

REVIEW OF THE *COMMUNITY JUSTICE CENTRE ACT*

DISCUSSION PAPER

September 2014

Legal Policy

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Submissions Close on 31 October 2014

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The Department of the Attorney-General and Justice is reviewing the *Community Justice Centre Act* and invites you to make a submission to the review.

Policy options and recommendations will be further developed by the Department of the Attorney-General and Justice from the submissions received. It is anticipated that a final Review report will be provided to the Attorney-General in late 2014.

Further consultation (either broad or targeted) may be necessary, depending on the level of complexity or the scope of any proposed changes to the Act.

The Department's preference is for written submissions. If stakeholders prefer to provide a verbal submission, they can do so by contacting the action officer in the Department of the Attorney-General and Justice. The Department would also be pleased to provide briefings to stakeholders if that would assist in eliciting comment.

All submissions and enquiries should be directed to:

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Closing date for submissions is 31 October 2014.

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1. Introduction

1.1 Scope of the Review

Section 32(1) of the *Community Justice Centre Act* (the Act) provides that the Chief Executive Officer of the Department of the Attorney-General and Justice must conduct a review of the Act. The Review must consider each of the following matters:

- (a) the operation and effectiveness of the Act;
- (b) the operation and effectiveness of the Community Justice Centre (CJC);
- (c) the operation and effectiveness of the Community Justice Consultative Council (the Council); and
- (d) any other matters arising from the operation of any provision in the Act that the Chief Executive thinks should be subject to a review.

The Chief Executive has not given a direction under section 32(1)(d) of the Act.

Section 32(2) of the Act requires the Chief Executive to prepare a report for the review that includes:

- (a) the result of the review; and
- (b) any recommendation arising from the review.

The Chief Executive Officer must give the Minister for Justice and Attorney-General the report as soon as possible after its completion (section 32(3) of the Act) and the Minister must table a copy of the report in the Legislative Assembly within six Sitting days after the Minister receives the report (section 32(4) of the Act).

This Review is a legislative review to consider whether the legislation in its current form is adequate and whether there is a need for amendment.

1.2 Purpose of this Discussion Paper

The issues identified in this paper are intended to give direction to submissions and elicit public comment. Comments and submissions received will inform the final Report. The issues raised are not intended to be exhaustive, and commentators are invited to identify other issues in their submissions.

This paper has been prepared based on information gathered from the CJC, the Director of the CJC, and discussions with the Council.

The structure of the paper follows the issues for review identified in section 32(1) of the Act. In summary:

- Part 2 of this Paper relates to the operation and effectiveness of the Act. This part provides a general outline of the structure of the Act, the objects of the Act, general administrative provisions of the Act and regulations. Consideration of the operation and effectiveness of the Act is, however, an underlying consideration for the whole of the review;
- Part 3 of this paper relates to the operation and effectiveness of the CJC. This part discusses the structure and operation of the CJC, the role of mediators, the mediation function of the Centre and the adjudication function of the Centre; and
- Part 4 of this paper relates the operation and effectiveness of the Council. This part discusses the powers and functions of the Council.

1.3 Surveys

The Director of the CJC sent surveys to a number of referrers to the CJC for their anonymous views on the operation of the CJC. The purposes of the surveys were to inform the review and for the responses to be incorporated into the final report prepared by the Department of the Attorney-General and Justice.

The questions posed in the surveys were:

1. What do you know of about the services of the CJC?
2. How do you know about the services of the CJC?
3. Why do you refer people to the CJC?
4. For what types of matters or disputes have you referred people to the CJC?
5. What do you think is good about the CJC?
6. What do you think requires improvement in the CJC or the Act?
7. Do you have any other suggestions/comments about the Act or the operation of the CJC?

Respondents to this Review are also invited to respond to any of those questions in their submission.

1.4 Background to the CJC

The Northern Territory CJC was established as part of the former Department of Justice, now Department of the Attorney-General and Justice, for a trial period in 2003. The CJC was established to provide a cost effective means of resolving some disputes. It is both a mediation and an adjudication service. The service was designed to be free of charge, confidential, voluntary and impartial.

The former Department of Justice conducted a review of the initial CJC in August 2004. The Review found there was an overwhelmingly positive response to the initial CJC from stakeholders, community groups and mediation parties surveyed. Subsequently, the CJC received ongoing funding and its legislative framework established in the Act commenced operation on 22 February 2006.

In his second reading speech for the introduction of the *Community Justice Centre Act*, the then Attorney-General, Dr Peter Toyne, stated that “the [CJC] provides and promotes mediation services as a means of resolving disputes to achieve greater harmony in the community”, and goes on to state that:

“The core aim of the proposed legislation is to facilitate the provision of mediation services for community disputes. Over time, it is anticipated that, for various minor or personal disputes, the legislation will provide an alternate model for dispute resolution. In doing so, the legislation seeks to take pressure off various other government agencies such as police, courts and providers of community legal services.”

At the time of commencement of the Act, the types of mediations it was envisaged the CJC would handle included neighbourhood disputes, workplace conflicts and family and community disagreements. The adjudication functions of the Act were targeted towards the resolution of payment disputes under the *Construction Contracts (Security of Payments) Act*.

1.5 Other Jurisdictions¹

Community Justice Centres exist in all Australian jurisdictions.

New South Wales

New South Wales was the first jurisdiction in Australia to introduce community mediation, with the establishment of Community Justice Centres in the early 1980s. The Community Justice Centres initiative was in fact the first significant mediation program in Australia.

The *Community Justice Centres Act 1983* (NSW) (the NSW Act) commenced on 1 December 1983. The NSW Act makes provision for the establishment and operation of Community Justice Centres as well as for the appointment of mediators. It sets out how mediation services are to be delivered, including that the Director may determine whether or not a dispute is suitable for mediation. Importantly, the NSW Act features a number of protections in relation to liability, confidentiality and privilege.

The New South Wales Law Reform Commission (NSWLRC) conducted a Review of the New South Wales Community Justice Centre. The NSWLRC released an Issues Paper in 2003, and a final Review in 2005.² The Report contained nineteen recommendations for reform, a number of which were adopted by government and led to the introduction of legislative amendments to the NSW Act in 2007 and 2010.

Community Justice Centres accept referrals from multiple sources including the Court, self-referrals, Local Government, Government and non-government organisations.

Victoria

In Victoria, the Dispute Settlement Centre (DSC) provides free mediation services for neighbourhood disputes, workplace disputes, anti-social behaviour disputes, disputed within communities or Incorporated Association disputes. The DSC also receives referrals from the Victorian Civil and Administrative Tribunal as well as the Victorian Magistrates Court. However, the DSC does not deal with disputes under the *Family Law Act 1975* (Cth) or involving family violence.

Victoria does not have separate legislation relating to the DSC. Sections 21K to 21N of the *Evidence (Miscellaneous Provisions) Act 1958* (VIC) provides for the DSC to be declared by order of the Governor in Council and a mediator to be declared by notice in the Government Gazette. The legislation also provides for protections from liability, confidentiality and privileges against anything said or a document prepared during a mediation session being used in proceedings in a court, tribunal or other body.

Queensland

In Queensland, the Dispute Resolution Centres are operated by the Queensland Department of Justice and Attorney-General. The *Dispute Resolution Centres Act 1990* (Qld) (the QLD Act) provides for the establishment and operation of Dispute Resolution Centres and for the provision of mediation services to assist in the resolution of certain types of disputes.

¹ The information on community justice centres in other jurisdictions has been sourced from: Australasian Dispute Resolution Service, Looseleaf, Thomson Reuters (2012).

² NSW Law Reform Commission, *Community Justice Centres*, Issues Paper No 23 (2003).

The QLD Act contains a provision stating that attendance at, and participation in, mediation sessions is voluntary.³ However in 1997, the QLD Act was amended to make provision for Dispute Resolution Centres to accept disputes that have been referred to mediation by order of the court (a 'referring order').⁴ In these matters, the parties may not be attending mediation voluntarily. The Queensland Supreme, District, and Magistrates courts as well as the Queensland Civil and Administrative Tribunal all have the power to make a referring order to mediation.

Western Australia

Western Australia does not have a broad community mediation program. However, it does have a community mediation program that is specific to Aboriginal clients. The Aboriginal Alternative Dispute Resolution Service commenced in 1990 as a Government program entitled the "Aboriginal Initiative Support Fund". This was as a result of the Royal Commission of Inquiry into Aboriginal Deaths in Custody.

On 1 July 2010, the name of the service was changed to the Aboriginal Mediation Service (AMS). The early focus of the service was to assist Noongar/Nyungar communities in the South West of Western Australia with family feuding. It did this by offering culturally appropriate mediation, negotiation and conciliation services, delivering training, and helping the communities develop conflict management strategies.

Today, the AMS offers mediation and conflict management services to Aboriginal and Torres Strait Islander people throughout the State of Western Australia. The AMS aims to reduce the incidence of Aboriginal people's involvement with the criminal justice system by providing a culturally appropriate mediation and conflict management service. This includes addressing complex and sometimes long standing inter and intra family conflict affecting Aboriginal people and communities within Western Australia.

The AMS works closely with government, non-government services and other agencies to provide a practical approach to facilitating peace, assist in developing peaceful agreements and realistic solutions to resolve conflict and decrease the level of conflict between disputing individuals and communities.

The AMS delivers a broad range of services including mediation, negotiation, conciliation, consensus building, shuttle mediation, teleconferencing, elder arbitration and service brokering. Where mediation has been deemed unsuitable, the AMS will assist government, non-government and community based organisations in developing strategies to manage the conflict in order to minimise the impact on the community.

South Australia

Community Mediation Services (CMS) commenced operation in 2001 and is the only free community mediation program in South Australia. It is managed and operated by a community legal service, Southern Community Justice Centre, and receives some funding from the South Australian Attorney-General's Department.

³ *Dispute Resolution Centres Act 1990 (QLD)* section 31(1)

⁴ *Courts Reform Amendment Act 1997 (Qld)*.

CMS receives referrals from multiple sources. The largest source of referrals for CMS is self-referrals, with other key sources being Local Government and the Legal Services Commission. Unlike other jurisdiction, the Court is not a referrer to CMS.

Tasmania

Tasmania has adopted generalist legislation, the *Alternative Dispute Resolution Act 2001* (Tas) (the Tasmanian Act) that governs the provision of community mediation services in Tasmania. The Tasmanian Act allows courts to refer matters, other than criminal proceedings, to mediation and neutral evaluation if the court considers the circumstances appropriate and whether or not the parties consent to the referral.⁵ Parties may agree on the mediator, but failing this the mediator will be the Registrar or his or her nominee.⁶

Australian Capital Territory

In the Australian Capital Territory, the Conflict Resolution Service (CRS) is not established under, or governed by, specific legislation. Instead the Australian Capital Territory has adopted generalist legislation in the form of the *Mediation Act 1997* (ACT) (the ACT Act).

The object of the ACT Act was to establish a system of registration of mediators by an approved agency. The ACT Act was instrumental in establishing the first competency standards for mediators in Australia. All registered mediators in the ACT must meet the competency standards. Importantly, the ACT Act also sets out the protections (liability, confidentiality and privilege) in relation to mediations conducted by registered mediators.

The CRS is currently partly funded by the ACT Government through the Department of Disability, Housing and Community Services and the Department of Justice and Community Safety.

⁵ *Alternative Dispute Resolution Act 2001* (Tas) Section 5(1)

⁶ *Alternative Dispute Resolution Act 2001* (Tas) Section 5(3)

2. The Operation and Effectiveness of the *Community Justice Centre Act*

Section 32(1)(a) of the Act requires the Chief Executive Officer to conduct a review of the operation and effectiveness of the Act.

2.1 Consideration of the Operation and Effectiveness of the Act

Section 32 of the Act requires a review of the operation and effectiveness of the Act. This involves a consideration of the provisions of the Act and whether they adequately enable the objects of the Act to be realised. The operation and effectiveness of the Act is an underlying issue of the other aspects of the review. As a result, this requirement of the review is primarily considered in light of the other requirements.

The Department would be interested in any general comments in relation to the operation and effectiveness of the Act, specifically whether there are any legislative amendments that need to be made.

Issue 1: Is the operation of the Act effective? Do you recommend any amendments?

2.2 Overview of the Act

A brief outline of the structure of the Act is as follows:

Part 1 of the Act includes preliminary and interpretive provisions.

Part 2 of the Act includes provisions relating to:

- establishment of the CJC (s 7);
- the purpose including provision of mediation services and to carry out other functions as provided by any other Act (s 8);
- the Director (s 9);
- mediators (s 10); and
- the delegation of the Director's powers (s 11).

Part 3 pertains to mediation and includes provisions relating to:

- applying for the provision of mediation services (s 13);
- termination of services (s 14);
- the conduct of mediation sessions (s 15); and
- the voluntary nature of any mediation conducted (s 16).

Part 4 pertains to adjudication and includes provisions relating to:

- giving the *Construction Contracts (Security of Payments) Act* effect as if the Director of the CJC were a prescribed appointer for that Act (s 19);
- the circumstances in which the Director may act (s 20);
- the power of the adjudicator (s 22); and
- the costs of adjudication (s 23).

Part 5 pertains to the Council. It includes provisions, which:

- establish the Council (s 24);
- set out the Council's functions (s 25);
- permit the Council to make guidelines (s 26);
- enable a party to a dispute for which mediation services have been provided to make a complaint to the Council (s 27); and
- permit the Minister to give directions to the Council (s 28).

Part 6 pertains to administration. It contains provisions relating to:

- the review (s 32);
- protection from liability (s 33);
- protection of information (s 34);
- privilege for defamation (s 35);
- secrecy (s 36); and
- the confidentiality agreement (s 37).

2.3 The Objects of the Act

The objects of the Act are in section 3 and are as follows:

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

As a comparative example, section 3 of the NSW Act sets out the object of the NSW Act as follows:

'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;
- (b) training persons to be mediators;
- (c) promoting alternative dispute resolution;
- (d) contributing to the development of alternative dispute resolution in NSW 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.'

Issue 2: Are the objects of the Act adequate? If not, what should be included or excluded?

2.4 Administrative Provisions of the Act

Part 6 of the Act provides for general administrative provisions for the Act including section 32 which requires the present review to take place.

Section 31 allows the CEO of the Administering Department (the Department of the Attorney-General and Justice) to approve forms for the Act. Currently, there are forms relating to Court referred matters, CJC referral forms as well as a confidentiality agreement that parties to the mediation complete before the provision of the mediation service.

Section 33 protects members of the Council, mediators, the Director and staff of the CJC from civil or criminal liability arising from the exercise of a power or the performance of a function under the Act, if acting in good faith.

Sections 34 to 37 provide for confidentiality, secrecy, protection of information and privilege for defamation. They specifically relate to the conduct of mediation services and so are discussed further at part 3.8 of this paper.

Section 38 provides that a person who is employed, engaged or who holds office on a full time basis, or on the basis that he or she may not be otherwise employed or engaged or otherwise hold office, is not disqualified from being appointed or remunerated as:

- a mediator;
- a Council member;
- a Committee member (of a Committee established by the Council under section 30 of the Act); or
- an adjudicator.

Issue 3: Are the administrative provisions of the Act adequate? If not, what should be amended or included?

2.5 Regulations

Section 40 of the Act provides for the regulation-making power. Regulations can only be made if there is sufficient power for the Administrator to make them in the Act. Regulations usually provide for procedural issues or other detail that do not need to be provided for in the Act.

Section 40 states that the Administrator may make regulations, not inconsistent with the Act, prescribing matters:

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

Section 24(6) of the Act also provides that the Regulations may make provision about any of the following:

- (a) the appointment of the 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.

There are currently no Regulations prescribed under the Act.

Issue 4: Are there any matters, other than those identified in sections 40 or 24(6) of the Act that should be prescribed in the Regulations? If so, which matters?

3. The Operation and Effectiveness of the CJC

Section 32(1)(b) of the Act requires the Chief Executive Officer of the Department of the Attorney-General and Justice to review the operation and effectiveness of the CJC. This part of the Discussion paper provides information about the operation of the CJC, and information which may inform an assessment of the effectiveness of the CJC.

It should be noted that an evaluation of the effectiveness of the CJC is also being conducted by Dr Catherine Holmes, an adjunct research fellow with the Batchelor Institute of Indigenous Tertiary Education, engaged by the Department to conduct this part of the evaluation. Dr Holmes will provide surveys to and/or interview mediators, members of the community and past participants in mediations/users of the CJC's services.

Dr Holmes' evaluation will explore the following key issues:

- (a) the capacity of the CJC's mediators;
- (b) the capacity of the CJC to deliver mediation training;
- (c) the motivating factors of mediators that work for the CJC; and
- (d) community understandings and expectations of the CJC.'

Notwithstanding Dr Holmes' evaluation, the Department is seeking comments and submissions on the effectiveness of the CJC from other stakeholders and welcomes any comments you may have.

Issue 5: Do you have any comments on the operation of the CJC? Is the CJC operating effectively? If not, why not?

3.1 Establishment of the CJC

The CJC was established in section 8 of the Act for the following purposes:

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

The 2012-13 CJC Annual Report⁷ lists the following key objectives of the CJC:

- (a) provide an efficient, accountable, impartial, accessible and confidential alternative dispute resolution service that meets the diverse needs of Territorians;
- (b) assist and empower Territorians to be responsible for the resolution and outcome of their own disputes;
- (c) provide a speedy, informal and effective dispute resolution service as an alternative to legal action;
- (d) promote and inform the community about alternative dispute resolution practices and services available through the CJC; and

⁷ The CJC's Annual Reports can be found on the Department of the Attorney-General and Justice's website:
<http://www.cjc.nt.gov.au/justice/general/corpinfo.shtml>

- (e) provide a flexible and responsive alternative dispute resolution service that meets the changing needs of the community and is consistent with, and meets, industry standards.

The CJC 2014-19 Strategic Plan (**Appendix A**) states the above objectives will be achieved through, among other things:

- increasing accessibility of services to people/communities throughout the NT, with an initial focus on areas where there is an identified need;
- developing and maintaining systems of quality assurance and accreditation for mediations and practitioners;
- developing, designing and delivering high quality mediation training which is culturally, socially and economically relevant to communities;
- seeking and securing community partnerships around specific projects and issues;
- building and maintaining strategic relationships in communities that enable people to access the CJC or to access alternative services;
- maintaining an active, high quality, professional and representative Council membership;
- developing, refining and utilizing data collection tools including the Complexity Matrix, to monitor and evaluate the work of the CJC; and
- increasing community awareness of the role of the CJC and alternative dispute resolution in managing conflict.

The two main legislated services provided by the CJC are mediation (Part 3 of the Act) and adjudication (Part 4 of the Act).

3.2 Structure of the CJC

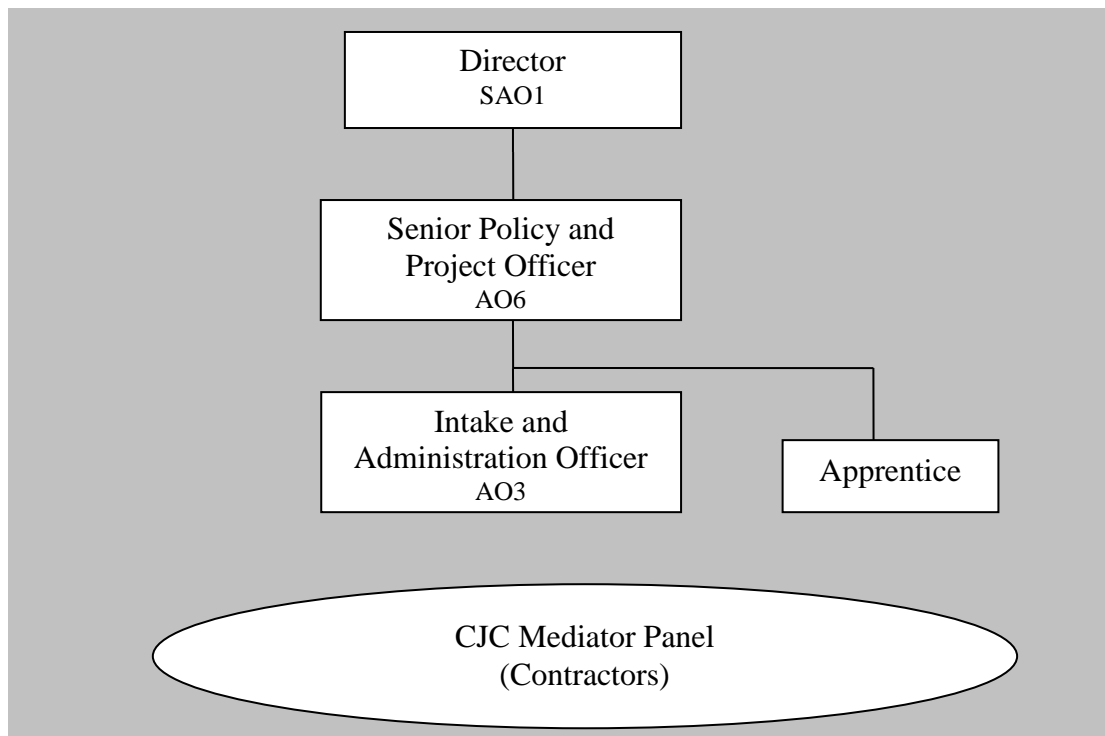
The CJC currently has a permanent staff of three:

- the Director;
- a Senior Project and Policy Officer; and
- an Intake/Administration Officer

The CJC also has a non-permanent position of Apprentice which is currently vacant. The CJC mediation panel in conjunction with the Director conduct the mediations across the NT.

See **Figure 1** for the CJC organisational chart.

Figure 1. CJC Organisational Chart



3.3 The Director of the CJC

Section 9 of the Act provides that there is to be a Director of the Centre appointed by the Chief Executive of the Department of the Attorney-General and Justice. The Director must be a public sector employee.

Section 9(4) prescribes that the Director must:

- (a) having regard to the Guidelines (see part 3.4 below), exercise powers and perform functions for the purposes of the CJC; and
- (b) exercise powers and perform functions under the *Construction Contracts (Security of Payments) Act* as provided by Part 4 of the Act.

Subsection (5) provides that the Director may be assisted by a mediator, or a person who is not a mediator but who is public sector employee employed for the purposes of the CJC.

Under section 13(1) of the Act, the parties to a dispute may apply to the Director for the provision of mediation services for the dispute. The Director must, having regard to the Guidelines, accept or refuse the application. Mediation services may only be provided for the dispute if the Director accepts the application.

Issue 6: Are the powers and functions of the Director specified in section 9(4) of the Act adequate? If not what changes do you suggest?

3.4 Guidelines

According to section 9(4) of the Act, the Director must have regard to Guidelines made under the Act when exercising powers and performing functions.

Section 5 of the Act provides for the making of Guidelines. The term is defined to mean 'the policy guidelines made and in force under section 26'. Section 26 states that

the Council may make policy guidelines for the provision of mediation services. While not limited, section 26(2) states the Guidelines may provide for:

- the matters the Director must take into account in deciding whether or not to provide mediation services or to terminate the provision of mediation services; and
- the principles governing the provision of mediation services.

The Council must notify the making of the Guidelines in the *Gazette* and must notify the Minister, the Chief Executive and the Director of the making of the Guidelines. The Guidelines take effect once gazetted.

Guidelines have been made and are published on the Department of the Attorney-General and Justice website:

http://www.cjc.nt.gov.au/justice/courtsupp/cjc/consultative_council.shtml and are reproduced at **Appendix B**.

The Guidelines state they are intended to provide the Director with guidance regarding the matters to be taken into account in determining whether the CJC should provide mediation services, under what circumstances mediation services should be terminated, and the principles governing the provision of those mediation services.

The Guidelines cover the following issues:

- principles governing the provision of mediation services, including that mediation services provided by the CJC must be consistent with the principles in the National Mediator Accreditation System (NMAS) Approval Standards and Practice Standard and the CJC Code of Conduct;
- provision of mediation services and the principles to take into account when the Director decides whether or not to provide mediation services;
- the circumstances under which the Director may terminate mediation services;
- the purposes for which the CJC may provide mediation training; and
- accreditation, re-accreditation and appointment of mediators.

Issue 7:

(a) Are the Guidelines made under section 26 of the Act adequate? If not, what matters should or should not be included in the Guidelines?

(b) Is the process for making Guidelines appropriate and adequate?

The Director also has regard to the following documents when exercising powers or performing functions:

- the National Mediator Accreditation Standards⁸ *Approval Standards* March 2012 (**Appendix C**) (Approval Standards); and
- the National Mediator Accreditation Standards *Practice Standards* March 2012 (**Appendix D**) (Practice Standards).

The Director also:

- conducts presentations to stakeholders; and
- is involved in preparing documents for the CJC, such as facts sheets and brochures, questionnaires, ministerial briefings, and annual reports.

3.5 Mediators

Section 10(1) of the Act states that the Director must engage one or more mediators for the provision of mediation services by the CJC. Section 10(2) prescribes that a mediator must be:

- (a) a public sector employee; or
- (b) a person engaged on conditions approved by the CEO.

The ways in which mediators are appointed and selected to conduct CJC mediations are important to the continued success of the CJC. Public confidence and willingness to participate in CJC mediations may depend on the perceived competence and impartiality of the mediator. Conversely, mediation also carries with it the potential for harm if mediators are not properly qualified or do not follow appropriate standards and guidelines, including risks to participants and third parties.

Section 10(3) of the Act states that each mediator (including the Director) must hold prescribed qualifications for a mediator. There are currently no regulations made under the Act prescribing the qualifications of mediators.

However the Guidelines provide that the appointment of mediators is to be done in accordance with section 10 of the Act and additionally require the accreditation and re-accreditation of CJC mediators in accordance with the NMAS Approval Standards and Practice Standards.

Australia has a national scheme for mediator standards and accreditation in the NMAS which came into effect on 1 January 2008.⁹ This is industry-based and relies on voluntary compliance by Recognised Mediation Accreditation Bodies. The Mediator Standards Board (MSB) is responsible for developing and maintaining the NMAS. The Director is a member of the MSB and ensures that the CJC continues to be involved in the ongoing enhancement and review of the mediation Approval Standards and Practice Standards.

The CJC is also a Recognised Mediation Accreditation Body for the purposes of the Approval Standards, and the CJC provides training in accordance with the Approval Standards. However, it is the individual mediator's responsibility to maintain his or her accreditation and not all those who are trained by the CJC usually become accredited mediators.

⁸ The Mediator Standards Board, National Mediator Standards accessed on 24 July 2014 <<http://www.msb.org.au/mediator-standards/standards>>.

⁹ http://www.nadrac.gov.au/what_is_adr/NationalMediatorAccreditationSystem/Pages/default.aspx

The number of experienced and trained CJC mediators for Darwin, Katherine, Alice Springs and remote or rural areas for each financial year since the inception of the CJC is shown in table below. Since 2012, CJC mediators have been required to be NMAS accredited.

Table 1: Number of CJC Mediators

Year ending	Darwin		Katherine		Alice Springs		Other communities	
	Trained ^a	Experienced ^b	Trained ^a	Experienced ^b	Trained ^a	Experienced ^b	Trained ^a	Experienced ^b
2005	-	12	-	-	-	-	-	-
2006	30	32	-	-	-	2	-	-
2007	27	35	3	1	5	6	3	0
2008	20	25	0	1	19	8	13	6
2009	20	25	0	1	8	16	23	6
2010	25	50	2	1	8	32	31	6
2011	150	29	2	1	50	8	36	6
2012#	69	18	4	1	25	5	33	3
2013#	108	28	13	6	24	8	34	9

^a Trained mediators are those who have undergone training with a Recognised Mediation Accreditation Body but may not necessarily be an accredited mediator.

^b Experienced mediators are those with a high degree of experience in mediation and can include accredited mediators, but not necessarily.

#Since 2012, all CJC mediators are required to be NMAS accredited.

The CJC has also developed informal practice guidelines to enhance mediator quality and compliance with the Approval Standards by:

- ensuring the majority of mediations continue to be delivered as co-mediations, with at least one experienced mediator with advanced skills, knowledge and understanding of ethics, hence providing checks and balances when delivering mediation sessions;
- enhancing peer feedback forms and requiring mediators to complete the form on completion of the mediation and obtain the Director’s approval before payment for the mediator is processed;
- continuing education campaigns and providing incentives to mediators to attend monthly continuing mediator development sessions;
- providing newsletters and sharing online information and resources available to mediators;
- utilising mediator questionnaires for mediators to complete post mediation session; and
- ensuring that all CJC personnel from intake stage through to mediation phase use consistent language/definitions.

Additionally, CJC mediators are subject to the CJC Professional Code of Conduct (June 2014) (**Appendix E**).

The CJC also aims to recruit a diversity of mediators, who represent the communities which they intend to serve. A culturally representative group of mediators may improve access for marginal groups who might otherwise be discouraged from taking part in mediations.

Although it is sometimes regarded as important to match the culture of the mediator with that of the participants, there may be cases where this is undesirable, for example, where the parties and the mediator come from a small community. It is sometimes more desirable for a mediator to be highly skilled at mediating cross-cultural issues rather than for them to belong to the same community as the parties. This is something which the CJC determines on a case by case basis to ensure that a physically, emotionally and culturally appropriate mediation can be facilitated.

Issue 8:

- (a) Are the requirements in, and the operation of, the Act in relation to mediators adequate?**
- (b) What, if any, qualifications should be prescribed by regulation for the purposes of section 10(3)?**

3.6 Assigning Mediators to Mediations

The Act does not prescribe how mediators should be assigned to mediations.

The CJC Director assigns mediators by assessing the context and complexity of the required mediation. The Director assigns the most appropriate mediators to each session, with a view to equal distribution of the workload, mediator skills level, and taking into account the timing of the mediation, the availability of the mediators, and the location of the mediation.

The Director also takes into account the following factors:

- client needs;
- the type of dispute;
- the mediator's experience and abilities, and any requirements for specialised mediators, such as gender, experience and cultural background;
- the party's capacity and number;
- the complexity and volatility of the issues in dispute; and
- any cultural issues.

Mediators are not assigned to a mediation if there is a conflict of interest.

The Director also allows parties to remove a mediator from the mediation if they are not comfortable with the mediator, or if the parties do not consider the mediator is competent to mediate the issue in dispute.

Issue 9:

- (a) Are the processes for assigning mediators adequate? Is there a need to amend the Act?**
- (b) Should the Act or Regulations prescribe how mediators should be assigned to mediations?**

3.7 Mediation Services Provided by the CJC

Section 13 of the Act states that parties to a dispute may apply to the Director for the provision of mediation services for their dispute. The term 'mediation service' is defined in section 5 to mean 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.

The term 'mediation session' is defined in section 5 to include any steps taken by a mediator:

- (a) to arrange for the mediation of a dispute;
- (b) for the mediation of a dispute; or
- (c) for any follow-up for the mediation of a dispute.

Community mediation can be an appropriate mechanism for the resolution of some disputes, including:

- those which are otherwise not readily resolvable by adversarial or court proceedings; and
- those which, while able to be determined by traditional legal proceedings, are better resolved by mediation as it is cheaper for the parties and takes pressure off the courts.

The CJC was established to provide a means of settling the sort of disputes that conventional court-based procedures are unable to resolve satisfactorily. The kind of disputes that the CJC's services are aimed at resolving can be characterised as interpersonal, community or neighbourhood disputes where the disputing parties had, or once had, an ongoing relationship. Such disputes could include disputes between family members, partners, friends, community members, members of an organisation, neighbours, landlords and tenants.

The Act does not contain a definition of 'mediation'. The Guidelines made under section 26 of the Act define 'mediation' as:

'A voluntary process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. Mediation may be undertaken voluntarily, under a court order, or subject to an existing contractual agreement.'

A description of a mediation process is described in section 2 of the NMAS Approval Standards as:

‘A mediation process is a process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to support participants to reach their own decision.’

The key point often emphasised, particularly in relation to community-based mediation, is that mediators do not make decisions or impose outcomes on the parties to a dispute. Rather, the parties arrive at settlement themselves. Therefore, mediation differs from other methods of alternative dispute resolution such as conciliation and arbitration.

Section 15(4) of the Act makes it clear that a mediator must not engage in the adjudication or arbitration of a dispute in the mediation session.

Issue 10: Should the Act contain a definition of ‘mediation’? If so what should the definition be?

Location of mediation services

There is one CJC in the NT, located in Darwin. The CJC conducts mediation sessions in Darwin, Alice Springs, Katherine and Tennant Creek.

The CJC also provides services to other remote communities, including Maningrida, Gunbalanya, Gapuwiyak, Ramingining, Wadeye, Milingimbi, Yuendumu, Hermannsberg, Galiwin’ku, Numbulwar, Lajamanu, Elliott, Nguiu, Angurugu/Umbakumba, Daguragu/Kalkarindji, and Ali Curung.

Number of mediations

The number of mediations provided by the CJC has been steadily increasing and the geographical area expanding. A breakdown of the number of mediation services provided for each urban and regional centre is shown in the table following.

Table 2: Number of Mediations per Centre

Year ending	Darwin	Katherine	Alice Springs	Other communities	Total
2005	48	-	-	-	48
2006	52	-	-	-	52
2007	30	-	1	3	34
2008	43	2	3	2	50
2009	104	4	11	12	101
2010	108	3	11	9	131
2011	115	6	15	12	144
2012	123	5	15	8	151
2013	119	3	26	5	153

Types of matters mediated

Referrals may come from the disputing parties themselves, but also the courts, police, legal practitioners, NT Government Agencies, Local Government and other organisations. Each year, the NT Police make the most referrals. The table following sets out the number of referrals to the CJC by different sources for each financial year since it commenced operating.

Table 4: Number of Referrals and Referrers

Type of Referral	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Police	138	268	241	188	185	171	123	160
Anti-Discrimination Commission	22	16	2	5	2	2	4	4
Legal Practitioners	26	22	30	20	55	52	35	98
Councils / Electorate office	14	35	22	15	14	27	5	16
Self-referral	35	80	77	53	89	85	96	153
Government Agency	43	27	12	7	32	44	12	40
Phone Book / Internet	19	13	6	8	12	27	12	18
Courts	0	2	2	81	113	78	66	101
Corrections	0	0	0	2	7	12	6	8
Other*	11	26	17	2	15	32	146	208
Total	308	463	409	381	524	530	505	806

* includes referrals by contract mediators, walk-ins, NTG switchboard or unknown

The Guidelines provide guidance to the Director in deciding whether or not to provide mediation services. The Director is to take into account whether the nature of the dispute falls into one of the following categories:

- (a) neighbourhood, including disputes about trees, fences, animals and noise;
- (b) housing, for example disputes between landlords and tenants, between co-tenants and body corporate matters;
- (c) relationships between family members;
- (d) intra-community;
- (e) inter-community;
- (f) small claims and civil claims; and
- (g) not-for-profit governance including governance of committees, clubs and so on.

The Guidelines state that the Director may accept a request for mediation of a dispute that falls outside these categories if there are no other appropriately qualified organisations or individual mediators to do it. The Guidelines also state that the Director must not mediate family law disputes. The CJC may mediate workplace disputes if referred by Employment Assistance Providers because they are unable to provide the service.

The table following sets out the numbers of dispute types the CJC has mediated each year since it commenced operating.

Table 5: Categories and Number of Disputes Mediated by the CJC

Type of dispute	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Animals (Dogs, livestock) ^a	8	5	2	2	4	7	3	4	5
Associations / Special Interest Groups	1	2	1	1	5	4	4	6	3
Goods and Services	2	0	1	0	1	2	0	0	1
Schools/ Education Institutions	1	1	2	0	0	1	0	2	1
Motor vehicle	2	1	0	0	1	0	0	0	3
Nuisance (noisy neighbours, antisocial behaviours)	11	6	9	14	19	15	35	36	33
Workplace	1	1	0	0	1	1	0	0	0
Business	1	1	2	0	0	3	0	1	3
Contractors	0	0	2	1	0	0	0	0	1
Remote Indigenous Communities ^b	0	1	1	3	3	3	7	5	8
Property (trees, fences, body corporate, carpark, water damage)	11	9	8	14	19	12	18	24	15
Tenancies (unwelcome visitors)	0	1	0	7	1	2	2	4	4
Burial Matters	0	0	0	1	0	1	4	4	3
Intra-family relationships	8	4	2	2	4	2	11	16	15
Correctional Centre Conferencing ^c	0	0	4	2	4	4	5	4	2
Victim Offender mediations (Youth Justice Conferencing) ^d	0	2	0	2	0	2	1	2	3
Personal Violence Restraining Orders (PVRO)	-	-	-	-	37	70	52	42	51
Other	0	0	0	1	2	2	2	1	2

^a includes general nuisance (such as barking dogs), pet/livestock damage to property and care arrangements for pets

^b where majority of the parties are Indigenous families and the substantive matter of the dispute is located in non-urban communities

^c Post court mediation conferencing involving the offender and victim prior to release of the offender

^d conference matters pursuant to section 84 of the *Youth Justice Act*

Mediation functions under other Acts

Section 8(b) of the Act also states that the CJC's purpose is to carry out other functions as provided under any other Act. These Acts include the *Youth Justice Act*, and the *Justices Act*. As is discussed below, the CJC provides mediation services in a number of other contexts which are not specifically provided for in the Act.

Since 2008-09 until the end of 2013, 439 matters were referred from the Courts. 428 of those referrals related to Personal Violence Restraining Orders (PVROs) under section 86 of the *Justices Act*. Of these matters, 252 matters were mediated with 171 (68%) of the mediated matters reaching agreement. The remaining 11 referred matters comprised Youth Justice Conferencing (8), burial disputes referred from the Coroner's Office (2) and a dispute about a will referred from the Public Trustee (1).

Section 86 of the *Justices Act* was introduced in 2007 and provides for PVROs, which are orders preventing a person having contact with the applicant if the court is satisfied there has been violence or it is likely there will be violence towards the applicant, and the parties are not in a domestic relationship. Section 86 states that before hearing an application for a PVRO, the Court must refer the protected person and defendant for mediation under the Act. Section 86(2) of the *Justices Act* sets out the circumstances in which the Court must not make a referral but must proceed to hear the application (for example, if there is evidence of a history of violence). Otherwise the Director of the CJC must accept the application (section 86(5)) and give the Court a written report on the outcome of the mediation or attempted mediation (section 86(6)). It should be noted that mediations will only proceed with the parties' consent because of the operation of section 16 of the Act (mediations must be voluntary).

Section 84 of the *Youth Justice Act* provides for pre-sentence conferencing which is a mediation session held between the victim and offender with the intention of arriving at an agreed outcome to redress the harm caused by the offender. Section 84(1) of the *Youth Justice Act* provides that the Court may, when determining the appropriate sentence for a youth who has been found guilty of an offence, adjourn the proceeding and order the youth to participate in a pre-sentencing conference.

Section 84(2) of the *Youth Justice Act* states that a pre-sentence conference may be with any of the victims of the offence the youth is charged with, community representatives, members of the youth's family or any other persons as the Court considers appropriate. Section 84(3) of the *Youth Justice Act* provides that the Court may:

- (a) direct that the conference be convened at a specified time and place; and
- (b) appoint a person who is appropriately qualified as the convenor of the conference.

Section 84(4) of the *Youth Justice Act* provides that the convenor must report to the Court as to the outcome of the conference.

Section 84 of the *Youth Justice Act* does not refer specifically to the CJC as the forum for pre-sentence conferencing. The Explanatory Memorandum to the Youth Justice Bill 2005 pertaining to section 84 states that it was intended the Police Diversion Unit and the CJC would generally conduct the conferences under section 84.

Issue 9:

- (a) Are the mediation functions performed by the CJC under other Acts effective?**
- (b) Should the Act be amended in any way?**
- (c) Should the pre-sentence conferencing be reflected in the Act and/or should the CJC be expressly referred to in the *Youth Justice Act*?**

Other mediation projects

The CJC has provided input and assistance into the development of mediation services in other contexts, for example, Correctional Centre pre-release conferencing (involving mediation between victims, offenders, families and other community members). Also a project was initiated in April 2009 following a Memorandum of Understanding between the Larrakia Nation Aboriginal Corporation and NT Correctional Services. The project focuses on Indigenous prisoners and aims to assist people who have been incarcerated returning to their home communities. It is hoped that CJC involvement in pre-release mediations will reduce the potential for disputes and violence in communities once the offender returns, and improve the prospects for reintegration.

The CJC also provides mediation services in a number of Indigenous community disputes. The CJC has been involved in mediations following major community riots, governance disputes in community stores, royalty disputes, funeral arrangement and housing disputes across the Territory. These mediations were provided in Arnhem Land, Daly River Region, Borroloola, Batchelor and Central Australian communities. The CJC aims to provide these mediations in a culturally appropriate way.

Finally, in the 2009/10 financial year, the CJC entered a Memorandum of Understanding with the then Department of Health and Families (now the Department of Children and Families) to pilot a 30-month program in Alice Springs to set up family group mediation conferences. The pilot was funded by the Alice Springs Transformation Plan and resulted in the opening of a CJC office in Alice Springs and the appointment of an Indigenous Mediator Convenor who was responsible for designing and delivering the program. The program ceased at the conclusion of the 2010/11 financial year.

Issue 10:

- (a) Have the range of mediation services provided by the CJC been effective?**
- (b) Should any other matters be specifically excluded or included from the range of matters that are mediated by the CJC?**
- (c) Should there be any amendment to the Act?**

3.8 The Mediation Session

Conduct of the mediation session

Section 15(1) of the Act provides that a mediation session must be conducted:

- (a) by one or more mediators; and
- (b) in accordance with any directions given by the Director.

Under section 15(2) of the Act, the mediator must have regard to the Guidelines made under section 26 in conducting the session. The Guidelines provide for the principles governing the provision of mediation services:

- mediation services provided must be free, voluntary for all parties, timely and easy to use;
- the CJC aims to provide mediation services for the whole community in an equitable manner; and
- all mediation services provided by the CJC must be consistent with the principles outlined in the NMAS Approval Standards and Practice Standards and the CJC Code of Professional Conduct 2006.

The CJC usually uses the co-mediation model. This involves two mediators working together as a team during a mediation session.

Issue 11:

- (a) Should section 15 be amended and if so what should it include or exclude?**
- (b) Should the Act prescribe the matters a mediator must have regard to when conducting a mediation?**

Culturally Effective Mediation

The CJC aims to conduct culturally appropriate mediations in both urban and non-urban areas. The CJC provides a service which addresses a range of matters such as funeral arrangements, community disputes, court-referred matters and general referrals from community-based police reporting on tensions experienced between family groups in the community.

The CJC currently makes provision for Indigenous people and communities primarily through its contracting of Indigenous mediators and their training of Indigenous mediators. Additionally, the Guidelines provide that 'any mediation services being undertaken within Indigenous communities or involving Indigenous persons need to utilise and recognise any existing capacity and mediation skills within the relevant Indigenous community to resolve their own disputes drawing from their own skills, knowledge, culture and law.'

The CJC has also adopted the following mediation strategies to attempt to develop a culturally relevant mediation service:

- (a) researching and utilising local knowledge and building appropriate relations with the people to assist Indigenous communities to resolve disputes;
- (b) researching community resources and traditional dispute resolution processes and skills;
- (c) promoting and providing accredited training for Indigenous mediators in both Darwin and remote locations;
- (d) ensuring input from the Indigenous communities on the operations of the CJC;
- (e) ensuring mediation procedures are accessible and usable for the community; and
- (f) ensuring a community development and capacity building focus is adopted when engaging with communities in dispute.

Involvement of other parties

Section 15(5) of the Act provides that, except with the permission of the Director in accordance with section 17, a person other than a party to the dispute must not participate in the mediation session. Section 15(6) states that, 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.

Section 17 provides that:

- (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 as defined in section 57A of the *Corporations Act 2001* – an officer of the corporation; 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.

There is no express provision excluding lawyers from CJC mediations. Despite this, lawyers are generally not involved in mediations conducted by the CJC for a number of reasons. These include the need to maintain informality and the need to ensure that those who cannot afford lawyers are not disadvantaged with respect to those who can.

Support persons are permitted to attend mediation sessions if all parties agree to their attendance and if they sign a confidentiality agreement. Likewise, a lawyer can attend in the capacity of support person.

Informality of mediation

Section 15(3) of the Act states that the rules of evidence do not apply in relation to mediation sessions. Additionally, section 15(7) states that mediation sessions must be conducted with:

- (a) as little formality as possible; and
- (b) as much expedition as possible.

Informality is a crucial element of making mediation accessible, and different to court room proceedings.

Consent and continuing participation

The voluntary nature of mediation is considered fundamental to the mediation model. Section 16(1) of the Act prescribes that mediation must be voluntary and section 16(2) states that a party may withdraw from a session at any time. Parties also sign an Agreement to Mediate (see **Appendix F**).

Section 14 of the Act also states that mediation services may be terminated at any time by a party to the dispute, the Director or a mediator providing the services. If the Director is terminating the mediation services, the Guidelines provide for the circumstances in which the Director may terminate. Guideline 5 provides that the Director may terminate mediation services or a mediation session at any point if the Director considers that:

- a mediator has breached their professional obligations under the NMAS or the CJC's Code of Professional Conduct;
- a party or a CJC mediator has breached the terms of the CJC's Agreement to Mediate;
- the Director forms an opinion that the dispute is not suitable for mediation, including because:
 - the parties are not coming to mediation in good faith;
 - the parties are not willing to negotiate;
 - the parties are not willing to sign and commit to the terms of the CJC's Agreement to Mediate;
 - the parties are not able to represent their interests or do not have authority to settle the dispute;
 - there are significant issues of power imbalance; or
 - there are concerns about the likelihood of violence to the parties, mediators or third parties.

Issue 12: Are the provisions relating to mediation sessions in the Act adequate? If not, what should be included or excluded?

Protection of information and privilege for defamation

Mediations are conducted on a 'without prejudice basis' which means that generally anything said or recorded during a mediation session cannot be held against any of the parties in later court proceedings. The purpose of this is to encourage open and frank discussion of the dispute.

Section 34 of the Act provides that a statement, document or any other thing made for a mediation session is not admissible as evidence in any proceedings before a court, tribunal or any other body that has the power to take evidence on oath. This extends to records of statements, document or things made for the purposes of a mediation. It is noted that other jurisdictions allow parties to consent to mediation documents being used in court proceedings in certain circumstances.

Section 35 of the Act also provides for a protection against defamation. Section 35 provides that the mediation session and any document produced in a mediation session has effect as if it were a judicial proceeding for the purposes of any privilege regarding defamation available in judicial proceedings. Section 35(3) makes

it clear that the privilege against defamation does not extend to a publication not made for a mediation session or which is not permitted by section 36 (discussed below).

Issue 13:

- (a) Are sections 34 and 35 of the Act adequate? If not, what should be included or excluded?**
- (b) Should mediation documents be able to be used in court proceedings with consent? If so whose consent should be required?**

Secrecy and confidentiality

Sections 36 and 37 of the Act cover issues of secrecy and confidentiality. Mediation is often considered a valuable dispute resolution alternative, due to it being confidential. Confidentiality can encourage frank and honest disclosure by participants and also encourage resolution.

Section 36 provides that it is an offence for a mediator, Council member, any CJC employee or the Director to record, disclose or publish any information, or to produce to a court or tribunal any document that is obtained while exercising a power or performing a function under the Act. Section 36(3) provides that this does not apply if the recording, disclosure, publication or production was done in exercising a power or function under the Act, relates to the administration of the Act, is required by another law, or is reasonably necessary for the protection of a person or the prevention of damage to property. This appears to contemplate laws such as mandatory reporting requirements under the *Care and Protection of Children Act* and the *Domestic and Family Violence Act*.

Section 37 provides that it is an offence for each party to a mediation to record, disclose, publish or produce any information, document or thing arising from the provision of the mediation services. However, section 37(4) provides that the above does not apply if both the Director and the parties agree to waive confidentiality.

Issue 14:

- (a) Are sections 36 and 37 of the Act adequate? If not, what should be included or excluded?**
- (b) What exceptions, if any, should apply to the confidentiality provisions under the Act?**

3.9 Adjudication under the *Construction Contracts (Security of Payments) Act*

Part 4 of the Act relates to the other function of the CJC, that is, adjudication under the *Construction Contracts (Security of Payments) Act* (CCSP Act).

This Part of the Act is aimed at resolving smaller payment disputes relating to construction contracts where the amount involved is under \$10,000. The CCSP Act provides for a process for decision making in relation to the adjudication of most building construction disputes occurring under contracts entered into after 1 July 2005. For smaller amounts, it is not cost effective for the dispute to be adjudicated through the process in the CCSP Act. As a result, Part 4

was included in the Act to provide a more cost effective way of adjudicating a dispute where the amount was up to \$10,000 by limiting the cost of adjudication to \$500.

Director's role

Section 19 of the Act provides that the Director is taken to be a prescribed appointer for the CCSP Act. Section 28 of the CCSP Act provides for the procedure for applying to have a payment dispute under that Act adjudicated. It provides that a party to a construction contract must, within 90 days of the dispute arising, prepare a written application for adjudication in accordance with the regulations made under that Act, serve it on each other party to the contract, and, if it is to be adjudicated by the CJC, must serve it on the Director of the CJC as the prescribed appointer.

Section 20 of the Act states that if the Director of the CJC is served with an application for adjudication, the Director must do the things mentioned in section 30(1) of the CCSP Act namely within 5 working days of being served with an application for adjudication:

- appoint a registered adjudicator to adjudicate the payment dispute concerned;
- send the application and any response received by it to the adjudicator; and
- give written notice to the parties and the Construction Contracts Registrar accordingly.

The Director must only do those things if the Director is satisfied that the amount of the payment claim for the dispute is less than \$10,000 and one or more of the parties to the contract have paid the lodgement fee for the adjudication within the 5 working days of receiving the application for adjudication.

Section 20(3) of the Act states that the lodgement fee is \$500 or another amount prescribed in the CJC Regulations. There are no Regulations made under the Act. Section 21 provides that each party to an adjudication conducted by an adjudicator is liable to pay an equal share of the lodgement fee.

Adjudicators

The Director must appoint a registered adjudicator under section 30(1)(a) of the CCSP Act. A registered adjudicator is an adjudicator who is registered by the Construction Contracts Registrar under section 52 of the CCSP Act.

Section 20(4) of the Act however, permits the Director of the CJC to appoint a person who is not a registered adjudicator to adjudicate a dispute under Part 4 of the Act if the Director is satisfied that the person has qualifications or experience relating to adjudication and the payment dispute is of a nature that may be adjudicated by the person.

Generally barristers are appointed as adjudicators for the purposes of this Part of the Act.

Adjudications

Section 22(1) of the Act provides that 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.

There have been seven adjudications under the Act since the Act was established. Two of the adjudications involved the same parties and subject matter, but separate payment disputes.

There is little information relating to why there has been a low number of CCSP Act applications for adjudications pursuant to Part 4 of the Act. Possible factors contributing to the limited number of applications for adjudication could include low awareness of this Part of the Act amongst the building industry and consumers, the cost of the adjudication lodgement fee (\$500) and possible lack of demand. The CJC has developed some educational materials publicising their adjudicative functions under the CCSP Act.

Costs of adjudication

Section 46 of the CCSP Act is excluded from applying to adjudications by the CJC. That section provides for the adjudicator under that Act to be paid for the work they do as an adjudicator, either at a rate agreed to by the parties and the adjudicator or published under section 55 of that Act.

The current practice for paying adjudicators under the Act is that the \$500 lodgement fee is placed on trust and that amount is used to pay the adjudicators. Generally barristers are appointed as adjudicators and it is accepted that the sum of \$500 is considered a low payment for the daily services of a barrister.

Issue 15:

- (a) Is Part 4 of the Act effective?**
- (b) Should section 20(3)(b) and Part 4 of the Act be retained?**
- (c) If so, does it need amending and what should be added or removed?**

3.10 Provision of Services Other than Mediation Services or Adjudication

The CJC delivers services other than mediation or adjudication. Often the additional services involve conflict management or advice. Examples of these services include:

- delivering mediation training to the community;
- delivering continuing mediator development workshops; and
- developing the Tiwi Islands Ponki Mediator Project and delivering ongoing training to the Ponki Mediators.

Other than the CJC, the Institute of Arbitrators and Mediators Australia (IAMA) and Lawyers Engaged in Alternative Dispute Resolution (LEADR) provide mediation training in the Northern Territory, and from that training, participants can become accredited mediators. However, the CJC is the only recognised mediator accreditation body by the Mediator Standards Board which is actually based in the Territory. The NMAS commenced in 2007. NMAS requires, among other things, that accredited mediators undertake continuous mediator development. The CJC delivers workshops that are recognised as appropriate continuous development of mediators.

The CJC began providing mediator training in 2006 and since that time 245 people have been trained by the CJC, and 58 of those are currently accredited and located in the NT.

In addition to the training of mediators, in the 2009/10 financial year, the CJC took part in the Department of Education and Training Apprenticeship program and supported a Certificate III in Business candidate.

The CJC also deals with enquiries and provides advice in relation to potential problems in the community and large-scale riots where people in the community, for example when disturbances occurred in Yuendumu. In that case, the CJC provided on-the-ground mediators, ongoing dispute resolution services as well as training for elders in the community since the critical stages of the conflict subsided.

The Director of the CJC is involved in several committees involving mediation and alternative dispute resolution, including the following:

- National Accreditation Committee;
- National Dispute Resolution Network (since 2005);
- NT Indigenous Mediator network forum; and
- Mediator Standards Board (since 2010).

Finally not all matters received by the CJC are dealt with by the CJC. A number of matters are resolved through various advice or referrals the CJC provides to parties to resolve their own conflict. This includes:

- referrals to other agencies such as the Anti-Discrimination Commission, Consumer Affairs, the NT Ombudsman, Fair Work Australia, and Employment Assistance Providers;
- referrals to Legal Service Providers, Police, Courts and Tribunals;
- providing advice as to how parties may wish to consider approaching the conflict without a formal process; and
- providing advice to Government and Non-Government organisations on designing strategies to resolve conflict in communities or manage violence including bullying and cyber bullying.

The table following shows the number of matters that were initially received by the CJC and how many of those are resolved or referred to more appropriate agencies or resolved before progressing to mediation or expert advice provided.

Table 6: Matters Received and Resolved other than by Mediation

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Number of intakes	264	295	463	409	380	524	530	505	830
Matters resolved or referred to more appropriate agencies or resolved before progressing to mediation or expert advice provided	33	88	282	246	201	340	320	297	498
Matters resolved or referred to other appropriate agencies as a percentage of intakes	13%	30%	61%	60%	53%	65%	60%	59%	60%

Issue 16:

- (a) Should the CJC have functions specified in the legislation beyond the provision of mediation and adjudication services?**
- (b) If so, should the Act be amended to capture these functions?**

4. The Operation and Effectiveness of the Community Justice Consultative Council

Section 24(1) of the Act establishes the CJC Council. Provisions relating to the Council can be found in Part 5 of the Act. Section 32(1) of the Act specifically requires this review to consider the operation and effectiveness of the Council.

Issue 17: Can you comment on the operation of the Council? Has it operated effectively? Has it been effective in meeting the objects and purposes of the Act?

4.1 Constitution of the Council

Section 24(2) states that the Council consists of seven members appointed by the Minister. Otherwise, there are no pre-requisites for appointment and section 24(5) provides that the *Public Sector Employment and Management Act* does not apply to the appointment of members of the Council.

Council members are also not remunerated.

Currently there are six sitting members and one position vacant. All members have diverse professional backgrounds, and all have experience in mediation.

Previously, the Council was predominantly NT Government employees. In October 2011, it was reconstituted. The profile of the current Council is as follows:

- a legal representative;
- a representative of the Indigenous community;
- an academic;
- an expert in mental health;
- a mediator (based in Alice Springs); and
- the CJC Director.

There is currently a vacant position in the Council, which is usually filled by a mediator.

Issue 18:

- (a) Should the Act or Guidelines provide for the requirements for the composition of the Council?**
- (b) Should there be any pre-requisites for appointment to the Council in the Act?**

4.2 Procedures for the Council

The Act is not prescriptive about how the Council must conduct its business except that section 24(4) provides that four members constitute a quorum for its meetings. Section 24(3) states that, other than the requirement of four persons to constitute a quorum, the Council and the Regulations may determine the procedure for the Council's meetings. Currently the Council meets once every two months.

Section 24(6) states that the Regulations may make provision for 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; and
- (f) any other matters about the Council.

There are currently no Regulations governing the Council.

Issue 19: Should any regulations be made under section 24? If so, what should they include?

4.3 Functions of the Council

The Council has three principle functions under the Act:

- (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 CJC;
 - (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.

Section 29 states that the Council may delegate in writing any of its powers or functions to the Director or a Committee established under section 30.

Section 30 of the Act provides that the Council may establish committees for the exercise of any of its powers, or the performance of any of its functions. A Committee member must be a Council member, the Director, a mediator or a CJC employee. To date no Committees have been established.

The Council has made Guidelines which are discussed above at part 3.4.

The Council has been involved in strategic planning days, and provided support to the CJC Director and the CJC. The Council has not traditionally acted in an advisory role to Government.

Consideration could be given to whether the Council should have broader functions, such as:

- to act as a clearinghouse in relation to alternative dispute resolution practices;
- to provide training and ongoing professional development; and
- to provide independent quality assurance of CJC functioning.

4.4 Terms of Reference

The CJC has also developed Terms of Reference for the Council (**Appendix G**) which provide for the purpose and functions of the Council.

The purpose of the Council is:

[to] provide independent strategic guidance and policy advice, reports and recommendations to the Minister for Justice and Attorney-General in relation to the operations of the CJC and the provision of mediation and other appropriate dispute resolution services in the Northern Territory, in addition to making guidelines and dealing with complaints.'

The functions set out in the Terms of Reference augment the legislated functions in section 25 of the Act and include providing strategic guidance and policy advice to the CJC, reporting to the Minister on appropriate dispute resolution in the Northern Territory, engaging with national bodies regarding mediation standards, and engaging with other states and territories with a view to assisting in closing the gap in Indigenous disadvantage.

Issue 20: Are the functions of the Council adequate? Should the functions and powers of the Council in the legislation be changed? If so what should they include or exclude?

4.5 Complaints

Section 27 of the Act provides that a party to a mediation may make a complaint to the Council about the manner in which the services were provided. While not intending to limit the scope, section 27(2) states that the complaint may relate to an aspect of the procedure adopted by the Director, a mediator or a CJC employee, in the provision of mediation services. However, section 27(3) specifically precludes complaints regarding the outcome of a mediation session.

The Act does not specify powers to deal with complaints for other aspects of the CJC's functions, for example the adjudication function.

However, the CJC has developed a complaints policy (**Appendix H**). The policy covers complaints about the level of service provided by the CJC as well as complaints about the Director of the CJC, a mediator employed or contracted by the CJC or any other CJC staff. A person can make a complaint by telephone, in person at the CJC office, by post or via email.

Parties to mediations are also given a feedback form (**Appendix I**) at the conclusion of the mediation.

To date the Council has not dealt with any complaints or made any reports or recommendations to the Minister.

Issue 21: Is the complaints mechanism in section 27 of the Act adequate and effective? If not, what should be included or excluded?



Community Justice Centre 5 Year Strategic Plan: January 2014 – January 2019

Background

- The Northern Territory’s Community Justice Centre (CJC), operating since 2003, provides mediation and conflict resolution services. These include the facilitation of mediation conferences, training, community education, professional development, accreditation services and advice on conflict management at a strategic level. The CJC provides services to Territorians relating to a broad range of issues and to diverse populations and geographical locations throughout the Northern Territory
- The CJC is a statutory body created pursuant to the Community Justice Centre Act 2005 (NT). It is situated within the Northern Territory’s Department of Attorney-General and Justice. The CJC has developed their 5 Year Strategic Plan to align with that of the Department’s Strategic Plan 2013 – 2016

Vision

The CJC’s vision is for Northern Territory communities to find healthy ways of negotiating and managing conflict or disputes to reach and maintain peace.

Mission

The mission of the CJC is to provide an alternative dispute resolution service that is effective, flexible, useful, accountable and respectful of diversity

Values

The CJC values: Trust; Honesty; Integrity; Respect; Impartiality; Transparency and Self-determination.

Governance Strategies

- To maintain an active, high quality, professional and representative Consultative Council membership;
- To ensure that there are appropriate and effective mechanisms in relation to planning, reporting and accountability of the CJC’s Executive Director;
- To ensure that the Executive Director is adequately supported to fulfill his or her role and functions;
- To provide high quality, reliable and expert advice to the Minister in relation to conflict resolution in the Northern Territory

Community Partnership Strategy

- To seek and secure community partnerships around specific projects and issues;
- To build and maintain strategic relationships in communities that enable people to access the CJC or to access alternative services.

Research, evaluation and reporting strategy

- Develop, refine and utilise data collection tools including the Complexity Matrix, to monitor and evaluate the work of the CJC;
- Evaluate the services of the CJC and make recommendations, on an ongoing basis, around improvements;
- Reflect and embed the broader knowledge base on mediation and alternative dispute resolution into the policy and practices of the CJC.



Mediation Services Strategy

- Increase accessibility of services to people/communities throughout the Northern Territory, with an initial focus on areas where there is an identified need;
- Develop and maintain systems of quality assurance and accreditation for mediations and practitioners;
- Identify emerging issues relating to conflict and ensure that the CJC is proactive and responsive, with mediators that are suitably resourced, trained and supported.

Training development Strategy

- Develop, design and deliver high quality mediation training which is culturally, socially and economically relevant to communities;
- Deliver nationally accredited mediation training as a key mechanism to increase the number of mediators working for the CJC (or other organisations);
- Facilitate appropriate high quality ongoing professional development to enable mediators to meet their national accreditation requirements

Promotion and advocacy Strategy

- Increase community awareness of the role of the CJC and alternative dispute resolution in managing conflict;
- Design, deliver and evaluate community education about alternative dispute resolution for Northern Territorians, such as interactive workshops and forums;
- Facilitate and broker access to mediation services and training, as required.

Approved by the Community Justice Consultative Council November 2013
To be reviewed within 12 months of expiry



Community Justice Centre (CJC)

GUIDELINES

1. Purpose

These Guidelines are made by the Community Justice Consultative Council (the Council) under section 26 of the *Community Justice Centre Act 2005* (NT) (the Act). These Guidelines are intended to provide the Director of the Community Justice Centre (CJC) with guidance regarding the matters to be taken into account in determining whether the CJC should provide mediation services, under what circumstances mediation services should be terminated and the principles governing the provision of those mediation services. In addition, they provide guidance regarding the training and approval of CJC mediators.

2. Definitions

“CJC’s Code of Professional Conduct 2006” means the Community Justice Centre Code of Professional Conduct 2006, which outlines practice and ethical standards for CJC mediators.

“community” means a group of people of any size which shares some or all of the following: language, beliefs, geographical location, a common cultural and historical heritage, social ties and kinship.

“dispute” has the same meaning as under section 5 of the Act;

“Correctional Centre Conferencing” means mediations conducted at Darwin Correctional Centre between Indigenous offenders who have committed serious crimes including murder, manslaughter and dangerous acts causing death, and the victim/s, families and wider community affected by the crime committed.

“inter-community” – means a dispute between two or more communities.

“intra –community” means a dispute within a community.

“Mediation” is a voluntary process in which the participants to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. Mediation may be undertaken voluntarily, under a court order, or subject to an existing contractual agreement.

“mediation service” has the same meaning as under section 5 of the Act;

“mediation session” has the same meaning as under section 5 of the Act;

“mediator” has the same meaning as under section 5 of the Act;

“National Mediator Accreditation System (NMAS) Approval Standards” are the standards for mediators seeking approval under the National Mediator Accreditation System, maintained by the Mediator Standards Board.

“National Mediator Accreditation System (NMAS) Practice Standards” are the standards for mediators operating under the National Mediation Accreditation System, maintained by the Mediator Standards Board;

“parties” has the meaning as under section 5 of the Act;

3. Principles Governing the Provision of Mediation Services

The CJC provides mediation services to the community to help people resolve their own disputes. Mediation services provided must be free, voluntary for all parties, timely and easy to use. Recognising that the CJC provides a free, community-based service, the CJC aims to provide mediation services for the whole community in an equitable manner.

All mediation services provided by the CJC must be consistent with the principles outlined in the National Mediator Accreditation System (NMAS) Approval Standards & Practice Standards and the CJC Code of Professional Conduct 2006.

The CJC recognises that it operates within a culturally diverse population and that culturally appropriate processes should be used in appropriate circumstances. In particular any mediation services being undertaken within Indigenous communities or involving Indigenous persons need to utilise and recognise any existing capacity and mediation skills within the relevant Indigenous community to resolve their own disputes drawing from their own skills, knowledge, culture and law.

4. Provision of Mediation Services

In deciding whether or not to provide mediation services, the Director must take into account, but is not limited to, the following:

(1) Whether the nature of the dispute falls within the following categories:

- (a) Neighbourhood. This includes but is not limited to disputes involving trees, fences, animals and noise between neighbours;
- (b) Housing. For example, disputes between landlords and tenants; disputes between co-tenants; body corporate matters;
- (c) Relationships between family members;
- (d) Intra-community;
- (e) Inter-community;
- (f) Small claims & civil claims;
- (g) Not-for-profit governance. This includes but is not limited to committees, clubs and incorporated associations whose members are in conflict;

- (h) Disputes referred by a Court or Tribunal under relevant legislation;
- (i) Correctional Centre Conferencing;

(2) The Director may, but is not required to, accept a request for mediation services that falls outside of the above categories in circumstances where there are no other appropriately qualified organisations or individual mediators able to provide mediation services. In deciding whether to provide mediation services in such circumstances the Director must take into account all other considerations outlined in these Guidelines.

(3) The Director may, but is not required to, accept a request for mediation services for a workplace dispute only if EASA provides a written referral to the Director stating that they are unable to provide mediation services.

(4) The Director must not accept any request to provide mediation services for disputes under the *Family Law Act 1975* (Cth)

(5) Whether the CJC has the human and financial resources, or is able to obtain those resources in a reasonable period of time. In making this assessment the Director may take into account:

- a. the anticipated period of time that mediation services will be required for ;
- b. the location of the parties to the dispute;
- c. whether in the Director's opinion the content of the dispute or the parties reasons for seeking mediation services are frivolous and/or vexatious;
- d. whether other mediation or appropriate dispute resolution services are available;
- e. whether the party or parties requesting mediation services have the capacity and resources to pay a private mediator.

(6) Whether the CJC and its panel of mediators have the skills and expertise to conduct the mediation to the standard required under the NMAS Practice Standards.

5. Termination of Mediation Services

(1) The Director may choose to terminate mediation services and/or a mediation session at any point if he or she considers that:

- a) a mediator has breached their professional obligations under the NMAS or the CJC's Code of Professional Conduct.
- b) a party or a CJC mediator has breached the terms of the CJC's Agreement to Mediate.
- c) the Director, either through direct contact with the parties or following consultation with CJC mediators, forms the view that the dispute is not suitable for mediation. The reasons that the Director may form a view that the dispute is not suitable for mediation include but are not limited to:

- (i) Parties are not coming to mediation in good faith;
- (ii) Parties are not willing to negotiate;
- (iii) Parties are not willing to sign and commit to the terms of the CJC's Agreement to Mediate;
- (iv) Parties are not able to represent their interests and/or do not have the authority to settle the dispute;
- (v) There are significant issues of power imbalance;
- (vi) There are legitimate concerns about the likelihood of violence to the parties and/or the mediators or other third parties.

6. Mediation training

(1) "Mediation training" means a mediation training course that meets the 'Threshold Training and Education Requirements' as outlined in the NMAS Approval Standards. Mediation training does not include professional development sessions, workshops, community education or other sessions conducted by the CJC.

(2) The CJC may deliver mediation training for the purpose of:

- (a) providing mediation services;
- (b) promoting mediation as a way of resolving disputes;
- (c) ensuring that CJC mediators hold the prescribed qualifications for a mediator.

(3) Mediation training is to adhere to the NMAS Approval Standards.

7. Accreditation, Re-accreditation & Appointment of Mediators

(1) The accreditation and re-accreditation of mediators is to be done in accordance with the NMAS Approval Standards & Practice Standards.

(2) The appointment of mediators for the provision of mediation services is to be done in accordance with section 10 of the Act.

National Mediator Accreditation Standards

Approval Standards

1 Application

1. These Approval Standards apply to any person who voluntarily seeks to be accredited under the National Mediator Accreditation System (the system) to act as a mediator and assist two or more participants to manage, settle or resolve disputes or to form a future plan of action through a process of mediation. Practitioners who act in these roles are referred to in these Approval Standards as mediators.
2. The Approval Standards:
 - (a) specify requirements for mediators seeking to obtain approval under the voluntary national accreditation system; and
 - (b) define minimum qualifications and training; and
 - (c) assist in informing participants, prospective participants and others what qualifications and competencies can be expected of mediators.
3. As a condition of ongoing approval, mediators must comply with the Practice Standards and seek re-approval in accordance with these Approval Standards every two years. These Approval Standards should be read in conjunction with the Practice Standards that apply to mediators.
4. Mediation can take place in all areas where decisions are made. For example, mediation is used in relation to commercial, community, workplace, environmental, construction, family, building, health and educational decision making. Mediation may be used where there is conflict or may be used to support future decision making. Mediators are drawn from diverse backgrounds and disciplines. Mediation may take place as a result of court or tribunal referral, pre-litigation schemes, through industry schemes, community-based schemes as well as through private referral, agency, self or other referral. These Approval Standards set out minimum voluntary accreditation requirements and recognise that some mediators who practise in particular areas, and/or with particular models, may choose to develop or comply with additional standards or requirements. Mediators may practise as “solo” mediators or may co-mediate with another mediator.

2 Description of a mediation process

1. A mediation process is a process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to support participants to reach their own decision.
2. The mediator[s] may assist the participants to:
 - (a) communicate with each other; and
 - (b) identify, clarify and explore disputed issues; and
 - (c) generate and evaluate options; and
 - (d) consider alternative processes for bringing any dispute or conflict to a conclusion; and
 - (e) reach an agreement or make a decision about how to move forward and/or enhance their communication in a way that addresses participants' mutual needs with respect to their individual interests based upon the principle of self-determination.
3. Mediation processes are primarily facilitative processes. The mediator provides assistance in managing a process which supports the participants to make decisions about future actions and outcomes.
4. Some mediators may also use a "blended" process that involves mediation and incorporates an "advisory" component, or a process that involves the provision of expert information and advice, where it enhances the decision making of the participants provided that the participants agree that such advice can be provided. Such processes may be defined as "conciliation" or "evaluative mediation". Practitioners who manage such processes and provide expert advice are required to have appropriate expertise (see Section 5(4) below) and obtain clear consent from the participants in respect of undertaking any "blended" advisory process.
5. Mediation processes are a complement to, not a substitute for, the need for participants to obtain individual legal or other expert advice and support. Mediation processes may not be appropriate for all individuals or all circumstances.

3 Approval requirements for mediators

1. A mediator manages processes aimed at maximising the participants' own decision making. The mediator must have personal qualities and appropriate life, social and work experience to conduct the process independently and professionally. To be accredited, the Recognised Mediation Accreditation Body (RMAB) requires a mediator to provide the following:
 - (a) evidence of good character (see Section 3(2) below); and

(b) an undertaking to comply with ongoing practice standards and compliance with any legislative and approval requirements (see Section 3(3) below); and

(c) evidence of relevant insurance, statutory indemnity or employee status (see Section 3(4) below); and

(d) payment of the Mediator Standards Board registration fee (see Section (section 3 (5) below)

(e) evidence of membership or a relationship with an appropriate association or organisation that has appropriate and relevant ethical requirements, complaints and -disciplinary processes as well as ongoing professional support (see Section 3(6) below); this may be the RMAB itself but may also include other relevant memberships or relationships; and

(f) evidence of mediator competence by reference to education, training and experience (see Section 4 below).

2. RMABs require mediators who apply to be accredited to provide evidence of “good character”. With respect to the requirement to be of “good character”, RMABs may, for example, request mediators to:

(a) provide evidence that they are regarded as honest and fair, and that they are regarded as suited to practise mediation by reference to their life, social and work experience, for example, by seeking references from two members of their community who have known them for more than three years; and

(b) show that they can meet the requirements of a police check in the State or States or Territory or Territories in which they practise; and

(c) show that they are without any serious conviction or impairment that could influence their capacity to discharge their obligations in a competent, honest and appropriate manner; and

(d) show that they are accredited with an existing scheme that has existing “good character” requirements that they comply with (for example, by referring to existing Law Institute, Law Society, Bar or Family Dispute Resolution Practitioner accreditation where relevant); and

(e) satisfy the RMAB that they do not come into the category of a “prohibited person” (or its equivalent) as defined in a particular jurisdiction and also not be disqualified to practise by another professional association relating to any other profession (for example, a Law Society or a Medical Association) or must explain to the RMAB the circumstances under which they have previously been removed or suspended from acting as a mediator under these standards.

3. The mediator must undertake to the RMAB to comply with any relevant legislation, these Practice and Approval Standards and any other approval requirements that may relate to particular schemes.

4. In respect of the insurance, indemnity or employed status requirements, the mediator must provide the RMAB with evidence of their current status. This may be provided in a range of ways, for example, by a letter setting out any relevant employee status, or by showing how indemnity applies, or by showing proof of membership that incorporates insurance status, or by the mediator naming their insurer, providing an insurance policy number and its expiry date or, through some other relevant document. If a mediator wishes to practise using a “blended” model and in an advisory manner, the mediator must hold additional insurance relating to the provision of expert advice or must indicate how existing insurance, statutory or other immunities apply.

5. The mediator must pay the Mediator Standards Board (MSB) registration fee at the time of accreditation (and again on each occasion when the mediator is re-accredited). The fee is set annually by the MSB.

6. An RMAB must have the following characteristics:

a) more than ten mediator members accredited under the National Mediator Accreditation System; and

b) provision of a range of member services such as, an ability to provide access to or refer mediators to ongoing professional development workshops, seminars and other programs and debriefing, or mentoring programs; and

c) a complaints system that either meets Benchmarks for Industry-based Customer Dispute Resolution or be able to refer a complaint to a Scheme that has been established by Statute; and,

d) sound governance structures, financial viability and appropriate administrative resources; and,

e) sound record-keeping in respect of the approval of practitioners and the approval of any in-house, outsourced or relevant educational courses; and,

(f) the capacity and expertise to assess training and education that may be offered by a range of training providers in respect of the training and education requirements set out in these Standards.

(g) be a financial member of the Mediator Standards Board (MSB). The MSB may adopt eligibility criteria for different classes of membership and may, at their discretion, approve or refuse an application for membership

An RMAB can be a professional body, a mediation agency or Centre, a Court or Tribunal, or some other entity.

4 Training and education

1. Mediators must demonstrate to an RMAB that they have appropriate competence by reference to applicable practice standards, their qualifications, training and experience. It is not necessary for the RMAB to provide education and training to individual mediators (see Section 5 below). Training and education may be provided by organisations other than RMABs, such as, industry training providers, universities and other training providers.

2. A mediator is required to meet the threshold approval requirements detailed below (see Section 5 below), as well as ongoing professional education requirements. A mediator who uses a “blended” process and provides information or advice in the context of a “blended” process must be competent to do so and possess the appropriate skills, knowledge and expertise.

5 Threshold training and education requirements

1. Unless “experience qualified” (see Section 5(3) below), from 1 January 2008, a mediator must have completed a mediation education and training course that:

(a) is conducted by a training team comprised of at least two instructors where the principal instructor[s] has more than three years’ experience as a mediator and has complied with the continuing accreditation requirements set out in Section 6 below for that period and has at least three years’ experience as an instructor; and

(b) has assistant instructors or coaches with a ratio of one instructor or coach for every three course participants in the final coached simulation part of the training and where all coaches and instructors are accredited; and

(c) is a program of a minimum of 38 hours in duration (which may be constituted by more than one mediation workshop provided not more than nine months has passed between workshops), excluding the assessment process referred to in Section 5(2) below; and

(d) involves each course participant in at least nine simulated mediation sessions and in at least three simulations each course participant performs the role of mediator; and

(e) provides written, debriefing coaching feedback in respect of two simulated mediations to each course participant by different members of the training team.

2. Unless “experience qualified” (see Section 5(3) below), from 1 January 2008, a mediator must also have completed to a competent standard, a written

skills assessment of mediator competence that has been undertaken in addition to the 38-hour training workshop referred to above, where mediator competence in at least one 1.5 hour simulation has been undertaken by either a different member of the training team or a person who is independent of the training team. The written assessment must reflect the core competency areas referred to in the Practice Standards. The final skills assessment mediation simulation may be undertaken in the form of a video or DVD assessment with role players, or as an assessed exercise with role players. The written report must detail:

- (a) the outcome of the skills assessment (in terms of competent or not yet competent); and
- (b) relevant strengths and how they were evidenced; and
- (c) relevant weaknesses and how they were evidenced; and
- (d) relevant recommendations for further training and skills development.

3. “Experience qualified” practitioners are those who have been assessed by an RMAB as demonstrating a level of competence by reference to the competencies expressed in the Practice Standards. An experience qualified mediator must either:

- (a) be resident in a linguistically and culturally diverse community for which specialised skills and knowledge are needed and/or from a rural/or remote community where there is difficulty in attending a mediation course or attaining tertiary or similar qualifications; or

- (b) have worked as a mediator prior to 1 January 2008 and have experience, training, and education that satisfies an RMAB that the mediator is equipped with the skills, knowledge and understandings set out in the core competencies referred to in the Practice Standards, and who has met the continuing accreditation requirements set out in Section 6 below in the 24 months prior to making an application.

4. Practitioners who seek to offer advice through the use of a “blended” process such as conciliation or advisory or evaluative mediation must also provide evidence to the RMAB of:

- (a) their continuing registration, membership or equivalent within the professional area in which advice is to be given; and

- (b) completion of an appropriate degree, or equivalent qualification in the area of their expertise from a university or former college of advanced education, of at least four years equivalent full-time duration, or a VET-approved organisation to a National Framework Level 6 standards; and

- (c) a minimum of five years’ experience in the professional field in which they seek to provide advice.

6 Continuing accreditation requirements

1. Mediators who seek to be reaccredited must satisfy their RMAB that they continue to meet the approval requirements set out in Section 3 of this document. In addition mediators seeking re-accreditation must, within each two-year cycle, provide evidence to the RMAB that they have:

(a) sufficient practice experience by showing that they have either:

(i) conducted at least 25 hours of mediation, co-mediation or conciliation (in total duration) within the two-year cycle; or,

(ii) where a mediator is unable to provide such evidence for reasons such as, a lack of work opportunities (in respect of newly qualified mediators); a focus on work undertaken as a dispute manager, facilitator, conflict coach or related area; a family, career or study break; illness or injury, an RMAB may require the mediator to have completed no less than 10 hours of mediation, co-mediation or conciliation work per two-year cycle and may require that the mediator attend “top up” training or reassessment; and,

(b) have completed at least 20 hours of continuing professional development in every two-year cycle that can be made up as follows:

(i) attendance at continuing professional development courses, educational programs, seminars or workshops on mediation or related skill areas as referred to in the competencies (see the Practice Standards) (up to 20 hours);

(ii) external supervision or auditing of their clinical practice (up to 15 hours);

(iii) presentations at mediation or ADR seminars or workshops including two hours of preparation time for each hour delivered (up to 16 hours);

(iv) representing clients in four mediations (up to a maximum of 8 hours);

(v) coaching, instructing or mentoring of trainee and/or less experienced mediators (up to 10 hours);

(vi) role playing for trainee mediators and candidates for mediation assessment or observing mediations (up to 8 hours);

(vii) mentoring of less experienced mediators and enabling observational opportunities (up to 10 hours).

(c) must pay the Mediator Standards Board (MSB) registration fee at the time of re-accreditation. The fee is set annually by the MSB.

2. Ongoing accreditation as a mediator requires the mediator to meet the

practice standards and competencies described in the Practice Standards. An RMAB has discretion to remove or suspend a mediator in circumstances where it believes, on the balance of probabilities, that there has been non compliance with the Practice Standards, other relevant ethical guidelines or professional requirements, or these Approval Standards. In relation to any removal or suspension, a mediator must be informed within 14 days of the concerns of the RMAB and provided with an opportunity to respond to the RMAB. The RMAB must have a process in place to deal with removal and suspension or must be able to provide access to a process where such decisions can be made in a procedurally fair manner.

National Mediator Accreditation Standards

Practice Standards

1 Application

1. These Practice Standards apply to any mediator acting as a third party to support two or more individuals or entities to manage, settle or resolve disputes, or to form a future plan of action through a process of mediation and who voluntarily decides to become accredited under the National Mediator Accreditation Scheme. Practitioners who act in these roles are referred to in these Practice Standards as mediators. A mediator supports participants in a mediation process to identify, clarify and explore issues, to generate and consider options and to make decisions about future actions and outcomes. The Practice Standards are intended to govern the relationship of mediators with the participants in the mediation, their professional colleagues, courts and the general public so that all will benefit from high standards of practice in mediation.
2. The Practice Standards:
 - (a) specify practice and competency requirements for mediators;and
 - (b) inform participants and others about what they can expect of the mediation process and mediators.
3. Mediators voluntarily accredited under the Australian National Mediator Standards must comply with the Approval Standards as well as the Practice Standards. These Practice Standards should be read in conjunction with the Approval Standards.
4. There are a range of different mediation models in use across Australia. As noted in the Approval Standards, mediation can take place in all areas where decisions are made. For example, mediation is used in relation to commercial, community, workplace, environmental, construction, family, building, health and educational decision making. Mediation may be used where there is conflict or may be used to support future decision making. Mediators are drawn from diverse backgrounds and disciplines. Mediation may take place as a result of court or tribunal referral, pre-litigation schemes, through industry schemes,

community-based schemes as well as through private referral, agency, self or other referral. These Practice Standards set out minimum practice requirements and recognise that some mediators who practise in particular areas or with particular models may choose to develop or comply with additional standards or requirements. Mediators may practise as “solo” mediators or may co-mediate with another mediator.

5. Where mediators practise under existing legislative frameworks and there is a conflict between the requirements of these Practice Standards and any legislation, the respective legislative requirements will override those of the Practice Standards to the extent of any inconsistency.

2 Description of a mediation process

The purpose of a mediation process is to maximise participants’ decision making.
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1. A mediation process is a process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to assist the participants to reach their decision.

2. Mediation processes are not a substitute for individual or organisational legal and/or other expert advice, or individual counselling or therapy. Mediation processes may not be appropriate for all disputants or all types of disputes.

3. The goal of a mediation process is agreed upon by the participants with the assistance of the mediator. Examples of goals may include assisting the participants to make a wise decision, to clarify the terms of a workable agreement and/or future patterns of communication that meet the participants’ needs and interests, as well as the needs and interests of others who are affected by the dispute.

4. The mediation process may:

- (a) assist the participants to define and clarify the issues under consideration;
- (b) assist participants to communicate and exchange relevant information;

- (c) invite the clarification of issues and disputes to increase the range of options;
- (d) provide opportunities for understanding;
- (e) facilitate an awareness of mutual and individual interests;
- (f) help the participants generate and evaluate various options; and
- (g) promote a focus on the interests and needs of those who may be subject to, or affected by, the situation and proposed options.

5. Mediators do not advise upon, evaluate or determine disputes. They assist in managing the process of dispute and conflict resolution whereby the participants agree upon the outcomes, when appropriate. Mediation is essentially a process that maximises the self-determination of the participants. The principle of self-determination requires that mediation processes be non-directive as to content.

6. Some mediation processes may involve participants seeking expert information from a mediator which will not infringe upon participant self-determination. Such information is deemed to be consistent with a mediation process if that information is couched in general and non-prescriptive terms, and presented at a stage of the process which enables participants to integrate it into their decision making. Such information might include the provision of general information and a reference to available material that could assist the participants. For example, a referral to resources that could be used by parents in a family dispute to determine the impact of options upon children or other family members.

7. Some mediators may use a “blended process” model whereby they provide advice. These processes are sometimes referred to as “advisory mediation”, “evaluative mediation” or “conciliation”. Such processes may involve the provision of expert information and advice, provided it is given in a manner that enhances the principle of self-determination and provided that the participants request that such advice be provided. Mediators who provide expert advice are required to have appropriate expertise (see Approval Standards at Section 5(4)) and to obtain the consent of participants prior to providing any advisory process.

3 Starting a mediation process

Before mediating, a mediator should ensure that an outline of the mediation process has been given to the participants.

1. The diversity in mediation practice means that there are considerable differences in terms of how participants enter into a mediation process. Where mediators are bound by existing professional or organisational requirements

relating to entry into a mediation process and to the extent that such professional or organisational requirements contradict with the Practice Standards, the existing professional or organisational requirements should prevail.

2. Prior to the mediation taking place, the mediator will ensure that the participants have been provided with an explanation of the process and have had an opportunity to reach agreement about the way in which the process is to be conducted. This may take place in an intake process that is held separately from a mediation session. The person conducting the intake process may be a different person to the mediator.

3. The objectives of an intake process may include:

(a) Determining whether mediation is appropriate and whether variations are required (for example, using an interpreter or a co-mediation model in culturally and linguistically diverse communities or varying arrangements where violence is an issue).

(b) Assisting the participants to prepare for the process. Participants who are prepared and who have received relevant advice are in the best position to make an informed decision when attending a mediation.

(c) Ensuring that every participant receives information about the roles of each party in the mediation; this discussion may involve questions relating to the role of lawyers, support people and others.

(d) Checking whether any information needs to be exchanged, how this can be done and what information, documents or things need to be available during the mediation process.

(e) Settling any preliminary procedural issues, for example:

(i) what documents/notes will be kept by the mediator?

(ii) will the process be confidential (if it is an internal process, what reporting will take place)?

(iii) will the participants have authority to negotiate?

(f) Clarifying the terms of any agreement to enter into the process.

(g) Settling venue and timing issues.

4. The mediator should:

(a) describe and explain the mediation process that is to be used;

(b) where necessary, discuss the appropriateness of the process for the participants in light of their particular circumstances, the benefits and risks of the process, and the other alternatives open to the participants;

(c) discuss the confidentiality of the mediation and any limitations on such confidentiality;

(d) advise the participants about how they or the mediator can suspend or terminate the mediation;

(e) reach agreement with the participants about any costs and how

such costs are to be paid;

(f) advise the participants about any indemnity provisions contained in any agreement to mediate, for example, where a mediator seeks to be indemnified in respect of his or her costs in response to any legal costs that may be incurred by the mediator;

(g) advise the participants of the mediator's role in relation to the provision of advice or other services for example:

(i) if the mediator is also a lawyer, he or she shall inform the participants that he or she cannot provide legal advice unless using a "blended process" model and with their clear consent or represent any of the participants in any related legal action;

(ii) if the mediator is a psychologist, counsellor or therapist, he or she shall inform the participants that he or she cannot counsel or practise therapy with either or any of the participants;

(h) discuss with or inform the participants about the procedures and practices in the mediation, such as:

(i) the circumstances under which separate sessions may be held;

(ii) how participants may seek information and advice from a variety of sources during the process;

(iii) how participants may withdraw from the process;

(iv) that participants are not required to reach an agreement;

(v) the opportunities for separate communication with the participants and/or with their legal representatives;

(vi) the circumstances in which other persons can be involved in the process, for example, the participation of experts, support persons or interpreters who may be involved in the mediation.

5. Wherever considered beneficial by the participants, the agreement to enter into mediation will be in writing. Any agreement with respect to the confidentiality of a session, or any waiver of such confidentiality, may also be acknowledged in writing by all participants. If there is no written agreement, for example, where mediation is conducted by a Court or Tribunal member and is governed by legislation, then the mediator will record the participants' understanding as to entry into the process and confidentiality.

6. Mediators will provide the participants with a copy of these Practice Standards, or advise where and how they can be accessed, for example, by referring to a website.

4 Power issues

Mediators shall have completed training that assists them to recognise power imbalance and issues relating to control and intimidation and take appropriate steps to manage the mediation process accordingly.

1. Some disputes may not be appropriate for mediation processes because of power imbalance, safety, control and/or intimidation issues.
2. If at any time abuse is present, or implied or threatened, the mediator shall take appropriate measures to ensure the safety of participants. Options include:
 - (a) activating appropriate pre-determined security protocols;
 - (b) using video conferencing or other personal protective and screening arrangements;
 - (c) requiring separate sessions with the participants;
 - (d) enabling a friend, representative, advocate, or legal representative to attend the mediation sessions;
 - (e) referring the participants to appropriate resources; and
 - (f) suspending or terminating the mediation session, with appropriate steps to protect the safety of the participants.

5 Impartial and ethical practice

A mediator must conduct the dispute resolution process in an impartial manner and adhere to ethical standards of practice.

1. Impartiality means freedom from favouritism or bias either in word or action, or the omission of word or action, that might give the appearance of such favouritism or bias. A mediator will disclose actual and potential grounds of bias and conflicts of interest. The participants shall be free to retain the mediator by an informed waiver of the conflict of interest. However, if in the view of the mediator, a bias or conflict of interest impairs their impartiality, the mediator will withdraw regardless of the express agreement of the participants.
2. A mediator should identify and disclose any potential grounds of bias or conflict of interest that emerge at any time in the process. Clearly, such disclosures are best made before the start of a process and in time to allow the participants to select an alternative mediator. Mediators should take reasonable steps to minimise the chances of being in a position of potential bias or conflict of interest before the process commences.
3. A mediator should avoid conflicts of interest, or potential grounds for bias or the perception of a conflict of interest, in recommending the services of other professionals. Where possible, the mediator should provide several alternatives if recommending referrals to other practitioners and services.
4. A mediator will not use information about participants obtained in

mediation for personal gain or advantage.

5. The perception by one or both of the participants that the mediator is partial does not in itself require the mediator to withdraw. In such circumstances, however, the mediator must remind all parties of a right to terminate the mediation process.

6. A mediator should not become involved in relationships with parties that might impair the practitioner's professional judgment or in any way increase the risk of exploiting clients. Except where culturally required, practitioners will not facilitate disputes involving close friends, relatives, colleagues/supervisors or students.

7. Mediators should adhere to, and be familiar with, the code of conduct or ethical standards prescribed by the organisation or association with which they have membership (see Approval Standards).

6 Confidentiality

A mediator should respect the confidentiality of the participants.
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1. A mediator shall not voluntarily disclose to anyone who is not a party to the mediation any information obtained except:

- (a) non-identifying information for necessary administrative, research, supervisory or educational purposes; or
- (b) with the consent of the participants to the mediation process; or
- (c) when required to do so by law; or
- (d) where permitted by existing ethical guidelines or requirements and the information discloses an actual or potential threat to human life or safety.

2. The mediator will clarify the participants' expectations of confidentiality before undertaking the mediation process. Any written agreement to enter into the process should include provisions concerning confidentiality.

3. Before undertaking the mediation process, the mediator will inform the participants of the limitations of confidentiality, such as statutory, judicially or ethically mandated reporting, such as any reporting required pursuant to professional ethical requirements.

4. If the mediator holds separate sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon before the sessions.

5. If subpoenaed, or otherwise notified to testify or to produce documents, the mediator should attempt to inform the participants as soon as reasonably practicable. The mediator should not give evidence without an order of the court or tribunal if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants. The mediator may include indemnification provisions in relation to costs incurred (see Section 3(2)(f)).

6. With the participants' consent, the mediator may discuss the mediation process with the participants' lawyers and other expert advisers where such advisers have not attended all or part of the actual mediation session.

7. Where the participants reach an agreement in a mediation process, the substance of the proposed agreement may, with the permission of participants, be disclosed to their respective representatives, advisers or others and may be used in a de-identified form for debriefing, research processes and discussion purposes.

8. The mediator should maintain confidentiality in the storage and disposal of client records and must ensure that office and administrative staff maintain such confidentiality. Overall, mediators are not required to retain documents relating to a dispute although they may retain any written agreement to enter into the mediation process and any written agreement as to outcomes. Some mediators may also choose to retain notes relating to the content of the dispute particularly where duty-of-care or duty-to-warn issues are identified.

7 Competence

Mediators must be competent and have relevant skills and knowledge.

1. Mediators should seek regular professional debriefing. The purpose of debriefing is to address matters relating to skills development, conceptual and professional issues, ethical dilemmas, and to ensure the ongoing emotional health of mediators. Debriefing can take place following a solo mediation, a co-mediation, in groups or through independent sessions with another experienced mediator.

2. Mediators should also participate in continuing professional development training. Where possible, mediators should also participate in programs of peer consultation and should help train and mentor the work of less experienced mediators.

3. Mediators should be competent and have the capacity to apply

knowledge, skills and an ethical understanding and commitment in the areas listed below. Mediators demonstrate competence by showing that they have the requisite knowledge and skills and can apply them. Mediators are required to ensure that ongoing professional development is focused on achieving and maintaining competencies including:

(a) KNOWLEDGE

In areas including, but not limited to:

- (i) The nature of conflict, including the dynamics of power and violence.
- (ii) The appropriateness or inappropriateness of mediation.
- (iii) Pre-mediation preparation, screening and intake.
- (iv) Communication patterns in conflict and negotiation situations.
- (v) Negotiation dynamics in mediation.
- (vi) Cross-cultural issues in mediation and dispute resolution.
- (vii) The principles, stages and functions of a mediation process.
- (viii) The roles and functions of mediators.
- (ix) The roles and functions of support persons, lawyers and other professionals in mediation.
- (x) The law of mediation on confidentiality, enforceability of mediated agreements and liability of mediators.

(b) SKILLS, including, but not limited to:

- (i) Preparation and dispute diagnosis in mediation.
- (ii) Intake and screening of both the parties and the dispute to assess suitability for mediation.
- (iii) Conduct and management of the mediation process.
- (iv) Appropriate communication skills, including listening, questioning, reflecting and summarising, required for the conduct of mediation.
- (v) Negotiation techniques and the mediator's role in facilitating negotiation and problem-solving.
- (vi) Mediator interventions appropriate for standard difficulties in mediation.
- (vii) Potential responses to high emotion, power imbalances and violence.
- (viii) Use of separate meetings and shuttle mediation.
- (ix) Asking questions about or in appropriate circumstances, drafting of mediated agreements.

(c) ETHICAL UNDERSTANDINGS in relation to:

- (i) The avoidance of conflicts of interest.
- (ii) Marketing and advertising of mediation.
- (iii) Confidentiality, privacy and reporting obligations.
- (iv) Neutrality and impartiality.
- (v) Fiduciary obligations.

- (vi) Supporting fairness and equity in mediation.
- (vii) Withdrawal from and termination of the mediation process.

8 Inter-professional relations

Mediators should respect the relationships with professional advisers, other mediators and experts which complement their practice of mediation.

1. Mediators should promote cooperation with other professionals and encourage clients to use other professional resources when appropriate.
2. When disputes involve more than one facilitative or other decision making process, mediators will keep themselves informed and keep other professional colleagues informed about the processes taking place. Mediators will consider and respond to any consultative responsibilities that extend beyond more narrowly defined obligations to facilitate a process directly between the disputants.

9 Procedural fairness

A mediator will conduct the mediation process in a procedurally fair manner.

1. A mediator will support the participants to reach any agreement freely, voluntarily, without undue influence, and on the basis of informed consent.
2. The mediator will provide each participant with an opportunity to speak and to be heard in the mediation, and to articulate his or her own needs, interests and concerns.
3. If a mediator, after consultation with a participant, believes that a participant is unable or unwilling to participate in the process, the mediator may suspend or terminate the mediation process.
4. The mediator should encourage and support balanced negotiations and should understand how manipulative or intimidating negotiating tactics can be employed by participants.
5. To enable negotiations to proceed in a fair and orderly manner or for an

agreement to be reached, if a participant needs either additional information or assistance, the mediator must ensure that participants have sufficient time and opportunity to access sources of advice or information.

6. Participants should be encouraged, where appropriate, to obtain independent professional advice or information.

7. It is a fundamental principle of the mediation process that competent and informed participants can reach an agreement which may differ from litigated outcomes. The mediator, however, has a duty to support the participants in assessing the feasibility and practicality of any proposed agreement in both the long and short term, in accordance with the participant's own subjective criteria of fairness, taking cultural differences and where appropriate, the interests of any vulnerable stakeholders into account.

8. The primary responsibility for the resolution of a dispute rests with the participants. The mediator will not pressure participants into an agreement or make a substantive decision on behalf of any participant.

10 Information provided by the mediator

The mediator has no advisory or determinative role in regard to the content of the matter being mediated or its outcome. The mediator can advise upon and determine the mediation process that is used.

1. Consistent with the standards relating to impartiality and preserving participant self-determination, a mediator may, with the clearly informed consent of the participants, provide the participants with information that the mediator is qualified by training or experience to provide. Such information should be couched in general terms.

2. A mediator should only provide information within the limits of his or her qualifications and competence while conducting a mediation.

3. Mediators shall not explore or provide interpretations of behaviour or statements with the aim of providing assistance of a counselling nature nor should they provide legal advice (see Section 5).

4. Where appropriate, for example, in some family, environmental and workplace disputes, the mediator has a responsibility to facilitate a discussion about the participants' awareness of the interests of others affected by the dispute, and by the proposed agreement, and to assist the participants to consider the separate and individual needs of other such persons.

5. If a mediator, upon request, uses a "blended process" model, such as

evaluative mediation or conciliation, this process must be the subject of clear consent normally through the use of a mediation or similar agreement.

6. Mediators will provide information about their specialist and relevant training, education and expertise to participants upon request.

11 Termination of the mediation process

The mediator may suspend or terminate a mediation process if continuation of the process might harm or prejudice one or more of the participants.

1. Mediators should be alert to situations where parties or their advisers seek to misuse the mediation process to achieve other ends such as:

- (a) delaying proceedings in the hope of reinforcing the continuation of an existing arrangement or prolong litigation or obtain other advantage; or
- (b) “buying” time in order to dissipate or conceal assets; or
- (c) where, in the opinion of the mediator, one or both participants is in some other way acting in bad faith.

2. A mediator may suspend or terminate the mediation process if in the opinion of the mediator it is being used for a purpose other than a mutual attempt to arrive at resolution or its usefulness has in some other way been exhausted. Mediators should, where possible, provide reasonable notice to the participants.

3. The mediator may withdraw from the mediation process when any agreement is being reached by the participants that the mediator believes is unconscionable. If terminating or withdrawing from a mediation process, the mediator should assist the parties in assessing further process options for dealing with their dispute.

12 Charges for services

The mediator should make explicit to parties all charges related to the practitioner’s services and how they are calculated.

1. The mediator will explain any fees to be charged for the mediation process and any related costs. The mediator must also obtain agreement from the participants as to how any fees will be shared and the method of payment.
2. Any written agreement with the participants about the mediation process should include a description of any fee arrangements with the mediator.
3. A mediator will not base fees on the outcome of the mediation, but it is not unethical for a mediator to act pro bono or to leave to the discretion of the parties the payment of any fees.
4. If any retainer has been collected before mediation services have been rendered, any unearned fees should be returned promptly upon termination of the mediation process.

13 Making public statements and promotion of services

The mediator should ensure that public statements made by the mediator promoting business are accurate.

1. The purpose of public statements concerning mediation processes should be to:
 - (a) educate the public about the process in order to help the public make informed judgments and choices; and
 - (b) present the mediation process objectively, as one which seeks to empower participants directly and constitutes only one of several methods for arriving at an outcome.
2. Public communications should not mislead the public, misrepresent facts or contain any:
 - (a) statements likely to mislead or deceive by making only a partial disclosure of relevant facts; or
 - (b) statements intended or likely to create false or unjustified expectations of favourable results.
3. When advertising professional services, mediators should restrict themselves to matters which educate and inform the public. These could include the following information to describe the mediator and the services offered, such as: name, address, telephone and facsimile numbers, email address, office hours, relevant academic degree(s), specialist subject expertise, relevant training and experience in the mediation process, mediation qualifications such as certifications and accreditations, appropriate professional affiliations and membership status, advantages of a mediation process, and any additional relevant or important consumer information. In particular:

(a) mediators should refrain from promises and guarantees of results. However, a mediator may report on de-identified information about any evaluation of their services that might assist parties to better understand the mediation process; and

(b) mediators must accurately represent their qualifications and their relevance and significance.

4. Mediators should, where possible, encourage and/or participate in research that can support further professional and public education.

5. Mediators can promote their accreditation or additional accreditation and membership under this system.



DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE



CODE OF PROFESSIONAL CONDUCT

Updated June 2014

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1 PREAMBLE

The following Code of Professional Conduct has been adapted from the codes developed by the Conflict Resolution Service ACT, NSW Community Justice Centres and the Colorado Council of Mediating Organisations. It also includes information from the Australian National Mediator Accreditation System Report – Approval Standards, 2007.

- Mediators are often professionals (psychologists, police officers, social workers etc.) who have obligations under other codes of ethics. This code is not to be construed as in competition with other codes but as additional guidelines for professionals performing mediation. When mediating for the Community Justice Centre, professionals will be bound by the ethical guidelines of this code.
- Mediation is an approach to conflict resolution in which an impartial third party intervenes in a dispute with the consent of the parties, to aid and assist them in reaching a mutually satisfactory settlement to issues in dispute.
- Mediation is a profession with ethical responsibilities and duties. Those who engage in the practice of mediation must be dedicated to the principle that all disputants have a right to negotiate and attempt to determine the outcomes of their own conflicts. They must be aware that their duties and obligations relate to the parties who engage their services, to the mediation process, to other mediators, to the Community Justice Centre and to the general public.
- The Community Justice Centre operates a co-mediation model. Proposed exceptions to this practice must be discussed with the CJC Director prior to embarking on such a mediation.

2 RESPONSIBILITY OF THE MEDIATOR TO THE PARTIES

2.1 Mediators are not dispute decision makers

The primary responsibility for the resolution of a dispute rests with the parties themselves. Mediators at all times should recognise that the agreements reached in negotiations are made voluntarily and in good faith by the parties. It is the mediator's responsibility to assist the disputants in reaching a settlement. They should not attempt to make a substantive decision for the parties. Parties may wish to solicit a recommendation for settlement from the mediators. Mediators should not comply with any such request.

Mediation through the Community Justice Centre can be initiated by the parties themselves or by the Director, following receipt of a referral from an organisation. However, the decision to attend mediation rests with the parties.

Mediation is a voluntary process, and mediators should ensure that parties are attending, and remaining at, a mediation session of their own will. Parties must be free to leave a mediation session at any time.

Mediators should not sit in moral judgment on anyone, and should not impose any personal values, morals or ideals on the disputing parties. Parties should be accepted for who they are, and not what the mediators would like them to be.

Mediators should try to clarify the positions of both parties and crystallise the alternatives (if any), encouraging and allowing the disputants to make the decisions which are appropriate for themselves.

A mediator should not act on behalf of parties and should not act as an intermediary with other organisations or persons in authority, even if they are asked by the parties to do so.

Mediators should advise parties that they can return to the Community Justice Centre for further mediation if problems arise in the future. This is an option whether or not the parties reached agreement during the first mediation session.

2.2 Indigenous Community Disputes

Any work being undertaken within remote or Indigenous communities needs to utilise and recognise any existing capacity and mediation skills within the community to resolve their own disputes using their own skills, knowledge, culture and law.

Due consideration must be given to utilisation of appropriate people when undertaking such work on behalf of the Community Justice Centre. Mediators should be able to demonstrate a high level of cultural awareness. When a mediator is to undertake work in communities, communities should be given the opportunity to confirm, or otherwise, the appropriateness of that person to undertake work within their community.

CJC mediators should be invited by the community to be involved in assisting parties to resolve their own disputes in their own way.

Mediators need to ensure that parties' language needs are addressed – it is likely that this will require interpreter/translator assistance.

3 RESPONSIBILITY OF THE MEDIATOR TOWARD THE MEDIATION PROCESS

Negotiation is an established procedure in our society as a means of resolving disputes. The process of mediation involves a third party intervention into negotiations to assist in the development of alternative solutions that parties will voluntarily accept as a basis for settlement. Pressures which jeopardise voluntary action and agreement by the parties should not be part of mediation.

3.1 Pre-mediation

The Community Justice Centre requires that mediators conduct a pre-mediation session with all parties prior to commencing the mediation process. Should the mediator wish to vary this process they should contact the Community Justice Centre Director.

If a party feels a mediator is not appropriate, or there is a conflict of interest, the matter will be referred back to the Community Justice Centre.

Mediators also have a responsibility to conduct a final assessment of the appropriateness of the dispute for mediation. Mediators may deem that mediation is not appropriate for reasons such as:

- Parties are not coming to mediation in good faith
- Parties are not willing to negotiate
- Party not willing to commit to confidentiality requirements
- Party not able to represent interests/have the authority to settle
- Significant issues of power imbalances
- Concerns of violence to the parties and the mediators

Should mediators deem a matter unsuitable for mediation, they will need to justify their reasons to the Director of the Community Justice Centre in writing.

3.2 The Mediation Process

A mediator will conduct the mediation process in a procedurally fair manner.

Mediation is a participatory process. Mediators are obliged to educate the parties about mediation and involve them in the process. Mediators should consider that such education and information are important not only to the resolution of a current dispute, but also to better equip the parties to handle future conflicts in a more creative and productive manner.

The Australian National Mediator Approval Standards and Practice Standards <<http://www.msb.org.au>> inform the practice and accreditation of mediators.

3.2.1 Agreement to Mediate Contract

Prior to commencing the mediation, all parties and mediators are required to sign the 'agreement to mediate' contract. Support people attending the mediation are also required to sign the 'confidentiality agreement'.

3.3 Appropriateness of Mediation

Mediation is not a solution for all types of conflicts. Intake staff should be aware of all procedures for dispute resolution and under what condition each is most effective. Intake staff are obliged to inform participants of their options and help them make decisions as to the most appropriate procedures. The procedure should clearly match the type of outcome which is desired by the parties.

3.4 Culturally Appropriate Processes (see also 2.2 Indigenous Community Disputes)

Detailed guidelines and documentation to support cross-cultural work will be provided to those undertaking such business on behalf of the Community Justice Centre. 'Cross-cultural' applies to situations when parties are from different cultural backgrounds.

Contemporary mediation is a 'western' process, which may not always be appropriate or desired within different cultural groups. Prior to any mediation, an appropriate assessment should be conducted that considers the most appropriate service in each particular circumstance.

Mediators have a responsibility to ensure that parties understand the 'contemporary' process they are being invited to enter. Communities or parties should be given the opportunity to build upon their own internal community capacity, which may include conducting of an appropriate ceremony. In these cases the mediator should consider whether they are the right person with appropriate authority or not to conduct the mediation.

When conducting mediations within Aboriginal communities, or other culturally diverse groups, mediators should be aware that there may be a need for cultural flexibility within the process. Mediators should keep in mind that the CJC is a service that aims to help the community in the way the community needs, however, if mediators have concerns or questions prior to conducting the mediation, they should contact the Director of CJC.

Mediators should be aware that the values of other cultural groups may vary. For example, there may be an increased focus on extended family relationships and different priorities placed on issues of guilt, punishment and resolution. These different values are not wrong – but it is important that the mediator explores these with the parties.

4 ROLE OF MEDIATORS AND COMMUNITY JUSTICE CENTRE STAFF

Since mediation is a voluntary process, the acceptability of the mediators as persons of integrity, objectivity and fairness by the parties is absolutely essential for the effective delivery of mediation procedures. Parties should be given the opportunity to confirm the status/appropriateness of mediators prior to the mediation commencing. Such discussions should occur during the pre-mediation.

The manner in which mediators carry out their professional duties and responsibilities is a measure of their effectiveness as mediators. Quality of character as well as intellectual, emotional, social and technical attributes reveal themselves in mediators oral and written communications with the parties, other mediators and the general public.

4.1 *Publicity and Advertising*

Mediators should not make any false, misleading, unfair statement or claim as to the mediation process, costs and benefits, and as to their role, skills and qualifications.

Publicity should not be used by a mediator to enhance their own position.

4.2 *Neutrality*

Mediators should determine and reveal all monetary, psychological, emotional, associational or authoritative affiliations they have with any of the parties to a dispute that might cause a conflict of interest or affect the perceived or actual neutrality of the mediator in the performance of their duties. If mediators (or any one of the parties) feel that their background will have or has had a potential to bias their performance, mediators should disqualify themselves from mediating.

When engaging with specific communities such as many Indigenous communities, close affiliations may mean that the mediator is the most appropriate person to conduct the mediation. Decisions regarding appropriateness of mediators in relation to specific cultural, linguistic or family requirements will be referred to the Director of CJC and will be determined following consultation with the parties.

4.3 *Impartiality*

A mediator must conduct the dispute resolution process in an impartial manner and adhere to ethical standards of practice.

This impartiality must extend beyond the mediation session, and any mediator wishing to continue a relationship with a disputant should do so only after consulting the Director of CJC.

4.4 *Confidentiality*

A mediator should respect the confidentiality of the participants. If mediators have any questions or concerns, these should be referred to the Director of CJC.

Information received by Community Justice Centre staff or mediators is to be treated as confidential to the service. Information may be shared between staff and mediators for supervision and training purposes, but not disclosed to people outside the CJC – see below for exceptions to confidentiality.

Information received in private session is not to be revealed to the other party.

For additional information on confidentiality mediators should refer to the *Community Justice Centre Act 2005*, in which legal frameworks are explained.

4.4.1 Exceptions to confidentiality

Information may be disclosed under the following circumstances:

- Consent – The parties give prior permission to the disclosures, and such disclosure is acceptable to the Community Justice Centre.
- Duty of Care – There is significant risk of serious injury or harm to a party or another person, and disclosure of information is necessary to prevent that injury or harm.
- Mandatory Reporting – It is a legal requirement to report where:
 - a) A mediator believes on reasonable grounds that:
 - (i) A child has suffered or is likely to suffer harm or exploitation (harm includes physical, psychological or emotional abuse or neglect);
 - (ii) A child aged less than 14 years has been or is likely to be a victim of a sexual offence;
 - (iii) a child over 16 years who is under the special care (“special care” includes step-parents, guardians, school teachers, correctional services officers, health professionals and someone whose relationship is related to the care and instruction of the child) or an adult has or is likely to have an act of sexual intercourse or gross indecency committed upon them by that adult

The *Care & Protection of Children Act* (NT) further defines harm. Phone the Child Abuse Prevention Service on 1800 688 009 to report these incidents or 000 if it is an emergency.

Or

- b) A mediator believes on reasonable grounds that either or both of the following circumstances exist:
 - (i) another person has caused, or is likely to cause, harm to someone else with whom the other person is in a domestic relationship;
 - (ii) the life or safety of another person is under serious or imminent threat because domestic violence has been, is being or is about to be committed;

The *Domestic and Family Violence Act* defines ‘in a domestic relationship’. Call the Child Abuse Task Force on 1800 700 250 or 000 if it is an emergency.

4.5 Power Issues

Mediators shall have completed training that assists them to recognise power imbalance and issues relating to control and intimidation and should take appropriate steps to manage the mediation process accordingly.

In the event a party needs additional information or assistance for the negotiation to proceed in a fair and orderly manner or for an agreement to be reached that is fair, equitable and has the capacity to hold over time, the Community Justice Centre is obliged to refer the party(s) to resources – either data or persons – who may facilitate this process. CJC staff can assist with this process.

4.6 The Law

Mediators are not acting in the role of lawyers. At no time within a mediation process will a mediator offer legal advice to parties. The Community Justice Centre staff will refer parties to appropriate legal services, if required. This same code applies to mediators who are themselves lawyers. The role of an impartial mediator should not be confused with that of a lawyer who is an advocate for a client.

4.7 The Settlement

The goal of negotiation and mediation is a settlement that is seen as fair and equitable by all parties. The mediators' responsibility to the parties is to help them reach this kind of settlement.

Whenever appropriate, mediators should develop a written statement that documents the agreement reached by the parties in mediation. A mediator's satisfaction with the agreement is secondary to that of the parties.

In the event that an agreement is reached, but a mediator has concerns such as:

- It is obviously illegal,
- There is gross inequity to one or more of the parties,
- It is based on false information,
- It is based on bad faith bargaining,
- It is impossible to carry out,

the mediator may pursue any of the following alternatives:

1. Inform the parties of the difficulties that the mediator sees in the agreement.
2. Withdraw as a mediator and indicate the general reason for taking such action.
3. Discuss with the Director of CJC.

4.8 Termination of Mediation

In the event that the parties cannot reach an agreement even with the assistance of a mediator, it is the responsibility of the mediator to make them aware of the deadlock and suggest that negotiations be terminated.

Mediators are obliged to inform parties when a final impasse has been reached and refer them to other means of dispute resolution. Mediators should not prolong unproductive discussion that results in increased time, emotional and monetary costs for the parties.

4.9 Directions from CJC staff

Mediators are expected to work effectively and cooperatively with CJC staff. In this regard mediators must comply with directions given by the CJC Director and other CJC staff.

4.10 Mediations conducted for other organisations

If mediators mediate for organisations other than CJC they must:

- Not represent themselves as CJC mediators.
- Understand that they are not covered by the privileges and indemnities set out under the *Community Justice Centre Contract for Services* or the Northern Territory Government insurance when conducting such mediations.

5 MEDIATOR ACCREDITATION

5.1 Professional Standards

Mediators must recognise that they are representatives of the Community Justice Centre and their work will not be judged solely on an individual basis, but will reflect on the professional mediation services provided by the Community Justice Centre. Any improper conduct or professional shortcoming therefore reflects not only on the individual mediator but also on the Community Justice Centre, and as such jeopardises the effectiveness of the service and the mediation process itself.

Mediators will not use their position for personal gain or advantage.

Mediators will not accept any money or thing of value for the conducting of a mediation – other than that paid by the Community Justice Centre – or incur obligations which might interfere with the impartial performance of their duties.

Mediators must not attempt to conduct a formal CJC mediation outside the auspices of the Community Justice Centre.

5.2 Competence

Mediators must be competent and have relevant skills and knowledge.

Mediators are required to report compliance with Continuing Professional Development

(CPD) requirements on an honour basis to the Community Justice Centre, which is a recognised mediator accreditation body (RMAB). The Community Justice Centre will notify any non-compliance to the implementation body responsible for the upkeep of the National Register of Accredited Mediators.

The Australian National Mediator Practice Standards and Approval Standards contain information about seeking and maintaining national mediator accreditation.

5.3 Training and Education

Individual mediators have the responsibility to constantly upgrade their skills and theoretical grounding and should endeavour to improve their practice and the profession by some form of further education in the negotiation and mediation fields in each year of practice as a mediator. Mediators should refer to the Mediation National Accreditation Standards for details.

Where mediators have undertaken continuing professional development (CPD) for other professional purposes, this can also count towards professional development under the national accreditation system provided the training satisfies the requirements stipulated by the Mediator Standards Board.

5.4 Expertise

Mediators will perform their services only in those areas of mediation where they are qualified either by experience or training. Mediators should not attempt to mediate where they are unprepared and where there is the risk of psychological, financial, legal or physical damage to one of the parties due to the mediator's lack of background knowledge.

Mediators are expected to cooperate with the Community Justice Centre in establishing and maintaining the quality, qualifications and standards of the mediation profession.

6 RESPONSIBILITY OF THE MEDIATOR TOWARDS THE PUBLIC AND OTHER UNREPRESENTED PARTIES

6.1 A fair negotiation process

Negotiation is essentially a private, voluntary process. The primary purpose of mediation is to assist the parties to achieve a settlement. Such assistance does not abrogate the rights of the parties to utilise economic, social, psychological and legal sanctions. It is important that the parties be free to seek advice at any stage of the process.

The mediation process may include a responsibility of the mediators to assert the interest of the public or other unrepresented parties in order that a particular dispute is settled; that costs or damages are alleviated; that normal life be resumed. Mediators should question agreements that are not in the interests of the public or unrepresented parties whose interests and needs should and are not being considered at the table.

Mediators may and should raise questions as to whether other parties' interests, or the other parties themselves should be at the negotiating table. It is understood, however, that the mediator does not regulate or control any of the content of a negotiated agreement.

7 RESPONSIBILITY OF THE MEDIATOR TOWARDS OTHER MEDIATORS

Mediators work as a team in a co-mediation model.

7.1 *Preparation and Debriefing*

Mediators should consult with each other when preparing for a mediation session about the roles each will perform by considering what is in the best interests of the parties.

Issues arising from a mediation session should be fully discussed after each mediation. Mediators must allow sufficient time to ensure proper debriefing and feedback for each co-mediator at the end of each session.

Timeliness is an important part of the mediators' preparation process. Mediators are paid a minimum of one half hour preparation prior to commencement of the mediation and mediators should ensure that they are ready to begin at this time.

Mediators must give open and honest feedback about their co-mediators to CJC staff when requested to do so, e.g during a debriefing or if a complaint has been made and an investigation is being conducted.

7.2 *Differences between Mediators*

During mediation mediators will carefully avoid personal criticism of their co-mediator. However, differences of opinion may be expressed. Mediators should aim to resolve these differences cooperatively, and to model effective communication and conflict resolution skills.

Differences should be seen as a valuable learning experience for both the mediators and for the parties. However, where there is a substantial difference about the direction of the mediation, and expression of those differences in front of the parties would be detrimental to the mediation process, mediators should call a recess and discuss the issues privately before proceeding.

8 COMPLAINTS, DISCIPLINE & DE-ACCREDITATION

8.1 *CJC Commitment to a fair process*

The Community Justice Centre will ensure that all complaints and grievances are handled with as little technicality and formality as possible in a process which accords procedural fairness to all parties.

8.2 Breach by Mediator

Parties should refer to the Community Justice Centre, Complaint Resolution Process (as per the *Community Justice Centre Act 2005*).

8.2.1 Reporting of Breach

An allegation of a breach of the code of conduct by a mediator can be reported by the public, the parties in the mediation, other mediators, staff of the Community Justice Centre or the Director of the Community Justice Centre.

A complaint should be formally lodged either through a written complaint or a verbal interview with the Director of the CJC.

This complaint will be investigated by the Director of the Community Justice Centre. Should the complaint be against the Director of the Community Justice Centre, it will be assessed according to the *Community Justice Centre Act 2005*, whereby the Consultative Council will investigate the issue.

8.3 Consequences of Breach

Where a mediator is found to be in breach of the Mediator Code of Practice or the *Community Justice Centre Act 2005*, he or she may be suspended from accreditation to the National Mediator Standards (NMS), on a temporary or permanent basis.

Other consequences may include the following:

- Interview with the Director of CJC.
- Specific training requirements put in place.
- Specific mediation requirements put in place.
- Removal from any mediation-related panels the mediator is serving upon.

8.3.1 Failure to comply with ongoing accreditation requirements

Mediators will be automatically de-accredited if they fail to comply with their ongoing requirements for Accreditation to the National Mediator Standards.

8.3.2 Right of Appeal

All mediators will have a right to appeal the decision of the Community Justice Centre Accreditation Committee to the CJC Consultative Council and finally to the Mediator Standards Board

8.4 De-Accreditation

Ongoing accreditation as a mediator requires the mediator to meet the practice standards and competencies described in the National Practice Standards. The Community Justice Centre (as a RMAB) has the discretion to remove or suspend a mediator in circumstances where the Community Justice Centre believes, on the

balance of probabilities, that there has been non-compliance with the National Practice Standards, relevant ethical guidelines, professional requirements or the National Approval Standards. In relation to any removal or suspension, a mediator must be informed within 14 days of the concerns of the Community Justice Centre and be provided with an opportunity to respond. Such a decision will be made by the Director of the Community Justice Centre. Should the mediator wish to appeal, then an appeal must be made to the Community Justice Centre Consultative Council before a final appeal may be made to the Mediator Standards Board.

**NORTHERN TERRITORY OF AUSTRALIA
AGREEMENT TO MEDIATE**

THIS AGREEMENT is made the _____ day of _____ 2013

BETWEEN:

THE NORTHERN TERRITORY OF AUSTRALIA care of Department of Attorney-General and Justice, Old Admiralty House, 68 The Esplanade Darwin in the Northern Territory of Australia ("the Territory")

AND:

MEDIATOR 1 of 1st Floor Nichols Place Darwin in the Northern Territory of Australia ("Mediator 1")

AND:

MEDIATOR 2 of 1st Floor Nichols Place Darwin in the Northern Territory of Australia ("Mediator 2")

AND:

RECIPIENT 1 of Residential address in the Northern Territory of Australia ("Recipient 1")

AND:

RECIPIENT 2 of Residential address in the Northern Territory of Australia ("Recipient 2")

RECITALS

- A. The Territory has established the Community Justice Centre ("the Centre") pursuant to provisions of the *Community Justice Centre Act* 2005 to provide Mediation Services to Recipients in major centres in the Northern Territory.
- B. The aim of the Centre is to facilitate the mediation of minor disputes between the Recipients.
- C. The Mediators are appointed by the staff of the Centre on the basis of their accreditation, skill and diligence.
- D. The Recipients agree to attend Mediation at the Centre facilitated by the Mediators.
- E. This Agreement sets out the terms and conditions and arrangements for the Recipients when attending and participating in mediation.

NOW THIS AGREEMENT WITNESSES as follows:

1. Definitions and interpretation

- (a) In this Agreement, the following definitions apply:
 - (i) "*Co-Mediator*" means a person appointed by the staff of the Centre to assist in the facilitation and assistance of the Recipients to identify the disputed issues, develop opinions, consider alternatives and endeavour to reach an agreement;
 - (ii) "*contract service provider*" means a contract service provide within the meaning of the *Information Act*;
 - (iii) "*duration*" of the mediation includes the mediation sessions with the Mediators in attendance as well as all other communication entered into before and after the mediation sessions;
 - (iv) "*Mediation*" means a process in which the Recipients to a dispute, with the assistance of a neutral third party, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement;
 - (v) "*Mediator*" means a person appointed by the staff of the Centre to facilitate and assist the Recipients identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement;
 - (vi) "*this Agreement*" means this Agreement and includes all subsequent changes, departures, amendments, variations, waivers and modifications made in accordance with this Agreement; and
 - (vii) "*personal information*" means all information about a person that is "personal information" as defined in the Information Act which is collected and/or handled by the Territory or the Mediator in connection with this agreement.
- (b) In this Agreement, unless the context otherwise requires:

- (i) headings used in this Agreement are for convenience only, and shall not affect the construction of this Agreement, interpretation or meaning and do not form part of this Agreement;
- (ii) a reference made to a thing (including, without limitation, any amount) includes a reference to the whole or any part of it and a reference to a group of persons includes a reference to any one or more of them;
- (iii) any word importing the singular number includes the plural and visa versa; and
- (iv) any word importing one gender includes the other gender.

2. Term of agreement

This Agreement continues for the duration of the mediation undertaken by the Recipients at the Centre unless terminated under clause 3 of this Agreement.

3. Termination

This Agreement may be terminated for any reason and at any time by the Recipients by giving notice (which may be verbal) to the other Recipients or the Mediators or the Territory.

4. Process of mediation

- (a) From time to time and for purposes of quality assurance, the Mediators and the Recipients agree that staff of the Centre may attend Mediation sessions as non-participating parties.
- (b) Mediation shall be entered into by the Recipients on the understanding that:
 - (i) mediation is to be undertaken at the Centre or at any other place nominated by the Territory;
 - (ii) the process of mediation is designed by the Mediators with the aim of minimising formal or technical requirements;
 - (iii) the process of mediation will not include any adjudication or arbitration or any other type of dispute resolution where the Recipients are not in full control over the outcome of the dispute; and
 - (iv) the rules of evidence do not apply to the mediation.
- (c) Unless otherwise determined by the Mediators and advised to the Recipients prior to the commencement of mediation, the process of mediation shall include:
 - (i) the identification of disputed issues;
 - (ii) the development of options for the resolution of disputed issues;
 - (iii) the consideration of alternatives to the options developed for the resolution of disputed issues;
 - (iv) an attempt to resolve the disputed issues using the developed options and considered alternatives.

5. Role of mediators

- (a) The Mediators have been appointed by the Territory under a separate Agreement (“the Consultancy Agreement”).
- (b) To the extent that there is an inconsistency with regard to the roles and responsibilities of the Mediators between this Agreement and the agreement contemplated in clause 5(a) of this Agreement, the Consultancy Agreement will prevail.
- (c) The Recipients acknowledge that the Mediators are appointed by the Territory on the basis of their accreditation, skill and diligence and the Mediators have no influence or control over the type or nature of each specific mediation including with regard to the Recipients.
- (d) The Territory, the Mediators and the Recipients agree and acknowledge that the role of the mediators when facilitating mediation is to:
 - (i) remain neutral regarding the Recipients to the dispute and the nature of the dispute;
 - (ii) assist the Recipients to understand the nature and aim of mediation as well as the mediation process to be undertaken;
 - (iii) assist the Recipients to identify disputed issues;
 - (iv) assist the Recipients to develop options regarding those issues;
 - (v) assist the Recipients to consider alternatives for resolution of disputes; and
 - (vi) assist the Recipients to reach an agreement for the resolution of disputes.

- (e) When facilitating the mediation, the Mediators shall have regard to the following factors:
 - (i) the primary responsibility for the resolution of the dispute rests with the Recipients to the dispute;
 - (ii) the Mediators at all times should ensure that any agreements reached in negotiations between the Recipients are voluntarily made by the Recipients;
 - (iii) the Mediators should allow Recipients to make decisions which are appropriate for themselves;
 - (iv) the Mediators should not be judgemental and should not impose any personal convictions or ideals on the Recipients;
 - (v) the Mediators should ensure that the Recipients feel free to return to the Centre for any future mediation;
 - (vi) the Mediators should not promote their own religious political or other beliefs to the Recipients;
 - (vii) the Mediators should not insist on the continuing of a particular process of mediation when the Mediators become aware that in order for the Recipients to resolve a dispute a new process should be adopted; and
 - (viii) the Mediators should not use the mediation to enhance or promote their own position.
- (f) When facilitating mediation, the Mediators shall not offer any legal opinion or advice to the Recipients.
- (g) The Territory, the Mediators and the Recipients agree that the Mediators have no advisory or determinative role in regard to the content of the dispute or the outcome of the dispute resolution however the Mediators may advise on or determine the process of mediation whereby resolution is attempted.

6. Voluntary and non binding

- (a) The Recipients agree that they will attend mediation at the Centre or other place nominated by the Territory on a voluntary basis and without force or coercion.
- (b) The Recipients agree that any agreement or resolution arising from mediation at the Centre shall be entered into on a voluntary basis and the Recipients are not bound in law to perform under any agreement or resolution.
- (c) Mediation is a voluntary process and decisions reached between Recipients to the mediation are not binding in law and cannot be used as evidence in any later court proceedings.

7. Confidentiality and evidence

- (a) All information received or otherwise acquired by the Recipients from third parties or the Mediators or the Territory (including staff of the Centre) in the course of the mediation including
 - (i) Any settlement proposal whether made by a party or the mediator.
 - (ii) The willingness of a party to consider any such proposal.
 - (iii) Any statement made by a party or the mediator during the mediation.
 - (iv) Any information prepared for the mediation.
 Shall be deemed to be confidential information and information that may not be used as evidence in any court proceeding whatsoever.
- (b) Each party, the Recipients, the Mediators and/or the Territory (including staff of the Centre), may not record, disclose, publish or produce any information, document or thing arising from the provision of the mediation services. Any breach of this Clause is a breach section 37 of the *Community Justice Centre Act*.
- (c) Clause 7(b)_of this Agreement does not apply:
 - to any recording disclosure, publication or production approved by all Recipients and the Mediators and/or the Director of the Centre in writing; or
 - where recording, disclosure, publication or production is required for any reason under relevant law, including under mandatory reporting requirements.
- (d) This clause shall survive the expiration or earlier termination of this Agreement for the benefit of the Recipients.

8. Customer surveys

The Recipients hereby consent to the Centre releasing their personal information to a contract service provider for the purpose of conducting customer surveys with a view to determining whether the Recipients were satisfied with the mediation service provided by the Centre.

9. Applicable law

This Agreement shall be governed by and construed in accordance with the laws of the Northern Territory of Australia.

10. Liability

Each Recipient agrees that any matter or thing done or omitted to be done by the Mediators or the Territory shall not be subject to any action, liability, claim or demand if the matter or thing was done in good faith and with a view to furthering Mediation.

EXECUTED by the parties as an Agreement.

SIGNED by **IPPEI OKAZAKI**)
for and on behalf of the **NORTHERN**)
TERRITORY OF AUSTRALIA).....
pursuant to a delegation under the)
Contracts Act in the presence of:)

.....
Witness

SIGNED by **MEDIATOR 1**)
in the presence of:)

.....
Witness

SIGNED by **MEDIATOR 2**)
in the presence of:)

.....
Witness

SIGNED by **RECIPIENT 1**)
in the presence of:)

.....
Witness

SIGNED by **RECIPIENT 2**)
in the presence of:)

.....
Witness

NORTHERN TERRITORY OF AUSTRALIA

("the Territory")

AND

MEDIATOR 1

("Mediator 1")

AND

MEDIATOR 2

("Mediator 2")

AND

RECIPIENT 1

("Recipient 1")

AND

RECIPIENT 1

("Recipient 2")

MEDIATION AGREEMENT

Solicitor for the Northern Territory
Level 11
NT House
22 Mitchell Street
DARWIN NT 0800

Telephone: (08) 8999 6047
Facsimile: (08) 8999 6347



Community Justice Consultative Council (CJCC)

TERMS OF REFERENCE

1) Purpose

The Community Justice Consultative Council (CJCC) will provide independent strategic guidance and policy advice, reports and recommendations to the Attorney-General and Minister for Justice in relation to the operations of the Community Justice Centre (CJC) and the provision of mediation and other appropriate dispute resolution services in the Northern Territory, in addition to making guidelines and dealing with complaints.

2) Functions

The CJCC:

- 2.1. Will provide strategic guidance and policy advice to the CJC
- 2.2. Will provide policy advice, reports and recommendations to the Attorney-General and Minister for Justice on appropriate dispute resolution in the Northern Territory.
- 2.3. Will provide policy guidelines for the provision of mediation services, including matters the Director must take into account in deciding whether to provide (or terminate) mediation services, and the principles governing the provision of mediation services.
- 2.4. Will deal with complaints regarding the provision of mediation services offered by the CJC, including investigation and review.
- 2.5. Will provide independent advice to the Attorney-General on the operation of the CJC.
- 2.6. Will provide independent advice to the Attorney-General on matters arising from review of:
 - 2.6.1 The operation and effectiveness of the *Community Justice Centre Act*.
 - 2.6.2 The operation and effectiveness of the CJC.
 - 2.6.3 The operation and effectiveness of the CJCC.
 - 2.6.4 Matters arising from the operation of any provision of the Community Justice Centre Act that the CEO think should be subject to a review.
- 2.7. Will engage with relevant national bodies that establish standards, and provide advice on, mediation standards.
- 2.8. Will promote best practice in appropriate dispute resolution as a means of dispute and conflict resolution.
- 2.9. Will collaborate with State, Territory, and national bodies with a view to assist in closing the gap in Indigenous disadvantage.



NOT HAPPY ABOUT THE COMMUNITY JUSTICE CENTRE SERVICE?

YOU CAN MAKE A COMPLAINT

The Community Justice Centre (CJC) seeks to provide Territorians with a good quality mediation and conflict resolution service. One of the ways this can happen is by making sure you can safely make complaints about the service. The complaint can then be investigated, and if necessary, acted upon.

There is a law, called the *Community Justice Centre Act*, which sets out what people can complain about and how complaints should be investigated. Under this law, there is a special advisory body called the Community Justice Consultative Council. It is the Consultative Council's job to investigate certain complaints. Other complaints may be investigated by the Director of the CJC.

If the complaint relates to a criminal behaviour, we will refer it to the police.

Mediators who work for the CJC are required to work in line with the CJC's Code of Professional Conduct and the Practice Standards for Nationally Accredited Mediators.

What you CAN complain about

You can make a complaint about the CJC level of service.

You can complain about:

- the Director of the CJC; or
- a mediator employed or contracted by the CJC; or
- any other CJC staff.

If you believe:

- you were given inaccurate, incorrect or insufficient information about the mediation process;
- you were not treated fairly or impartially during the mediation process; or
- that the legal status of an agreement made at mediation was not explained to you properly.

What you CAN'T complain about

You can't complain about the outcome of a mediation session.

Confidentiality

All complaints will be treated respectfully and confidentially. Confidentiality in this situation means the people/person investigating your complaint will not tell other people anything about it, except the person you are complaining about as they will be notified and given an opportunity to comment about the complaint.

How to make a complaint

Option 1 – free telephone call from a landline

Telephone the CJC, free of charge, by calling **1800 000 473**. (It is NOT free if you call from a mobile phone). The CJC staff member will carefully write down your complaint.

If you don't want to tell the CJC staff member your complaint because it is about them or one of their colleagues, or for some other reason, you can ask to speak to the Director to make your complaint.

If you are not comfortable with that, another option is to ask to make your complaint to the Consultative Council. You do not have to leave your name to do this, but it would help. However, you do need to leave a contact number so that the Chair of the Consultative Council can get back to you.

Option 2 – in person

You can visit the CJC Office located on the 1st floor Zone B of the Darwin Magistrates Court at Nichols Place on the corner of Bennett St and Cavenagh St and speak to a CJC staff member or the Director.

It is a good idea to make an appointment first so that enough time can be set aside to carefully listen and then write down your concerns or complaints. You can do this by ringing the free call number 1800 000 473.

If you prefer, you can also visit the CJC or ring the free call number to arrange to see the Chair of the Consultative Council at a place that suits you and the Chair.

Option 3 – in writing via post or email

You can also write down the details of your complaint and send it to us by post, fax or email. You can send your letter or email to the Director or the Chairperson of the Consultative Council. Make sure you say that the letter is marked 'confidential' on the envelope and

at the top of the letter, or if you send an email, write 'confidential complaint' in the subject line.

The postal address is:

Community Justice Consultative Council
GPO Box 1722
DARWIN NT 0801

Fax number is:

(08) 89996226

The CJC's email address is:

cjc@nt.gov.au

How will my complaint be investigated?

Information about how your complaint will be investigated is available on the CJC website at www.cjc.nt.gov.au

You can also get this information verbally when you lodge a complaint by phone or in person. Alternatively, you can ask for written information to be sent to you.

Will the person I complain about know I lodged the complaint?

Please be aware that when we are investigating your complaint, the mediator, CJC staff member or Director may be shown part or all of the complaint and will know who made it. This is necessary to ensure that the process is fair and the person being complained about has the opportunity to respond.

PROCESS FOR RESOLVING COMPLAINTS

The Community Justice Consultative Council is the advisory body which has the responsibility to investigate complaints about CJC services. In the first instance, all complaints will be handled by the Chairperson of the Consultative Council. Depending on the nature of the complaint, the Chairperson may ask the Director of the CJC (who is also a member of the Consultative Council) or another member of the Council to explore the complaint and report to the Council.

Complaints about a mediator

If there is a complaint about a mediator, the Chairperson will:

- determine whether the complaint meets the criteria for a complaint under the *Community Justice Centre Act 2005* (NT);
- acknowledge the complaint on behalf of the Council in writing as soon as possible after receiving it. (The Chair may also provide verbal acknowledgement)

- review the mediator's debriefing notes;
- discuss the complaint with the mediator (and co-mediator if appropriate) and
- decide whether to recommend to the CJC Consultative Council that the matter be brought before a 'Panel of Mediators'.

Formation of a Panel of Mediators

Where considered necessary, the Council may decide to take the complaint before a Panel of Mediators. This process should take no longer than 4 weeks. Under this process, the Chairperson will form a Panel of Mediators to review the mediation process. The Panel will comprise at least 3 mediators of advanced standing. The Chairperson and other Council members may or may not be a member of the Panel. The Panel will not include anyone who is referred to in the complaint.

The Panel of Mediators may choose to interview you or the parties lodging the complaint or base their deliberations on the information in the lodged submissions. In all instances, the Panel of Mediators will interview the mediator or mediators involved in the complaint. The purpose of the Panel's deliberations

will be to assess whether, in their opinion, the process of mediation was in accordance with the CJC's Code of Professional Conduct and the Practice Standards for Nationally Accredited Mediators. The Panel will prepare a written report on its findings and provide it to the Council.

The mediator or mediators against whom the complaint has been lodged will be afforded full natural justice, will have access to all relevant details of the complaint and will be given the opportunity to respond to all or any aspect of it.

At the conclusion of the investigative process, the Council will recommend to the Director to take actions it deems necessary to address the matters raised in the complaint. The Council may decide that no action is necessary.

The Chairperson will inform you of the steps taken to address their complaint and any outcomes of the complaint procedure within 7 working days of the Council concluding its investigation.

Complaints about CJC Director or CJC Staff

The following process will be adopted when investigating complaints about the Director or staff.

In the instance of a complaint made about the CJC Director or CJC Staff, the Chairperson will acknowledge the complaint on behalf of the Council in writing as soon as possible after receiving it. (The Chair may also provide verbal advice).

The Chairperson will review the CJC's relevant file/s (does this require other parties permission or is that granted in original consent to mediate), any other correspondence and the complaint. The Chairperson may interview the party/parties lodging the complaint.

The Chairperson may at this point decide that the complaint does not warrant further action or investigation and will recommend to the Director to take those actions, if any, which it deems necessary

to address those matters raised in the complaint.

If the Chairperson deems that a complaint does require further action or investigation, she or he will discuss the matter with the person who is the subject of the complaint and inform them of what action is to be taken. This further action may include the Chairperson seeking the assistance of the Council in addressing the complaint.

As part of the investigative process, where a complaint is lodged against a particular person, that person will be notified and given the opportunity to review the relevant parts of the complaint and respond, either verbally or in writing.

At the conclusion of the investigative process, the Chairperson and/or the Council will recommend to the Director to take those actions, if any, which it deems necessary to address those matters raised in the complaint.

The Chairperson will inform the person of the steps taken to address their complaint and any outcomes of the complaint procedure within 7 working days of the Council concluding its investigation.

If the matter requires allocation of investigative resources beyond that of the Council, or because you are not satisfied with the outcome of the Council's investigation) then the complainant will be informed of their right to take their complaint to the NT Ombudsman.

NT Ombudsman
12th Floor, NT House,
22 Mitchell Street,
Darwin NT 0800
PO Box 1344
Darwin NT 0801

Phone: (08) 8999 1818
Fax: (08) 8999 1828
Free call: 1800 806 380
Email: nt.ombudsman@nt.gov.au



Community Justice Centre

...a way to work it out

PARTY QUESTIONNAIRE

The CJC is always keen to receive feedback so that it can maintain its standards of accessibility, timeliness and professionalism. Please hand this form back to the mediator. Your answers will remain anonymous.

QUESTIONS	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Was the CJC easy for you to contact and get to?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were you treated fairly by the CJC? If <i>not</i> please explain why not.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Comments:					
Were you satisfied with the timeliness of the service (initial contact, mediation, and referral) provided?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If a friend was in a similar situation as you, would you advise them to use the CJC?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At the mediation session: Were the mediators professional?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Comments:					
Are you aware of the process for raising complaints and concerns with the CJC?	Yes <input type="radio"/>		No <input type="radio"/>		
Do you have any suggestions on how the CJC could improve its service?	Yes <input type="radio"/>		No <input type="radio"/>		

Further Comments:

The CJC thanks you for taking the time to complete this survey!

