

Explanatory note

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

Overview of Bill

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

- (a) to specify the object of that Act, and
- (b) to abolish the Community Justice Centres Council, and
- (c) to confer certain functions on the Director of Community Justice Centres (***the Director***) that were previously exercised by the Community Justice Centres Council, and
- (d) to enable the Director to seek advice from any person or body in relation to the Director's functions and the achievement of the object of the Act and to establish advisory committees for that purpose, and
- (e) to provide for mediators at Community Justice Centres to be persons employed under the *Public Sector Employment and Management Act 2002*, and
- (f) to enable the Director to accept disputes for mediation that have been referred by a court or tribunal without the consent of all the parties to the dispute (currently, only voluntary mediation is undertaken by Community Justice Centres), and
- (g) to require mediators under the Principal Act to report to the Director-General of the Department of Community Services information obtained during the exercise of their mediation functions about children at risk of harm, and
- (h) to alter the requirements as to who must consent to the admission in evidence in proceedings of certain privileged information and documents arising from a mediation session.

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

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act.

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

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

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

Schedule 1 Amendment of Community Justice Centres Act 1983

Object of Act

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

Abolition of Community Justice Centres Council and role of Director Schedule 1 [5] and [35] omit provisions of the Principal Act that relate to the establishment and functions of the Community Justice Centres Council. **Schedule 1**

[2], [6], [24], [28], [29], [31] and [33] make consequential amendments.

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

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

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

Mediators and staff of Community Justice Centres

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

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

Mandatory mediation referred by court or tribunal

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

Currently, section 23 of the Principal Act requires attendance at mediation to be voluntary. Several courts and tribunals have power to refer disputes for mediation without the consent of the parties and it is the duty of the parties to attend. The proposed section provides that even though such a dispute has been accepted by the Director for mediation, a party to the dispute can withdraw from a mediation session.

The proposed section also preserves in relation to mandatory mediation referred by a court or tribunal, the Director's power under section 24 of the Principal Act to decline to accept a dispute for mediation or to terminate a mediation session.

Privileged information and documents

Currently, section 28 of the Principal Act provides that evidence of anything said or admissions made in a mediation session under that Act and documents prepared for the purposes of or in the course of a mediation session are not admissible in proceedings before any court, tribunal or body except in specified circumstances.

One such circumstance is where the persons in attendance at, or named during, the mediation session and, in the case of a document, all persons named in the document, consent to its admission.

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

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

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

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

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

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

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

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

Schedule 2 Amendment of other Acts and Regulation

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