



New South Wales

# Community Justice Centres Amendment Bill 2010

## 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*) as follows:

- (a) to provide for the appointment of mediators for Community Justice Centres and the terms and conditions of appointment of those mediators,
- (b) to provide that the Director and the staff of Community Justice Centres are to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*,
- (c) to provide that a party to a mediation session may be accompanied by or represented by another person but that the Director or the mediator conducting the mediation session may exclude a person from the mediation session in certain circumstances,
- (d) to provide that the parties to a mediation session may agree that an agreement reached at, or drawn up pursuant to, the session may be enforceable in a court, tribunal or other body,

- (e) to provide that the privilege given with respect to evidence given at, or documents prepared for, a mediation session does not extend to evidence in relation to agreements that the parties have agreed will be enforceable,
- (f) to provide that the secrecy requirements that apply to a person exercising functions under the principal Act do not prevent the person from giving evidence in relation to agreements that the parties have agreed will be enforceable,
- (g) to provide that the obligation for a mediator to provide a report under the *Children and Young Persons (Care and Protection) Act 1998* applies only if the mediator has reasonable grounds to suspect that a child is at risk of significant harm,
- (h) to make a minor change to the oath or affirmation of secrecy required to be given by a mediator,
- (i) to make other minor and consequential amendments to the principal Act.

## 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 on the date of assent to the proposed Act.

**Clause 3** repeals the *Community Justice Centres Amendment Act 2007*.

## **Schedule 1      Amendment of Community Justice Centres Act 1983 No 127**

**Schedule 1 [2]** amends the definition of *mediation* so that it applies not only to mediation undertaken at the request of one of the parties to the dispute or the Director of Community Justice Centres but also mediation carried out in compliance with an order of a court or tribunal.

**Schedule 1 [5]** provides for the appointment of mediators for Community Justice Centres. Mediators are to be appointed by the Director-General of the Department of Justice and Attorney General. As mediators are not appointed under the *Public Sector Employment and Management Act 2002* they are not members of the Government Service or Public Service. A mediator holds office for a term of not more than 3 years and is paid the remuneration and allowances decided by the Director-General. Proposed section 8 sets out the circumstances in which a mediator vacates his or her office and provides for the removal of a mediator from office by the Director-General. **Schedule 1 [1], [3], [8] and [9]** make consequential amendments by defining the terms *Director-General* and *mediator* and updating references to mediators. **Schedule 1 [24]** makes a consequential amendment to repeal a redundant provision.

**Schedule 1 [6]** provides that the Director of Community Justice Centres and the staff of the Centres are employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* and therefore are members of the Government Service.

**Schedule 1 [7]** removes the requirement that Community Justice Centres, and the principal offices of Community Justice Centres, be established by order of the Governor.

**Schedule 1 [10]** amends section 20A of the principal Act so that matters relating to the provision of mandatory mediation services apply to any dispute referred by a court or tribunal to Community Justice Centres for mediation. It is no longer relevant whether the parties to the dispute have consented to the referral or not.

**Schedule 1 [11]** provides that, unless otherwise provided by the regulations, the provisions of the principal Act (other than section 23 (1) and (3)) apply to a mandatory mediation (that is, a mediation referred by a court or tribunal) in the same way that the provisions apply to a mediation voluntarily undertaken by the parties. Section 23 (1) provides that attendance at and participation in mediation sessions are voluntary and section 23 (3) provides that an agreement reached at or drawn up pursuant to a mediation session is not enforceable unless agreed by the parties. **Schedule 1 [13]** makes a consequential amendment.

**Schedule 1 [12]** provides that a party to a mediation session may be accompanied by or represented by another person. However, the Director of Community Justice Centres or the mediator conducting the mediation session may exclude a person (other than a party to the session) from attending, or continuing to attend, the session if, in the Director's or mediator's opinion, the person's presence may frustrate the mediation session. **Schedule 1 [15]** is a consequential amendment.

**Schedule 1 [14]** provides that an agreement reached at, or drawn up pursuant to, a mediation session is not enforceable in a court, tribunal or other body unless the parties agree in writing that the agreement is to be enforceable.

**Schedule 1 [16]** provides that if a mediator is obliged to make a report under section 29A of the principal Act that the mediator believes a child is at risk of significant harm evidence of anything said in a mediation session, or a document prepared in relation to the session, is admissible in proceedings instituted in connection with the report.

**Schedule 1 [17]** provides that evidence may be given in proceedings before a court, tribunal or other body in relation to an agreement reached at, or drawn up pursuant to, a mediation session if the parties have agreed the agreement is to be enforceable. **Schedule 1 [18]** similarly provides the obligation of secrecy imposed on a person exercising functions under the principal Act does not apply in relation to giving evidence about such an agreement.

**Schedule 1 [19]** amends section 29A of the principal Act. That section imposes an obligation on a mediator to make a report under the *Children and Young Persons (Care and Protection) Act 1998* if the mediator has reasonable grounds to suspect a

child is at risk of harm. The amendment will impose the obligation only if the mediator suspects a child is at risk of significant harm.

**Schedule 1 [20]** repeals a redundant provision.

**Schedule 1 [21] and [22]** amend the mediator's oath of secrecy and the mediator's affirmation of secrecy so that a mediator will be able to make records of matters disclosed during or incidentally to a mediation session.

**Schedule 1 [23]** provides that regulations made under the principal Act may contain provisions of a savings and transitional nature consequent on the enactment of the *Community Justice Centres Amendment Act 2010*.

First print



New South Wales

# Community Justice Centres Amendment Bill 2010

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Repeal of Community Justice Centres Amendment Act 2007	2
Schedule 1 Amendment of Community Justice Centres Act 1983 No 127	3





New South Wales

# Community Justice Centres Amendment Bill 2010

No. , 2010

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## A Bill for

An Act to make miscellaneous amendments to the *Community Justice Centres Act 1983*; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Community Justice Centres Amendment Act 2010</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Repeal of Community Justice Centres Amendment Act 2007 No 70</b>	6
The <i>Community Justice Centres Amendment Act 2007</i> is repealed.	7

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<b>Schedule 1</b>	<b>Amendment of Community Justice Centres Act 1983 No 127</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Insert in alphabetical order in section 4 (1):	4
	<i>Director-General</i> means the Director-General of the Department of Justice and Attorney General.	5
		6
<b>[2] Section 4 (1), definition of “mediation”</b>		7
	Omit paragraph (b) of the definition. Insert instead:	8
	(b) the bringing together of the parties to any dispute for that purpose, and	9
		10
<b>[3] Section 4 (1), definition of “mediator”</b>		11
	Omit the definition. Insert instead:	12
	<i>mediator</i> means:	13
	(a) the Director, or	14
	(b) a person for the time being holding office as a mediator under section 5.	15
		16
<b>[4] Section 4 (5)</b>		17
	Insert after section 4 (4):	18
	(5) Notes included in this Act do not form part of this Act.	19
<b>[5] Part 2, Division 1</b>		20
	Insert before Division 2:	21
<b>Division 1 Mediators</b>		22
<b>5 Appointment of mediators</b>		23
	(1) The Director-General may, on the recommendation of the Director, appoint a person as a mediator for Community Justice Centres.	24
		25
		26
	(2) The <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment of a mediator.	27
		28
<b>6 Terms of office</b>		29
	Subject to this Division, a mediator holds office for the term, not more than 3 years, specified in the mediator’s instrument of appointment, and is eligible for reappointment.	30
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<b>7</b>	<b>Remuneration</b>	1
	A mediator is entitled to be paid the remuneration and allowances decided by the Director-General from time to time.	2 3
<b>8</b>	<b>Vacancy in office</b>	4
	(1) The office of a mediator becomes vacant if the mediator:	5
	(a) dies, or	6
	(b) completes a term of office and is not reappointed, or	7
	(c) resigns the office by written instrument addressed to the Director-General, or	8 9
	(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	10 11 12 13
	(e) becomes a mentally incapacitated person, or	14
	(f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	15 16 17 18 19
	(2) The Director-General may remove a mediator from office at any time.	20 21
<b>[6]</b>	<b>Sections 11 and 12</b>	22
	Omit the sections. Insert instead:	23
	<b>11 Staff</b>	24
	The Director and the staff of Community Justice Centres are to be employed under and in accordance with Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> .	25 26 27
<b>[7]</b>	<b>Sections 15 and 16</b>	28
	Omit the sections.	29
<b>[8]</b>	<b>Section 19 Use of certain words or letters</b>	30
	Omit “person holding a current accreditation as a mediator under section 11” from section 19 (1A).	31 32
	Insert instead “mediator”.	33

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<b>[9] Section 19 (1A)</b>	1
Omit “holds a current accreditation as a mediator”. Insert “is a mediator”.	2
<b>[10] Section 20A Provision of mandatory mediation services</b>	3
Omit “and without the consent of all of the parties to the dispute” from section 20A (1).	4 5
<b>[11] Section 20A (4) (a)</b>	6
Omit “except sections 23 (1) and (3), 27, 28 and 29”.	7
Insert instead “except section 23 (1) and (3)”.	8
<b>[12] Section 21 Conduct of mediation sessions</b>	9
Omit section 21 (4) and (5). Insert instead:	10
(4) A party to a mediation session may be accompanied by or represented by another person.	11 12
(5) The Director or the mediator conducting a mediation session may exclude a person (other than a party to the mediation session) from attending, or continuing to attend the mediation session if, in the Director’s or mediator’s opinion, the presence of the person may frustrate the purpose or conduct of the mediation session.	13 14 15 16 17
<b>[13] Section 23 Mediation to be voluntary</b>	18
Insert after section 23 (1):	19
<b>Note.</b> See, however, section 20A (4) (a) which provides that this subsection (and subsection (3)) does not apply to the mediation of a dispute referred to Community Justice Centres for mediation by an order of a court or tribunal.	20 21 22 23
<b>[14] Section 23 (3)</b>	24
Insert “, unless the parties agree in writing that the agreement is to be enforceable” after “body”.	25 26
<b>[15] Section 25 Representation by agent</b>	27
Omit the section.	28
<b>[16] Section 28 Privilege</b>	29
Insert “or 29A” after “section 29 (2) (c)” in section 28 (6) (b).	30

<b>[17] Section 28 (6) (b)</b>	1
Insert after the paragraph:	2
, or	3
(c) given as evidence:	4
(i) as to the fact that an agreement the parties have	5
agreed is to be enforceable has been reached at, or	6
drawn up pursuant to, a mediation session, and	7
(ii) as to the substance of that agreement.	8
<b>[18] Section 29 Secrecy</b>	9
Insert at the end of section 29 (2) (b):	10
(b1) if the disclosure is for the purposes of giving evidence:	11
(i) as to the fact that an agreement the parties have	12
agreed is to be enforceable has been reached at, or	13
drawn up pursuant to, a mediation session, and	14
(ii) as to the substance of that agreement,	15
<b>[19] Section 29A Mandatory reporting</b>	16
Omit “at risk of harm”. Insert instead “at risk of significant harm”.	17
<b>[20] Section 30 Power to accept appointment</b>	18
Omit the section.	19
<b>[21] Schedule 2 Mediator’s oath of secrecy</b>	20
Omit “make a record of, or”.	21
<b>[22] Schedule 3 Mediator’s affirmation of secrecy</b>	22
Omit “make a record of, or”.	23
<b>[23] Schedule 4 Savings and transitional provisions</b>	24
Insert at the end of clause 1A (1):	25
<i>Community Justice Centres Amendment Act 2010</i>	26

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**[24] Schedule 4, clause 19**

Omit the clause.

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