



Australian Capital Territory

# **Mediation Act 1997      No 61**

## **Republication No 2**

Republication date: 23 January 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Mediation Act 1997* as in force on 23 January 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Mediation Act 1997

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12 September 2001



Australian Capital Territory

## Mediation Act 1997

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An Act relating to mediation and the registration of mediators

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## **1 Short title**

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

## **3 Interpretation for Act**

### **(1) In this Act:**

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001, s 155*).

***approved agency*** means an entity that is declared to be an approved agency under section 4 (2).

***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.

***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.

## **4 Declarations about competency standards and approved agencies**

- (1) The Minister may, in writing, declare standards of competency required for the registration of a person under section 5.
- (2) The Minister may, in writing, declare an entity to be an approved agency for this Act.
- (3) A declaration under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**5 Registration of mediators**

- (1) Subject to subsection (6), 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—
  - (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; and
  - (b) it is satisfied that the applicant has achieved the standards of competency prescribed for section 4; and
  - (c) the applicant satisfies any requirements of the agency that relate to mediators.
- (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
  - (b) where the application has not been granted, of the grounds for not granting it.
- (6) A person—
  - (a) who has made an application under subsection (1) that has been refused; or
  - (b) whose registration has been cancelled under section 8;is not eligible to make another application under subsection (1) to any approved agency within 6 months of the refusal or cancellation, as the case requires.

## **6 Duration of registration**

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.

## **7 Renewal of registration**

- (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.
- (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 section 5 (1), be eligible for registration; and
  - (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.

## **8 Cancellation of registration**

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

- (a) if the mediator were an applicant under section 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.

## **9 Admissibility of evidence**

Evidence of—



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

is not admissible in any proceedings except in accordance with the *Evidence Act 1995* (Cwlth), section 131.

## **10 Secrecy**

- (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 ACT or Commonwealth law; or
  - (b) the disclosure is made with the consent of the parties; or
  - (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—
    - (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 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 damage.

## **11 Protection from defamation**

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.

## **12 Protection of mediators**

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.

## **13 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe requirements to be complied with by an approved agency.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

## Endnotes

3      Legislation history

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### 3      Legislation history

#### **Mediation Act 1997 No 61**

notified 9 October 1997 (Gaz 1997 No S300)

s 1, s 2 commenced 9 October 1997 (s 2 (1))

remainder commenced 1 July 1998 (s 2 (2))

#### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### **Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 Nov 1999 (Gaz 1999 No 45)

sch 3 commenced 10 Nov 1999 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 246**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 246 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

### 4      Amendment history

#### **Commencement**

s 2                      om 2001 No 44 amdt 1.2832

#### **Interpretation for Act**

s 3                      def *approved agency* sub 1999 No 66 s 6 sch 3

#### **Declarations about competency standards and approved agencies**

s 4                      sub 1999 No 66 s 6 sch 3

am 2001 No 44 amds 1.2833-1.2835

#### **Regulations-making power**

s 13                    am 1998 No 54 sch

sub 2001 No 44 amdt 1.2836

**5 Earlier replications**

Some earlier replications were not numbered. The number in column 1 refers to the publication order.

Replication No	Amendments to	Replication date
1	Act 1999 No 66	17 April 2000

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