Community Justice Centres Amendment Bill 2007

About this Item
Speakers - Sharpe The Hon Penny; Clarke The Hon David; Rhiannon Ms Lee; Nile Reverend the Hon Fred

Business - Bill, Second Reading, Third Reading, Motion

COMMUNITY JUSTICE CENTRES AMENDMENT BILL 2007

Page: 4539

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [9.28 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

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 Iemma 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 Iemma 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 20 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 Iemma Government's commitments to the State Plan to build harmonious communities and reduce red tape. I commend the bill to the House.

The Hon. DAVID CLARKE [9.28 p.m.]: The Opposition does not oppose the Community Justice Centres Amendment Bill 2007. The bill amends the Community Justice Centres Act 1983 to streamline the operation of community justice centres and expand their role within the New South Wales justice system. Such centres have become an important part of the mediation and dispute resolution process within the justice system of our State. Originally set up in 1980, their purpose is to resolve civil disputes without the parties having to resort to litigation, which can be costly—even prohibitively so.

Of the approximately 3,000 disputes referred to community justice centre mediators a year, approximately 80 per cent result in settlement. This is a process that works to the benefit of the State of New South Wales and to those engaged in disputes. Firstly, it reduces the workload of our courts, which otherwise very often would hear time and resource consuming issues. Secondly, it is a process that is less stressful for those involved in disputes. Thirdly, it is a service provided without cost to the parties to disputes.

The bill implements a number of recommendations from the 2005 Report on Community Justice Centres prepared

by the New South Wales Law Reform Commission. It first inserts an objects clause to clarify that community justice centres have the core purpose of providing a dispute resolution and conflict management service, which includes the mediation of disputes and the provision of training for mediators.

The bill abolishes the Community Justice Centres Council, whose role in establishing and mentoring community justice centres has largely become superfluous with the passage of time. Henceforth the continuing oversight power will be exercised by the director of community justice centres, who will also have the power to seek advice from any person or body in relation to the director's functions and to establish an advisory committee for that purpose. The director will report directly to the Attorney General's Department. Because of some lack of clarity in existing legislation as to the status, control and entitlements of mediators in community justice centres, the bill specifically confirms that mediators are employed and regulated pursuant to the Public Sector Employment and Management Act 2002. As the position presently stands, such centres undertake only voluntary mediation.

Parties to such mediation must have given their consent. The bill will change that position. Henceforth the director of community justice centres can accept and pass on disputes for mediation referred by a court or a tribunal without the consent of the parties to the dispute. The bill will require community justice centre mediators 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 will 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.

As I indicated earlier the Opposition does not oppose the bill; any improvements to the community justice centre mediation process are welcome. It fulfils an important need by providing alternative means of resolution for civil litigants. Nevertheless, the Shadow Attorney General, Greg Smith, has raised concerns about the operation of some of the bill's provisions. He has, for example, expressed a concerned that mediators should not be compromised or be faced with a conflict of interest by virtue of the bill's clarification that mediators are deemed to be employees pursuant to the Public Sector Employment and Management Act 2002. The effects of this bill need to be monitored carefully and the Opposition will certainly be doing that. We hope that the Government will be doing likewise.

Ms LEE RHIANNON [9.32 p.m.]: The Community Justice Centres Amendment Bill is a grab bag of reforms for community justice centres in New South Wales, some the Greens support and some we have serious questions about. The bill implements a number of reforms flowing from report No. 106 of the New South Wales Law Reform Commission, which relates to community justice centres. The Law Reform Commission undertook extensive consultation in writing that report and the Greens are pleased to support the provisions of the bill that implement the its recommendations. It is disappointing, however, that the Law Reform Commission's report was released in 2005 and it is now the end of 2007. The obvious question to be asked is: Why has the Government waited almost three years to act on the recommendations of this report? As I will show shortly, not many recommendations made their way into the bill. The Labor Government does not delay in introducing bill after bill involving tough law and order, tabloid-driven measures.

Why has it taken the Government three years to present a bill on alternative dispute resolution and community justice centres? And why, after waiting three years for this legislation, are we presented with legislation that implements only a handful of the Law Reform Commission's recommendations? On my count, only two of its 14 recommendations have been implemented—which means that 12 recommendations are still sitting on the shelf gathering dust. What does this say about the priorities of the Carr and Iemma governments? Community justice centres provide a very important service in New South Wales and have done so for 20 years. Every year mediators at community justice centres in New South Wales handle more than 3,000 disputes. I understand that mediation through community justice centres has a success rate of more than 80 per cent. We would all have to agree that is quite remarkable. Community justice centres offer free mediation services for civil disputes. Given enough funding and support, community justice centres make alternative dispute resolution accessible to all.

Anyone who has been inside a courtroom knows that formal litigation can be costly, complex, lengthy and alienating. Even small civil disputes can come with huge financial and personal costs. Alternative dispute resolution also eliminates unnecessary and drawn out legal discovery of documents and allows outcomes that would not be available in a court order. As a general rule, adversarial courtroom contests rely on lawyers to draw out differences. Rarely do relationships between parties improve over the course of a court case, especially with civil disputes between neighbours or people in the same community. It is important that where possible relationships are maintained and problems resolved. Surely mediation is a far better way to achieve this than a drawn out courtroom battle.

The Greens support the expansion of mediation and other dispute resolution methods. We support the measures in this bill to expand the role of community justice centres. Specifically we support proposed section 3, which expands the purposes of community justice centres to include trainee mediators, promote alternative dispute resolution and contribute to the development of alternative dispute resolution in New South Wales by entry into connections and partnerships. We also support proposed section 20A, which allows community justice centres to conduct court-ordered mediation where attendance is mandatory. Under part 4 of the Civil Procedure Act courts

are able to refer civil matters to mediation with or without the consent of the parties. Under the current laws, parties involved in mandatory mediation are left in the hands of expensive private firms specialising in mediation.

The Greens also support proposed section 29A, which improves child protection by requiring mediators to disclose information obtained in the course of mediation where there are reasonable grounds to suspect that a child may be at risk of harm. The Greens do have reservations, however, about sections of this bill that change the employment status of mediators. The current practice is that mediators employed at community justice centres are appointed by the Attorney General. The bill inserts a new section 12 to specify that staff of community justice centres, including mediators, are to be employed under the Public Sector Employment and Management Act. My office has heard from a mediator with experience in community justice centres who is concerned about this change. I understand there is a danger that this move could compromise the independence of mediators. The Greens believe that independence in dispute resolution is an important principle, whether the matter is resolved in a courtroom or at a round-table mediation.

The importance of mediation is obvious in cases between an individual and the Government—for example, a dispute over a fence between an individual's house and a government building. Is it right that the mediator in that matter should be a public servant? How would the individual feel about that? Would that maintain independence? The Greens have serious concerns about this aspect of the bill. I understand that there has been very little consultation with mediators at community justice centres on this point. I also note that this change goes beyond, indeed it goes against, the recommendations in the Law Reform Commission report on community justice centres. The Law Reform Commission considers that mediators should continue to be ministerial appointees, as this would give them a degree of independence from government.

The report states that "independence is important because it reassures clients and allows mediators to carry out their work without fear or favour". At the same time I understand that if mediators are made public sector employees they would move onto the award, thus providing greater job security and freeing them from the current maximum three-year accreditation. When the Parliamentary Secretary replies to the debate I would like her to respond to the Greens' concerns about the ongoing independence of mediators. She must put on the record that the Government remains committed to their independence.

The final important question that remains for the Greens is: Where is the extra funding to support the extra services? The bill seeks to expand the role of community justice centres but, frankly, where is the money? Try as I might, I could not find a big boost in funding for community justice centres in this year's budget. If the money is not there, I do not see how the Government can deliver on its commitments. The Government is a slow learner when it comes to realising that it is no use giving an already-stretched body more functions without also giving it extra resources to back them up. I am concerned that if additional money is not put on the line, the positive changes in the bill will be little more than window-dressing that succeeds only in overstretching hardworking staff.

Reverend the Hon. FRED NILE [9.40 p.m.]: The Christian Democratic Party supports the Community Justice Centres Amendment Bill 2007, the purpose of which is to implement a number of reforms to improve the operation of community justice centres in New South Wales. The bill specifies the object of the Community Justice Centres Act 1983. The Government has adopted the same approach with several other bills when the object of the principal Act was not stated specifically. Proposed section 3, "Object of Act", states clearly:

> 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.

The bill will also abolish the Community Justice Centres Council. I understand that the council voted for its own dissolution in 2001 and has not met since then. This is part of a pattern, as other government-sponsored bodies also exist in legislation but do not function. Obviously the Government should have taken action before 2007 either to abolish the council or to investigate whether it had a role and make it exercise that role. Bodies that are enshrined in legislation should not be left in limbo.

The bill also confers certain functions on the Director of Community Justice Centres that were exercised previously by the Community Justice Centres Council. The bill will enable the director to seek advice from any person or body in relation to the director's functions and achieving the object of the Act, and to establish advisory committees for that purpose. The role of the Community Justice Centres Council will be virtually assumed by the

new Professional Reference Group and the Training Group. A stakeholder consultative committee will also be established. That appears to be a positive move, as those bodies will fill the vacuum left by the abolition of the council.

The bill also provides for mediators at community justice centres to be employed under the Public Sector Employment and Management Act 2002. The bill clarifies the legislation they are employed under and removes the need for them to be appointed by the Attorney General. Who will appoint the mediators now? I assume the director general will make those appointments. Perhaps the Parliamentary Secretary will clarify that point when she replies to the debate. The bill enables the director to accept disputes for mediation that have been referred by a court or tribunal without the consent of all parties to the dispute. At present only voluntary mediation is undertaken by community justice centres. That is a worthwhile move. If consent cannot be obtained, it may be necessary to force opposing parties to participate in compulsory mediation in order to resolve the matter.

The mediators will report to the Director General of the Department of Community Services information regarding children at risk of harm that was obtained during the exercise of their mediation functions. That provision ties in with the mandatory reporting requirement and should probably apply automatically. However, the requirement is now spelt out in the bill. Community justice centres play a valuable role in our society, and the Christian Democratic Party is pleased to support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [9.45 p.m.], in reply: I thank honourable members for their contributions to the debate on the Community Justice Centres Amendment Bill 2007. Community justice centres have offered dispute resolution services to people in New South Wales for more than 20 years. The amendments proposed in the bill will improve the operation of the Act and allow community justice centres to continue helping people to resolve their differences effectively. They will also allow community justice centres to pursue a broader mandate of promoting and developing out-of-court dispute resolution in New South Wales.

I will address some of the issues that were raised during the debate. Ms Lee Rhiannon expressed concern that the Government is not implementing all the recommendations of the Law Reform Commission in its report on community justice centres. This is because many of the commission's recommendations related to the now-defunct Community Justice Centres Council. In fact, it should be noted that in this bill the Government proposes to formally abolish the council. This is because the priority for community justice centres is to obtain regular feedback from clients so that they can improve service delivery and meet clients' needs. A high-level council is not an effective way of obtaining this type of feedback.

In 2001 the Community Justice Centres Council proposed its own dissolution and recommended the establishment of a community committee to advise the director. Since then community justice centres have established two reference groups—the Professional Reference Group and the Training Group—which provide advice on practical matters relating to the operation of the centres. Community justice centres are also preparing to establish a stakeholder consultative committee in line with the recommendation made by the council in 2001. This committee will provide regular advice and feedback to community justice centres on alternative dispute resolution issues. In this context the continued existence of the council is considered to be unnecessary.

Ms Lee Rhiannon also questioned why it has taken some time to implement the recommendations of the Law Reform Commission. This is mainly because much time and care was taken to consult a number of stakeholders. The stakeholders who had input into the bill include the Chief Magistrate, Aboriginal Justice Advisory Council, Law Society of New South Wales, Legal Aid Commission, Women's Legal Service, Department of Aboriginal Affairs, Department of Local Government, Department of Housing, Department of Community Services, Director of Public Prosecutions, New South Wales Police Force, Combined Community Legal Centres Group (NSW), and the Community Justice Centres Professional Reference Group.

As to the concerns expressed about mediators being public sector employees, I am advised that the Law Reform Commission report considered that mediators should continue to be ministerial appointees as this method of appointment generally gives mediation a degree of independence from the Government. Submissions to the commission by stakeholders participating in the review supported the continuation of this method of employment on the grounds that it ensured the independence of mediators. However, the independence of mediators in a dispute is not premised on their status as ministerial appointees. A mediator is, by definition, a neutral and impartial person whose role is to help people understand each other's point of view and work together to reach agreement. None of the community justice centres' counterparts in other Australian jurisdictions use ministerial appointment as the method of employing mediators. The independence of mediators derives not from their employment status but from the nature of their profession.

At present community justice centres mediators are formally accredited by the Attorney General and their legal status is that of an employee. The bill proposes to set out clearly and explicitly the status of a mediator as an employee. This is vital to ensuring certainty of the terms under which mediators work and clarity in their relationship with the department. In answer to Reverend the Hon. Fred Nile, I confirm that mediators will be appointed by the Director General of the Attorney General's Department. I thank members for their contributions to the debate and commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.