



STATUTES AMENDMENT (MEDIATION, ARBITRATION AND REFERRAL) ACT 1996

No. 46 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 46 of 1996

An Act to amend the District Court Act 1991, the Magistrates Court Act 1991 and the Supreme Court Act 1935 and to repeal the Conciliation Act 1929.

[Assented to 27 June 1996]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Mediation, Arbitration and Referral) Act 1996*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF DISTRICT COURT ACT 1991**

Amendment of s. 32—Mediation and conciliation

4. Section 32 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) Subject to and in accordance with the rules, the Court constituted of a Judge (whether sitting with assessors or not) may, with or without the consent of the parties, and a Master or the Registrar may, with the consent of the parties, appoint a mediator and refer an action or any issues arising in an action for mediation by the mediator.;

(b) by inserting after subsection (2) the following subsections:

(2a) A mediator appointed under this section must not, except as required or authorised to do so by law, disclose to another person any information obtained in the course or for the purposes of the mediation.

(2b) The Court may itself endeavour to achieve a negotiated settlement of an action or resolution of any issues arising in an action.

(2c) A Judge or Master who attempts to settle an action or to resolve any issues arising in an action is not disqualified from taking further part in those proceedings but will be so disqualified if he or she is appointed as a mediator in relation to those proceedings.;

(c) by inserting in subsection (3) "by mediation" after "action";

(d) by striking out subsection (4).

Amendment of s. 34—Expert reports

5. Section 34 of the principal Act is amended by striking out from subsection (1) "of a technical nature".

Amendment of s. 51—Rules of Court

6. Section 51 of the principal Act is amended by inserting after paragraph (ca) of subsection (1) the following paragraph:

(cb) regulating the referral of an action or issues arising in an action to mediation or arbitration, the conduct of mediations or arbitrations or the referral of questions for investigation and report by an expert.

**PART 3
AMENDMENT OF MAGISTRATES COURT ACT 1991**

Amendment of s. 27—Mediation and conciliation

7. Section 27 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) Subject to and in accordance with the rules, the Court constituted of a Magistrate (whether sitting with assessors or not) may, with or without the consent of the parties, and any other judicial officer or a Registrar may, with the consent of the parties, appoint a mediator and refer an action or any issues arising in an action for mediation by the mediator.;

(b) by inserting after subsection (2) the following subsections:

(2a) A mediator appointed under this section must not, except as required or authorised to do so by law, disclose to another person any information obtained in the course or for the purposes of the mediation.

(2b) The Court may itself endeavour to achieve a negotiated settlement of an action or resolution of any issues arising in an action.

(2c) A Magistrate or other judicial officer who attempts to settle an action or to resolve any issues arising in an action is not disqualified from taking further part in those proceedings but will be so disqualified if he or she is appointed as a mediator in relation to those proceedings.;

(c) by inserting in subsection (3) "by mediation" after "action";

(d) by striking out subsection (4).

Amendment of s. 29—Expert reports

8. Section 29 of the principal Act is amended by striking out from subsection (1) "of a technical nature".

Amendment of s. 49—Rules of Court

9. Section 49 of the principal Act is amended by inserting after paragraph (ca) of subsection (1) the following paragraph:

(cb) regulating the referral of an action or issues arising in an action to mediation or arbitration, the conduct of mediations or arbitrations or the referral of questions for investigation and report by an expert.

PART 4 AMENDMENT OF SUPREME COURT ACT 1935

Substitution of ss. 65 to 70

10. Sections 65, 66, 67, 68, 69 and 70 of the principal Act, and the heading appearing above those sections, are repealed and the following heading and sections are substituted:

Mediation, Arbitration and Referral for Report

Mediation and conciliation

65. (1) Subject to and in accordance with the rules of court, the court constituted of a judge may, with or without the consent of the parties, and a master or the registrar may, with the consent of the parties, appoint a mediator and refer a civil proceeding or any issues arising in a civil proceeding for mediation by the mediator.

(2) A mediator appointed under this section has the privileges and immunities of a judge and such of the powers of the court as the court may delegate.

(3) A mediator appointed under this section must not, except as required or authorised to do so by law, disclose to another person any information obtained in the course or for the purposes of the mediation.

(4) The court may itself endeavour to achieve a negotiated settlement of a civil proceeding or resolution of any issues arising in a civil proceeding.

(5) A judge or master who attempts to settle a proceeding or to resolve any issues arising in a proceeding is not disqualified from taking further part in the proceeding but will be so disqualified if he or she is appointed as a mediator in relation to the proceeding.

(6) Evidence of anything said or done in an attempt to settle a proceeding by mediation under this section is not subsequently admissible in the proceeding or in related proceedings.

(7) If a case is settled under this section, the terms of the settlement may be embodied in a judgment.

Trial of issues by arbitrator

66. (1) The court may refer a civil proceeding or any issues arising in a civil proceeding for trial by an arbitrator.

(2) The arbitrator may be appointed either by the parties to the proceeding or by the court.

(3) The arbitrator becomes for the purposes of the reference an officer of the court and may exercise such of the powers of the court as the court delegates to the arbitrator.

(4) The court will, unless good reason is shown to the contrary, adopt the award of the arbitrator as its judgment on the action or issues referred.

(5) The costs of the arbitrator will be borne, in the first instance, equally by the parties or in such other proportions as the court may direct, but the court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

Expert reports

67. (1) The court may refer any question arising in a civil proceeding for investigation and report by a referee who is an expert in the relevant field.

(2) A person to whom a question is referred under this section becomes for the purposes of the investigation an officer of the court and may exercise such of the powers of the court as the court delegates.

(3) The court may adopt a report obtained under this section in whole or part.

(4) The costs of the expert's investigation and report will be borne, in the first instance, equally by the parties or in such other proportions as the court may direct, but the court may subsequently order that a party be reimbursed wholly or in part by another party for costs incurred under this subsection.

Amendment of s. 72—Rules of court

11. Section 72 of the principal Act is amended by inserting after paragraph II of subsection (1) the following paragraph:

IIa. For regulating any matters relating to the referral of a proceeding or issues arising in a proceeding to a mediator or arbitrator, the conduct of mediations or arbitrations or the referral of questions for investigation and report by an expert (whether appointed under section 67 or otherwise):.

**PART 5
REPEAL OF CONCILIATION ACT 1929**

Repeal of Conciliation Act 1929

12. The *Conciliation Act 1929* is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor