

Miscellaneous

A PILOT COMMUNITY MEDIATION SERVICE

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INTRODUCTION

The Christchurch Service was established as a two year pilot project with the aim of testing the validity, within New Zealand, of community mediation as a way to settle disputes between persons with ongoing contact with one another. The kinds of disputes envisaged were, for example, between neighbours, family members or persons who worked together in either a voluntary or paid capacity. It was considered that the formal legal system, with an inevitable win or lose outcome, was not always the appropriate vehicle for this kind of conflict there being no facility to deal with future relationships or a compromise settlement.

2. An Organising Committee was set up in late 1982 and comprised representatives from the community, Police, Law Society, District Council of Social Services and District Court. Base funding was obtained from sources such as The Community Development Fund of the New Zealand Lottery Board, charitable trusts, the Department of Social Welfare and the Christchurch City Council. Legislation, the Community Mediation Service (Pilot Project) Act, 1983 was sponsored by the Department of Justice and provided for confidentiality, privilege, voluntary attendance at mediation, no legal enforcement of mediation agreements and also for an independent research evaluation of the project. (A copy of the Act is appended).

3. Preliminary work was done, during 1983, on the projected need for the service and community agencies contacted. The pilot period, January 1984 to December 1985, included a five month establishment phase (January -June 1984) and case intake was initiated in mid-June 1984. Staff included a full-time co-ordinator, an assistant and a team of voluntary mediators who were recruited and trained during February to May 1984.

SELECTION OF MEDIATORS

4. The mediators were selected on the basis of obtaining as diverse a group of people as possible in terms of age, cultural and social background. Educational qualifications were not seen as important but rather the personal qualities of tolerance, commonsense, non-judgmental attitudes, and, not least, a sense of humour. Mediators were, in general, a group of people who had not previously been involved in voluntary work. The first team of 21 mediators included women and men from age groups ranging from early twenties to late sixties and from a range of occupations which included a student, social worker, business manager, weaver, housewife, freezing worker and a fireman. A Maori and a Samoan were members of this first mediation team and assistance was offered by leading members of minority groups in New Zealand, such as the Vietnamese Community.

OBJECTIVES

5. The objectives of the Christchurch Community Mediation Service were to provide a free, community based, mediation service within the area of Greater Christchurch (population approximately 322,000) and to promote awareness and understanding of conflict management within the community. The aim was also to examine, by independent research, the appropriateness of community mediation for New Zealand as a whole.

6. The service was intended to reach all sections of the community and to be available at flexible hours, including evenings and weekends, at times to suit participants in mediation sessions.

CASE-LOAD

7. The work of the service for the first eighteen months of operation to mid-December 1985, that is for the evaluation period, recorded 249 cases and 222 inquiries. By April 1986, a further 51 cases had been accepted for mediation. Intake work consisted of an initial contact by a person with a dispute she or he wished to have mediated (Party A), an assessment by a Co-ordinator as to suitability for mediation, and, if so, a communication by the Service with the other person(s) (Party B) involved in the dispute, which offered to set up a mediation session.

8. Inquiries were recorded as such where the matter was either not suitable for mediation, that is for example on ongoing relationship or a significant power imbalance, or where a person was not yet prepared to try mediation but wanted general information or assistance.

9. Of the 246 cases with an outcome (to 11 December 1985) just under half (41 per cent) were either mediated, conciliated by the Co-ordinator, or resolved without mediation following contact being made by the Service. It is notable that 81.3 per cent of the mediated cases reached an agreement, this was usually written, but a small percentage were verbal agreements. A third of Party B disputants declined to attend a mediation session, one of the principles of the Service being voluntary attendance at mediation, s7.(2) Community Mediation Service (Pilot Project) Act. The Community Mediation Service in this sense reflects a low initial case load for other community mediation services (Norwood, South Australia, West Coast Mediation Service, Vancouver, and a noted low initial intake by North American Community Mediation Services in general). The majority (75 per cent) of the mediated cases have been matters concerning neighbour conflict. Family disputes made up 20 per cent cases. Many disputes have been both long standing (in one case, 20 years) and complex. Arguments over shared driveways, boundaries or trees often included harassment, verbal and/or physical abuse and the involvement of children and other family members. In several instances 4 to 5 households were involved.

SCHOOLS PROGRAMME

10. It was perceived that community education in conflict management was an important part of the work of the Community Mediation Service. A school's programme was developed in 1985 and extended during the beginning of 1986. This has involved conflict management classes, the demonstration of mediation techniques and the exploration of the nature and causes of conflict. Media interest and coverage has been considerable. The wide range of referrals might also be said to indicate an acceptance of the concept of community mediation by a large section of the community.

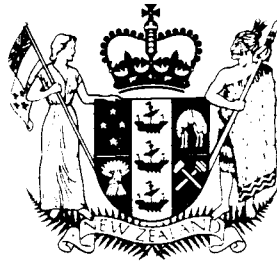
CONCLUSION

11. As a new community scheme for New Zealand, the early model of the Community Justice Centres in New South Wales, Australia, provided some indications for possible directions for the New Zealand Service.

12. However the Australian model was necessarily limited in relevance to a New Zealand scheme, for instance in:

- (a) funding sources, and
- (b) the ethnic and cultural bases of the population.

It is clear from subsequent communications with other community mediation services that New Zealand has experienced a degree of parallel development and similar difficulties to other services. The main problems have been ongoing funding, and the workload of full-time staff where a very wide range of activities has been necessary including administration, publicity, education and client contact. The implications of voluntary attendance at mediation, that is a high rate of refusals to attend, has been mainly in terms of complexity and extent of pre-intake work. This is evident in the maze of agencies contacted to identify either an appropriate kind of approach to a disputant or to make a suitable referral or follow-up. On the other hand a projected actual case load level was not borne out during the pilot period with consequences such as the over-recruitment of mediators. Financial backing for any community organisation is always a difficulty and has also been an undue part of the work of the Community Mediation Service. The progress of this Service has shown, however, in spite of these difficulties that there is a growing acceptance of, and interest in, community mediation as a conflict resolution technique within the Christchurch Community.



ANALYSIS

Title	6. Mediators
1. Short Title	7. Mediation
2. Interpretation	8. Privilege
3. Act to bind the Crown	9. Confidentiality
4. Function of Mediation Service	10. Exemption from liability
5. Functions of Committee	11. Expiration

1983, No. 102

**An Act to facilitate the provision by the Christchurch
Community Mediation Service Incorporated of
mediation services as a pilot project** [16 December 1983]

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

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

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

“Approved premises” means—

- (a) The office premises of the Mediation Service;
- (b) Any premises approved by or on behalf of the
Committee for the conduct of mediation sessions:

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

“Co-ordinator”—

- (a) Means the person appointed by the Committee
to co-ordinate the work of the Mediation Service; and
- (b) Includes the person appointed by the Committee
as the acting Co-ordinator; and
- (c) Includes any person to whom the powers and
functions of the Co-ordinator are delegated by the Co-
ordinator:

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

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

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

“Mediator”—

(a) Means any person appointed by the Co-ordinator to act as a mediator in, or in connection with, mediation sessions; and

(b) Includes the Co-ordinator.

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

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

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

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

(a) Co-ordinate the work of the Mediation Service:

(b) Lay down policy guidelines for the work of the Mediation Service:

(c) Give directions with respect to the work of the Mediation Service:

(d) Cause an independent evaluation to be made of the work of the Mediation Service.

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

6. Mediators—(1) Subject to subsection (4) of this section, mediators may be appointed by the Co-ordinator in accordance with policy guidelines laid down by the Committee.

(2) The Co-ordinator may, in accordance with those policy guidelines, revoke the appointment of a mediator.

(3) The Co-ordinator shall revoke the appointment of a mediator at the request of that mediator.

(4) The Co-ordinator shall appoint as mediators only such persons as are, by reason of their training and personal qualities, suitable to undertake mediation.

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

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

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

(4) The Co-ordinator is entitled at any time and for any reason to refuse to accept a dispute for mediation.

(5) The Co-ordinator or a mediator is entitled at any time and for any reason to terminate a mediation session.

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

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

(8) Notwithstanding any enactment or rule of law, an agreement made in the course of a mediation session is not enforceable in any court or tribunal.

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

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

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

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

(a) Making arrangements for a mediation session:

(b) A mediation session:

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

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

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

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

(a) The parties to the dispute consent to the admission of the statement; or

(b) The statement is admissible evidence in favour of any person charged with an offence and that person adduces the evidence; or

- (c) The statement is admissible evidence against a person charged with an offence—
 - (i) Against the person; or
 - (ii) Against rights of property; or
 - (iii) Of threatening, conspiring, or attempting to commit any such offence—
being an offence arising from an act or omission occurring after the statement was made; or
- (d) The statement is admissible evidence against a person charged with an offence arising from the making of the statement.

9. Confidentiality—(1) This section applies to—

- (a) A mediator;
- (b) A member of the Committee;
- (c) An employee of the Mediation Service;
- (d) A person acting on behalf of the Mediation Service;
- (e) A person carrying out an evaluation of the work of the Mediation Service pursuant to section 5 (1) (d) of this Act.

(2) Every person to whom this section applies commits an offence and is liable on summary conviction to a fine not exceeding \$500 who discloses to any other person any information, statement, or admission received by or made to that person in the course of—

- (a) Making arrangements for a mediation session;
 - (b) A mediation session;
 - (c) Action taken to follow up a mediation session.
- (3) Nothing in subsection (2) of this section applies if—
- (a) The person from whom the information is obtained, or by whom the statement or admission is made, consents to the disclosure;
 - (b) There are reasonable grounds to believe disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
 - (c) The information, statement, or admission is given in evidence pursuant to section 8 (4) of this Act;
 - (d) The disclosure is reasonably required for the purpose of providing mediation;
 - (e) 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—

- (i) The disclosure is for the purpose of aiding in the resolution of a dispute between the parties or assisting any such parties in any other manner; and
 - (ii) The person from whom the information is obtained, or by whom the statement or admission is made, consents to the disclosure:
- (f) The disclosure is reasonably required to facilitate the evaluation of the work of the mediation service pursuant to section 5 (1) (d) of this Act and such disclosure is authorised by the Committee.

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

11. Expiration—This Act shall expire with the close of the 31st day of December 1987 and shall be deemed to have been repealed as at the close of that day.

This Act is administered in the Department of Justice.
