

South Africa

Mediation in Certain Divorce Matters Act, 1987

Act 24 of 1987

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Mediation in Certain Divorce Matters Act, 1987
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South Africa

Mediation in Certain Divorce Matters Act, 1987

Act 24 of 1987

Published in Government Gazette 10795 on 24 June 1987

Assented to on 16 June 1987

Commenced on 1 October 1990 by [Mediation in Certain Divorce Matters Act, 1987: Commencement](#)

[This is the version of this document as it was from 24 June 1987 to 9 July 1991.]

(Afrikaans text signed by the State President.)

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.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

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—

"**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.

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.
- (2) No person shall be appointed as a Family Advocate unless he is qualified to be admitted to practice 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 referred to in [section 4](#) (1).
- (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](#)),

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.

[Editorial note: The Constitutional Court of South Africa has confirmed the order of the High Court, Gauteng Local Division, Johannesburg, in which the court declared section 4 of the Mediation in Certain Divorce Matters Act 24 of 1987 to be inconsistent with the Constitution and invalid “to the extent that it precludes never-married parents and married parents who are not going through a divorce, and their children, from accessing the services of the Office of the Family Advocate in the same manner as married parents who are divorced or going through a divorce do”. The declaration of invalidity shall not be retrospective and is suspended for a period of 24 months to enable Parliament to cure the defect in the Mediation in Certain Divorce Matters Act giving rise to its invalidity. See the full judgement here: [Centre for Child Law v T S and Others \(CCT 157/22\) \[2023\] ZACC 22 \(29 June 2023\)](#)]

5. Regulations

- (1) The Minister may make regulations as to—
- (a) the procedure to be followed in relation to the institution of an enquiry referred to in [section 4](#), and the manner in which the report and recommendations mentioned in that section shall be produced in court;
 - (b) the conditions of service of a Family Counsellor;
 - (c) the payment by the State of remuneration and allowances to a Family Counsellor for services rendered, the manner of calculation of such remuneration and allowances and the recovery of such remuneration and allowances by the State from a party or parties to a divorce action or an application referred to in [section 4](#)(1)(b), and (2)(b) by means of an order as to costs by the court;

- (d) the appointment by a Family Advocate or a Family Counsellor of a person or persons to assist him with an enquiry referred to in [section 4](#) and the payment by the State of remuneration to such person or persons;
 - (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.

6. Amendment of section 6 of Act 70 of 1979

Section 6 of the Divorce Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) A decree of divorce shall not be granted until the Court—
- (a) is satisfied that the provisions made or contemplated that can be affected in the circumstances, and, with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances; and
 - (b) if an enquiry is instituted by the Family Advocate in terms of section 4 (1)(a) or (2)(a) of the Mediation in Certain Divorce Matters Act, 1987, has considered the report and recommendations referred to in the said section 4(1).".

7. Amendment of section 8 of Act 70 of 1979

Section 8 of the Divorce Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) A maintenance order or an order in regard to the custody or guardianship of, or access to, a child, made in terms of this Act, may at any time be rescinded or varied or, in the case of a maintenance order or an order with regard to access to a child, be suspended by a court if the court finds that there is sufficient reason therefor: Provided that if an enquiry is instituted by the Family Advocate in terms of section 4(1)(b) or (2)(b) of the Mediation in Certain Divorce Matters Act, 1987, such an order with regard to custody or guardianship of, or access to, a child, shall not be rescinded or varied or, in the case of an order with regard to access to a child, not be suspended before the report and recommendations referred to in the said section 4(1) have been considered by the court.".

8. Amendment of section 12 of Act 70 of 1979

Section 12 of the Divorce Act, 1979, is hereby amended by the substitution for subsection (3) of the following subsection:

- "(3) The provisions of subsections (1) and (2) shall *mutatis mutandis* apply with reference to proceedings relating to the enforcement or variation of any order made in terms of

this Act as well as in relation to any enquiry instituted by a Family Advocate in terms of the Mediation in Certain Divorce Matters Act, 1987."

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.