

**COURTS LEGISLATION (MEDIATION AND EVALUATION)
AMENDMENT ACT 1994 No. 57**

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

**COURTS LEGISLATION (MEDIATION AND EVALUATION)
AMENDMENT ACT 1994 No. 57**

NEW SOUTH WALES



Act No. 57, 1994

An Act to amend certain Acts with respect to the referral of matters for mediation or neutral evaluation in certain court proceedings; and for other purposes. [Assented to 28 September 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Courts Legislation (Mediation and Evaluation) Amendment Act 1994.

Commencement

2 This Act commences on a day, or days to be appointed by proclamation.

Amendments

3. Each Act specified in Schedule 1 is amended as set out in that Schedule.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Compensation Court Act 1984 No. 89

(1) Part 4A:

After Part 4, insert:

**PART 4A—MEDIATION AND NEUTRAL
EVALUATION**

Purpose of Part

38A. (1) The purpose of this Part is to enable the Court to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.

(2) This Part does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part; or
- (b) a matter arising in proceedings from being dealt with under the provisions of the Community Justice Centres Act 1983.

SCHEDULE 1—AMENDMENTS— *continued***Meaning of “mediation” and “neutral evaluation”**

38B. (1) For the purposes of this Part, “mediation” means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

(2) For the purposes of this Part, “Neutral evaluation” means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of compensation.

Other definitions

38C. In this Part:

“**evaluator**” means a person to whom the Court refers a matter for neutral evaluation under this Part;

“**mediation session**” means a meeting arranged for the mediation of a matter under this Part;

“**mediator**” means a person to whom the Court refers a matter for mediation under this Part;

“**neutral evaluation session**” means a meeting arranged for the neutral evaluation of a matter under this Part.

Referral by Court

38D. (1) The Court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if:

- (a) the Court considers the circumstances appropriate; and
- (b) the parties to the proceedings consent to the referral; and
- (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.

(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.

SCHEDULE 1—AMENDMENTS— *continued*

Mediation and neutral evaluation to be voluntary

38E. (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

(2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

Costs of mediation and neutral evaluation

38F. The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

Agreements and arrangements arising from mediation sessions

38G. (1) The Court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

(2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

Mediators and evaluators

38H. (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Part.

(2) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be evaluators for the purposes of this Part.

(3) Different lists may be compiled for different types of matters or to take account of any other factors.

(4) A person may be included in a list under this section **only** if:

- (a) the person consents to being included in the list; and
- (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.

SCHEDULE 1—AMENDMENTS—*continued*

(5) The Chief Judge may amend or revoke any list compiled under this section for any reason that the Chief Judge considers appropriate.

(6) The Chief Judge is to review at least annually any list compiled under this section.

Privilege

38I. (1) In this section, “**mediation session**” or “**neutral evaluation session**” includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

(2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:

- (a) a mediation session or neutral evaluation session; or
- (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.

(3) The privilege conferred by subsection (2) only extends to a publication made:

- (a) at a mediation session or neutral evaluation session; or
- (b) as provided by subsection (2) (b); or
- (c) as provided by section 38J.

(4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.

(5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

SCHEDULE 1—AMENDMENT—*continued*

(6) Subsections (4) and (5) do not apply with respect to any evidence or document:

- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document; or
- (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 38J (c).

Secrecy

38J. A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Part;
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

SCHEDULE 1—AMENDMENTS—*continued***Exoneration from liability for listed mediators and evaluators**

38K. No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part; and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

Regulations for the purposes of this Part

38L. The regulations may include provisions for the purposes of this Part.

(2) Section 43 (**Rules**):

Before section 43 (1) (b), insert:

- (a2) regulating and prescribing the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 4A; and

District Court Act 1973 No. 9

Part 3A:

After Part 3, insert:

PART 3A—MEDIATION AND NEUTRAL EVALUATION**Purpose of Part**

162. (1) The purpose of this Part is to enable the Court to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.

(2) This Part does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part; or

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a matter arising in proceedings from being dealt with under the provisions of the Community Justice Centres Act 1983.

Meaning of “mediation” and “neutral evaluation”

163. (1) For the purposes of this Part, “mediation” means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

(2) For the purposes of this Part, “neutral evaluation” means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including my likely findings of liability or the award of damages.

Other definitions

164. In this Part:

“**evaluator**” means a person to whom the Court refers a matter for neutral evaluation under this Part;

“**mediation session**” means a meeting arranged for the mediation of a matter under this Part;

“**mediator**” means a person to whom the Court refers a matter for mediation under this Part;

“**neutral evaluation session**” means a meeting arranged for the neutral evaluation of a matter under this Part.

Referral by Court

164A. (1) The Court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if:

- (a) the Court considers the circumstances appropriate; and
- (b) the parties to the proceedings consent to the referral; and
- (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.

Mediation and neutral evaluation to be voluntary

164B. (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

(2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

Costs of mediation and neutral evaluation

164C. The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

Agreements and arrangements arising from mediation sessions

164D. (1) The Court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

(2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

Mediators and evaluators

164E. (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Part.

(2) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be evaluators for the purposes of this Part.

(3) Different lists may be compiled for different types of matters or to take account of any other factors.

(4) A person may be included in a list under this section only if:

(a) the person consents to being included in the list; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.

(5) The Chief Judge may amend or revoke any list compiled under this section for any reason that the Chief Judge considers appropriate.

(6) The Chief Judge is to review at least annually any list compiled under this section.

Privilege

164F. (1) In this section, “**mediation session**” or “**neutral evaluation session**” includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

(2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:

- (a) a mediation session or neutral evaluation session; or
- (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.

(3) The privilege conferred by subsection (2) only extends to a publication made:

- (a) at a mediation session or neutral evaluation session; or
- (b) as provided by subsection (2) (b); or
- (c) as provided by section 164G.

(4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.

SCHEDULE 1—AMENDMENTS—*continued*

(5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

(6) Subsections (4) and (5) do not apply with respect to any evidence or document:

- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document; or
- (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 164G (c).

Secrecy

164G. A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Part;
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;

SCHEDULE 1—AMENDMENTS—*continued*

- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Exoneration from liability for listed mediators and evaluators

164H. No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part; and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

Rules

164I. The Rule Committee may make rules, not inconsistent with this Act, for or with respect to regulating and prescribing the practice and procedure to be followed in the mediation or neutral evaluation of any matter under this Part.

Regulations for the purposes of this Part

164J. The Governor may make regulations for the purposes of this Part.

Industrial Relations Act 1991 No. 34**(1) Section 313 (Rules of the Industrial Court):**

After section 313 (2) (a), insert:

- (a1) the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Division 4; and

SCHEDULE 1—AMENDMENTS—*continued*

(2) Division 4 of Part 1 of Chapter 4:

After Division 3 of Part 1 of Chapter 4, insert:

Division 4—Mediation and neutral evaluation

Purpose of Division

314A. (1) The purpose of this Division is to enable the Industrial Court to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.

(2) This Division does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Division; or
- (b) a matter arising in proceedings from being dealt with under the provisions of the Community Justice Centres Act 1983.

Meaning of “mediation” and “neutral evaluation”

314B. (1) For the purposes of this Division, “**mediation**” means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

(2) For the purposes of this Division, “**neutral evaluation**” means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

Other definitions

314C. In this Division:

“**evaluator**” means a person to whom the Industrial Court refers a matter for neutral evaluation under this Division;

“**mediation session**” means a meeting arranged for the mediation of a matter under this Division;

SCHEDULE 1—AMENDMENTS— *continued*

“mediator” means a person to whom the Industrial Court refers a matter for mediation under this Division;

“neutral evaluation session” means a meeting arranged for the neutral evaluation of a matter under this Division.

Referral by Industrial Court

314D. (1) The Industrial Court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if:

- (a) the Industrial Court considers the circumstances appropriate; and
- (b) the parties to the proceedings consent to the referral; and
- (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.

(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Division.

Mediation and neutral evaluation to be voluntary

314E. (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

(2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

Costs of mediation and neutral evaluation

314F. The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

Agreements and arrangements arising from mediation sessions

314G. (1) The Industrial Court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

SCHEDULE 1—AMENDMENTS—*continued*

(2) This Division does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

Mediators and evaluators

314H. (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Division.

(2) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be evaluators for the purposes of this Division.

(3) Different lists may be compiled for different types of matters or to take account of any other factors.

(4) A person may be included in a list under this section only if:

- (a) the person consents to being included in the list; and
- (b) the person agrees to comply with the provisions of this Division and of any regulations or rules made for the purposes of this Division.

(5) The Chief Judge may amend or revoke any list compiled under this section for any reason that the Chief Judge considers appropriate.

(6) The Chief Judge is to review at least annually any list compiled under this section.

Privilege

314I. (1) In this section, “**mediation session**” or “**neutral evaluation session**” includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

(2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:

- (a) a mediation session or neutral evaluation session; or

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Industrial Court or the registry of the Industrial Court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.
- (3) The privilege conferred by subsection (2) only extends to a publication made:
 - (a) at a mediation session or neutral evaluation session; or
 - (b) as provided by subsection (2) (b); or
 - (c) as provided by section 314J.
- (4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
 - (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document; or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 364J (c).

Secrecy

314J. A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Division only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Division;

SCHEDULE 1—AMENDMENTS—*continued*

- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Exoneration from liability for listed mediators and evaluators

314K. No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Division; and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Division.

Regulations for the purposes of this Division

314L. The regulations may include provisions for the purposes of this Division.

SCHEDULE 1—AMENDMENTS—*continued***Land and Environment Court Act 1979 No. 204**

(1) Part 5A:

After Part 5, insert:

**PART 5A—MEDIATION AND NEUTRAL
EVALUATION****Purpose of Part**

61A. (1) The purpose of this Part is to enable the Court to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.

(2) This Part does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part; or
- (b) a matter arising in proceedings from being dealt with under the provisions of the Community Justice Centres Act 1983.

Meaning of “mediation” and “neutral evaluation”

61B. (1) For the purposes of this Part, “**mediation**” means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

(2) For the purposes of this Part, “**neutral evaluation**” means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

Other definitions

61C. In this Part:

“**evaluator**” means a person to whom the Court refers a matter for neutral evaluation under this Part;

“**mediation session**” means a meeting arranged for the mediation of a matter under this Part;

SCHEDULE 1—AMENDMENTS—*continued*

“mediator” means a person to whom the Court refers a matter for mediation under this Part;

“neutral evaluation session” means a meeting arranged for the neutral evaluation of a matter under this Part.

Referral by Court

61D. (1) The Court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if:

- (a) the Court considers the circumstances appropriate; and
- (b) the parties to the proceedings consent to the referral: and
- (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.

(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.

Mediation and neutral evaluation to be voluntary

61E. (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

(2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

Costs of mediation and neutral evaluation

61F. The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

Agreements and arrangements arising from mediation sessions

61G. (1) The Court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

(2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

SCHEDULE 1—AMENDMENTS—*continued*

Mediators and evaluators

61H. (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Part.

(2) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be evaluators for the purposes of this Part.

(3) Different lists may be compiled for different types of matters or to take account of any other factors.

(4) A person may be included in a list under this section only if:

- (a) the person consents to being included in the list; and
- (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.

(5) The Chief Judge may amend or revoke any list compiled under this section for any reason that the Chief Judge considers appropriate.

(6) The Chief Judge is to review at least annually any list compiled under this section.

Privilege

61I. (1) In this section, “**mediation session**” or “**neutral evaluation session**” includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

(2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:

- (a) a mediation session or neutral evaluation session; or
- (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Court or the registry of the Court., for the purpose of enabling a mediation session or neutral evaluation session to be arranged.

SCHEDULE 1—AMENDMENTS—*continued*

(3) The privilege conferred by subsection (2) only extends to a publication made:

- (a) at a mediation session or neutral evaluation session; or
- (b) as provided by subsection (2) (b); or
- (c) as provided by section 61J.

(4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.

(5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

(6) Subsections (4) and (5) do not apply with respect to any evidence or document:

- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document; or
- (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 61J (c).

Secrecy

61J. A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Part;
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;

SCHEDULE 1—AMENDMENTS—*continued*

- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Exoneration from liability for listed mediators and evaluators

61K. No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part; and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

Regulations for the purposes of this Part

61L. The regulations may include provisions for the purposes of this Part.

(2) Section 74 (**Rules**):

After section 74 (1) (a), insert:

- (a1) the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 5A;

SCHEDULE 1—AMENDMENTS—*continued***Local Courts (Civil Claims) Act 1970 No. 11**

(1) Part 3C:

After Part 3B, insert:

**PART 3C—MEDIATION AND NEUTRAL
EVALUATION**

Purpose of Part

21I. (1) The purpose of this Part is to enable a court to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.

(2) This Part does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part; or
- (b) a matter arising in proceedings from being dealt with under the provisions of the Community Justice Centres Act 1983.

Meaning of “mediation” and “neutral evaluation”

21J. (1) For the purposes of this Part, “**mediation**” means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

(2) For the purposes of this Part, “**neutral evaluation**” means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

Other definitions

21K. In this Part:

“**evaluator**” means a person to whom a court refers a matter for neutral evaluation under this Part;

“**mediation session**” means a meeting arranged for the mediation of a matter under this Part;

SCHEDULE 1—AMENDMENTS—*continued*

“mediator” means a person to whom a court refers a matter for mediation under this Part;

“neutral evaluation session” means a meeting arranged for the neutral evaluation of a matter under this Part.

Referral by court

21L. (1) A court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if:

- (a) the court considers the circumstances appropriate; and
- (b) the parties to the proceedings consent to the referral; and
- (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.

(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.

Mediation and neutral evaluation to be voluntary

21M. (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

(2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

Costs of mediation and neutral evaluation

21N. The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

Agreements and arrangements arising from mediation sessions

21O. (1) A court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

(2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

SCHEDULE 1—AMENDMENTS—*continued*

Mediators and evaluators

21P. (1) The Chief Magistrate may compile a list or lists of persons considered by the Chief Magistrate to be suitable to be mediators for the purposes of this Part.

(2) The Chief Magistrate may compile a list or lists of persons considered by the Chief Magistrate to be suitable to be evaluators for the purposes of this Part.

(3) Different lists may be compiled for different types of matters or to take account of any other factors.

(4) A person may be included in a list under this section only if:

- (a) the person consents to being included in the list; and
- (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.

(5) The Chief Magistrate may amend or revoke any list compiled under this section for any reason that the Chief Magistrate considers appropriate.

(6) The Chief Magistrate is to review at least annually any list compiled under this section.

Privilege

21Q. (1) In this section, “**mediation session**” or “**neutral evaluation session**” includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

(2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:

- (a) a mediation session or neutral evaluation session; or
- (b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at a court or a registry of a court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.

SCHEDULE 1—AMENDMENTS—*continued*

(3) The privilege conferred by subsection (2) only extends to a publication made:

- (a) at a mediation session or neutral evaluation session; or
- (b) as provided by subsection (2) (b); or
- (c) as provided by section 21R.

(4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.

(5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

(6) Subsections (4) and (5) do not apply with respect to any evidence or document:

- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document; or
- (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 21R (c).

Secrecy

21R. A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Part;
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;

SCHEDULE 1—AMENDMENTS—*continued*

- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Exoneration from liability for listed mediators and evaluators

21S. No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part; and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

Regulations for the purposes of this Part

21T. The Governor may make regulations for the purposes of this Part.

(2) Section 84 (**Rules**):

After section 84 (1) (n), insert:

- (n1) regulating and prescribing the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 3C;

SCHEDULE 1—AMENDMENTS—*continued*

Supreme Court Act 1970 No. 52

(1) Part 7B:

After Part 7A, insert:

**PART 7B—MEDIATION AND NEUTRAL
EVALUATION**

Purpose of Part

110H. (1) The purpose of this Part is to enable the Court to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.

(2) This Part does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part; or
- (b) a matter arising in proceedings from being dealt with under the provisions of the Community Justice Centres Act 1983.

Meaning of “mediation” and “neutral evaluation”

110I. (1) For the purposes of this Part “**mediation**” means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

(2) For the purposes of this Part, “**neutral evaluation**” means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

Other definitions

110J. In this Part:

“**evaluator**” means a person to whom the Court has referred a matter for neutral evaluation under this Part;

SCHEDULE 1—AMENDMENTS—*continued*

“**mediation session**” means a meeting arranged for the mediation of a matter under this Part;

“**mediator**” means a person to whom the Court has referred a matter for mediation under this Part;

“**neutral evaluation session**” means a meeting arranged for the neutral evaluation of a matter under this Part.

Referral by Court

110K. (1) The Court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if:

- (a) the Court considers the circumstances appropriate; and
- (b) the parties to the proceedings consent to the referral; and
- (c) the parties to the proceedings agree as to who is to be the mediator or evaluator for the matter.

(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.

Mediation and neutral evaluation to be voluntary

110L. (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.

(2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

Costs of mediation and neutral evaluation

110M. The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares.

Agreements and arrangements arising from mediation sessions

110N. (1) The Court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

SCHEDULE 1—AMENDMENTS—*continued*

(2) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

Mediators and evaluators

110O. (1) The Chief Justice may compile a list or lists of persons considered by the Chief Justice to be suitable to be mediators for the purposes of this Part.

(2) The Chief Justice may compile a list or lists of persons considered by the Chief Justice to be suitable to be evaluators for the purposes of this Part.

(3) Different lists may be compiled for different types of matters or to take account of any other factors.

(4) A person may be included in a list under this section **only** if:

- (a) the person consents to being included in the list; and
- (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.

(5) The Chief Justice may amend or revoke any list compiled under this section for any reason that the Chief Justice considers appropriate.

(6) The Chief Justice is to review at least annually any list compiled under this section.

Privilege

110P. (1) In this section, “**mediation session**” or “**neutral evaluation session**” includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

(2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:

- (a) a mediation session or neutral evaluation session; or

SCHEDULE 1—AMENDMENTS—*continued*

(b) a document or other material sent to or produced to a mediator or evaluator, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.

(3) The privilege conferred by subsection (2) only extends to a publication made:

- (a) at a mediation session or neutral evaluation session; or
- (b) as provided by subsection (2) (b); or
- (c) as provided in section 110Q.

(4) Evidence of anything said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.

(5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

(6) Subsections (4) and (5) do not apply with respect to any evidence or document:

- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document; or
- (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 110Q (c).

Secrecy

110Q. A mediator or evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained;

SCHEDULE 1—AMENDMENTS—*continued*

- (b) in connection with the administration or execution of this Part;
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Exoneration from liability for listed mediators and evaluators

110R. No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part; and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or evaluator's name was included in a list compiled under this Part.

Regulations for the purposes of this Part

110S. The Governor may make regulations for the purposes of this Part.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 124 (**Rule-making power**):

After section 124 (h), insert:

- (i) for regulating and prescribing the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 7B;
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*[Minister's second reading speech made in—
Legislative Council on 4 May 1994
Legislative Assembly on 11 May 1994 a.m.]*