

# MEDIATION IN CERTAIN DIVORCE MATTERS ACT NO. 24 OF 1987

[ASSENTED TO 16 JUNE, 1987]

[DATE OF COMMENCEMENT: 1 OCTOBER, 1990]

*(Afrikaans text signed by the State President)*

This Act has been updated to *Government Gazette* 33448 dated 6 August, 2010.

## as amended by

Mediation in Certain Divorce Matters Amendment Act, No. 121 of 1991

General Law Amendment Act, No. 139 of 1992

[with effect from 7 August, 1992—see title GENERAL LAW AMENDMENT ACTS]

Natural Fathers of Children Born out of Wedlock Act, No. 86 of 1997

[with effect from 1 September, 1998—see title CHILDREN]

Judicial Matters Second Amendment Act, No. 55 of 2003

[with effect from 31 March, 2005, unless otherwise indicated—see title COURTS]

Jurisdiction of Regional Courts Amendment Act, No. 31 of 2008

[with effect from 9 August, 2010—see title COURTS]



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ACT

**To provide for mediation in certain divorce proceedings, and in certain applications arising from such proceedings, in which minor or dependent children of the marriage are involved, in order to safeguard the interests of such children; and to amend the Divorce Act, 1979, in order to provide for the consideration by a court in certain circumstances of the report and recommendations of a Family Advocate before granting a decree of divorce or other relief and to make the provisions of section 12 (1) and (2) of the said Act applicable to an enquiry instituted in terms of this Act; and to provide for matters connected therewith.**

## ARRANGEMENT OF SECTIONS

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**1. Definitions.**—In this Act, unless the context otherwise indicates, any word or expression has the meaning attached thereto in the Divorce Act, 1979 (Act No. 70 of 1979), and—

“**court**” means the court having jurisdiction in any action or proceedings referred to in section 4;

[Definition of “court” inserted by s. 10 (2) of Act No. 31 of 2008.]

“**Family Advocate**” means a Family Advocate appointed under section 2 (1);

“**Family Counsellor**” means a Family Counsellor appointed under section 3 (1);

“**Minister**” means the Minister of Justice.

\*1A. . . . .

**2. Appointment of Family Advocates.**—(1) The Minister may appoint one or more officers in the public service at each division of the Supreme Court of South Africa to be styled the Family Advocate, to exercise the powers and perform the duties granted or assigned to a Family Advocate by or under this Act or any other law and the Minister, or any person authorized thereto in writing by him, may appoint one or more persons, whether or not they are officers in the public service, at any such division to act as a Family Advocate or Family Advocates for the duration of a specific divorce action or an application or for more than one such action or application.

[Sub-s. (1) amended by s. 1 of Act No. 121 of 1991.]

(2) No person shall be appointed as a Family Advocate unless he is qualified to be admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and the Minister deems him to be suitable for appointment as a Family Advocate by reason of his involvement in or experience of the adjudication or settlement of family matters.

**3. Appointment of Family Counsellors.**—(1) Subject to the provisions of this section the Minister may appoint at each division of the Supreme Court of South Africa one or more suitably qualified or experienced persons to be styled the Family Counsellor, to assist the Family Advocate with an enquiry in terms of any applicable law.

[Sub-s. (1) substituted by s. 8 of Act No. 86 of 1997.]

(2) A Family Counsellor shall hold office for a period of three years, or for such shorter period as the Minister determines at the time of his appointment.

(3) A Family Counsellor may resign by written notice to the Minister.

(4) The Minister may at any time withdraw the appointment of a Family Counsellor if in his opinion there is sufficient reason for doing so.

**4. Powers and duties of Family Advocates.**—(1) The Family Advocate shall—

(a) after the institution of a divorce action; or

(b) after an application has been lodged for the variation, rescission or suspension of an order with regard to the custody or guardianship of, or access to, a child, made in terms of the Divorce Act, 1979 (Act No. 70 of 1979),

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\* Pending insertion. Refer Act 120/1993, s 74.

if so requested by any party to such proceedings or the court concerned, institute an enquiry to enable him to furnish the court at the trial of such action or the hearing of such application with a report and recommendations on any matter concerning the welfare of each minor or dependent child of the marriage concerned or regarding such matter as is referred to him by the court.

(2) A Family Advocate may—

- (a) after the institution of a divorce action; or
- (b) after an application has been lodged for the variation, rescission or suspension of an order with regard to the custody or guardianship of, or access to, a child, made in terms of the Divorce Act, 1979,

if he deems it in the interest of any minor or dependent child of a marriage concerned, apply to the court concerned for an order authorizing him to institute an enquiry contemplated in subsection (1).

(3) Any Family Advocate may, if he deems it in the interest of any minor or dependent child of a marriage concerned, and shall, if so requested by a court, appear at the trial of any divorce action or the hearing of any application referred to in subsections (1) (b) and (2) (b) and may adduce any available evidence relevant to the action or application and cross-examine witnesses giving evidence thereat.

**5. Regulations.**—(1) The Minister may make regulations as to—

- (a) the procedure to be followed in relation to the institution of an enquiry by a Family Advocate in terms of any applicable law, and the manner in which the report and recommendations emanating from such enquiry shall be produced in court;

[Para. (a) substituted by s. 9 (a) of Act No. 86 of 1997.]

- (b) the conditions of service of a Family Counsellor;
- (c) the payment by the State of remuneration and allowances to a Family Advocate appointed under section 2 (1) to act in a specific divorce action or an application in terms of any applicable law or in more than one such action or application and a Family Counsellor, for services rendered, the determination of criteria for the payment of such remuneration and allowances, the manner of calculation of such remuneration and allowances and the recovery thereof by the State from a party or parties to such action or application by means of an order as to costs by the court;

[Para. (c) substituted by s. 2 of Act No. 121 of 1991 and by s. 9 (b) of Act No. 86 of 1997.]

- (d) the appointment by a Family Advocate or a Family Counsellor of a person or persons to assist him or her with an enquiry referred to in paragraph (a) and the payment by the State of remuneration to such person or persons;

[Para. (d) substituted by s. 9 (b) of Act No. 86 of 1997.]

- (dA) the circumstances in which a court may cause an investigation to be carried out by a Family Advocate as contemplated in section 10 (1A) of the Maintenance Act, 1998 (Act No. 99 of 1998), and section 5 (1A) of the Domestic Violence Act, 1998 (Act No. 116 of 1998);

[Para. (dA) inserted by s. 15 of Act No. 55 of 2003.]

- (e) the appointment, powers and duties of one or more committees to advise the Minister regarding the appointment, powers and duties of Family Counsellors; and

(f) generally, any other matter which he deems necessary or expedient to prescribe in order to give effect to the provisions of this Act and to realize the objects thereof.

(2) No regulations may be made under subsection (1) (c) or (d) except with the concurrence of the Minister of Finance.

**5A. Court may condone non-compliance with provision of regulation.**—The court may, at the trial of an action or the hearing of an application in terms of any applicable law, condone non-compliance with any provision of a regulation made under section 5.

[S. 5A inserted by s. 26 of Act No. 139 of 1992 and substituted by s. 10 of Act No. 86 of 1997.]

**6.** *Amends section 6 of the Divorce Act, No. 70 of 1979, by substituting subsection (1).*

**7.** *Amends section 8 of the Divorce Act, No. 70 of 1979, by substituting subsection (1).*

**8.** *Amends section 12 of the Divorce Act, No. 70 of 1979, by substituting subsection (3).*

**9. Short title and commencement.**—(1) This Act shall be called the Mediation in Certain Divorce Matters Act, 1987, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

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