

1997  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Mediation Bill 1997

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**A BILL**  
**FOR**  
**An Act relating to mediation**

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 a day fixed by the Minister by notice in the *Gazette*.

10 (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

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**Interpretation**

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

“approved agency” means a body or organisation approved under section 4,

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

- 10 (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;

“mediator” means a person who—

- 15 (a) is to be taken to be registered under this Act by virtue of section 7, or  
(b) is registered under section 8;

“registered” means registered as a mediator.

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

**Approval of agencies**

20 4. The Minister may, by instrument, approve a body or an organisation for the purposes of this Act.

**Determination of competency qualifications**

25 5. The Minister may, by instrument, determine the qualifications, standards of competency and personal attributes required for registration of a person as a mediator.

**Instruments to be disallowable**

6. An instrument under section 4 or 5, and any instrument amending such an instrument, are disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*.

30 **Mediators at commencement of the Act**

7. Where—

- (a) the Minister approves under section 4 a body or an organisation that—  
(i) is in existence at the commencement of that section, and

(ii) had, prior to that commencement, registered a person as a mediator; and

(b) the registration is in effect at the commencement of section 4;

5 the person shall be taken to be registered under this Act until the expiry of his or her registration under subsection 9 (1).

### Registration of mediators

8. (1) A person may apply in writing to an approved agency for registration as a mediator.

10 (2) An approved agency shall approve an application and register the applicant if satisfied that the applicant possesses the qualifications, standards of competency and attributes determined under section 5.

(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.

15 (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)—

20 (a) of its determination, and

(b) where the application has not been granted, of the grounds for not granting it.

25 (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.

### Duration of registration

30 9. (1) Subject to section 11, the registration of a person who is to be taken to be registered by virtue of section 7 expires 2 years after the date of the publication in the *Gazette* of the instrument by which the registering body or organisation is approved.

(2) Subject to section 11, the registration of any other mediator expires 3 years after the day on which he or she has been registered or on which his or her registration was last renewed, as the case requires.

**Renewal of registration**

10. (1) A 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

5 (2) The approved agency shall renew the registration of a mediator if satisfied that the mediator—

- (a) would, if he or she were an applicant under subsection 8 (1), be eligible for registration; and
- 10 (b) has, since his or her registration or last renewal, as the case requires, undertaken such further education in matters relating to mediation as is approved by the agency.

**Cancellation of registration**

11. An approved agency that has registered a mediator may cancel the registration if satisfied that—

- 15 (a) if the mediator were an applicant under subsection 8 (1), he or she would not be eligible for registration, or
- (b) the mediator has made a disclosure in breach of section 13 and the circumstances are such that his or her registration should be cancelled

20 **Admissibility of evidence**

12. (1) Subject to this section, evidence of—

- (a) a communication made in a mediation session,
- 25 (b) a document or the contents of a document prepared—
  - (i) for the purposes of;
  - (ii) in the course of; or
  - (iii) pursuant to a decision taken or undertaking given in;a mediation session; or

(c) anything done in a mediation session;

is not admissible in any proceedings

30 (2) Subsection (1) does not apply where—

- (a) all the parties to the mediation session agree that it is not to apply,
- (b) the substance of the evidence has been disclosed with the consent of all the parties;

- (c) the substance of the evidence has been admitted and full disclosure of the evidence is reasonably necessary to enable a proper understanding of the other evidence that has been admitted;
- 5 (d) in the case of paragraph (a) or (b)—the communication or document included a statement to the effect that it is not to be treated as confidential,
- (e) the proceedings are brought to enforce an agreement made in, or as a result of, a mediation session and disclosure of the evidence is necessary to determine the validity or the agreement or the interpretation of any of its terms;
- 10 (f) evidence that has been admitted in the proceedings, whether or not evidence of the kind referred to in subsection (1), or an inference properly drawn from such evidence, is likely to mislead the court unless evidence referred to in subsection (1) is admitted;
- 15 (g) the evidence is relevant to determining liability for costs;
- (h) the proceedings relate to a person's right that is affected by the communication, document or action;
- (i) the communication was made, the document was prepared or the action was done (as the case requires) in furtherance of the commission of an offence, a fraud or an act that renders a person liable to a civil penalty; or
- 20 (j) 1 of the parties, or an employee or agent of 1 of the parties, knew, or ought reasonably to have known, that the communication was made, the document was prepared or the action was done (as the case requires) in furtherance of a deliberate abuse of power.
- 25 (3) In this section—  
“action” includes a failure to act;  
“consent” includes—
- (a) implied consent; and
- 30 (b) the consent of an employee or agent of the person whose consent is in issue, being an employee or agent who has ostensible authority to consent;
- “power” means a power conferred by a law of the Territory, the Commonwealth, a State or another Territory.
- 35 (4) In this section, a reference to—
- (a) a communication made by a person;

- (b) a document prepared by a person; or
- (c) an action of a person,

shall be read as including a communication made, a document prepared or an action done (as the case requires) by an employee or agent of the person

5 **Secrecy**

13. (1) A person who is or has been a mediator shall not disclose any information obtained in a mediation session.

(2) This section does not apply where—

- 10 (a) the disclosure is required by or under a law of the Territory or the Commonwealth;
- (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
- 15 (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
  - 20 (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—

- 25 (a) violence, or the threat of violence, to a person; or
- (b) intentional damage to property or the threat of such damage.

**Protection from defamation**

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

- 30 (a) a mediation session; or
- (b) a document or other material—
  - (i) produced at a mediation session; or

- (u) given to a mediator for the purpose of arranging or conducting a mediation session

**Protection of mediators**

- 5 **15.** A 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.