

Community Justice Centres Act 1983 No 127

[1983-127]



New South Wales

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Community Justice Centres Act 1983 No 127



New South Wales

An Act to provide for the establishment and operation of Community Justice Centres to provide mediation services in connection with certain disputes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Community Justice Centres Act 1983*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on 1 December 1983.

3 Object of Act

The object of this Act is to provide for the establishment and operation of Community Justice Centres for the purpose of:

- (a) providing dispute resolution and conflict management services, including the mediation of disputes, and
- (b) training persons to be mediators, and
- (c) promoting alternative dispute resolution, and
- (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
- (e) undertaking other matters incidental to the provision of dispute resolution and conflict management services.

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

Community Justice Centre means a Community Justice Centre established under this Act.

Director means the Director of Community Justice Centres.

functions includes powers, authorities and duties.

mediation includes:

- (a) the undertaking of any activity for the purpose of promoting the discussion and settlement of disputes,
- (b) the bringing together of the parties to any dispute for that purpose, and
- (c) the follow-up of any matter the subject of any such discussion or settlement.

mediation session means a meeting in accordance with this Act between 2 or more parties who are in dispute on any matter.

mediator means:

- (a) the Director, or
- (b) a person for the time being holding office as a mediator under section 5.

Secretary means the Secretary of the Department of Justice.

- (2) A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) A reference in this Act to the parties to a mediation session includes a reference to the parties to a dispute in respect of which an application for a mediation session is duly made, but does not include a reference to the mediator conducting the mediation session.
- (4) A reference in this Act to the conduct of a mediation session by a mediator includes a reference to the conduct of a mediation session in the presence, or under the supervision, of the mediator.
- (5) Notes included in this Act do not form part of this Act.

Part 2 Administration

Division 1 Mediators

5 Appointment of mediators

- (1) The Secretary may, on the recommendation of the Director, appoint a person as a mediator for Community Justice Centres.

- (2) The *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a mediator.

6 Terms of office

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.

7 Remuneration

A mediator is entitled to be paid the remuneration and allowances decided by the Secretary from time to time.

8 Vacancy in office

- (1) The office of a mediator becomes vacant if the mediator:

- (a) dies, or
- (b) completes a term of office and is not reappointed, or
- (c) resigns the office by written instrument addressed to the Secretary, or
- (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
- (e) becomes a mentally incapacitated person, or
- (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.

- (2) The Secretary may remove a mediator from office at any time.

9 (Repealed)

Division 2 Staff of Community Justice Centres

10 (Repealed)

11 Staff

The Director and the staff of Community Justice Centres are to be employed under the *Government Sector Employment Act 2013*.

12 (Repealed)

13 Delegation by Director

- (1) The Director may authorise a member of the staff of a Community Justice Centre to

exercise such of the Director's functions (including any functions delegated to the Director under this Act, but not including this power of authorisation) as the Director thinks fit, and the Director, or any successor as Director, may revoke wholly or in part any such authorisation.

- (2) A function which is authorised to be exercised under this section may, while the authorisation remains unrevoked, be exercised from time to time in accordance with the terms of the authorisation.
- (3) An authorisation under this section may be made subject to conditions or limitations.
- (4) Notwithstanding any authorisation under this section, the Director may continue to exercise all or any of the functions to which the authorisation relates.
- (5) Any act or thing done in the exercise of a function by a person authorised under this section to exercise the function has the same force and effect as if it had been done by the Director.
- (6) Where the exercise of a function of the Director depends on the opinion, belief or state of mind of the Director and the function is in accordance with this section authorised to be exercised by another person, the function may, subject to any restriction imposed by the Director, be exercised in accordance with the opinion, belief or state of mind of that other person.

13A Director may seek advice relating to Director's functions and object of Act

- (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.
- (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.
- (3) Any or all of the members of an advisory committee may be persons who are not members of staff of Community Justice Centres.
- (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).
- (5) The Minister may determine the remuneration (if any) and the term of office of members of an advisory committee established under this section.

Part 3 Community Justice Centres

14 Establishment of Community Justice Centres

Community Justice Centres shall be established and operated in accordance with this Act for the purpose of achieving the purposes referred to in section 3 (a)-(e).

15, 16 (Repealed)

17 (Repealed)

18 Centres to be part of Department of Justice

Community Justice Centres are taken for all purposes to form part of the Department of Justice.

19 Use of certain words or letters

(1) The words "Community Justice Centre" or the letters "CJC" shall not be used in the name of any centre, organisation, body or group or any other place or establishment, or any part thereof, nor shall any centre, organisation, body or group, or any other place or establishment, or any part thereof, be held out as a Community Justice Centre (whether or not as established under this Act) by the use of the words "Community Justice Centre" or the letters "CJC" or in any other manner:

(a) unless in either case it is in fact a Community Justice Centre established under this Act, or

(b) except in either case with the consent of the Director.

(1A) A person (other than a mediator) must not take or use a name, title or description including a name, title or description that includes the words "Community Justice Centre" or the letters "CJC" that, having regard to the circumstances in which it is taken or used:

(a) indicates, or

(b) is capable of being understood to indicate, or

(c) is calculated to lead a person to infer,

that the person is a mediator under this Act.

(2) In this section, a reference to:

(a) the words "Community Justice Centre" includes a reference to those words whether or not they appear consecutively and to words that are substantially the same as those words, and

(b) the letters "CJC" includes a reference to matter that is substantially the same as

those letters.

Part 4 Mediation

20 Provision of mediation services generally

- (1) The Director is responsible for the provision of mediation services and for the operation and management of Community Justice Centres.
- (2) Each mediation session shall be conducted by one or more mediators assigned for the purpose by the Director.
- (3) No dispute shall be accepted for mediation under this Act except with the consent of the Director.

20A Provision of mandatory mediation services

- (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.
- (2) The Director may accept, or decline to accept, a dispute to which this section applies for mediation under this Act.
- (3) If the Director accepts a dispute to which this section applies for mediation:
 - (a) the Director may assign the mediator or mediators who are to conduct the mediation sessions in relation to the dispute, and
 - (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.
- (4) Unless otherwise provided by the regulations:
 - (a) the provisions of this Act (except section 23 (1) and (3)) 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
 - (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:
 - (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

(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).

- (5) If the Director accepts a dispute to which this section applies for mediation under this Act, the Director is to provide a written report on the outcome of the mediation or attempted mediation to the court or tribunal that referred the matter for mediation.
- (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.

21 Conduct of mediation sessions

- (1) The procedure for commencing and conducting a mediation session at a Community Justice Centre is to be as determined by the Director.
- (2) Mediation sessions shall be conducted with as little formality and technicality, and with as much expedition, as possible.
- (3) The rules of evidence do not apply to mediation sessions.
- (4) A party to a mediation session may be accompanied by or represented by another person.
- (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.

22 Disputes

- (1) The Director may determine that specified classes of disputes are not to be the subject of mediation sessions, or that specified classes of disputes may be the subject of mediation sessions, but nothing in this subsection limits any other provisions of this Act.
- (2) A mediation session may be commenced or continued whether or not the dispute is justiciable before any court, tribunal or body and whether or not the dispute is the subject of any legal proceedings.
- (3) For the purposes of this Act, persons may be treated as being in dispute on any matter if they are not in agreement on the matter (whether or not any relevant negotiations are still in progress).

23 Mediation to be voluntary

- (1) Attendance at and participation in mediation sessions are voluntary.

Note—

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.

- (2) A party to a mediation session may withdraw from the mediation session at any time.
- (3) Notwithstanding any rule of law or equity, any agreement reached at, or drawn up pursuant to, a mediation session is not enforceable in any court, tribunal or body, unless the parties agree in writing that the agreement is to be enforceable.
- (4) Except as expressly provided in this Act, nothing in this Act affects any rights or remedies that a party to a dispute has apart from this Act.

24 Refusal or termination of mediation

- (1) The Director may decline to consent to the acceptance of any dispute for mediation under this Act at a Centre.
- (2) A mediation session may be terminated at any time by the mediator or by the Director.

25 (Repealed)

Part 5 Miscellaneous

26 Evaluations

- (1) The Minister may cause or arrange for an evaluation to be made, at such times and in respect of such periods as the Minister thinks fit, of Community Justice Centres and of their operation and activities.
- (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.

27 Exoneration from liability

- (1) No matter or thing done or omitted to be done by:
 - (a), (b) (Repealed)
 - (c) a mediator, or
 - (d) the Director or a member of the staff of a Community Justice Centre,shall, if the matter or thing was done in good faith for the purpose of executing this Act, subject any of them to any action, liability, claim or demand.
- (2) A member of the police force, or any other officer or person, is not liable to be proceeded against in respect of:

- (a) failure to charge a person with a crime or offence or to initiate or proceed with proceedings for a crime or offence, or any similar failure,
 - (b) the arrest of a person followed by such a failure, or
 - (c) failure to offer evidence at the hearing of a charge referred to in paragraph (a),
if the member of the police force or other officer or person satisfies the court that the failure was reasonable:
 - (d) by reason of the reference of the dispute to which the alleged crime or offence relates for mediation under this Act or by reason of an agreement reached by the parties to a dispute so referred, and
 - (e) in all the circumstances of the case.
- (3) Nothing in this Act prevents a charge referred to in subsection (2) (a) from being laid or any proceedings so referred to from being instituted or proceeded with, or any evidence being offered in relation to such a charge, or any incidental act, matter or thing from being done by any person at any time.
- (4) No person shall be concerned to inquire whether or not any circumstance has arisen requiring or authorising a person to act in the office of a member or of the Director, and anything done or omitted to be done by that person while so acting shall be as valid and effectual and shall have the same consequences as if it had been done or omitted to be done by that member or the Director.
- (5) In subsection (2), a reference to a crime or offence does not include a reference to a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

28 Privilege

- (1) In this section, **mediation session** includes any steps taken in the course of making arrangements for a mediation session or in the course of the follow-up of a mediation session.
- (2) Subject to subsection (3), the like privilege with respect to defamation exists with respect to:
- (a) a mediation session, or
 - (b) a document or other material sent to, or produced at, a Community Justice Centre for the purpose of enabling a mediation session to be arranged,
- as exists with respect to judicial proceedings and a document produced in judicial proceedings.
- (3) The privilege conferred by subsection (2) does not extend to a publication made

otherwise than:

- (a) at a mediation session,
 - (b) as provided by subsection (2) (b), or
 - (c) as provided by section 29 (2).
- (4) Evidence of anything said or of any admission made in a mediation 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 pursuant to, a mediation session, or any copy thereof 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) where the persons in attendance at the mediation session consent to 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 pursuant to section 29 (2) (c) or 29A, or
 - (c) given as evidence:
 - (i) as to the fact that an agreement the parties have agreed is to be enforceable has been reached at, or drawn up pursuant to, a mediation session, and
 - (ii) as to the substance of that agreement.
- (7) A mediator, the Director, a member of the staff of a Community Justice Centre, a person making an evaluation under section 26 or a party to a mediation session is not liable to be proceeded against for concealing a serious indictable offence without reasonable cause in respect of any information obtained in connection with the administration or execution of this Act.

29 Secrecy

- (1) A mediator shall not commence to exercise the functions of a mediator without first taking an oath before a justice of the peace in or to the effect of the form set out in Schedule 2 or making an affirmation in or to the effect of the form set out in Schedule 3.
- (2) A person who is or has been a mediator, a Director, a member of the staff of a Community Justice Centre or a person making an evaluation under section 26 or carrying out research referred to in paragraph (e) may disclose information obtained in connection with the administration or execution of this Act only as follows:
 - (a) with the consent of the person from whom the information was obtained,

- (b) in connection with the administration or execution of this Act,
- (b1) if the disclosure is for the purposes of giving evidence:
 - (i) as to the fact that an agreement the parties have agreed is to be enforceable has been reached at, or drawn up pursuant to, a mediation session, and
 - (ii) as to the substance of that agreement,
- (c) where there are reasonable grounds to believe that disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (c1) where the disclosure is made for the purposes of section 29A,
- (d) where the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting any such parties in any other manner,
- (e) where the disclosure does not reveal the identity of a person without the consent of the person and is reasonably required for the purposes of research carried out by, or with the approval of, the Director or an evaluation pursuant to section 26, or
- (f) 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.

29A Mandatory reporting

If a mediator has reasonable grounds to suspect that a child is at risk of significant harm (within the meaning of section 23 of the *Children and Young Persons (Care and Protection) Act 1998*) 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.

30 (Repealed)

31 Regulations

- (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.
- (2) In particular, regulations may be made for or with respect to the following:
 - (a) fees and charges for services provided by Community Justice Centres and mediators,

(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),

(c) the waiver or refund of the whole or part of any such fee or charge.

32 Repeal of Act No 134, 1980

The *Community Justice Centres (Pilot Project) Act 1980* is repealed.

33 Savings and transitional provisions

Schedule 4 has effect.

Schedule 1 (Repealed)

Schedule 2 Mediator's oath of secrecy

(Section 29)

I, _____ of _____ being a mediator within the meaning of the *Community Justice Centres Act 1983* do swear that I will not, either directly or indirectly, except as permitted under section 29 of that Act, and either while I am, or after I cease to be, a mediator, divulge or communicate to any person, court or tribunal any information, document or other matter disclosed during or incidentally to a mediation session.

Sworn and subscribed at _____ this _____ day of _____ }
19 _____ before me— }
Signature
.....
Justice of the Peace

Schedule 3 Mediator's affirmation of secrecy

(Section 29)

I, _____ of _____ being a mediator within the meaning of the *Community Justice Centres Act 1983* do solemnly, sincerely and truly declare and affirm that I will not, either directly or indirectly, except as permitted under section 29 of that Act, and either while I am or after I cease to be, a mediator, divulge or communicate to any person, court or tribunal any information, document or other matter disclosed during or incidentally to a mediation session.

Subscribed at _____ this _____ day of _____ 19 }
before me— }
Signature
.....
Justice of the Peace

Schedule 4 Savings and transitional provisions

(Section 33)

Part 1 Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Community Justice Centres Amendment Act 2007

Community Justice Centres Amendment Act 2010

- (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.
- (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:
 - (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
 - (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.

Part 2 Provisions consequent on enactment of this Act

1 Definition

- (1) In this Part, **repealed Act** means the *Community Justice Centres (Pilot Project) Act 1980*.
- (2) A person holding office pursuant to this Part holds that office subject to this Act.

2 Membership of Council

- (1) A member of the Committee constituted under the repealed Act who was nominated or selected under clause 1 (2) (a), (c), (h), (i) or (j) of Schedule 1 to that Act and held office as such a member immediately before 1 December 1983 shall be deemed:
 - (a) to have been appointed on that date as a member of the Council, and
 - (b) to have had for that appointment the same qualification by nomination or selection as the member had for appointment as a member of that Committee.
- (2) Subject to clause 5, the term of office of a member of the Council holding office

pursuant to subclause (1) expires:

(a) immediately before 1 December 1986, or

(b) on an earlier day of which the Minister notifies the member by instrument in writing,

whichever first occurs.

3 Chairman

The person who, immediately before 1 December 1983 held office as Chairman of the Committee constituted under the repealed Act shall be deemed to have been appointed on that date as Chairman of the Council.

4 Delegation to Director

A delegation to the Director of a Community Justice Centre under section 8 of the repealed Act that was in force immediately before 1 December 1983 shall be deemed to be a delegation on that date to the Director of that Centre under section 9 of this Act.

5 Directors

On and from 1 December 1983, a Director of a Community Justice Centre holding office under section 9 of the repealed Act immediately before that date continues in office under section 10 of this Act as the Director of that Centre.

6 Mediators

A person accredited under section 11 of the repealed Act as a mediator for a Community Justice Centre and holding office immediately before 1 December 1983 shall be deemed to have been accredited on that date under section 11 of this Act.

7 Delegation by Director

An authority in force immediately before 1 December 1983 that was conferred under section 13 of the repealed Act on a person holding office as a member of the staff of a Community Justice Centre shall, if that person is a member of the staff of that Centre on that date, be deemed to have been conferred on that date by the Director of that Centre under section 13 of this Act.

8 Community Justice Centres

Subject to this Act, a Community Justice Centre established under section 14 of the repealed Act, and being operated immediately before 1 December 1983, continues on and after that date as a Community Justice Centre established under section 14 of this Act.

9 Premises

An order made and published under section 15 of the repealed Act and in force

immediately before 1 December 1983 has effect on and from that date as if it were an order made and published under section 15 of this Act.

10 Records

Records relating to the activities of a Community Justice Centre that were made and kept under section 17 of the repealed Act and were in existence immediately before 1 December 1983 shall be deemed to be records made under section 17 of this Act in relation to the activities of that Centre.

11 Mediation

- (1) A dispute duly accepted before 1 December 1983 for mediation under the repealed Act shall be deemed to have been duly accepted for mediation under this Act.
- (2) A dispute may be accepted for mediation under this Act notwithstanding that it arose before 1 December 1983.
- (3) A mediation session that was commenced under the repealed Act and had not been completed immediately before 1 December 1983 shall be continued and completed as if it had been commenced under this Act.
- (4) A determination made under section 22 of the repealed Act and in force immediately before 1 December 1983 shall be deemed to be a determination made on that date under section 22 of this Act.

12 Agreement after mediation

The provisions of section 23 (3) apply to and in respect of an agreement reached at, or drawn up pursuant to, a mediation session under the repealed Act in the same way as those provisions apply to and in respect of an agreement reached at, or drawn up pursuant to, a mediation session under this Act.

13 Exoneration from liability

For the purposes of section 27 (2) (d), a reference to mediation under this Act includes a reference to mediation under the repealed Act.

14 Oath or affirmation by mediator

A mediator who holds office pursuant to clause 6 and:

- (a) has taken the oath specified in Schedule 2 to the repealed Act—shall be deemed to have taken the oath specified in Schedule 2 to this Act, or
- (b) has made the affirmation specified in Schedule 3 to the repealed Act—shall be deemed to have made the affirmation specified in Schedule 3 to this Act.

15 Secrecy

The provisions of section 29 (2) apply to and in respect of information obtained in the administration or execution of the repealed Act in the same way as those provisions apply to and in respect of information obtained in connection with the administration or execution of this Act.

16 Annual report

For the purposes of the report to be submitted by the Council in respect of the year ending on 30 June 1984, a reference in section 31 to Community Justice Centres includes a reference to Community Justice Centres established under the repealed Act.

Part 3 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act \(No 3\) 1992](#)

17 Limitation on accreditation of mediators

A person accredited under section 11 immediately before the date of commencement of the amendments to section 11 made by the [Statute Law \(Miscellaneous Provisions\) Act \(No 3\) 1992](#) is taken to be accredited under section 11, as amended, for a period of 12 months commencing on that date.

Part 4 Provisions consequent on enactment of [Community Justice Centres Amendment Act 2007](#)

18 Community Justice Centres Council

On the repeal of Division 1 of Part 2 by the [Community Justice Centres Amendment Act 2007](#), the Community Justice Centres Council is abolished.

19 (Repealed)

20 Reporting by mediators

Section 29A does not apply in relation to the work of a mediator occurring before the commencement of that section.