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The Development of Contextualised Front End Mediation
Mechanisms to Facilitate More Cost-effective Access
to Construction Dispute Resolution in the Horn of Africa

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WHAT IS MEDIATION?

- Mediation is a facilitative process in which parties in dispute come together to discuss and reach an outcome or resolve their disputes with the assistance of an impartial third party (a mediator).
- The role of the mediator is to help the parties negotiate an agreed resolution of their dispute.
- Unlike adjudicators mediators cannot impose judgment or make any decisions that are binding on the parties, instead, they apply their skills to assist the parties negotiate an agreed outcome without an outcome being forced upon them by a court or tribunal decision maker.



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COMPULSORY MEDIATION

- Compulsory mediation is critical to construction dispute resolution in an emerging economy.
- At this conference you will hear that the cost of construction dispute resolution is very, very high everywhere.
- Even in developed economies consumers find it very challenging to fund the cost of adversarial dispute resolution.
- In emerging economies, the cost imposition is both prohibitive and unsustainable as in some emerging economies poverty is widespread and the majority of the population survive on a subsistence economy basis.
- They simply cannot afford to spend their very finite financial resources on construction dispute resolution and as consumers they are incredibly vulnerable and in reality, are denied access to conventional judicial machinery.



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THE MEDIATION IMPERATIVE

- It follows that adversarial dispute resolution that is part of the DNA of traditional adversarial dispute resolution is simply not compatible for either the Horn of Africa or many emerging economies.
- A contexturised best practice approach that is suitable for the ‘boots on the ground’ reality of emerging economies is mandatory front-end mediation.
- The state can afford to license and accredit trained mediators and to make them accessible to disputants.



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THE MEDIATION IMPERATIVE

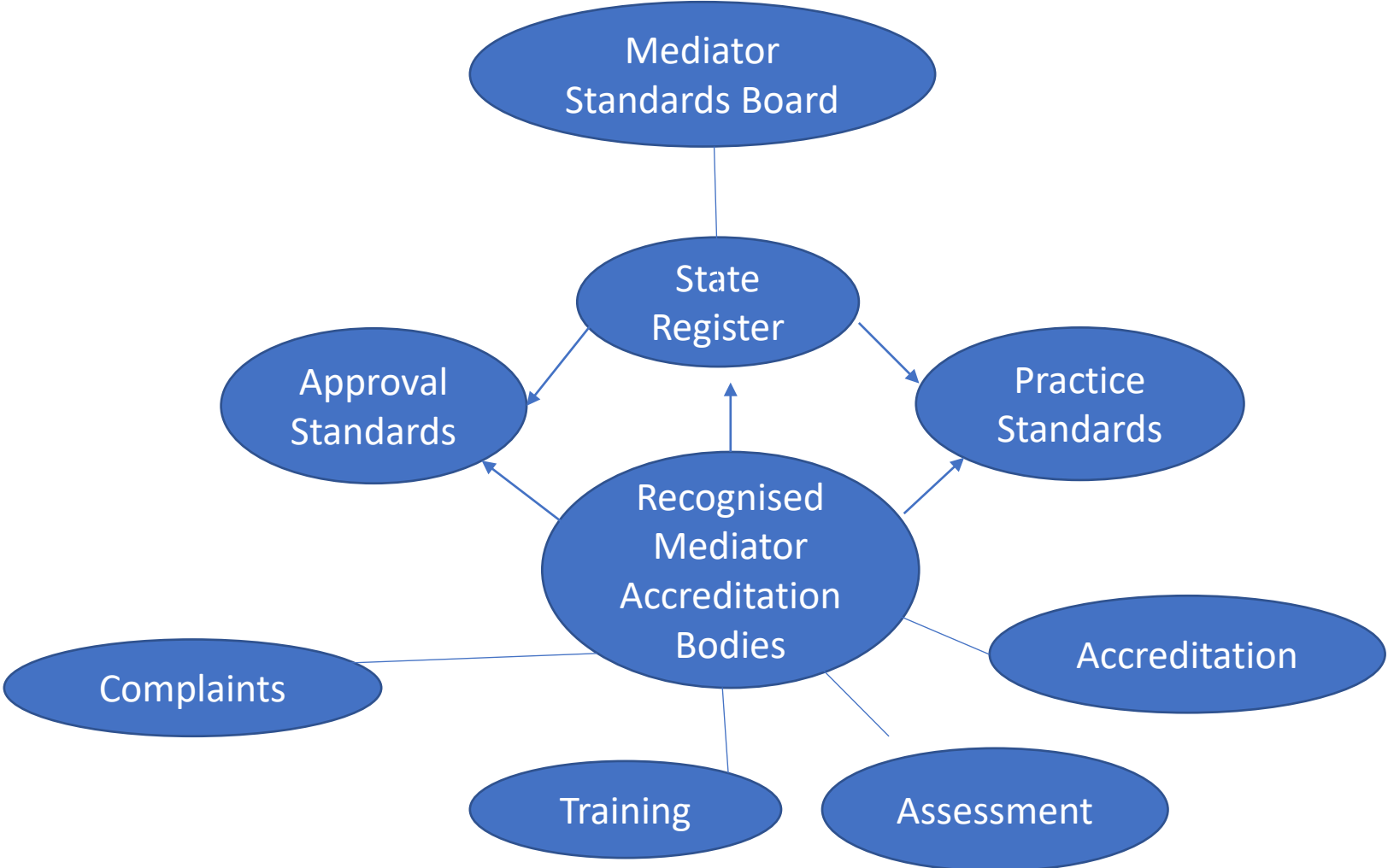
- But unlike some western jurisdictions like Victoria where the state underwrites the cost of the mediation apparatus in many African countries the state will not be able to underwrite that function.
- It follows that the disputants will jointly remunerate the mediator and as most building disputes ultimately settle at mediation, mediation will occur before legal proceedings can be issued in a court of law or a tribunal.
- Compulsory conciliation as a prerequisite to litigation is compulsory by law in the Australian state of Victoria.



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A BEST PRACTICE MODEL MEDIATOR ACCREDITATION SYSTEM



Presented by Tsigereda Lovegrove

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