



New South Wales

Community Justice Centres Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Community Justice Centres Act 1983* (***the Principal Act***):

- (a) to specify the object of that Act, and
- (b) to abolish the Community Justice Centres Council, and
- (c) to confer certain functions on the Director of Community Justice Centres (***the Director***) that were previously exercised by the Community Justice Centres Council, and
- (d) to enable the Director to seek advice from any person or body in relation to the Director's functions and the achievement of the object of the Act and to establish advisory committees for that purpose, and
- (e) to provide for mediators at Community Justice Centres to be persons employed under the *Public Sector Employment and Management Act 2002*, and
- (f) to enable the Director to accept disputes for mediation that have been referred by a court or tribunal without the consent of all the parties to the dispute

(currently, only voluntary mediation is undertaken by Community Justice Centres), and

- (g) to require mediators under the Principal Act to report to the Director-General of the Department of Community Services information obtained during the exercise of their mediation functions about children at risk of harm, and
- (h) to alter the requirements as to who must consent to the admission in evidence in proceedings of certain privileged information and documents arising from a mediation session.

The Bill also makes other amendments to the Principal Act of a minor or consequential nature or for the purposes of statute law revision.

The Bill also amends other Acts and a Regulation consequentially.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Community Justice Centres Act 1983* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Community Justice Centres Act 1983

Object of Act

Schedule 1 [1] inserts proposed section 3 into the Principal Act which sets out the object of that Act. The object of the Principal Act is to provide for the establishment and operation of Community Justice Centres to provide dispute resolution and conflict management services, including the mediation of disputes. Community Justice Centres will also provide for the training of mediators and will undertake various other measures for the promotion and development of alternative dispute resolution. **Schedule 1 [11]** makes a consequential amendment.

Abolition of Community Justice Centres Council and role of Director

Schedule 1 [5] and [35] omit provisions of the Principal Act that relate to the establishment and functions of the Community Justice Centres Council. **Schedule 1 [2], [6], [24], [28], [29], [31] and [33]** make consequential amendments.

Schedule 1 [10] enables the Director to seek advice from other persons and bodies in relation to the carrying out of the Director's functions and the achievement of the object of the Act. The Director may also establish advisory committees for that purpose.

Currently, the Director is subject to policy guidelines and directions of the Community Justice Centres Council in the exercise of certain functions of the Director. **Schedule 1 [13], [19] and [21]** amend the Principal Act so as to remove those restrictions.

Schedule 1 [16] amends section 19 of the Principal Act so as to confer on the Director the function (currently exercised by the Community Justice Centres Council) of giving consent to the use of certain titles by organisations that are not Community Justice Centres. **Schedule 1 [22]** amends section 22 of the Principal Act so as to confer on the Director the power (currently exercised by the Community Justice Centres Council) to determine that specified classes of disputes may or may not be the subject of mediation under the Principal Act.

Mediators and staff of Community Justice Centres

Schedule 1 [7] omits section 11 of the Principal Act which currently provides for the accreditation of mediators by the Minister. **Schedule 1 [8]** substitutes section 12 of the Principal Act to provide that mediators are to be employed under the *Public Sector Employment and Management Act 2002*. **Schedule 1 [4], [17], [18] and [33]** make consequential amendments.

Schedule 1 [32] inserts proposed section 29A into the Principal Act to impose a duty on a mediator to make a report to the Director-General of the Department of Community Services if the mediator forms a suspicion on reasonable grounds arising in the course of the mediator's mediation work that a child is at risk of harm. **Schedule 1 [30]** makes a consequential amendment.

Mandatory mediation referred by court or tribunal

Schedule 1 [20] inserts proposed section 20A into the Principal Act to enable the Director to accept disputes for mediation under the Principal Act that are referred by a court or tribunal to Community Justice Centres for mediation without the consent of the parties to the dispute.

Currently, section 23 of the Principal Act requires attendance at mediation to be voluntary. Several courts and tribunals have power to refer disputes for mediation without the consent of the parties and it is the duty of the parties to attend. The proposed section provides that even though such a dispute has been accepted by the Director for mediation, a party to the dispute can withdraw from a mediation session. The proposed section also preserves in relation to mandatory mediation referred by a court or tribunal, the Director's power under section 24 of the Principal Act to decline to accept a dispute for mediation or to terminate a mediation session.

Privileged information and documents

Currently, section 28 of the Principal Act provides that evidence of anything said or admissions made in a mediation session under that Act and documents prepared for the purposes of or in the course of a mediation session are not admissible in proceedings before any court, tribunal or body except in specified circumstances. One such circumstance is where the persons in attendance at, or named during, the mediation session and, in the case of a document, all persons named in the document, consent to its admission.

Schedule 1 [27] amends section 28 of the Principal Act to enable such evidence or documents to be admissible in proceedings where the consent of the persons in attendance at the mediation session concerned has been given.

Other consequential or minor amendments and amendments by way of statute law revision

Schedule 1 [2], [9], [25] and [26] amend the Principal Act to omit unnecessary references to the Deputy Director.

Schedule 1 [3] and [15] amend the Principal Act so as to update references to repealed legislation and the Department of Courts Administration, which no longer exists.

Schedule 1 [12] amends section 15 of the Principal Act to remove the requirement for the determinations of the Governor as to the establishment of Community Justice Centres to be published in the Gazette.

Schedule 1 [14] omits section 17 of the Principal Act. Currently, the section contains requirements relating to the keeping and disposal of records of the activities of Community Justice Centres for the purposes of making evaluations under section 26 of the Principal Act. The disposal of those records is now governed by the *State Records Act 1998*. **Schedule 1 [23]** transfers the obligation to keep those records to section 26 of the Principal Act.

Schedule 1 [34] inserts proposed section 31 into the Principal Act which contains a power for the Governor to make regulations for the purposes of the Principal Act.

Schedule 1 [36]–[39] amend Schedule 4 to the Principal Act to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. The amendments also formally abolish the Community Justice Centres Council and provide for mediators who are currently accredited under the Principal Act to continue as mediators for their current term of accreditation.

Schedule 2 Amendment of other Acts and Regulation

Schedule 2 makes consequential amendments to other Acts and a Regulation.



New South Wales

Community Justice Centres Amendment Bill 2007

Contents

| | Page |
|--|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Amendment of Community Justice Centres Act 1983 No 127 | 2 |
| 4 Amendment of other Acts and Regulation | 2 |
| 5 Repeal of Act | 2 |
| Schedule 1 Amendment of Community Justice Centres Act 1983 | 3 |
| Schedule 2 Amendment of other Acts and Regulation | 11 |



New South Wales

Community Justice Centres Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Community Justice Centres Act 1983* with respect to the staff and administration of Community Justice Centres, the abolition of the Community Justice Centres Council and the conduct of certain mandatory mediation; and for other purposes.

| | |
|--|-------------|
| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Community Justice Centres Amendment Act 2007</i> . | 3 |
| 2 Commencement | 4 |
| (1) Except as provided by subsection (2), this Act commences on the date of assent. | 5 6 |
| (2) Schedule 1 [4], [7], [8], [17], [18], [20], [30], [32] and [33] and Schedule 2.1 and 2.2 commence on a day or days to be appointed by proclamation. | 7 8 9 |
| 3 Amendment of Community Justice Centres Act 1983 No 127 | 10 |
| The <i>Community Justice Centres Act 1983</i> is amended as set out in Schedule 1. | 11 12 |
| 4 Amendment of other Acts and Regulation | 13 |
| Each Act and Regulation specified in Schedule 2 is amended as set out in that Schedule. | 14 15 |
| 5 Repeal of Act | 16 |
| (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced. | 17 18 |
| (2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act. | 19 20 |

| | | |
|--|--|----|
| Schedule 1 | Amendment of Community Justice Centres Act 1983 | 1 |
| | | 2 |
| | (Section 3) | 3 |
| [1] Section 3 | | 4 |
| | Insert after section 2: | 5 |
| | 3 Object of Act | 6 |
| | The object of this Act is to provide for the establishment and operation of Community Justice Centres for the purpose of: | 7 |
| | | 8 |
| | (a) providing dispute resolution and conflict management services, including the mediation of disputes, and | 9 |
| | | 10 |
| | (b) training persons to be mediators, and | 11 |
| | (c) promoting alternative dispute resolution, and | 12 |
| | (d) contributing to the development of alternative dispute resolution in New South Wales by entering into connections and partnerships with the legal profession, courts, tribunals, the academic sector and other providers of alternative dispute resolution services, and | 13 |
| | | 14 |
| | | 15 |
| | | 16 |
| | | 17 |
| | (e) undertaking other matters incidental to the provision of dispute resolution and conflict management services. | 18 |
| | | 19 |
| [2] Section 4 Definitions | | 20 |
| | Omit the definitions of <i>Council</i> , <i>Deputy Director</i> and <i>member</i> from section 4 (1). | 21 |
| | | 22 |
| [3] Section 4 (1), definition of "Director" | | 23 |
| | Omit the definition. Insert instead: | 24 |
| | <i>Director</i> means the person holding the office of the Director of Community Justice Centres under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> . | 25 |
| | | 26 |
| | | 27 |
| [4] Section 4 (1), definition of "mediator" | | 28 |
| | Omit paragraph (b) of the definition. Insert instead: | 29 |
| | (b) a person employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> as a mediator for Community Justice Centres. | 30 |
| | | 31 |
| | | 32 |
| [5] Part 2, Division 1 The Council | | 33 |
| | Omit the Division. | 34 |

| | |
|--|----------------------|
| [6] Section 10 Director | 1 |
| Omit the section. | 2 |
| [7] Section 11 | 3 |
| Omit the section. | 4 |
| [8] Section 12 | 5 |
| Omit the section. Insert instead: | 6 |
| 12 Staff | 7 |
| The Director and the staff of Community Justice Centres (including mediators) are to be employed under and in accordance with Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> . | 8 9 10 11 |
| [9] Section 13 Delegation by Director | 12 |
| Omit “the Deputy Director or” from section 13 (1). | 13 |
| [10] Section 13A | 14 |
| Insert after section 13: | 15 |
| 13A Director may seek advice relating to Director’s functions and object of Act | 16 17 |
| (1) The Director may consult any other person or body the Director considers appropriate in relation to the carrying out of the Director’s functions under this Act and the achievement of the object of this Act. | 18 19 20 21 |
| (2) Without limiting subsection (1), the Director may establish advisory committees to give advice in relation to the exercise of the Director’s functions under this Act and the achievement of the object of this Act. | 22 23 24 25 |
| (3) Any or all of the members of an advisory committee may be persons who are not members of staff of Community Justice Centres. | 26 27 28 |
| (4) The procedure for the calling of meetings of an advisory committee established by the Director and for the conduct of business at those meetings is to be as determined by the committee (subject to any determination of the Director). | 29 30 31 32 |
| (5) The Minister may determine the remuneration (if any) and the term of office of members of an advisory committee established under this section. | 33 34 35 |

| | |
|---|----------|
| [11] Section 14 Establishment of Community Justice Centres | 1 |
| Omit “providing mediation services”. | 2 |
| Insert instead “achieving the purposes referred to in section 3 (a)–(e)”. | 3 |
| [12] Section 15 Premises of Community Justice Centres | 4 |
| Omit “published in the Gazette”. | 5 |
| [13] Section 16 Place of operation of Community Justice Centres | 6 |
| Omit “, subject to the policy guidelines determined by, and any directions of, the Council,” from section 16 (2). | 7 8 |
| [14] Section 17 Records | 9 |
| Omit the section. | 10 |
| [15] Section 18 | 11 |
| Omit the section. Insert instead: | 12 |
| 18 Centres to be part of Attorney General’s Department | 13 |
| Community Justice Centres are taken for all purposes to form part of the Attorney General’s Department. | 14 15 |
| [16] Section 19 Use of certain words or letters | 16 |
| Omit “Council” from section 19 (1) (b). Insert instead “Director”. | 17 |
| [17] Section 19 (1A) | 18 |
| Omit “person holding a current accreditation as a mediator under section 11”. | 19 |
| Insert instead “mediator”. | 20 |
| [18] Section 19 (1A) | 21 |
| Omit “holds a current accreditation as a mediator”. | 22 |
| Insert instead “is a mediator”. | 23 |
| [19] Section 20 Provision of mediation services generally | 24 |
| Omit “, subject to the policy guidelines determined by, and any directions of, the Council,” from section 20 (1). | 25 26 |

| | |
|---|--|
| [20] Section 20A | 1 |
| Insert after section 20: | 2 |
| 20A Provision of mandatory mediation services | 3 |
| (1) This section applies to a dispute that has been referred to Community Justice Centres for mediation by an order of a court or tribunal under a provision of another Act or of a statutory rule and without the consent of all of the parties to the dispute. | 4 5 6 7 |
| (2) The Director may accept, or decline to accept, a dispute to which this section applies for mediation under this Act. | 8 9 |
| (3) If the Director accepts a dispute to which this section applies for mediation: | 10 11 |
| (a) the Director may assign the mediator or mediators who are to conduct the mediation sessions in relation to the dispute, and | 12 13 14 |
| (b) a mediator assigned by the Director to conduct the mediation sessions in relation to the dispute is taken to be the mediator appointed by the court or tribunal that made the order referring the dispute for mediation or the mediator specified in the order, as the case may be. | 15 16 17 18 19 |
| (4) Unless otherwise provided by the regulations: | 20 |
| (a) the provisions of this Act (except sections 23 (1) and (3), 27, 28 and 29) apply to the mediation under this Act of a dispute to which this section applies and to the mediators conducting the mediation sessions in relation to the dispute, and | 21 22 23 24 25 |
| (b) the provisions of the Act or statutory rule under which an order was made referring such a dispute for mediation under this Act, and the terms of the order: | 26 27 28 |
| (i) apply to the mediation of the dispute under this Act and to the mediators conducting the mediation sessions in relation to the dispute in the same way as they apply to mediation under the Act or statutory rule under which the referring order was made and mediators conducting mediation under that Act or statutory rule, and | 29 30 31 32 33 34 35 |
| (ii) so apply except to the extent to which they are inconsistent with subsection (3) or the other provisions of this Act applied by paragraph (a). | 36 37 38 |
| (5) If the Director accepts a dispute to which this section applies for mediation under this Act, the Director is to provide a written | 39 40 |

| | | |
|-------------|---|----------------------|
| | report on the outcome of the mediation or attempted mediation to the court or tribunal that referred the matter for mediation. | 1 2 |
| | (6) If the Director declines to accept a dispute to which this section applies for mediation under this Act, the Director is to give the court or tribunal that referred the matter for mediation notice in writing of the Director's decision and the reason for the decision. | 3 4 5 6 |
| [21] | Section 21 Conduct of mediation sessions | 7 |
| | Omit "shall, subject to the policy guidelines determined by, and any directions of, the Council," from section 21 (1). | 8 9 |
| | Insert instead "is to". | 10 |
| [22] | Section 22 Disputes | 11 |
| | Omit "Council" from section 22 (1). Insert instead "Director". | 12 |
| [23] | Section 26 Evaluations | 13 |
| | Insert at the end of the section: | 14 |
| | (2) The Director is to ensure that such records relating to the activities of Community Justice Centres are made and kept as are necessary or appropriate to enable a proper evaluation of Community Justice Centres to be made under this section. | 15 16 17 18 |
| [24] | Section 27 Exoneration from liability | 19 |
| | Omit section 27 (1) (a) and (b). | 20 |
| [25] | Section 27 (1) (d) | 21 |
| | Omit ", the Deputy Director". | 22 |
| [26] | Section 27 (4) | 23 |
| | Omit "or Deputy Director" wherever occurring. | 24 |
| [27] | Section 28 Privilege | 25 |
| | Omit section 28 (6) (a). Insert instead: | 26 |
| | (a) where the persons in attendance at the mediation session consent to admission of the evidence or document, or | 27 28 |
| [28] | Section 28 (7) | 29 |
| | Omit "A member of the Council or a sub-committee of the Council, a mediator, the Director, the Deputy Director". | 30 31 |
| | Insert instead "A mediator, the Director". | 32 |

Community Justice Centres Amendment Bill 2007

Schedule 1 Amendment of Community Justice Centres Act 1983

| | |
|--|----------------------------------|
| [29] Section 29 Secrecy | 1 |
| Omit “a member of the Council or a sub-committee of the Council,” from section 29 (2). | 2 3 |
| [30] Section 29 (2) (c1) | 4 |
| Insert after section 29 (2) (c): | 5 |
| (c1) where the disclosure is made for the purposes of section 29A, | 6 7 |
| [31] Section 29 (2) (e) | 8 |
| Omit “Council”. Insert instead “Director”. | 9 |
| [32] Section 29A | 10 |
| Insert after section 29: | 11 |
| 29A Mandatory reporting | 12 |
| If a mediator has reasonable grounds to suspect that a child is at risk of harm (within the meaning of section 23 of the <i>Children and Young Persons (Care and Protection) Act 1998</i>) and those grounds arise during the course of or from the mediator’s work as a mediator, it is the duty of the mediator to make a report, as soon as practicable, under section 24 of that Act. | 13 14 15 16 17 18 |
| [33] Section 30 Power to accept appointment | 19 |
| Omit the section. | 20 |
| [34] Section 31 | 21 |
| Omit the section. Insert instead | 22 |
| 31 Regulations | 23 |
| (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. | 24 25 26 27 |
| (2) In particular, regulations may be made for or with respect to the following: | 28 29 |
| (a) fees and charges for services provided by Community Justice Centres and mediators, | 30 31 |

| | | |
|-------------|---|----------------|
| | (b) without limiting paragraph (a), fees and charges for services relating to mediation referred to in section 20A (whether or not requested or agreed to), | 1 2 3 |
| | (c) the waiver or refund of the whole or part of any such fee or charge. | 4 5 |
| [35] | Schedule 1 Constitution and procedure of Community Justice Centres Council | 6 7 |
| | Omit the Schedule. | 8 |
| [36] | Schedule 4 Savings and transitional provisions | 9 |
| | Insert before clause 1: | 10 |
| | Part 1 Preliminary | 11 |
| | 1A Regulations | 12 |
| | (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: | 13 14 15 |
| | <i>Community Justice Centres Amendment Act 2007</i> | 16 |
| | (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. | 17 18 |
| | (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: | 19 20 21 |
| | (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or | 22 23 24 |
| | (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. | 25 26 27 |
| | Part 2 Provisions consequent on enactment of this Act | 28 29 |
| [37] | Schedule 4, clause 1 | 30 |
| | Omit “this Schedule” wherever occurring. Insert instead “this Part”. | 31 |

| | |
|--|----|
| [38] Schedule 4, Part 3, heading | 1 |
| Insert after clause 16: | 2 |
| Part 3 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act (No 3) 1992 | 3 |
| | 4 |
| | 5 |
| [39] Schedule 4, Part 4 | 6 |
| Insert after clause 17: | 7 |
| Part 4 Provisions consequent on enactment of Community Justice Centres Amendment Act 2007 | 8 |
| | 9 |
| | 10 |
| 18 Community Justice Centres Council | 11 |
| On the repeal of Division 1 of Part 2 by the <i>Community Justice Centres Amendment Act 2007</i> , the Community Justice Centres Council is abolished. | 12 |
| | 13 |
| | 14 |
| 19 Existing accredited mediators | 15 |
| (1) On the repeal of section 11 by the <i>Community Justice Centres Amendment Act 2007</i> and despite section 12, a person accredited as a mediator under section 11 whose accreditation is in force immediately before that repeal is taken to be appointed as a mediator for the remainder of the period for which the person was accredited. | 16 |
| | 17 |
| | 18 |
| | 19 |
| | 20 |
| | 21 |
| (2) Despite subclause (1), the Director may revoke the appointment of a person who is taken by that subclause to have been appointed as a mediator. | 22 |
| | 23 |
| | 24 |
| (3) No application may be made to the Administrative Decisions Tribunal in relation to a person because of the operation of this clause or anything done under this clause. | 25 |
| | 26 |
| | 27 |
| (4) No compensation is payable to any person because of the operation of this clause or anything done under this clause. | 28 |
| | 29 |
| 20 Reporting by mediators | 30 |
| Section 29A does not apply in relation to the work of a mediator occurring before the commencement of that section. | 31 |
| | 32 |

| | | |
|-------------------|---|----|
| Schedule 2 | Amendment of other Acts and Regulation | 1 |
| | | 2 |
| | (Section 4) | 3 |
| 2.1 | Civil Procedure Act 2005 No 28 | 4 |
| [1] | Section 26 Referral by court | 5 |
| | Insert after section 26 (2): | 6 |
| | (2A) Without limiting subsections (1) and (2), the court may refer proceedings or part of proceedings for mediation under the <i>Community Justice Centres Act 1983</i> . | 7 |
| | | 8 |
| | | 9 |
| [2] | Section 34 Mediation otherwise than under this Part | 10 |
| | Insert “without having being referred under section 26” after “ <i>Community Justice Centres Act 1983</i> ” in section 34 (b). | 11 |
| | | 12 |
| 2.2 | Consumer, Trader and Tenancy Tribunal Act 2001 No 82 | 13 |
| [1] | Section 59 Referral by Tribunal | 14 |
| | Insert after section 59 (2): | 15 |
| | (3) Without limiting subsections (1) and (2), the Tribunal may refer a matter arising in proceedings for mediation under the <i>Community Justice Centres Act 1983</i> . | 16 |
| | | 17 |
| | | 18 |
| [2] | Section 64 Other measures not precluded | 19 |
| | Insert “without having being referred under section 59” after “ <i>Community Justice Centres Act 1983</i> ” in section 64 (b). | 20 |
| | | 21 |

| | |
|--|---|
| 2.3 Freedom of Information Regulation 2005 | 1 |
| Schedule 3 Public authorities | 2 |
| Omit the matter relating to the Community Justice Centres Council from Part 3. | 3 |
| | 4 |