

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.30 a.m.]: I move:

That this bill be now agreed to in principle.

The purpose of this bill is to amend the Community Justice Centres Act 1983 to implement a number of recommendations from the 2005 New South Wales Law Reform Commission's Report 106 on Community Justice Centres. The bill also proposes a number of other changes to the Act to improve community justice centres' management and service delivery. By supporting the expansion of mediation and other dispute resolution methods throughout the New South Wales justice system the bill will make an important contribution to the Lemma Government's commitments in the State Plan to build harmonious communities, and to reduce red tape.

Formal litigation through the courts can be a costly and time-consuming process. That is why the Lemma Government is committed, wherever possible, to encouraging more people to resolve their personal disputes involving civil matters, without the need to go to court. We want to help people resolve their disputes quickly and cheaply, without compromising the interests of justice. For more than twenty years, community justice centres have played a key role in offering alternative dispute resolution services to people across New South Wales. They offer free mediation services for disputes of a civil nature. It should be noted that they do not offer their services in relation to criminal matters.

Accordingly, community justice centres have played a vital role in keeping smaller civil disputes out of the court system, and in helping people avoid the tremendous financial and personal costs that are often associated with court-based litigation. They have helped thousands of feuding neighbours, friends, families and workmates resolve their differences, with a success rate of more than 80 per cent. The Government believes that alternative dispute resolution has the potential to play a greater role in the State's system of civil justice. This bill will help achieve this goal by enabling community justice centres to expand their broad mandate to promote and provide alternative dispute resolution services in New South Wales.

Before addressing the bill's provisions in detail I provide some background to the proposed amendments. Mediation is an effective way of avoiding lengthy, complex and costly court battles. It helps people who are involved in a dispute to develop options, consider alternatives and reach an agreement. Mediators play a key role throughout this process. They ensure that proceedings are structured, and they guide the parties through the various stages of the mediation towards an agreement or an acceptable and agreed outcome.

But, unlike judges or arbitrators, mediators do not give any advice or make any decisions about the content of the dispute or the outcome of its resolution. Rather, mediation allows the parties to reach an agreement based on solutions that they have come up with themselves. In fact, this is one of its key benefits. Unlike formal litigation, mediation can preserve and even strengthen existing business or neighbourly relationships. Mediation also brings additional benefits, including: eliminating unnecessary discovery; allowing outcomes which would not be available in a court order; expanding information on which parties make key decisions; responding to personal or business needs; and protecting the interests of third parties.

In 1980 a pilot community justice centres program was established to provide mediation services, free of charge, for disputes that conventional, court-based procedures were unable to resolve satisfactorily or cost-effectively. Pilot centres were established at Wollongong, Bankstown and Surry Hills. The pilot was successful and, following a favourable review, the scheme was made permanent with the commencement of the Community Justice Centres Act 1983. Today community justice centres provide free mediation services across the whole of New South Wales. Disputes are referred for mediation by magistrates, court staff, police, legal centres, marriage counsellors, doctors, and even banks. They mostly involve neighbourhood and non-violent family disputes. Every year Community Justice Centre mediators handle about 3,000 of these disputes throughout the State, and they meet with tremendous levels of success, with around 80 per cent of all mediated disputes leading to an agreement.

In 2002 the then Attorney General, the Hon. Bob Debus MP, asked the New South Wales Law Reform Commission to review the Community Justice Centres Act 1983. The commission reported back in 2005 and made a number of recommendations to improve the operation of the Act. The Attorney General's Department then consulted with a range of individuals and organisations about the recommendations, including the Chief Magistrate, the Aboriginal Justice Advisory Council, the Law Society of New South Wales, the Legal Aid Commission, the Women's Legal Service, the Department of Aboriginal Affairs, the Department of Local Government, the Department of Housing, NSW Police and the Combined Community Legal Centres Group of New South Wales. This bill now proposes to implement a number of the Law Reform Commission's recommendations. It also proposes further changes to improve community justice centres' management and service delivery.

I turn now to the details of the bill. The proposed first amendment in the bill will insert an objects clause into the Community Justice Centres Act 1983. Currently the Act does not have an objects clause. The Law Reform Commission recommended that the role of community justice centres in relation to training, education and

promotion of out-of-court dispute resolution methods should be recognised and identified in the legislation. Accordingly, the bill proposes inserting a provision into the Act, which states that the purpose of community justice centres is to provide dispute resolution and conflict management services, including the mediation of disputes and matters incidental to the provision of such services, such as the training of persons to be mediators; promoting alternative dispute resolution; and contributing to the development of alternative dispute resolution in New South Wales by the establishment of connections and partnerships with the legal profession, courts and tribunals, the academic sector and other providers of alternative dispute resolution services. Community justice centres have the capacity to build on their expertise and to expand their role in providing and promoting dispute resolution services in New South Wales. This broad new objects clause will support and encourage such an expansion.

I move now to provisions in the bill relating to the Community Justice Centres Council. The role of the council has evolved considerably over the past twenty years. Originally, the Community Justice Centres Council was made up of people who were on the original steering committee for the pilot scheme. The council later took on the role of advising the director on administrative, financial and policy matters under the Act. While the council played a key role in establishing community justice centres, a high level council, whose members have included academics and a magistrate, eventually ceased to be relevant or valuable to a mature and experienced organisation.

Community justice centres now operate as business centres of the Attorney General's Department, which further decreases the need for a council with administrative and management functions. In fact, the council itself has actually proposed its own dissolution. In doing so, it has recommended the establishment of a community advisory committee. This accords with the needs of community justice centres, whose priority is to obtain regular feedback from clients so that they can improve service delivery and meet the needs of clients. Accordingly, they have established two reference groups to provide advice on practical matters relating to their operation: the Professional Reference Group and the Training Group. Mediators are represented on both groups.

Community justice centres are also preparing to establish a third stakeholder consultative committee to provide regular advice and feedback on alternative dispute resolution issues. It is in this context that the bill now proposes to formally abolish the council and to remove references to it in the legislation. As a result, a number of consequential amendments are required. These include amendments to give the Director of Community Justice Centres broad decision-making powers for the effective management of community justice centres; amendments to enable the director to seek advice from the various advisory committees; and amendments to require the Director of Community Justice Centres to report to the Director General of the Attorney General's Department rather than to the council.

I move now to the status of mediators. Currently mediators are appointed by the Attorney General. They are managed and supervised by the Director of Community Justice Centres, and are legally considered to be employees in the Attorney General's Department. However, the status of mediators as employees is not clear on the face of the existing legislation. Accordingly, the bill proposes to amend the Act to explicitly provide that mediators are employed under the Public Sector Employment and Management Act 2002. The proposed changes will clarify the current status and entitlements of mediators and cut red tape. Additionally, in order to participate in the proposed national accreditation system for mediators, the relationship between community justice centres and mediators needs to be clearly defined and understood. The amendments will assist community justice centres to prepare for the introduction of the national accreditation system. I note that these amendments will not affect the current accreditation of mediators or the next round of re-accreditations, which are due in December this year. Commencement of these amendments will be by proclamation to ensure a measured and appropriate transition to the new arrangements.

I turn now to the issue of mandatory mediation. As I outlined earlier, mediation is an effective way of avoiding lengthy, complex and costly court battles. Under part 4 of the Civil Procedure Act 2005 courts have the power to refer a civil matter to mediation with or without the consent of the parties. Under the current provisions in the Community Justice Centres Act 1983 community justice centres cannot hear court-ordered mediation. Currently the only option for people subject to such an order is to use more expensive private firms. This prevents the full potential of mediation in the justice system from being realised.

The bill proposes that the Act be amended to allow community justice centres to conduct court-ordered mediation where attendance is mandatory, provided the court and the community justice centres consider the case appropriate for such mediation. Before making an order requiring parties to go to mediation the court exercises its discretion in each case to decide whether mandatory mediation might be beneficial. The discretion of the court to refer a case for mandatory mediation, and the discretion of the Director of Community Justice Centres to accept or reject such a referral, will allow any expansion of mandatory mediation services to be undertaken in a controlled manner.

In addition, the two discretions will ensure that mandatory mediation will be limited to appropriate cases and to instances where it is likely to improve rather than reduce the efficiency of the legal system. The bill also proposes that community justice centres be allowed to charge fees for providing mandatory mediation and that these fees be prescribed by regulation. The intention is to encourage parties to participate in free mediations of their own accord rather than taking to court matters that could more appropriately have been mediated. A fee waiver policy

will be developed in consultation with the relevant Ministers and stakeholders to prevent financial hardship from leading to breaches of orders to attend mediation.

The intention is also for community justice centres to broaden their role in the provision of training. Community justice centres have an excellent reputation as providers of mediator training, but under the current arrangements they only provide it to mediators who have applied for work to justice centres. Accordingly, the regulation will also allow community justice centres to offer and to charge for mediator training courses for the general public. Before community justice centres can conduct court-ordered mediations it will be necessary to consult on the fee waiver policy. It will also be necessary for mediators to receive training about the requirements of court-ordered mediations. Accordingly, commencement of these provisions will be by proclamation, and will be delayed to allow appropriate preparations to take place.

I turn now to the issue of child protection and reporting obligations. Community justice centre mediators have obligations of secrecy and confidentiality regarding the mediations they conduct. However, mediators who handle disputes referred by the Department of Community Services waive their confidentiality obligations in relation to information about the risk of harm to a child or young person. The Law Reform Commission, in its report on the Community Justice Centres Act 1983, further recommended that amendments be made to require all community justice centre mediators to disclose information obtained in the course of mediations when there are reasonable grounds to suspect that a child may be at risk of harm.

Accordingly, the bill proposes the introduction of the requirement on community justice centre mediators to report to the Department of Community Services information that they may acquire in the course of their work regarding a child or young person at risk of harm. Because it will be necessary for mediators to receive training about these new reporting obligations, these amendments will not come into force immediately but will commence by proclamation once all mediators have had the opportunity to update their training. The bill will improve the operation of the Community Justice Centres Act 1983 and with it the capacity of community justice centres to manage their affairs and their staff.

It will support the expansion of mediation and other dispute resolution methods throughout the New South Wales justice system. This will ensure that more opportunities are created for appropriate disputes to be dealt with through mediation rather than through the often heavy and costly hand of formal judicial processes. This in turn will make an important contribution to the Government's commitments to the State Plan to build harmonious communities and reduce red tape. I commend the bill to the House.