



# South African Law Reform Commission

**EMBARGO: FOR IMMEDIATE RELEASE**

**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION REGARDING THE RELEASE FOR COMMENT OF ITS DISCUSSION PAPER 168 - PROJECT 94: ALTERNATIVE DISPUTE RESOLUTION: A MEDIATION ACT FOR SOUTH AFRICA**

The South African Law Reform Commission (Commission) is pleased to announce the release for public comment of its PROJECT 94 Discussion Paper 168, which addresses the need for the adoption of a generic mediation statute dealing with commercial, civil and community mediation.

On 22 November 2019, the Commission published its project 100A Discussion Paper 148 which dealt with *Care and Contact with Minor Children: Alternative Dispute Resolution in Family Matters*. In December 2024, the Commission approved its report on this investigation for submission to the Minister of Justice and Constitutional Development. Discussion paper 168 on mediation in commercial, civil and community mediation does therefore not deal with mediation in family disputes.

Discussion Paper 168 was prepared to elicit responses and comments from interested parties and to serve as a basis for the deliberations of the Commission. The Commission will consider public responses and comments to the discussion paper and test public opinion about solutions identified by the Commission. Based on such responses, a report containing the Commission's final recommendations will be prepared. The report (with draft mediation legislation) will be submitted to the Minister of Justice and Constitutional Development for consideration for tabling in Parliament.

The objectives of the Mediation Bill in clause 2 are to minimise citizen frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlement of disputes through mediation; promote and encourage mediation as an appropriate method

of dispute resolution; afford parties the opportunity to resolve their disputes expeditiously and cost-effectively; provide for the regulation of the mediator profession; provide for the regulation of the procedure for the referral of disputes to mediation; direct the mediation process; and provide for the enforcement of international commercial mediation settlement agreements under the rules of procedure and the conditions laid down in the Singapore Convention.

Discussion paper 164 and the draft Mediation Bill deal with –

- Definitions
- The interpretation of the Mediation Bill
- The application of the Mediation Bill
- Arrangements for the certification of mediators
- The appointment of a Mediation Council
- The functions and powers of the Mediation Council
- Codes of practice for mediators
- Funding of the Mediation Council
- Agreements to mediate
- The appointment of a mediator
- The termination of the appointment of a mediator
- The effect of mediation on time limits
- The suspension of proceedings which are subject of a mediation agreement
- The immunity of a mediator
- The procedure to be followed at mediation and the role of a mediator
- The commencement and time-limit for completion of a mediation
- The submission of information at mediation to the mediator
- The confidentiality of a mediation process
- Legal privilege in relation to mediation proceedings
- The right of disputants to assistance by a legal practitioner or another person
- Mediated settlement agreements and their enforcement
- Termination of a mediation
- The certification of a mediation outcome
- Unconditional and without prejudice tenders
- Role of experts and non-parties at a mediation
- Costs of mediation
- Mandatory mediation
- Categories of disputes subject to mandatory mediation

- Parties may in certain circumstances be exempted from mandatory mediation
- Notice by parties agreeing to or opposing mediation
- The general powers of court
- Information and education documents
- The roles of legal practitioners
- The functions and duties of clerks and registrars
- The Chief Justice and Heads of Court may make directives and Rules Board may make Rules
- The enforcement of international commercial mediation settlement agreements
- Regulations to be made under the Bill.

The Commission proposes that community mediation within communities and at local government level should be promoted by the proposed legislation. However, the proposed legislation did not attempt to exhaustively regulate community and further discussions with community mediators and local authorities should be undertaken. Could funding be allocated at local government level to support and grow existing community mediation programmes in our community like the Sri Lankan model we note in the discussion paper? Codes of conduct or code of ethics have been adopted in Nepal, Sri Lanka, and Trinidad and Tobago, which apply to community mediators. A further question is whether stakeholders agree with our view that the envisaged Mediation Council be tasked with the adoption of a code of conduct for community mediators and if so, what issues should it address? We therefore request our stakeholders who are active in the community mediation field in South Africa, to engage with the Commission on the regulation and funding of community mediation and on promoting mediation in resolving our community disputes.

Enquiries about discussion paper 168 should be addressed to Mr Pierre van Wyk at [pvanwyk@justice.gov.za](mailto:pvanwyk@justice.gov.za) (until 28 February 2025) and to Dr Dellene Clark at [dclark@justice.gov.za](mailto:dclark@justice.gov.za) (until the finalisation of this investigation).

Respondents are requested to submit written comment, representations or submissions to the Commission by **30 April 2025** to the following address:

The Secretary  
South African Law Reform Commission  
Private Bag X668  
Pretoria  
0001

E-mail: [dclark@justice.gov.za](mailto:dclark@justice.gov.za)

Discussion paper 168 is available on the Internet at the following site:  
<https://www.justice.gov.za/salrc/dpapers.htm>

Discussion paper 168 can also be obtained free of charge from the SALRC on request. Kindly contact Mr Jacob Kabini at [Jakabini@justice.gov.za](mailto:Jakabini@justice.gov.za) or (012) 622 6346 in this regard.

The Commission plans to host in-person and virtual workshops on discussion paper 168 and the Mediation Bill. Once these arrangements have been finalised the Commission will issue a further media statement alerting stakeholders to these arrangements. However, stakeholders are invited to express their interest to attend the planned workshops by way of email to Mr Pierre van Wyk and Dr Dellene Clark. We further request stakeholders who are active in the community mediation field, to confirm their preference for the attendance of virtual or in-person workshops.

Contact for enquiries in respect of the media statement: Mr Pierre van Wyk at [pvanwyk@justice.gov.za](mailto:pvanwyk@justice.gov.za) and telephone 012 622 6317, alternatively Dr Dellene Clark at [dclark@justice.gov.za](mailto:dclark@justice.gov.za) and telephone 012 622 6307.

**ISSUED BY THE SECRETARY, S A LAW REFORM COMMISSION, CENTURION**

**DATE: 27 January 2025**