

ACT PARLIAMENTARY COUNSEL
THIRD ASSEMBLY

1997

MOP.
No.

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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

Clark

**MEDIATION BILL 1997
[No 2]**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

CIRCULATED BY AUTHORITY

of

GARY HUMPHRIES MLA

ATTORNEY-GENERAL

MEDIATION BILL 1997

[No 2]

OUTLINE

The Bill has three main objectives. The first objective is to provide for the registration of mediators and the ongoing professional supervision of registered mediators. Once the Bill comes into operation a person seeking registration as a mediator must have been assessed by an approved agency as competent according to the *ACT Mediation Competency Standards*. An approved agency is a body or organisation declared to be such under the regulations to the Act.

The second objective is to provide for the confidentiality of anything said, admitted or done during a mediation session conducted by a registered mediator. If mediation, as a means of resolving disputes, is to be successful, there is a need for an assurance, backed by law, that the parties to the dispute can speak freely without fear that what they say or do during a mediation may be used later on in evidence against them. This confidentiality provision therefore aims at fostering an atmosphere of trust which encourages the parties to a dispute to discuss issues openly and honestly. In this way the prospect of reaching an agreement is enhanced.

The third objective of the Bill is to provide for the immunity of a registered mediator from civil suit. It is essential that a registered mediator be able to act without fear of being sued by any of the parties, if she or he is to carry out the role of being a mediator effectively. This immunity is, however, subject to a proviso: that the mediator acts in good faith in carrying out the function of a mediator.

The amendments amend the Bill in 2 ways :

- (a) **Subclause 5(6)** is amended to allow a person to seek registration from more than 1 agency. Only if a person has been refused registration or has had her or his registration cancelled will the waiting period of 6 months apply. This clarifies that the waiting period will not apply to persons who have been accepted for registration by 1 agency and who seek registration with another.
- (b) it is intended that the Regulations will require approved agencies to keep a **register of mediators which will be available for inspection by the public**. Clause 13 is therefore amended to add a subclause to provide that the Regulations may prescribe requirements to be complied with by an approved agency, and a penalty for failure to comply.

FINANCIAL CONSIDERATIONS

There are no financial implications arising from those amendments.

CONSIDERATION OF THE AMENDING CLAUSES

The proposed amendment to subclause 5(1) is needed because of the proposed amendment to **subclause 5(6)**.

Subclause 5(6) is amended to provide that only a person whose application for registration as a mediator has not been granted or whose registration has been cancelled may not make another application within a period of 6 months.

Subclause 13(2) is added to provide that the Regulations may prescribe requirements to be complied with by an approved agency, and a penalty for failure to comply. It is intended that approved agencies will be listed in the Regulations and will also be required to comply with certain requirements prescribed in the Regulations. One of those requirements will be that the agency keep a register of mediators and that the register be available to the public.