



Dispute Resolution Centres Act 1990

Current as at 13 May 2019

© State of Queensland 2021



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

Dispute Resolution Centres Act 1990

Contents

		Page
Part 1	Preliminary	
1	Short title	3
2	Interpretation	3
Part 3	Dispute resolution centres	
Division 1	Establishment and operation of dispute resolution centres	
22	Establishment of dispute resolution centres	5
23	Premises of dispute resolution centres	5
24	Place of operation of dispute resolution centres	5
26	Centres to be part of department	5
27	Use of certain words	6
Division 2	Staff of dispute resolution centres	
27AA	Directors	7
27AB	Mediators	7
27AC	Staff	7
27AD	Delegation by director	8
Part 4	Mediation	
27A	Application	8
28	Provision of mediation services	9
29	Conduct of mediation sessions	9
30	Disputes	10
31	Mediation to be voluntary	10
32	Refusal or termination of mediation	11

Contents

33	Representation by agent	11
Part 5	Miscellaneous	
35	Exoneration from liability	12
36	Privilege	13
37	Secrecy	14
38	Power to accept appointment	17
39	Annual report on operation of Act	17
40	Proceedings	17
41	Regulation-making power	17
Part 6	Transitional provisions	
Division 1	Justice and Other Legislation Amendment Act 2008	
42	Transitional provision for Justice and Other Legislation Amendment Act 2008, pt 9	18
Division 2	Justice and Other Legislation Amendment Act 2013	
43	Continuation of obligations about disclosure of information	18
Schedule 1	20
Schedule 2	21

Dispute Resolution Centres Act 1990

An Act to provide for the establishment and operation of dispute resolution centres to provide mediation services in connection with certain disputes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Dispute Resolution Centres Act 1990*.

2 Interpretation

(1) In this Act—

agency means a department or local government, and includes part of an agency.

director means a person holding office or duly acting as director of a dispute resolution centre.

dispute resolution centre means a dispute resolution centre established under this Act.

functions includes powers, authorities and duties.

mediation includes—

- (a) the undertaking of any activity for the purpose of promoting the discussion and settlement of disputes; and
- (b) the bringing together of the parties to any dispute for that purpose, either at the request of 1 of the parties to the dispute or on the initiative of a director; and

- (c) the follow-up of any matter the subject of any such discussion or settlement.

mediation session means a meeting in accordance with this Act between 2 or more parties who are in dispute on any matter.

mediator, in relation to a dispute resolution centre, means—

- (a) the director of the centre; or
(b) a person appointed under section 27AB as a mediator for the centre.

QCAT principal registrar means the principal registrar under the QCAT Act.

Queensland Council of Social Service Inc. means the body by that name incorporated on 15 December 1986 under the *Associations Incorporation Act 1981* as amended.

referring order means an order referring a dispute for mediation made by—

- (a) the Supreme Court, the District Court or a Magistrates Court under the *Civil Proceedings Act 2011*, section 43(3); or
(b) QCAT, or the QCAT principal registrar, under the QCAT Act, section 75; or
(c) the Planning and Environment Court under the *Planning and Environment Court Act 2016*.
- (2) A reference in this Act to the discharge of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) A reference in this Act to the parties to a mediation session includes a reference to the parties to a dispute in respect of which an application for a mediation session is duly made, but does not include a reference to the mediator conducting the mediation session.
- (4) A reference in this Act to the conduct of a mediation session by a mediator includes a reference to the conduct of a

mediation session in the presence, or under the supervision, of the mediator.

Part 3 Dispute resolution centres

Division 1 Establishment and operation of dispute resolution centres

22 Establishment of dispute resolution centres

Dispute resolution centres may be established and operated in accordance with this Act for the purpose of providing mediation services.

23 Premises of dispute resolution centres

Dispute resolution centres may be established at such premises as the Governor in Council may determine by gazette notice.

24 Place of operation of dispute resolution centres

- (1) The principal office of a dispute resolution centre is at the premises specified in relation to the centre in the gazette notice under section 23.
- (2) The activities of a dispute resolution centre may be conducted at the principal office or at such other places as the director of the centre may approve from time to time.

26 Centres to be part of department

Dispute resolution centres are to operate within and as parts of the department, and nothing in this Act derogates from the operation of the provisions of the *Public Service Act 2008*, or any other Act so far as they apply to that department and any such part thereof.

27 Use of certain words

- (1) The words ‘dispute resolution centre’ or the letters ‘DRC’ are not to be used in the name of any centre, organisation, body or group or any other place or establishment, or any part thereof, nor is any centre, organisation, body or group, or any other place or establishment, or any part thereof, to be held out as a dispute resolution centre (whether or not as established under this Act) by the use of the words ‘dispute resolution centre’ or the letters ‘DRC’ or in any other manner—
 - (a) unless in either case it is in fact a dispute resolution centre established under this Act; or
 - (b) except in either case with the consent of the Minister.
- (2) In this section, a reference to—
 - (a) the words *dispute resolution centre* includes a reference to those words whether or not they appear consecutively and to words that are substantially the same as those words; and
 - (b) the letters *DRC* includes a reference to matter that is substantially the same as those letters.
- (3) A person who—
 - (a) uses or causes to be used the words ‘dispute resolution centre’ or the words ‘DRC’; or
 - (b) holds out or causes to be held out anything as a dispute resolution centre;in contravention of subsection (1), commits an offence against this Act.
Maximum penalty—15 penalty units.
- (4) It is a defence to prove that the usage or holding out in question was established before the commencement of this section.

Division 2 Staff of dispute resolution centres

27AA Directors

There is to be a director for each dispute resolution centre and the same person may be the director for more than 1 dispute resolution centre.

27AB Mediators

- (1) The chief executive may appoint a person, other than a director, as a mediator for a dispute resolution centre for the term decided by the chief executive.
- (2) A person is eligible for appointment as a mediator only if the chief executive considers the person has knowledge, experience or skills relevant to the exercise of a mediator's functions.
- (3) In making an appointment of a mediator, the chief executive must take into account the desirability of the mediators appointed reflecting the social, gender and cultural diversity of the general community.
- (4) The chief executive may impose conditions on the appointment of a person as a mediator.
- (5) A mediator is to be paid the remuneration and allowances decided by the chief executive.
- (6) A mediator is appointed under this Act and not the *Public Service Act 2008*.

27AC Staff

The director and staff of a dispute resolution centre (other than a mediator appointed under section 27AB) are to be employed under the *Public Service Act 2008*.

27AD Delegation by director

- (1) The director of a dispute resolution centre may authorise a member of the staff of the centre to discharge such of the director's functions (including any functions delegated to the director under this Act, but not including this power of authorisation) as the director thinks fit, and the director, or any successor as director of the centre, may revoke wholly or in part any such authorisation.
- (2) A function which is authorised to be discharged under this section, while the authorisation remains unrevoked, may be discharged from time to time in accordance with the terms of the authorisation.
- (3) An authorisation under this section may be made subject to conditions or limitations.
- (4) Notwithstanding any authorisation under this section, the director may continue to discharge all or any of the functions to which the authorisation relates.
- (5) Any act or thing done in the discharge of a function by a person authorised under this section to discharge the function has the same force and effect as if it had been done by the director.
- (6) Where the discharge of a function of the director depends on the opinion, belief or state of mind of the director and the function is in accordance with this section authorised to be discharged by another person, the function, subject to any restriction imposed by the director, may be discharged in accordance with the opinion, belief or state of mind of that other person.

Part 4 Mediation

27A Application

- (1) This part, other than the prescribed sections, does not apply in relation to a dispute that is the subject of a referring order.

- (2) To remove any doubt, it is declared that the Act that applies to the mediation of a dispute that is the subject of a referring order is the Act under which the referring order is made.
- (3) In this section—
prescribed sections means—
 - this section
 - section 28(1), (2), (3) and (4).

28 Provision of mediation services

- (1) The director of a dispute resolution centre is responsible for the provision of mediation services, including mediation services necessary to give effect to a referring order, and for the operation and management of the centre.
- (2) Each mediation session is to be conducted by 1 or more mediators assigned for the purpose by the director.
- (3) If, under a referring order, the director of a dispute resolution centre is appointed as mediator of the dispute referred for mediation, the director may assign 1 or more appropriately qualified mediators to conduct the mediation.
- (4) A mediator assigned by the director under subsection (3) is taken to be the mediator appointed for the dispute under the referring order.
- (5) No dispute may be accepted for mediation under this Act unless the director consents.

29 Conduct of mediation sessions

- (1) The procedure for commencing and conducting a mediation session at a dispute resolution centre is to be as determined by the director.
- (2) Mediation sessions are to be conducted with as little formality and technicality, and with as much expedition, as possible.
- (3) The rules of evidence do not apply to mediation sessions.

- (4) A dispute may not be adjudicated or arbitrated upon at a mediation session.
- (5) A mediation session is to be conducted in the absence of the public, but persons who are not parties to a mediation session may be present at or participate in a mediation session with the permission of the director.

30 Disputes

- (1) The director of a dispute resolution centre may decide, for the centre, that specified classes of disputes are not to be the subject of mediation sessions, or that specified classes of disputes may be the subject of mediation sessions, but nothing in this subsection limits any other provisions of this Act.
- (2) A mediation session may be commenced or continued whether or not the dispute is justiciable before any court, tribunal or body and whether or not the dispute is the subject of any legal proceedings.
- (3) For the purposes of this Act, persons may be treated as being in dispute on any matter if they are not in agreement on the matter (whether or not any relevant negotiations are still in progress).

31 Mediation to be voluntary

- (1) Attendance at and participation in mediation sessions are voluntary.
- (2) A party to a mediation session may withdraw from the mediation session at any time.
- (3) Notwithstanding any rule of law or equity, any agreement reached at, or drawn up pursuant to, a mediation session is not enforceable in any court, tribunal or body, unless the parties agree in writing that the agreement is to be enforceable.
- (4) Except as expressly provided in this Act, nothing in this Act affects any rights or remedies that a party to a dispute has apart from this Act.

32 Refusal or termination of mediation

- (1) The director of a dispute resolution centre may decline to consent to the acceptance of any dispute for mediation under this Act at the centre.
- (2) A mediation session may be terminated at any time by the mediator or by the director.

33 Representation by agent

- (1) A party to a mediation session is not entitled to be represented by an agent unless—
 - (a) it appears to the director that—
 - (i) an agent should be permitted in order to facilitate mediation; and
 - (ii) the agent proposed to be appointed has sufficient knowledge of the matter in dispute to enable the agent to represent the party effectively; and
 - (b) the director so approves.
- (2) Subsection (1) does not prevent—
 - (a) where a corporation within the meaning of the Corporations Act is party to a mediation session—an officer of the corporation; or
 - (b) where a corporation that is a body corporate constituted under the *Building Units and Group Titles Act 1980*, is a party to a mediation session—the proprietor or, if there is more than 1 proprietor, 1 of the proprietors, constituting that corporation; or
 - (ba) if a corporation that is the body corporate for a community titles scheme under the *Body Corporate and Community Management Act 1997* is a party to a mediation session—1 member of the body corporate; or
 - (c) where any other corporation is a party to a mediation session—an agent appointed by the corporation;from representing that corporation.

- (3) Where a director approves of the representation of a party by an agent, the approval of the director may be given subject to such conditions as the director considers reasonable to ensure that any other party to the mediation session is not substantially disadvantaged by the agent appearing at the mediation session and, where the director does so, the entitlement of the agent to represent the party is subject to compliance by the agent with those conditions.
- (4) Contravention of any provision of this section does not invalidate any mediation session.

Part 5 Miscellaneous

35 Exoneration from liability

- (1) No matter or thing done or omitted to be done by—
 - (a) a mediator; or
 - (b) a director or a member of the staff of a dispute resolution centre;if the matter or thing is done in good faith for the purpose of executing this Act, subjects any of them to any action, liability, claim or demand.
- (2) A police officer, or any other officer or person, is not liable to be proceeded against in respect of—
 - (a) failure to charge a person with an offence or to initiate or proceed with proceedings for an offence, or any similar failure; or
 - (b) the arrest of a person followed by such a failure; or
 - (c) failure to offer evidence at the hearing of a charge referred to in paragraph (a);if the failure is reasonable—
 - (d) by reason of the reference of the dispute to which the alleged offence relates for mediation under this Act or

by reason of an agreement reached by the parties to a dispute so referred; and

(e) in all the circumstances of the case.

(3) In subsection (2)—

offence does not include an offence constituted wholly or partly by domestic violence within the meaning of the *Domestic and Family Violence Protection Act 2012*.

(4) Nothing in this Act prevents a charge referred to in subsection (2)(a) from being laid or any proceedings so referred to from being instituted or proceeded with, or any evidence being offered in relation to such a charge, or any incidental act, matter or thing from being done by any person at any time.

(5) No person is to be concerned to inquire whether or not any circumstance has arisen requiring or authorising a person to act in the office of a director, and anything done or omitted to be done by that person while so acting is as valid and effectual and has the same consequences as if it had been done or omitted to be done by that director.

36 Privilege

(1) In this section—

mediation session includes any steps taken in the course of making arrangements for a mediation session or in the course of the follow-up of a mediation session.

(2) Subject to subsection (3), the like privilege with respect to defamation exists with respect to—

(a) a mediation session; or

(b) a document or other material sent to, or produced at, a dispute resolution centre for the purpose of enabling a mediation session to be arranged;

as exists with respect to proceedings before the Supreme Court and a document produced in these proceedings.

[s 37]

- (3) The privilege conferred by subsection (2) does not extend to a publication made otherwise than—
 - (a) at a mediation session; or
 - (b) as provided by subsection (2)(b); or
 - (c) as provided by section 37(2).
- (4) Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or pursuant to, a mediation session, or any copy thereof is not admissible in evidence in any proceedings before any court, tribunal or body.
- (6) Subsections (4) and (5) do not apply with respect to any evidence or document—
 - (a) where the persons in attendance at, or named during, the mediation session and, in the case of a document, all persons named in the document—consent to admission of the evidence or document; or
 - (b) in proceedings instituted with respect to—
 - (i) any act or omission in connection with which a disclosure has been made pursuant to section 37(2)(c); or
 - (ii) an offence under section 37(3) concerning the disclosure of the evidence or document.
- (7) This section does not apply in relation to a dispute that is the subject of a referring order.
- (8) To remove any doubt, it is declared that the Act that applies to the mediation of a dispute that is the subject of a referring order is the Act under which the referring order is made.

37 Secrecy

- (1) A mediator is not competent to commence to discharge the functions of a mediator without first taking an oath before a

justice of the peace in or to the effect of the form set out in schedule 1 or making an affirmation in or to the effect of the form set out in schedule 2.

- (2) A relevant person may disclose information obtained in connection with the administration or execution of this Act only as follows—
- (a) with the consent of the person from whom the information was obtained;
 - (b) in connection with the administration or execution of this Act;
 - (c) where there are reasonable grounds to believe that disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
 - (d) where the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting any such parties in any other manner;
 - (e) where the disclosure does not reveal the identity of a person without the consent of the person and is reasonably required for the purposes of research carried out by, or with the approval of, a director;
 - (f) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.
- (3) A relevant person who discloses information obtained in connection with the administration of this Act otherwise than as authorised under subsection (2) commits an offence against this Act.

Maximum penalty—15 penalty units.

- (4) Despite subsections (2) and (3) a director may, if the director considers it is appropriate in the circumstances, disclose to an agency or court—
 - (a) the fact that a dispute resolution process has taken place; and
 - (b) whether an agreement was reached as a result of that process.
- (5) Before a director may make the disclosure mentioned in subsection (4), the director must—
 - (a) tell the parties of his or her intention to make the disclosure; and
 - (b) allow the parties a reasonable time, not less than 5 days, to make written representations to the director about the disclosure; and
 - (c) have regard to the representations.
- (6) Subsection (4) does not permit the disclosure of the content of the agreement reached by the parties without the consent of the parties.
- (7) This section, other than subsection (1), does not apply in relation to a dispute that is the subject of a referring order.
- (8) To remove any doubt, it is declared that the Act that applies to the disclosure of information about a dispute that is the subject of a referring order is the Act under which the referring order is made.
- (9) In this section—

relevant person means a person who is or has been any of the following—

 - (a) a mediator;
 - (b) a director;
 - (c) a member of the staff of a dispute resolution centre;
 - (d) a person making an evaluation under section 34, as in force at any time before its repeal;

- (e) a person carrying out research for, or with the approval of, a director.

38 Power to accept appointment

- (1) Where, by or under any Act, provision is made requiring the whole of the time of the holder of a specified office to be devoted to the duties of that office or prohibiting the holder of a specified office from engaging in employment outside the duties of that office, the provision does not operate to disqualify a holder of that office from—
 - (a) holding that office and also the office of a mediator; or
 - (b) keeping remuneration payable to the holder as a mediator.
- (2) The office of a mediator is not, for the purposes of any Act an office or place of profit under the Crown.

39 Annual report on operation of Act

The department's annual report for a financial year must include a report about the operation of this Act during the year.

40 Proceedings

- (1) A person who commits an offence against this Act may be prosecuted in a summary way under the *Justices Act 1886* on the complaint of an officer of the department authorised generally or in a particular case by the Minister.
- (2) The identity of the complainant and the complainant's authority to lay the complaint, as stated in the complaint, is to be presumed in the absence of evidence to the contrary.

41 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.

- (2) Without limiting subsection (1), a regulation may prescribe the fees payable for commercial services provided by a dispute resolution centre, other than commercial services provided to a member of the public.

Part 6 Transitional provisions

Division 1 Justice and Other Legislation Amendment Act 2008

42 Transitional provision for Justice and Other Legislation Amendment Act 2008, pt 9

- (1) This section applies if, immediately before the commencement, a person was accredited under section 19 as a mediator for a dispute resolution centre.
- (2) The person continues to be a mediator until the end of 12 months after the commencement.
- (3) In this section—
commencement means the commencement of this section.

Division 2 Justice and Other Legislation Amendment Act 2013

43 Continuation of obligations about disclosure of information

- (1) Section 37, as in force immediately before the commencement of this section, continues to apply to each member of the former council, despite the amendment of that section by the *Justice and Other Legislation Amendment Act 2013*.
- (2) In this section—

former council means the council established under part 2, division 1 as in force before the commencement of this section.

Schedule 1

section 37(1)

MEDIATOR'S OATH OF SECRECY

I, of

being a mediator within the meaning of the *Dispute Resolution Centres Act 1990*, do swear that I will not, either directly or indirectly, except as permitted under section 37 of that Act, and either while I am, or after I cease to be a mediator, make a record of, or divulge or communicate to any person, court or tribunal any information, document or other matter disclosed during or incidentally to a mediation session.

SO HELP ME GOD

Sworn and subscribed at.....)

this day)

of 19 ..)

before me—)

.....
Signature

.....
Justice of the peace

