

Serial 20
Community Justice Centre Bill 2005
Dr Toyne

**A BILL
for
AN ACT**

to establish the Northern Territory Community Justice Centre, and for
related purposes

NORTHERN TERRITORY OF AUSTRALIA
COMMUNITY JUSTICE CENTRE ACT 2005

Act No. of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2005

AN ACT

to establish the Northern Territory Community Justice Centre, and for related purposes

[Assented to [] 2005]
[Second reading [] 2005]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – INTRODUCTION

Division 1 – Preliminary matters

1. Short title

This Act may be cited as the *Community Justice Centre Act 2005*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Objects

The objects of this Act are as follows:

- (a) to promote mediation as a way of resolving disputes;
- (b) to facilitate the provision of adjudication under the *Construction Contracts (Security of Payments) Act*.

4. Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Division 2 – Interpretation

5. Definitions

In this Act, unless the contrary intention appears –

"approved form" means a form approved under section 31;

"Centre" means the Northern Territory Community Justice Centre established by section 7;

"Centre employee" has the meaning in section 9(5)(b);

"CEO" means the Chief Executive Officer;

"Committee" means a committee established under section 30;

"Committee member" means a member of a Committee;

"Council" means the Community Justice Consultative Council established by section 24;

"Council member" means a member of the Council;

"Director" means the person holding or occupying the office of Director referred to in section 9;

"dispute" has the meaning in section 6(1);

"Guidelines" means the policy guidelines made and in force under section 26;

"mediation service" means any of the following services in relation to a dispute:

- (a) the conducting of mediation sessions for the dispute;
- (b) any other services relating to the mediation sessions;

"mediation session" includes any steps taken by a mediator –

- (a) to arrange for the mediation of a dispute; or
- (b) for the mediation of a dispute; or

- (c) for any follow-up for the mediation of a dispute;

"mediator" means –

- (a) the Director; or
- (b) a person engaged as a mediator under section 10;

"parties" for –

- (a) a dispute – has the meaning in section 6; or
- (b) a mediation session – means the parties to the dispute to which the session relates;

"purposes of the Centre" means the purposes referred to in section 8.

6. Disputes and parties to disputes

(1) There is a dispute on a matter if 2 or more persons are in disagreement on the matter (whether or not any negotiations on the matter are in progress).

- (2) Those persons are parties to the dispute.

PART 2 – NORTHERN TERRITORY COMMUNITY JUSTICE CENTRE

7. Establishment

The Northern Territory Community Justice Centre is established.

8. Centre's purposes

The Centre is established for the following purposes:

- (a) to provide mediation services;
- (b) to carry out other functions as provided by any other Act.

9. Director

- (1) There is to be a Director of the Centre.
- (2) The Director must be appointed by the CEO.
- (3) The Director must be a public sector employee.
- (4) The Director must –
 - (a) having regard to the Guidelines, exercise powers and perform functions for the purposes of the Centre; and

- (b) exercise powers and perform functions under the *Construction Contracts (Security of Payments) Act* as provided by Part 4 of this Act.

(5) The Director may be assisted by the following persons for subsection (4)(a):

- (a) a mediator;
- (b) a person (a "Centre employee") who –
 - (i) is not a mediator; and
 - (ii) is a public sector employee; and
 - (iii) is employed for the purposes of the Centre.

(6) The Director may be assisted by a Centre employee for subsection (4)(b).

10. Mediators

(1) The Director must engage one or more mediators for the provision of mediation services by the Centre.

- (2) A mediator must be –
 - (a) a public sector employee; or
 - (b) a person engaged on conditions approved by the CEO.

(3) Each mediator (including the Director) must hold the prescribed qualifications for a mediator.

11. Delegation

(1) The Director may delegate any of the Director's powers or functions (other than powers or functions arising from Part 4) to –

- (a) a mediator; or
 - (b) a Centre employee.
- (2) The delegation must be in writing.

12. Use of certain words

(1) The words "Community Justice Centre" must not be used in the name of an organisation other than the Centre.

(2) A person must not contravene subsection (1).

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

PART 3 – MEDIATION

13. Provision of services

(1) The parties to a dispute may apply to the Director for the provision of mediation services for the dispute.

(2) The application must be made in the approved form.

(3) The Director must, having regard to the Guidelines, accept or refuse the application.

(4) Mediation service may only be provided for the dispute if the Director accepts the application.

14. Termination of services

Mediation services provided for a dispute may be terminated at any time by any of the following:

(a) a party to the dispute;

(b) the Director;

(c) a mediator providing the services.

15. Mediation sessions

(1) A mediation session must be conducted –

(a) by one or more mediators; and

(b) in accordance with any directions given by the Director.

(2) A mediator must have regard to the Guidelines in conducting the session.

(3) The rules of evidence do not apply in relation to the session.

(4) A mediator must not engage in the adjudication or arbitration of a dispute in the session.

(5) Except with the permission of the Director or in accordance with section 17, a person other than a party to the dispute must not participate in the session.

(6) Without limiting subsection (5), the Director may permit a person nominated by a party to the dispute to be present during the session for providing support to that party.

(7) Mediation sessions must be conducted with –

(a) as little formality and technicality as possible; and

(b) as much expedition as possible.

16. Mediations must be voluntary

(1) The attendance of a party at a mediation session must be voluntary.

(2) The party may withdraw from the session at any time.

(3) Except in relation to any agreement arising from the session, the session does not –

(a) affect any rights of the party; or

(b) create any obligations that bind the party.

17. Representative of party

(1) A party to a mediation session that is a body corporate may be represented during the session by –

(a) if the body corporate is a corporation within the meaning of the Corporations Act 2001 – an officer of the corporation within the meaning of that Act; or

(b) otherwise – a person nominated by the body corporate.

(2) A person must not be a representative under this section if the person contravenes a requirement specified by the Director for this section.

PART 4 – ADJUDICATION

18. Interpretation

(1) In this Part, unless the contrary intention appears –

"adjudicator" means a person appointed by the Director to adjudicate a payment dispute for Part 3 of the CCSP Act;

"CCSP Act" means the *Construction Contracts (Security of Payments) Act*;

"lodgment fee" means the lodgment fee referred to in section 20.

(2) Unless the contrary intention appears, the following terms have the same meanings in this Part as in the CCSP Act:

adjudication

appointed adjudicator

construction contract

party

payment claim

payment dispute

prescribed appointer

registered adjudicator

working day.

19. Director taken to be prescribed appointer

Subject to this Part, the CCSP Act has effect as if the Director were a prescribed appointer for that Act.

20. When Director may act

(1) This section applies if a party to a construction contract serves a written application for the adjudication of a payment dispute on the Director under section 28 of the CCSP Act.

(2) The Director must do each of the things referred to in section 30(1)(a), (b) and (c) of the CCSP Act within 5 working days after being served with that application if –

(a) the Director is satisfied the amount of the payment claim for the dispute is less than \$10 000; and

(b) one or more of the parties to the contract have paid to the Director the lodgment fee for the adjudication within those 5 working days.

(3) For subsection (2), the amount of the lodgment fee is –

(a) \$500; or

(b) if another amount is prescribed by the Regulations – that amount.

(4) The Director may, for section 30(1)(a) of the CCSP Act, appoint a person who is not a registered adjudicator to adjudicate the payment dispute if the Director is satisfied –

- (a) the person has qualifications and experience relating to adjudication (whether or not they are qualifications and experience prescribed for section 52 of the CCSP Act); and
- (b) the payment dispute is of a nature that may be adjudicated by the person.

(5) The CCSP Act has effect in relation to the adjudication as if the person were a registered adjudicator.

Note for subsection (5) –

This means, for example, the Registrar under the CCSP Act must make available for public inspection the result or a report of a decision by the person under section 54 of that Act.

(6) Subject to this Part, an adjudicator to whom the application is sent under section 30(1)(b) of the CCSP Act is taken to be an appointed adjudicator for that Act.

(7) If the requirements in subsection (2)(a) and (b) are not satisfied in relation to the application –

- (a) the Director must not do any of the things referred to in section 30(1)(a), (b) and (c) of the CCSP Act for that application; and
- (b) section 30(2) and (3) of the CCSP Act applies.

21. Liability for lodgment fee

(1) Each party to an adjudication conducted by an adjudicator is liable to pay an equal share of the lodgment fee.

(2) If a party (the "first party") has paid more than the party's equal share of the fee, the adjudicator may decide that another party must pay to the first party an amount that would result in all the parties paying an equal share of the fee.

- (3) If the adjudicator makes a decision under subsection (2) –
 - (a) the adjudicator must include in the decision the date on which the amount is payable; and
 - (b) Part 3, Divisions 4 and 5 of the CCSP Act apply (with the necessary changes) to the decision as if it were a determination of an appointed adjudicator.

22. Power of adjudicator

(1) An adjudicator must not make a determination for a payment dispute under section 33(1)(b) of the CCSP Act that would result in the total of the amount to be paid, and the security to be returned, for the dispute equal to \$10 000 or more.

(2) To avoid doubt, the total of the amount to be paid, and the security to be returned, for the dispute does not include any interest payable under section 35 of the CCSP Act.

23. Costs of adjudication

(1) Section 46 of the CCSP Act does not apply in relation to an adjudication arising because of this Part.

(2) Section 55 of the CCSP Act does not apply to –

- (a) the Director; or
- (b) an adjudicator.

PART 5 – COMMUNITY JUSTICE CONSULTATIVE COUNCIL

24. Establishment

(1) The Community Justice Consultative Council is established.

(2) The Council consists of 7 members appointed by the Minister.

(3) Subject to subsection (4) and the Regulations, the Council may determine the procedures for its meetings.

(4) At a meeting of the Council, 4 members constitute a quorum.

(5) To avoid doubt, the *Public Sector Employment and Management Act* does not apply in relation to the appointment of a Council member.

(6) The Regulations may make provision, consistent with this Act, about any of the following:

- (a) the appointment of Council members (including the nomination of persons to be appointed as Council members);
- (b) the appointment of a Council member as the Chairperson, or the Deputy Chairperson, of the Council;
- (c) the term of the office of a Council member;
- (d) the vacation of the office of a Council member;

- (e) meetings of the Council;
- (f) any other matters about the Council.

25. Functions

The functions of the Council are –

- (a) to make Guidelines under section 26; and
- (b) to deal with a complaint under section 27; and
- (c) to make reports and recommendations to the Minister on any of the following matters the Council considers appropriate:
 - (i) the operation of the Centre;
 - (ii) any matter that may be the subject of a review under section 32(1);
 - (iii) any other matter arising from the operation of this Act.

26. Guidelines

(1) The Council may, consistent with this Act, make policy guidelines for the provision of mediation services.

(2) Without limiting subsection (1), the Guidelines may provide for one or more of the following:

- (a) the matters the Director must take into account in deciding –
 - (i) whether or not to provide mediation services; or
 - (ii) to terminate the provision of mediation services;
- (b) the principles governing the provision of mediation services.

(3) The Council must, by notice in the *Gazette*, notify the making of the Guidelines.

(4) In addition, the Council must notify each of the following about the making of the Guidelines:

- (a) the Minister;
- (b) the CEO;
- (c) the Director.

(5) The Guidelines must not take effect before their notification under subsection (3).

27. Complaint

(1) A party to a dispute for which mediation services have been provided may make a complaint to the Council about the manner in which the services were provided.

(2) Without limiting subsection (1), the complaint may relate to an aspect of the procedure adopted by any of the following in providing the services:

- (a) the Director;
- (b) a mediator;
- (c) a Centre employee.

(3) However, a complaint must not be made about the outcome of a mediation session.

(4) The Council may do any of the following on receiving the complaint:

- (a) review the matters raised in the complaint;
- (b) if the Council considers that actions should be taken by the Director to address any of those matters – recommend the Director to take those actions;
- (c) if the Council considers that the Guidelines should address any of those matters – amend or make provision in the Guidelines accordingly.

(5) The Regulations may make provision, consistent with this Act, about any matters arising from this section.

28. Direction

The Minister may give directions to the Council about the exercise of any of the Council's powers or the performance of any of the Council's functions under this Act, except directions about any of the following:

- (a) the content of a report or recommendation by the Council;
- (b) the taking of an action about a complaint under section 27(4).

29. Delegation

- (1) The Council may delegate any of its powers or functions to –
 - (a) the Director; or
 - (b) a Committee.
- (2) The delegation must be in writing.

30. Committee

- (1) The Council may establish committees for the exercise of any of its powers, or the performance of any of its functions, as is specified by the Council.
- (2) A Committee member must be appointed by the Council.
- (3) A Committee member must be –
 - (a) a Council member; or
 - (b) the Director; or
 - (c) a mediator; or
 - (d) a Centre employee.
- (4) The Regulations may make provision, consistent with this Act, about any matters arising from this section.

PART 6 – ADMINISTRATION

31. Approved form

The CEO may approve forms for this Act.

32. Review

- (1) The CEO must conduct a review of each of the following matters within 5 years after the commencement of this Act:
 - (a) the operation and effectiveness of this Act;
 - (b) the operation and effectiveness of the Centre;
 - (c) the operation and effectiveness of the Council;
 - (d) any other matters arising from the operation of any provision in this Act that the CEO thinks should be subject to a review.

- (2) The CEO must prepare a report for the review that includes –
 - (a) the result of the review; and
 - (b) any recommendation arising from the review.
- (3) The CEO must give the Minister the report as soon as possible after its completion.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

33. Protection from liability

- (1) This section applies to a person who is or has been any of the following:
 - (a) the Director;
 - (b) a mediator;
 - (c) a Centre employee;
 - (d) a Council member;
 - (e) a Committee member.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

34. Protection of information

The following are not admissible as evidence in any proceedings before a court, tribunal or any other body that has the power of admitting sworn statements:

- (a) a statement, document or any other thing made for a mediation session;
- (b) a record of the statement, document or thing.

35. Privilege for defamation

(1) A mediation session has effect as if it were a judicial proceeding for the purposes of any privilege that is available for a judicial proceeding under any law about defamation in force in the Territory.

(2) Any document produced in a mediation session has effect as if it were a document produced in a judicial proceeding ("proceeding document") for the purposes of any privilege that is available for a proceeding document under any law about defamation in force in the Territory.

(3) The privilege provided by this section does not extend to a publication –

- (a) that is not made for a mediation session; or
- (b) that is not permitted by section 36.

36. Secrecy

(1) This section applies to a person who is or has been any of the following:

- (a) the Director;
- (b) a mediator;
- (c) a Centre employee;
- (d) a Council member;
- (e) a Committee member.

(2) The person must not –

- (a) record any information obtained by the person in exercising a power or performing a function under this Act; or
- (b) disclose any such information to a person or body (including a court or tribunal); or
- (c) publish all or part of a document obtained by the person in exercising a power or performing a function under this Act; or
- (d) produce to a court or tribunal a document or any other thing obtained by the person in exercising a power or performing a function under this Act.

(3) Subsection (2) does not apply in relation to any recording, disclosure, publication or production that –

- (a) is part of the exercise of a power or the performance of a function under this Act; or
- (b) relates to the administration of this Act; or
- (c) is required by another law; or
- (d) is reasonably necessary for the protection of a person or the prevention of damage to property; or
- (e) is made for –
 - (i) a person who is the subject of the information, document or thing; or
 - (ii) another person with the consent of the person referred to in subparagraph (i) (whether the consent is given expressly or by implication); or
 - (iii) a person prescribed by the Regulations.

(4) A person who contravenes subsection (2) is guilty of an offence.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

(5) For this section, a reference to a power or function under this Act does not include a reference to a power or function under the *Construction Contracts (Security of Payments) Act* arising from Part 4 of this Act.

37. Confidentiality agreement

(1) The Director may require the parties to a dispute to sign an agreement of confidentiality before providing mediation services for the dispute.

(2) The agreement must specify that each party may not record, disclose, publish or produce any information, document or thing arising from the provision of the mediation services.

(3) A person who contravenes the agreement is guilty of an offence.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

(4) However, subsection (3) does not apply to any recording, disclosure, publication or production approved by the Director and all the parties to the dispute.

38. Appointments may be made despite other Act

(1) This section applies to a person who is employed or engaged, or holds an office –

- (a) on a full-time basis; or
- (b) on the basis that the person may not –
 - (i) be otherwise employed or engaged; or
 - (ii) otherwise hold an office.

(2) Despite any other Act, the person is not disqualified from being appointed or remunerated as one or more of the following:

- (a) a mediator;
- (b) a Council member;
- (c) a Committee member;
- (d) an adjudicator within the meaning of Part 4.

39. Annual report

(1) For each financial year, the CEO must prepare an annual report on the operation of this Act during that year.

(2) The CEO must give the Minister the report within 3 months after the end of that year.

(3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

40. Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**PART 7 – TRANSITIONAL MATTERS FOR COMMUNITY JUSTICE
CENTRE ACT 2005**

41. Savings

(1) This section applies to any mediation commenced before the commencement of this Act for or by the part of the Department of Justice then known as the Community Justice Centre.

(2) This Act does not –

- (a) prevent the completion of the mediation after the commencement of this Act; or
- (b) affect anything arising from the mediation (whether or not the mediation was completed before the commencement of this Act).

(3) Subsection (2) has effect –

- (a) whether or not the person conducting the mediation is a mediator or holds the prescribed qualifications for a mediator; and
- (b) whether or not the requirements of this Act have been complied with in relation to the conducting of the mediation.

PART 8 – CONSEQUENTIAL AMENDMENTS

42. Principal Act amended

This Part amends the *Construction Contracts (Security of Payments) Act*.

43. New section 11A

After section 11 –

insert

11A. Interaction with *Community Justice Centre Act*

The operation of this Act is subject to Part 4 of the *Community Justice Centre Act*.

Note for section 11A –

Part 4 of the Community Justice Centre Act provides for the Director of the Community Justice Centre to be treated as a prescribed appointer for this Act. That Part also creates exceptions to some of the rules in this Act.

44. New section 53A

After section 53 –

insert

53A. Adjudicators to give Registrar information

A registered adjudicator must, in accordance with the Regulations, give the Registrar information prescribed by the Regulations.

45. Expiry of Part

This Part expires on the day after it commences.
