

INITIATIVES IN SA

2 pronged approach

Government led- SALRC Discussion paper 148 Alternate dispute resolution in Family Law

Mediation Bill- currently in passage to Cabinet

Civil society- various mediation bodies; various ADR initiatives

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SALRC – ADR IN FAMILY LAW MATTERS

Call for submissions until 30 Jan 2020;

The TOR of the Discussion Paper 148

▪ To develop recommendations for the further improvement of the family justice system that will –

- a) be orientated to the needs of all children and families;
- b) foster early resolution of disputes; and
- c) minimise family conflict.

Families to choose solutions that best suit them

Introduce element of therapeutic justice- empowers families to resolve their disputes

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MOST INNOVATIVE

INTRODUCTION OF COMPULSORY ATTENDANCE OF INFORMATION AND EDUCATION PROGRAMME

Recognises the need for the development of standardised information and education programmes to be made available to the public, free of charge. It is proposed that parties in any family law dispute be obliged to attend such a programme before any other proceedings may commence

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REASONS WHY

Members of the public often experience the legal system as alienating and confusing. Many citizens approach the justice system with very little or no accurate understanding of how family disputes can be resolved. The majority of litigants further lack education in basic parenting skills and capacity.

most parents accessing courts are furthermore indigent. The SALRC Paper further recognises the connection that exists between poverty and vulnerability, on the one hand, and unmet legal needs, on the other.

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MEDIATION

Mandatory mediation- constitutional

Access to courts

Rights and protection of children

Costs- implementation by state

Engagement costs – for parties. Is this affordable?

Sets out design of a mandatory mediation model

attendance of compulsory MIEP

attendance of a mediation session

can opt out after one session- risk of costs sanction if at trial it is proven that the non participation at mediation was unreasonable

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VOLUNTARY COLLABORATIVE DISPUTE RESOLUTION

Four way mediation process- each party represented

Legal representatives sign agreement which disqualifies them to proceed in litigation if mediation fails

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VOLUNTARY FAMILY ARBITRATION

Sets out amendment of S2 of Arbitration Act 1965

Welfare of children be dealt with in the Family Dispute Resolution Bill

No award affecting rights and interests of children will come into effect unless endorsed by HC

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VOLUNTARY PARENTING COORDINATION

To assist parents who cannot agree on issues that require joint decision making

Will use mediation to arrive at consensus.

If this fails- will issue a binding directive , subject to review by a court

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