

COMMUNITY MEDIATION SERVICE (PILOT PROJECT) BILL

EXPLANATORY NOTE

THIS Bill facilitates the establishment and operation of a voluntary community based mediation service in Christchurch. This service is to be provided by a body to be incorporated under the Incorporated Societies Act 1908 and known as the Christchurch Community Mediation Service Incorporated. The Bill does not itself establish the mediation service. It does however, contain provisions relating to the operation of the service, and provides statutory safeguards for the parties to disputes which are subject to mediation and for those involved in providing the service. In some respects the Bill is similar to the New South Wales Community Justice Centres (Pilot Project) Act, 1980, No. 134. That Act, however, differs significantly in that it provides for the establishment of Community Justice Centres as part of the Department of the Attorney-General and of Justice.

The main features of the mediation service are as follows. Mediation is voluntary. No person may be compelled to attend a mediation session and may withdraw at any stage from it. Mediation is undertaken by a mediator or mediators with the parties to the dispute. Agreements reached at a mediation session are not binding on the parties and cannot be enforced in the Courts.

The submission of a dispute to mediation does not prevent legal proceedings being taken by the parties. Mediation is to be undertaken in accordance with guidelines and directions given by the Executive Committee of the Mediation Service.

The Bill confers protection from defamation, and provides that statements made in the course of mediation are not admissible in civil or criminal proceedings. The Bill also confers immunity from liability on the Mediation Service, the Executive Committee and mediators.

The establishment of the mediation service is in the nature of a pilot project. Accordingly it is provided that the Act expires on 31 December 1986.

Clause 1 of the Bill relates to the Short Title.

Clause 2 relates to the definition of terms used in the Act.

Clause 3 provides that the Act binds the Crown.

Clause 4 provides that the principal function of the Christchurch Community Mediation Service Incorporated (the "Mediation Service") is to establish and operate a pilot project for the provision of mediation to the community in Christchurch.

Clause 5 specifies the principal functions of the Executive Committee. These are to co-ordinate the work of the Mediation Service, lay down policy guidelines and give directions for its work.

Clause 6 relates to mediators. *Subclause (1)* provides that mediators shall be appointed by the Executive Committee or the Co-ordinator. *Subclause (2)* provides that an appointment may be revoked by the Committee or the Co-ordinator. *Subclause (3)* provides that an appointment shall be revoked at the request of the mediator. *Subclause (4)* provides that the persons to be appointed shall be persons who by reason of training and personal qualities are suitable to undertake mediation.

Clause 7 relates to mediation. *Subclause (1)* provides that mediation sessions shall be conducted by a mediator or mediators. *Subclause (2)* provides that mediation is voluntary. *Subclause (3)* allows a party to withdraw from a mediation session at any time. *Subclause (4)* requires every mediator to ensure, so far as practicable, that the parties to a dispute are aware, before commencing a mediation session, that they may have legal rights in respect of the subject-matter of the dispute. *Subclause (5)* provides that mediation may be refused, or a mediation session terminated at any time and for any reason. *Subclause (6)* provides that where a party to a dispute has suffered physical violence from another party to the dispute, the mediator shall have particular regard to the need to ensure that that person is protected from further physical violence. *Subclause (7)* provides that mediation is to be in private unless the mediator considers it desirable that a person who is not a party to the dispute should attend the mediation session, and the parties agree. *Subclause (8)* provides that mediation of a dispute may be undertaken when the dispute is the subject of legal proceedings. *Subclause (9)* provides that agreements reached at mediation sessions do not bind the parties. *Subclause (10)* provides that the rules of evidence do not apply to a mediation session. *Subclause (11)* provides that the Act does not limit or affect any rights or remedies that a party to a dispute has apart from the Act.

Clause 8 relates to privilege. *Subclause (1)* provides that the clause applies to an oral or written statement (including a statement contained in a document) made in the course of making arrangements for a mediation session, a mediation session itself, or action taken to follow up a mediation session. *Subclause (2)* provides that no action for defamation may be taken in respect of any such statement. *Subclauses (3) and (4)* provide that evidence of any such statement is not admissible in proceedings before any court, tribunal, or person acting judicially unless:

- (a) The parties to the dispute consent to its admission as evidence; or
- (b) The statement is admissible evidence in favour of a person who is charged with an offence and that person adduces the evidence.

Clause 9 exempts the Mediation Service, the Executive Committee and any mediator from civil and criminal liability for acts or omissions in good faith in connection with providing mediation.

Clause 10 provides that the Act expires on 31 December 1986.

Hon. Mr McLay

COMMUNITY MEDIATION SERVICE (PILOT PROJECT)

ANALYSIS

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A BILL INTITULED

An Act to facilitate the provision by the Christchurch Community Mediation Service Incorporated of mediation services as a pilot project

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Community Mediation Service (Pilot Project) Act 1983.

10 2. **Interpretation**—In this Act, unless the context otherwise requires,—

“Approved premises” means—

(a) The office premises of the Mediation Service;

15 (b) Any premises approved by or on behalf of the Committee for the conduct of mediation sessions:

“Committee” means the Executive Committee of the Mediation Service:

20 “Co-ordinator” means the person appointed by the Committee to co-ordinate the work of the Mediation Service:

“Mediation” means promoting discussion between parties to a dispute and encouraging the parties to come to a fair and amicable settlement of that dispute in a mediation session:

“Mediation Service” means the Christchurch Community Mediation Service Incorporated: 5

“Mediation session” means a mediation session conducted in approved premises by a mediator with the parties to a dispute:

“Mediator” means— 10

- (a) The Co-ordinator; and
- (b) Any person appointed by or on behalf of the Committee to act as a mediator in, or in connection with, mediation sessions.

3. Act to bind the Crown—This Act shall bind the Crown. 15

4. Function of Mediation Service—(1) The principal function of the Mediation Service shall be to establish and operate a pilot project for the provision of mediation to the community in Christchurch.

(2) Nothing in **subsection (1)** of this section limits any other function of the Mediation Service. 20

5. Functions of Committee—(1) The principal functions of the Committee shall be to—

- (a) Co-ordinate the work of the Mediation Service;
- (b) Lay down policy guidelines for the work of the Mediation Service; 25
- (c) Give directions with respect to the work of the Mediation Service.

(2) Nothing in **subsection (1)** of this section limits any other function of the Committee. 30

6. Mediators—(1) Every Mediator shall be appointed by—

- (a) The Committee; or
 - (b) The Co-ordinator on behalf of the Committee.
- (2) The Committee or the Co-ordinator, as the case may be, may revoke the appointment of a mediator. 35

(3) The Committee or the Co-ordinator, as the case may be, shall revoke the appointment of a mediator at the request of that mediator.

(4) The Committee or the Co-ordinator, as the case may be, shall appoint persons who by reason of their training and personal qualities are suitable to undertake mediation. 40

7. Mediation—(1) Each mediation session shall be conducted by a mediator or mediators.

(2) Attendance at and participation in a mediation session are voluntary.

5 (3) A party may withdraw from a mediation session at any time.

(4) Before commencing a mediation session every mediator shall ensure, so far as practicable, that the parties to a dispute are aware that they may have legal rights in relation to the
10 subject-matter of the dispute.

(5) A mediator is entitled at any time and for any reason to refuse mediation or to terminate a mediation session.

(6) Where a party to a dispute has suffered physical violence from another party to that dispute, the mediator shall have
15 particular regard to the need to ensure that such person is protected from further physical violence.

(7) Mediation shall be in private unless the mediator considers it desirable that a person who is not a party to the dispute should be present at, or participate in, the mediation session,
20 and the parties agree.

(8) Mediation may be undertaken whether or not the dispute is the subject of proceedings before any court or tribunal.

(9) Notwithstanding any enactment or rule of law, an agreement reached at, or drawn up pursuant to, a mediation
25 session is not binding on the parties and is not enforceable in any court or tribunal.

(10) The rules of evidence do not apply to mediation sessions.

(11) Except as expressly provided in this Act, nothing in this Act limits or affects any rights or remedies that a party to a
30 dispute has apart from this Act.

Cf. Act No. 134, 1980 (N.S.W.), ss. 21 (2)-(4), 23

8. Privilege—(1) This section applies to any oral or written statement (including a statement contained in a document) made in the course of:

35 (a) Making arrangements for a mediation session;

(b) A mediation session;

(c) Action taken to follow up a mediation session.

(2) No action in defamation lies against any person in respect of any oral or written statement to which this section applies.

40 (3) Evidence of any oral or written statement to which this section applies is not admissible in proceedings before any court, or tribunal, or a person acting judicially.

(4) Nothing in **subsection (3)** of this section applies to the admission of any oral or written statement to which this section applies, if—

- (a) The parties to the dispute consent to the admission of the statement; or
- (b) The statement is admissible evidence in favour of any person charged with an offence and that person adduces the evidence.

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9. Exemption from liability—No civil or criminal proceedings lie against the Mediation Service, the Committee, 10 or any mediator for any act or omission in connection with providing mediation in accordance with this Act, the policy guidelines and directions of the Committee, and any document or instrument defining the constitution and rules of the Mediation Service, unless the act or omission was in bad faith. 15

10. Expiration—This Act shall expire with the close of the 31st day of December 1986 and shall be deemed to have been repealed as at the close of that day.