

Act 1994 No. 57

**COURTS LEGISLATION (MEDIATION AND EVALUATION)
AMENDMENT BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to enable certain courts to establish procedures for the mediation and early neutral evaluation of matters arising in proceedings (other than criminal proceedings).

The Bill amends the following Acts:

Compensation Court Act 1984
District Court Act 1973
Industrial Relations Act 1991
Land and Environment Court Act 1979
Local Courts (Civil Claims) Act 1970
Supreme Court Act 1970

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to the Schedule of amendments to the Acts referred to above.

SCHEDULE 1—AMENDMENTS

Schedule 1 inserts provisions into the Acts referred to above dealing with the following matters:

Purpose of new provisions

The amendments state that the purpose of the new provisions is to enable the relevant court to refer matters for mediation and neutral evaluation if the parties concerned agree to it. However, the parties are not prevented from agreeing to and arranging for the mediation or neutral evaluation of any matter otherwise than in accordance with the new provisions. Also, matters arising in proceedings may still be dealt with in accordance with the Community Justice Centres Act 1983.

Meaning of “mediation” and “neutral evaluation”

The amendments explain the terms “mediation” and “neutral evaluation”.

Mediation is a structured 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.

Neutral evaluation is 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 or compensation.

Costs of mediation and neutral evaluation

The amendments provide that the parties to the relevant proceedings are to bear the costs of mediation or neutral evaluation.

Referral by court

The amendments enable the relevant court by its order to refer a matter arising in proceedings (other than criminal proceedings) for mediation or neutral evaluation. The referral may only be made with the consent of the parties to the proceedings and if the parties have agreed as to who is to be the mediator or evaluator.

Mediation and neutral evaluation to be voluntary

The amendments make it clear that attendance at and participation in mediation sessions and neutral evaluation sessions are voluntary. A party can withdraw from a session at any time.

Agreements and arrangements arising from mediation sessions

The amendments enable the relevant court to make orders to give effect to any agreement or arrangement arising out of a mediation session. However, 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, is not affected by the new provisions.

Mediators and evaluators

The amendments enable the Chief Justice, the Chief Judge or the Chief Magistrate (as the case may be) of the relevant court to compile lists of persons suitable to be mediators or evaluators for the purposes of the new provisions. Before a person is included in such a list, the person must agree to comply with the new provisions and any relevant regulations and rules of court.

The lists may be amended or revoked and are required to be reviewed each year.

Privilege

The amendments give the mediation sessions and neutral evaluation sessions, and documents and material produced for them, the same privilege with respect to defamation proceedings that judicial proceedings and documents produced in judicial proceedings have.

Evidence of things said or admissions made at such sessions is generally not admissible in proceedings before a court, tribunal or body. Documents prepared for the purposes of, in the course of or as a result of such a session are generally not admissible in evidence in proceedings before a court, tribunal or body. However, such evidence and documents are admissible with the consent of the persons concerned or in proceedings relating to acts or omissions causing injury to any person or damage to property.

Secrecy

The amendments specify the only circumstances in which a mediator or evaluator may disclose information obtained in the administration or execution of the new provisions. Those circumstances include disclosure for the purposes of the administration or execution of the Act and cases in which the mediator or evaluator has 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.

Exoneration from liability for listed mediators and evaluators

The amendments protect a person whose name is included in a list of mediators or evaluators prepared under the new provisions from liability for things done in good faith for the purposes of a mediation session or neutral evaluation session under the new provisions.

The amendments also enable regulations to be made for the purposes of the new provisions and rules of court to be made for regulating and prescribing the practice and procedure to be followed in connection with the mediation or neutral evaluation of any matter under the new provisions.
