

Alternative Dispute Resolution

In 2010, the Commission published its Report on [Alternative Dispute Resolution: Mediation and Conciliation](#) (LRC 98-2010) (3rd Programme of Law Reform, Project 5), which followed from its [Consultation Paper on Alternative Dispute Resolution](#) (LRC CP 50-2008). This Report made over 100 reform recommendations and also includes a draft *Mediation and Conciliation Bill*. The Report notes that mediation and conciliation are increasingly being used to try to reach mutually acceptable settlements of civil and commercial cases. These include: big commercial and small consumer claims, employment disputes, family breakdown, medical claims and property disputes.

The report recommends that a draft *Mediation and Conciliation Bill* should be enacted that defines clearly what is meant by mediation and conciliation, including the differences between them (the Bill states that a mediator may assist the parties to reach an agreement, while a conciliator may also make a proposal to the parties to resolve the dispute). The key principles of mediation and conciliation should also be set out, including: they are voluntary processes; the parties control them; confidentiality of the processes is required; and their quality must be assured by clearly stated standards. The Report also recommends that mediation and conciliation can be initiated either: (a) independently of court proceedings or (b) where a court suggests them after court proceedings have begun.

The Report recommends that, where parties include a mediation or conciliation clause in a contract, the courts could stop (stay) court proceedings, and this reflects the approach taken in a 2009 High Court case, *Health Service Executive v Keogh* [2009] IEHC 419. It also recommends that the Government should make an ADR under which Government Departments and State bodies would be required to consider and attempt mediation or conciliation in appropriate cases before initiating court proceedings. As to financial cost, the Commission recommended that parties should, in general, share the cost of mediation or conciliation equally.

The Report recommends that there should also be a statutory Code of Practice for Mediators and Conciliators, which would set out detailed requirements, based on accepted international standards, for all mediators and conciliators, including training requirements. Other emerging areas of ADR should also be dealt with in the statutory Code of Practice. This would include collaborative practice, where professional advisers actively assist and advise the parties/clients to reach, on a voluntary basis, a mutually acceptable agreement to resolve their dispute (including in a family law dispute).

The report also recommends that, in a dispute arising after medical care, health care professionals (such as doctors, dentists and nurses) should be able to make an apology without this being an admission of legal liability. The Report and draft *Mediation and Conciliation Bill* also include provisions to implement the 2008 EU Directive on Cross-Border Mediation in Civil and Commercial Disputes, 2008/52/EC.