

1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Mediation Bill 1997
[No. 2]

A BILL
FOR
An Act relating to mediation and the registration
of mediators

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Mediation Act 1997*.

5 **Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

- (2) The remaining provisions commence on 1 July 1998.

Interpretation

- 10 3. (1) In this Act, unless the contrary intention appears—

“approved agency” means a body or an organisation declared by the regulations to be an approved agency for the purposes of this Act;

5 “mediation session” means a meeting between persons who are in dispute and a registered mediator for the purpose of resolving the dispute by mediation, and includes any activity undertaken for the purpose of—

(a) arranging such a meeting, whether successful in arranging it or not; or

(b) following-up any matter or issue raised in such a meeting;

10 “registered mediator” means a person who is registered under section 5 while the registration is current.

(2) A reference in this Act to the parties to a mediation session does not include a reference to the mediator.

Competency standards

15 4. The standards of competency required for the registration of a person under section 5 are the standards specified in an instrument prescribed for the purposes of this section, being an instrument as in effect, in force or existing at a particular time or from time to time.

Registration of mediators

20 5. (1) A person may apply in writing to an approved agency for registration under this section.

(2) An approved agency shall approve an application and register the applicant if—

25 (a) any fee determined by the agency to be payable to it in respect of an application under this section has been paid to it;

(b) it is satisfied that the applicant has achieved the standards of competency prescribed for the purposes of section 4; and

(c) the applicant satisfies any requirements of the agency that relate to mediators.

30 (3) A person whose application under subsection (1) has been refused may, by notice in writing given to the agency, require it to review the decision.

(4) An approved agency that receives a notice under subsection (3) shall review the relevant decision.

(5) An approved agency shall notify an applicant in writing within 7 days of determining an application under subsection (1) or a review under subsection (4)—

- (a) of its determination; and
- 5 (b) where the application has not been granted, of the grounds for not granting it.

(6) A person who has made an application under subsection (1) may not make another such application, whether to the same or another approved agency, within 6 months of the making of the first application.

10 **Duration of registration**

6. Subject to section 8, the registration of a registered mediator expires 3 years after the day on which he or she was registered or on which his or her registration was last renewed, as the case requires.

Renewal of registration

- 15 7. (1) A registered mediator may, before the expiry of his or her registration, apply to the approved agency by which he or she has been registered or to another approved agency for renewal of the registration.

20 (2) The approved agency shall renew the registration of a mediator if any fee determined by the agency to be payable to it in respect of an application under this section has been paid and the agency is satisfied that the mediator—

- (a) would, if he or she were an applicant under subsection 5 (1), be eligible for registration; and
- 25 (b) has, since his or her registration or last renewal, whichever last occurred, undertaken such further education in matters relating to mediation as is approved by the agency.

Cancellation of registration

8. The approved agency by which a registered mediator has been registered may cancel the registration if satisfied that—

- 30 (a) if the mediator were an applicant under subsection 5 (1), he or she would not be eligible for registration; or
- (b) the mediator has made a disclosure in breach of section 10 and the circumstances are such that his or her registration should be cancelled.

35 **Admissibility of evidence**

9. Evidence of—

- (a) a communication made in a mediation session; or
- (b) a document, whether delivered or not, prepared—
 - (i) for the purposes of;
 - (ii) in the course of; or
- 5 (iii) pursuant to a decision taken or undertaking given in;
a mediation session;

is not admissible in any proceedings except in accordance with section 131 of the *Evidence Act 1995* of the Commonwealth.

Secrecy

- 10 **10. (1)** A person who is or has been a registered mediator shall not disclose any information obtained in a mediation session.
- (2) This section does not apply where—
 - (a) the disclosure is required by or under a law of the Territory or the Commonwealth;
 - 15 (b) the disclosure is made with the consent of the parties;
 - (c) the disclosure is made with the consent of the person who gave the information; or
 - (d) the person referred to in subsection (1) believes on reasonable grounds that—
 - 20 (i) a person's life, health or property is under serious and imminent threat and the disclosure is necessary in order to avert, or mitigate the consequences of, its realisation; or
 - (ii) the disclosure is necessary in order to report to the appropriate authority the commission of an offence or
 - 25 prevent the likely commission of an offence.
- (3) In this section—
 - "offence" means an offence involving—
 - (a) violence, or the threat of violence, to a person; or
 - (b) intentional damage to property or the threat of such
 - 30 damage.

Protection from defamation

11. The same privilege with respect to defamation as exists in relation to judicial proceedings exists in relation to—

- (a) a mediation session; or
- (b) a document or other material—
 - (i) produced at a mediation session; or
 - (ii) given to a registered mediator for the purpose of arranging or conducting a mediation session.

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Protection of mediators

12. A registered mediator has, in the performance in good faith of his or her functions as mediator, the same protection and immunity as a judge of the Supreme Court.

10 **Regulations**

13. The Executive may make regulations for the purposes of this Act.