



Australian Capital Territory

# **Mediation Act 1997    No 61**

## **Republication No 3**

Republication date: 25 September 2002

Last amendment made by Act 2002 No 30

Amendments incorporated to 17 September 2002

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Mediation Act 1997* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 25 September 2002. It also includes any amendment, repeal or expiry affecting the republished law to 17 September 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
17 September 2002



Australian Capital Territory

## Mediation Act 1997

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Amendments incorporated to  
17 September 2002



Australian Capital Territory

# Mediation Act 1997

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An Act relating to mediation and the registration of mediators

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## **1 Name of Act**

This Act is the *Mediation Act 1997*.

## **2 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

## **3 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

## **4 Declarations about competency standards and approved agencies**

- (1) The Minister may, in writing, declare standards of competency required for the registration of a person under section 5.
- (2) The Minister may, in writing, declare an entity to be an approved agency for this Act.
- (3) A declaration under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

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**5 Registration of mediators**

- (1) Subject to subsection (6), a person may apply in writing to an approved agency for registration under this section.
- (2) An approved agency shall approve an application and register the applicant if—
  - (a) any fee determined by the agency to be payable to it in relation to an application under this section has been paid to it; and
  - (b) it is satisfied that the applicant has achieved the standards of competency prescribed for section 4; and
  - (c) the applicant satisfies any requirements of the agency that relate to mediators.
- (3) A person whose application under subsection (1) has been refused may, by written notice given to the agency, require it to review the decision.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (4) An approved agency that receives a notice under subsection (3) shall review the relevant decision.
- (5) An approved agency shall notify an applicant in writing within 7 days of determining an application under subsection (1) or a review under subsection (4)—
  - (a) of its determination; and
  - (b) if the application has not been granted—of the grounds for not granting it.
- (6) A person—
  - (a) who has made an application under subsection (1) that has been refused; or
  - (b) whose registration has been cancelled under section 8;is not eligible to make another application under subsection (1) to any approved agency within 6 months of the refusal or cancellation.

## **6 Duration of registration**

Subject to section 8, the registration of a registered mediator ends 3 years after the day when he or she was registered or when his or her registration was last renewed, as the case requires.

## **7 Renewal of registration**

- (1) A registered mediator may, before the end of his or her registration, apply to the approved agency by which he or she has been registered or to another approved agency for renewal of the registration.
- (2) The approved agency shall renew the registration of the mediator if any fee determined by the agency to be payable to it in relation to an application under this section has been paid and the agency is satisfied that the mediator—
  - (a) would, if he or she were an applicant under section 5 (1), be eligible for registration; and
  - (b) has, since his or her registration or last renewal, whichever last occurred, undertaken the further education in matters relating to mediation that is approved by the agency.

## **8 Cancellation of registration**

The approved agency by which a registered mediator has been registered may cancel the registration if satisfied that—

- (a) if the mediator were an applicant under section 5 (1), he or she would not be eligible for registration; or
- (b) the mediator has made a disclosure in breach of section 10 and the circumstances are such that his or her registration should be cancelled.

## **9 Admissibility of evidence**

Evidence of—

- (a) a communication made in a mediation session; or
- (b) a document, whether delivered or not, prepared—
  - (i) for the purposes of; or
  - (ii) in the course of; or
  - (iii) pursuant to a decision taken or undertaking given in;  
a mediation session;

is not admissible in any proceedings except in accordance with the *Evidence Act 1995* (Cwlth), section 131.

## **10 Secrecy**

- (1) A person who is or has been a registered mediator shall not disclose any information obtained in a mediation session.
- (2) This section does not apply if—
  - (a) the disclosure is required by or under a ACT or Commonwealth law; or
  - (b) the disclosure is made with the consent of the parties; or
  - (c) the disclosure is made with the consent of the person who gave the information; or
  - (d) the person referred to in subsection (1) believes on reasonable grounds that—
    - (i) a person's life, health or property is under serious and imminent threat and the disclosure is necessary to avert, or mitigate the consequences of, its realisation; or
    - (ii) the disclosure is necessary to report to the appropriate authority the commission of an offence or prevent the likely commission of an offence.

(3) In this section:

*offence* means an offence involving—

- (a) violence, or the threat of violence, to a person; or
- (b) intentional damage to property or the threat of such damage.

## **11 Protection from defamation**

The same privilege in relation to defamation as exists in relation to judicial proceedings exists in relation to—

- (a) a mediation session; or
- (b) a document or other material—
  - (i) produced at a mediation session; or
  - (ii) given to a registered mediator for the purpose of arranging or conducting a mediation session.

## **12 Protection of mediators**

A registered mediator has, in the exercise in good faith of his or her functions as mediator, the same protection and immunity as a judge of the Supreme Court.

## **13 Regulation-making power**

(1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe requirements to be complied with by an approved agency.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Dictionary

(see s 2)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- ACT
- contravene
- document
- person.

***approved agency*** means an entity that is declared under section 4 (2) to be an approved agency.

*Note* An entity includes an individual, see *Legislation Act 2001*, dict, pt 1, def of ***entity***.

***mediation session*** means a meeting between people in dispute and a registered mediator for the purpose of resolving the dispute by mediation, and includes anything done for the purpose of—

- (a) arranging the meeting (whether or not successfully); or
- (b) following up anything raised in the meeting.

***party***, to a mediation session, does not include the registered mediator for the session.

***registered mediator*** means a person who is registered under section 5 as a mediator (Registration of mediators).

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

### 3 Legislation history

#### Mediation Act 1997 No 61

notified 9 October 1997 (Gaz 1997 No S300)  
 s 1, s 2 commenced 9 October 1997 (s 2 (1))  
 remainder commenced 1 July 1998 (s 2 (2))

as amended by

#### Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)  
 s 1, s 2 commenced 27 November 1998 (s 2 (1))  
 sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 Nov 1999 (Gaz 1999 No 45)  
 sch 3 commenced 10 Nov 1999 (s 2)

#### Legislation (Consequential Amendments) Act 2001 No 44 pt 246

notified 26 July 2001 (Gaz 2001 No 30)  
 s 1, s 2 commenced 26 July 2001 (IA s 10B)  
 pt 246 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### Statute Law Amendment Act 2002 No 30 pt 3.48

notified LR 16 September 2002  
 s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
 pt 3.48 commenced 17 September 2002 (s 2 (1))

### 4 Amendment history

#### Name of Act

s 1 sub 2002 No 30 amdt 3.594

#### Dictionary

s 2 om 2001 No 44 amdt 1.2832  
 ins 2002 No 30 amdt 3.595

#### Notes

s 3 def **approved agency** sub 1999 No 66 s 6 sch 3  
 om 2002 No 30 amdt 3.595  
 def **mediation session** om 2002 No 30 amdt 3.595  
 def **registered mediator** om 2002 No 30 amdt 3.595  
 sub 2002 No 30 amdt 3.595

## Endnotes

### 5 Earlier republications

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#### **Declarations about competency standards and approved agencies**

s 4 sub 1999 No 66 s 6 sch 3  
am 2001 No 44 amends 1.2833-1.2835

#### **Registration of mediators**

s 5 am 2002 No 30 amdt 3.596

#### **Renewal of registration**

s 7 am 2002 No 30 amdt 3.597

#### **Regulation-making power**

s 13 am 1998 No 54 sch  
sub 2001 No 44 amdt 1.2836

#### **Dictionary**

dict ins 2002 No 30 amdt 3.598  
def **approved agency** ins 2002 No 30 amdt 3.598  
def **mediation session** ins 2002 No 30 amdt 3.598  
def **party** ins 2002 No 30 amdt 3.598  
def **registered mediator** ins 2002 No 30 amdt 3.598

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1999 No 66	17 April 2000
2	Act 2001 No 44	23 January 2001

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