

Amendments to the Children's Act 38 of 2005 and the Children's Amendment Act 41 of 2007

July 15

This document is a summary of proposed amendments to the Children's Act 38 of 2005 and the Children's Amendment Act 41 of 2007 to be submitted by 15 July 2011.

NAME OF ORGANISATION/DIRECTORATE/DEPARTMENT/PROVINCE: Family Life Centre, Parkwood, Johannesburg

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Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
22 (5)	Parental Responsibilities and Rights Agreements	<u>Addition</u> The family advocate or the court concerned should be satisfied that the child's views and wishes have been ascertained by a social worker or psychologist and given due consideration.	To ensure the children's participation in the conferring/acquiring of parental rights and responsibilities to another person, by a person qualified to ascertain the views and wishes of children and who has an understanding of the psycho-social dynamics relevant in divorce matters.		
31	Major decisions affecting the child	<u>Addition</u> In the event of non-compliance, the provision should include legal recourse for the child and/or co-holder of parental rights and responsibilities who views and wishes have not been	This will result in greater compliance with the provision; Added protection for children & co-holder of parental rights and responsibilities.		

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		ascertained and given due consideration ie who or what institution should they approach for assistance in order to enforce their rights under the section.			
33(5)(b)	Contents of parenting plans	<u>Amendment</u> "Other suitably qualified person" should be specifically and narrowly defined.	As it currently reads, the ambit is too wide and it is being abused. In practice anyone, irrespective of their academic qualifications (or none) can become mediators.		
34(1)	Formalities	<u>Addition</u> The parenting plan must include a section recording that the children's views and wishes were ascertained by a social worker or psychologist and given due consideration, and that the children were informed of the contents of the final parenting plan by the social worker or psychologist who interviewed them.	To ensure the children's participation in the process and that such participation is facilitated by a person qualified to interview children and ascertain what is in their best interests, and who has an understanding of the psycho-social components / dynamics of divorce.		
34(3)(bb)	Formalities	<u>Amendment</u> "other appropriate person" must be narrowly defined just as	To ensure that mediations are conducted by people		

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		"other suitably qualified person".	who have the requisite qualifications and training in order to preserve the integrity of the profession, which is currently open to abuse.		
35(1)	Refusal of access or refusal to exercise parental responsibilities and rights	<u>Addition</u> The section should contemplate possible exceptions to the criminal sanctions. For example in the event of a threat of harm to the children or co-holder of parental rights and responsibilities; or in the event of the child's refusal to have contact with a holder of parental rights and responsibilities.	The section does not contemplate circumstances in which the child or parent's life may be in danger or where the child is refusing contact. The current provision is the antithesis of the intention of the legislature, which is to ensure children's participation and protect their best interests.		
35(2)	Refusal of access or refusal to exercise parental responsibilities and rights	<u>Addition</u> The section should contemplate exceptions / exclusions where it may be necessary to withhold residential information in order to protect the children or co-holder of parental rights and responsibilities, until such time	To protect children and co-holders of parental rights and responsibilities from abuse, violence etc. The section as it currently stands exerts pressure on a holder of parental		

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		as formal legal recourse and protection is sought ie variation of the parental rights and responsibilities.	rights and responsibilities to comply with a parental rights and responsibilities agreement even in the event of imminent danger.		