

Mediation Board
Act No 72 of 1988

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF MEDIATION BOARDS
IN ARMS TO BE SPECIFIED BY THE MINISTER; TO DEFINE THE POWERS
AND DUTIES OF SUCH BOARDS, AND TO MAKE PROVISION FOR MATTERS
CONNECTED THEREWITH OK

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :

Short title. **1.** This Act may be cited as the Mediation Boards Act, No 72 of 1988.

Appointment of **2.**
Commission.

(1) The President shall appoint a Commission consisting of five persons (hereinafter referred to as the "Commission") three of whom at least shall be from among persons who have held judicial office in the Supreme Court or the Court of Appeal. The President shall nominate as Chairman of the Commission one of the three members who have held judicial office as aforesaid.

(2) The Chairman and Commissioners shall hold office for a period of three years unless any one of them earlier dies, resigns or is removed from office: Provided however, that, if at the expiration of the period of office of the Chairman or the Commissioners the new members of the Commission have not been appointed, the Chairman and Commissioners holding office on the day immediately prior to such expiration, shall continue in office until the new members are appointed.

(3) The Chairman or any Commissioner vacating office upon the expiration of his term of office shall be eligible for re-appointment.

(4)

(a) The Chairman or any Commissioner may resign office by letter addressed to the President.

(b) The President may without assigning a reason remove the Chairman or any Commissioner from office.

(5) The Chairman or any Commissioner who has resigned or has been removed from office shall not be eligible for re-appointment.

(6)

(a) Where any vacancy arises in the Commission, by reason of death resignation or removal of the Chairman or any commissioner, the President shall fill such vacancy having regard to the provisions of subsection (1).

(b) Any person appointed to fill a vacancy arising from the death, resignation or removal of the Chairman or any Commissioner shall hold office for the unexpired period of the term of office of his predecessor.

(7) Where a Commissioner becomes, by reason of illness or other infirmity or absence from Sri Lanka temporarily unable to perform the duties of his office,

the President may appoint a fit person to act in his place for the period of such incapacity or absence, and where the Commissioner who is so incapacitated or absent from Sri Lanka is the Chairman of the Commission, the President shall appoint another Commissioner who has previously held judicial office to act in his place until the resumption of duties by the Chairman of the Commission.

(8) The Chairman and the Commissioners shall be remunerated in such manner and at such rates as may be determined by the Minister with the concurrence of the Minister in charge of the subject of finance.

(9) Three members of the Commission shall constitute the quorum for any meeting of the Commission and the Chairman shall preside at all meetings of the Commission. The Commission may regulate its own procedure in regard to meetings of such Commission and the transaction of business at such meetings.

(10) No act or proceeding of the Commission shall be deemed invalid by reason only of any defect in the appointment of the Chairman or any Commissioner.

Power and duties of
Commission.

3. The Commission shall

(a) appoint, transfer, dismiss and exercise disciplinary control over Mediators for the purposes of this Act;

(b) supervise and control the performance and discharge by Mediators of their duties and functions under this Act;

(c) issue such directions as may be necessary to such Mediators.

Mediation
Board Area-

4. The Minister shall from time to time, by Order published in the Gazette, specify each area (hereinafter referred to as a " Mediation Board area ") to which the provisions of this Act shall apply.

Appointment of
panel of
Mediators.

5.

(1) Upon the publication of an Order under section 4 in respect of a Mediation Board area, the Commission shall take all such steps as are necessary to appoint a Chairman and a Panel or Mediation to such area from among the persons referred to in subsection (2), In accordance with, the procedure set out in the First Schedule to this Act

(2) The persons who shall be eligible for appointment to any Panel of Mediators are

(a) any person resident in a Mediation Board area or engaged in any work in that area;

(b) any person resident or engaged in any work out-side such Mediation Board area if the Commission so decides, in exceptional circumstances; and

(c) any public officer nominated by the Government Agent of the administrative district within which such Mediation Board area is situated:

Provided however that an officer nominated under this paragraph shall be eligible for appointment to the Panel appointed for every Mediation Board area within that administrative district.

Jurisdiction of
Mediation
Board. **6.**

(1) Subject to the provisions of subsection (2) any person may make an

application to the Chairman of the Panel of any Mediation Board area, for settlement by mediation of any dispute, arising wholly or partly within that Mediation Board area, or any offence specified in the Second Schedule to this Act and alleged to have been committed within that Mediation Board area:

Provided that where the dispute is

- (a) in relation to movable or immovable property, the application shall be made to the Chairman of the Panel appointed for the Mediation Board area within which such movable property is kept or immovable property is situated;
- (b) in relation to a contract, the application shall be made to the Chairman of the Panel appointed for the Mediation Board area within which such contract was made; and
- (c) in relation to a matter which constitutes a cause of action in a court of law, the application shall be made to the Chairman of the panel appointed for the Mediation Board area within the territorial limits of the court having jurisdiction in respect of such action,

(2) No application made under subsection (1) shall be entertained by the Chairman of a Panel, if one of the disputants is

- (a) the state ; or
- (b) a public officer acting in his capacity as such officer, where the dispute relates to the recovery of any property, money or other dues; or
- (c) the Attorney-General, where the offence is an offence in respect which, proceedings are instituted by the Attorney General.

(3) Every application shall be accompanied by a document evidencing the fact that the prescribed fee has been paid in the prescribed manner.

Action other than those involving **7.**

the grant of any provisional remedy not to be filed without certificates of non-settlement.

(1) Where a Panel has been appointed for a Mediation Board area, subject to the provisions of subsection (2), no proceeding in respect of any dispute arising wholly or partly within that area or an offence alleged to have been committed within that area shall be instituted in, or be entertained by any court of first instance if

- (a) the dispute is in relation to movable or immovable property or a debt, damage or demand, which does not exceed twenty-five thousand rupees in value ; or
- (b) the dispute gives rise to a cause of action in a court not being an action specified in the Third Schedule to this Act; or
- (c) the offence is an offence specified in the Second Schedule to this Act, unless the person instituting such action produces the certificate of non-settlement referred to in section 12 or section 14 (2) :

Provided however that where the relief prayed for in an action in respect of any such dispute includes a prayer for the grant of any provisional remedy under Part V of the Civil Procedure Code, or where a disputant to any dispute in respect of which an

application has been made under section 6 subsequently institutes an action in any court in respect of that dispute including a prayer for a provisional remedy under Part V of the Civil Procedure Code, the court, may entertain and determine such action in so far as it relates only to the grant of such provisional remedy. After such determination, the court shall

(a) where no application has been made under section 6, in respect of the dispute constituting the cause of action before it, refer such dispute to the Chairman of the appropriate Panel for mediation; and

(b) where an application has been made under section 6, in respect of that dispute, direct the Chairman, of the appropriate Panel where a Board has not yet been constituted, or the appropriate Board, as the case may be, to continue mediation In respect of that dispute,

(2) Nothing in subsection (1) of this section shall apply to any civil proceedings in respect of a dispute, where one of the disputants is the state or in respect of a dispute relating to the recovery of any property, money or other dues by a public officer acting in his capacity as such officer or to an offence in respect of which proceedings are instituted may the Attorney-General.

Reference by **8**. Where an action is field in any civil court having jurisdiction over a Mediation Board area, in court. respect of any dispute, the court may, with the written consent of the parties, refer the dispute to the Chairman of the Panel appointed for that area, for settlement by mediation.

Constitution of **9**.
Mediation Board

(1) The Chairman of a Panel appointed for a Mediation Board shall, upon receipt of an application under section 6 or upon a reference made to him under section 7 or 8, constitute a Mediation Board (hereinafter referred to as the " Board ") of three members consisting of

(a) one member selected by each disputant; and

(b) one member selected by the members selected under paragraph (a), from the Panel appointed for that Mediation Board area:

Provided however, that where the disputants referred to in paragraph (a) or the members referred to in paragraph (b) are unable to agree as to their respective selections the Chairman of the Panel shall make the necessary selection.

(2) The member selected under paragraph (b) of sub section (1) shall act as the Chief Mediator of the Board (hereinafter referred to as the " Chief Mediator") : Provided however that where the Chairman of the Panel is selected as a member of the Board, the Chairman shall set as the Chief Mediator,

(3) Upon the constitution of the Board, the Chairman of the Panel shall refer the dispute or offence in respect of which the application or reference has been made to such Board for settlement by mediation.

Duties of
Mediation
Board.

10. Where any dispute or offence is referred to any Board under subsection (3) of section 8 it shall be the duty of such Board by all lawful means to endeavour to bring the disputants to an amicable settlement and to remove, with their consent and wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute, or offence and for this

purpose shall

- (a) notify the disputants and such other persons as the Board may consider necessary to be present at a mediation conference either, together or individually, at a specified time and place;
- (b) require any person notified to be present to bring to any such conference any witnesses or documents which may assist the disputants in arriving at a settlement;
- (c) convene as many such mediation conferences as may be necessary to arrive at a settlement;
- (d) complete its proceedings within the time limit specified in section 13 and in the event of failure to do so, issue a certificate of non-settlement in the prescribed form signed by the Chief Mediator stating that it has not been possible to settle such dispute or offence.

Where settlement to reached.

11.

(1) Where the disputants agree to a settlement, the terms of the settlement shall be reduced to writing and be signed by the Chief Mediator and the disputants, and the Board shall

(a) where the settlement is in respect of any dispute or offence brought before the Board by an application made under section 6, issue immediately, a copy thereof to each of the disputants; and

(b) where the settlement is in respect of any dispute referred by court under section 7 or 8, forward to court a copy thereof.

(2) Where a copy of the settlement is forwarded to court under paragraph (b) of subsection (1) the court shall, after notice to the disputants, enter a decree in accordance with such settlement.

Where no settlement is possible.

12. Where the disputants do not agree to a settlement, the Board shall

(a) in the case of a dispute or offence referred to the Board upon application made under section 6 issue a certificate of non-settlement in the prescribed form signed by the Chief Mediator stating that such dispute or offence has been referred to such Board and that it is not possible to settle the dispute or offence by Mediation; or

(b) in the case of a dispute referred by any court for settlement under section 7 or 8, report to such court in the prescribed form signed by the Chief Mediator that it is not possible to settle the dispute by mediation.

Time limit within which Board must act.

13. The Board shall, in respect of every dispute or offence before it for settlement by mediation, take the steps specified in subsection (1) of section 11 or in section 22 within thirty days of the constitution of the Board.

Failure to comply with or violation of settlements.

14.

(1) Where any dispute or offence referred to a Mediation Board in pursuance of any application made under section 6 is settled and one of the disputants fails to comply with, or violates the terms of the settlement At any time, the other party shall forthwith report such failure or violation to the Board,

(2) The Board shall, upon receipt of a report under subsection (1), notify the disputants and such other persons as are considered necessary to be present

at a specified time and place and shall endeavour to resolve any differences that may have arisen between them and shall assist them to enter into a fresh settlement. Where, the resolution of such differences is not possible, the Board shall issue a certificate of non-settlement, in the prescribed form, signed by the Chief Mediator, stating that it has not been possible to settle such dispute or offence.

Representation.15. No Attorney-at-law, agent or other person shall be entitled or be permitted to appear on behalf of any disputant in any matter before a Board:

Provided however, that representation before a Board

(a) of one spouse by another spouse ; or

(b) of a minor or other person under any disability, by his parent, guardian or curator, shall be permitted.

Privileges16.

(1) Every person who makes a statement before a Mediation Board shall in respect of such statement be entitled to all the privileges which a witness giving evidence before a court of law is entitled to in respect of such evidence.

(2) No statement made by any person, before a Mediation Board shall be admissible in evidence in any civil or criminal proceedings.

Prescription.17. In computing the period of prescription, in regard to any cause of action or offence, the period commencing on the date on which an application is made to the Chairman of a Panel of Mediators in respect of the dispute constituting such cause of action or such offence, as the case may be, and ending on the date of the certificate issued under section 12 or subsection (2) of section 14 in respect of that dispute or offence, shall be disregarded, notwithstanding anything to the contrary in any other written law.

Offence settled by a Mediation Board deemed to be compounded.18. Where any offence specified in the Second Schedule to this Act is settled by a Mediation Board such offence shall be deemed to have been compounded within the meaning, and for the purpose, of paragraph (a) of subsection (4) of section 266 of the Code of Criminal Procedure Act, No. 15 of 1979,

Grama Seva Niladhari to assist the Board.19. Any Board may, in carrying out its duties under paragraph (a) of section 10 and subsection (2) of section 14 require the assistance of any Grama Seva Niladhari appointed for a Grama Seva Niladhari's division within the Mediation Board area, to communicate any notification to a disputant or other person, and such Grama Seva Niladhari shall when so required, render all such assistance as may be necessary in that regard to such Board.

members of Board deemed to be public servants.20. The members of every Board constituted under this Act shall, so long as they are acting as such, members, be deemed to be public servants within the meaning of the Penal Code, and every proceeding before such Board shall be deemed to be a judicial proceeding within the meaning of that Code.

Board deemed to be a Scheduled Institution.21. Every Board constituted under this Act shall be deemed to be a Schedule institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly.

Defect in constitution of Board not to invalidate acts and proceedings of Board.22. No act or proceeding of a Board shall be deemed to be invalid by reason only of a defect in the constitution of the Board.

Regulations.23.

(1) The Minister may make regulations in respect of any matter in respect of which regulations are authorized by this Act to be made or required by this Act to be

prescribed.

(2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation,

(3) Every regulation made under subsection (I) shall, as soon as convenient after its publication, in the Gazette be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval) but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation shall be deemed to be so rescinded shall be published in the Gazette.

Interpretation.**24.** In this Act, unless the context otherwise requires "disputant" means any party to a dispute or any person involved in the commission of an alleged offence or any person against whom any offence is alleged to have been committed,