



# Children's Amendment Bill

## Progress Update

### Report on amendments made by the National Council of Provinces

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#### 1. What's in the Children's Amendment Bill?

The purpose of the Children's Amendment Bill is to give effect to the Constitutional rights of children to:

- a) family care, parental care or appropriate alternative care;
- b) social services; and
- c) protection from abuse, neglect, maltreatment and degradation.

The Bill also emphasizes the core international and constitutional principle that in every matter affecting a child, the child's best interests should be of paramount

importance. This is an important development because the Act that this Bill will eventually repeal, the 1983 Child Care Act, was not written from a child rights perspective. It was written in the 1980s by the Apartheid government when South Africa did not have a Bill of Rights or democracy. It therefore did not take into account key concepts such as equality for all children, consequently, there is great disparity between different provinces social services to children. In the era of HIV, there are approximately 1,5 million children in South Africa who have lost their mother or both parents and social services play a critical role in providing care and protection for these children .

The Children's Amendment Bill provides for the following social services to children and their families:

- Partial care (crèches)
- Early childhood development centres and programmes
- Prevention and early intervention programmes (to assist families to prevent abuse and neglect from occurring)
- Protection services for children who have been abused and neglected
- Foster care
- Child and youth care centres (children's homes, places of safety, secure care facilities, schools of industry, reform schools, and shelters for street children)
- Drop in centres for vulnerable children

## **2. Summary of changes made by the NCOP**

### **Strategies and Provisioning clauses**

Strategy, provisioning, and norms and standards clauses have been inserted into each chapter relating to each area of service delivery:

- partial care (s77, 28 and 79)
- early childhood development (s92, 93, and 94)
- prevention and early intervention programmes (s145, 146 and 147)
- protection services (s104, 105 and 106)
- Child and Youth Care Centres (s192, 193 and 194)
- Drop-in Centres. (s214, 215 and 216)

This means that a legislative duty has been placed on the national minister and the provincial MECs of Social Development to ensure:

- a sufficient spread of each service (e.g. drop in centres) in every province;
- that there is an updated record of the services available in every province for planning, monitoring and budgeting purposes;
- that budgets are allocated at a national and provincial level for the provision of these services by the state and NGOs, CBOs and FBOs; and
- that national norms and standards are set in regulations

The national Minister of Social Development must consult with other relevant ministers and interested persons when devising the strategies for every area of service delivery. For child and youth care centres, the obligation to consult with other ministers and stakeholders was omitted. It is not certain whether this was an intentional exclusion or a mistake.

The provisioning clause for child protection services and child and youth care centres states that provinces **“must”** fund these services. For partial care, ECD, prevention and early intervention, and drop in centres provinces are given discretion to provide and fund through the use of the word **“may”**.

### **Human Resources**

Recognising the acute shortage of social workers in the country to deal with the increasing demands on the child protection system and the valuable role played by a range of other social services professionals and para-professions (e.g. child and youth care workers, auxiliary social workers, and community workers), the Department of Social Development has reworked the Bill, where possible replacing references to social workers with the term “social service professionals”. The Children’s Act 38 of 2005 defines a social service professional to include a probation officer, development worker, child and youth care worker, youth worker, social auxiliary worker and social security worker who are registered as such in terms of the Social Service Professions Act of 1978.

See sections 81, 82, 97, 110, 141, 186 and 220 for references to social service professionals. This means that many of the tasks that were restricted to social workers can now be carried out by a range of social service professionals. Some of the funding that was earmarked exclusively for social workers in the costing report can now be spent on a range of social service professionals. This may also reduce the total cost of implementing the bill and will help ensure that each category of workers is appropriately used according to their particular training and skills.

Certain functions remain reserved for social workers. See sections 88, 102, 136, 148, 149, 168, 170, 171, 174, 175, 183, 184, 187, 201, 216 and 225.

### **Shelters for children on the street**

In the original draft of the Bill shelters for children on the streets were in chapter 14. There were differences between the level of protection given to children placed into child and youth care centres (chapter 13 of the Bill) and the protection given to children living on the streets who use shelters. The level of protection offered to children on the street was lower.

One of the guiding principles of the international law and the Constitution is equality. Governments are obliged to actively identify individual children and

groups of children the realization of whose rights may demand special measures. Children who are living and/or working on the streets constitute one of the most disadvantage groups and are exceptionally vulnerable to exploitation. Therefore, they are entitled to special measures of protection, and resources should be prioritized to provide quality protection for this vulnerable group. Shelters have been reclassified as child and youth care centres and moved into chapter 13, to ensure the highest standards of care and protection for this vulnerable group.

### **Discipline of a child**

Corporal punishment is now expressly prohibited, the common law defence of reasonable chastisement has been abolished, and the government has an obligation to promote positive parenting and appropriate forms of discipline. Anyone reported for subjecting a child to inappropriate forms of discipline must be referred to an early intervention service, and prosecution is an option in cases that are deemed to constitute abuse (see section 139).

The section is well crafted to ensure that the emphasis is on assisting families to use alternative positive forms of discipline and restricting the use of the criminal justice system for the most serious cases.

### **Investigations into death, abuse or serious injury**

The death of a child in a partial care, early childhood development centre, child and youth care centre or drop in centre must be reported to and investigated by the police. Abuse or serious injury within the centres mentioned above, must be reported to and investigated by the provincial Department of Social Development.

Previously the investigation requirement was restricted to the death of a child. It has now been expanded to include abuse or serious injury. See sections 89, 178 and 226.

### **Registration Fees**

NGOs no longer have to pay a fee to register a facility or programme.

### **Delegation of functions to Municipalities**

Functions can only be delegated to Municipal managers with clear written agreements including financial responsibilities and reporting procedures.

### **Disability**

The strategy clauses for the chapters on partial care, early childhood development, child and youth care centres and drop-in centres all place an obligation on the Minister to ensure that children with disabilities and chronic

illnesses have equal access to the services. However this obligation is not made explicit with regard to protection services or prevention and early intervention services.

### **Early Childhood Development**

The definition has been changed to: “An early childhood development programme means a programme structured within an early childhood development service to provide learning and support appropriate to the child’s developmental age and stage”. However, the age range is still birth to school-going age which perpetuates the onerous dual registration requirement currently borne by ECD centres (They have to register with Social Development for children aged birth to 4, and with Department of Education for children aged 5 to 9).

Before a programme can be registered a social service profession must write a report, and programmes must be assessed by a suitably qualified person to ensure that they meet the required norms and standards. These changes ensure that programmes are regularly assessed but remove the burden from social workers.

At the launch of Child Protection Week and the Symposium on Child Poverty the Minister said “Ultimately, each South African child should go through an efficient, effective and well-organised ECD system. We also seek to promote uniformity with regard to subsidies, and address the serious lack of infrastructure in poor communities.” If this vision is to be realised the Provisioning clauses for partial care, and Early Childhood Development will have to change. In the current version of the Children's Amendment Bill provinces are given discretion as to whether or not to provide and fund through the use of the word “**may**” in s78 and s93.

### **Child protection**

A new clause on norms and standards has been inserted, these relate to a wide range of services including prevention, assessment, integration into alternative care, foster care supervision and aftercare. This demonstrates the commitment in the Bill to seeing child protection as part of a continuum of services.

### **Reporting of child in need of care and protection**

Section 110 list a range of people who work with children who are obliged to report cases of sexual abuse, physical abuse and deliberate neglect of children. Additions to the list include correctional service officials; homeopaths; midwives; traditional leaders; and volunteers.

The criteria for reporting has changed from on “personal observation” to on “reasonable grounds”.

The report goes to the provincial department of Social Development or a designated child protection organisation, and not to the police or the children’s court.

The subsection overriding the confidentiality provision in the Choice on Termination of Pregnancy Act has been deleted.

### **Child headed households**

The Bill provides for a mentorship scheme to provide care and material support to children living in child headed households.

The mentorship scheme section has been amended to include:

- An age limit of 15 for the mentorship scheme to be used ( the implication is that if the child at the head of the household is younger than 15 then the household may not be supported via the mentorship scheme and need to be taken into alternative care – i.e. they should not remain on their own).
- A requirement of a social work investigation before the provincial Department of Social Development can recognise the child headed household, and therefore render assistance. This will cause delays in child headed household’s accessing assistance due to the lack of social workers available to do the investigations particularly in remote rural areas.
- A limit on the number of children that a mentor can supervise to 12 children.
- Authorises the individual mentor to collect and administer grants for the children

### **Child Labour and exploitation of children**

Prohibition on child labour and exploitation has been inserted. No person may employ a child in contravention of the Basic conditions of Employment Act nor may they employ a child for child labour (i.e. under the age of 15) or involve them in commercial sexual exploitation or other illicit activities. However, the transgression of this provision is not rendered an offence in terms of s305. Therefore the prohibition of child labour has little effect.

### **Prevention and early intervention**

A new category of prevention programme has been added aimed at:

- s144 (1) (e) providing psychological, rehabilitation and therapeutic programmes for children;

This is a positive move and also addresses a major gap in the Sexual Offences Bill. The Sexual Offences Bill does not provide funding for the many NGOs and

CBOs providing counselling and treatment for survivors of sexual abuse. Through the inclusion of this provision in the Children's Bill, organisations providing this essential service to child victims of abuse and neglect will be able to access government funding.

However, this chapter is still very limited in its scope, and there are no assessment and referral mechanisms built-in to link vulnerable children with appropriate services. Schools and Early Childhood Development programmes should be supported to identify vulnerable children and refer them to specialist local services or social service professionals.

### **Foster Care**

All references to court-ordered kinship care have been removed, there is no distinction made between relatives who care for children and non related adults, they are all now classified as foster parents.

One difference is that in terms of section 186 (2) a court may make an order that the child remains in the care of a relative until the age of 18 from the very first children's court inquiry if -

- (a) the child has been abandoned by the biological parents;
- (b) the child's biological parents are deceased;
- (c) there is for any other reason no purpose in attempting reunification between the child and the child's biological parents; and
- (d) it is in the best interest of the child.

Where the child is to be placed in the care of a non-related foster parent the court may extend the placement until the child is 18 only after the two years, i.e. at a second children's court inquiry.

Such long-term foster placements must be evaluated by a "social service professional" relieving the burden on social workers.

### **Child and Youth Care Centres**

Shelters are included and prisons have been explicitly excluded from the list of child and youth care centres.

In addition to residential care programmes, child and youth care centres may now offer after care services to children and young adults leaving residential care, and programmes for the treatment of children with a psychiatric conditions.

All child and youth care centres must offer a therapeutic programme designed for the residential care of children outside the family environment, the list of programmes that may be offered now includes a programme designed for—

- (j) the reception and care of street children;

Existing reform schools and industrial schools are to be regarded as child and youth care centres which brings them into the fold of the child care and protection system rather than the education system. There is a clear obligation placed on the provincial department of education to provide education to children in schools of industry and reform schools. Public schools for learners with special educational needs have been removed from the Bill. They remain under the control of the Department of Education.

Staff and managers of child and youth care centres must have “the skills and training as prescribed” and be “a fit and proper person to assist in operating a child and youth care centre.”

### **Drop-in centres**

The norms and standards for drop-in centres have been expanded to include the following:

- providing programmes in life and social skills, as well as psychosocial services, education, primary health care and recreation.
- reporting of all children residing the drop-in centres to a social worker for intervention and family reunification.
- drop-in centres should have screened and trained staff and care givers.

### **Amendment of section 305 of Act 38 of 2005**

The amendment does not include a reference to section 141, which would create an offence for people engaging children in child labour or exploiting children.

## **3. The Parliamentary Process**

Parliament passed the first Children's Bill on 14 December 2005. The President signed it into law in June 2006 and its official name and number is the Children's Act No 38 of 2005. The full Act will not come into force until the second half of the Bill (The Children's Amendment Bill) is passed by Parliament (this is anticipated by the end of 2007). The Child Care Act of 1983 therefore still governs the child care and protection system until the new Children's Act is put into force.

The second half of the Children's Bill, called the Children's Amendment Bill [B19 of 2006] was tabled in Parliament in August 2006. As it is a Bill which affects the provinces, it was first processed through the National Council of Provinces (NCOP). The NCOP began their deliberations on the Amendment Bill in September 2006 and there were public hearings in all nine provincial parliaments. The NCOP made many changes to the Bill in response to the public hearings and passed it on 29 May 2007. The new version is known as the Children's Amendment Bill [B19B of 2006].

The Children's Amendment Bill has now been referred to the National Assembly (NA) for consideration by the Portfolio Committee for Social Development. There have been substantial changes to the Bill that was tabled for public comment. Therefore, the committee should hold public hearings. The NA has three options: it can pass the Bill as is, it can amend the Bill and pass it with amendments, or it can reject the Bill. If it passes the Bill without amendments, the Bill will be submitted to the President for assent. If the NA amends or rejects the Bill, it will have to be reconsidered by the NCOP.

#### **4. Who to speak to for more information**

The Children's Bill Working Group is a network of networks. It has representatives of all the child sector umbrella bodies and representatives of the churches, trade unions, legal experts and academic institutions. The Children's Bill Working Group was established in March 2003 with the aim of promoting debate and decision-making that is informed by:

- child rights,
- evidence, and
- consultation with the children's sector.

We are all committed to this aim in order to ensure that the new law is drafted in a way that will provide workable solutions to the major challenges facing children in the areas of social services and protection from abuse and neglect. The Children's Bill Working Group is divided into nine sub-groups that work on specific issues relating to the Children's Amendment Bill. Spokespeople are as follows:

- Children with disabilities: Sue Philpott 084 681 2016
- HIV/AIDS: Wanjiru Mukoma 082 423 8515
- Discipline of children: Sam Waterhouse 084 552 9646
- ECD and partial care: Eric Atmore 082 568 0200
- Protection: Megan Briedé 084 551 1751
- Prevention and early intervention: Nokuku Sipuka 083 276 4339
- Role of Schools in child protection: Kevin Roussel 072 361 9632
- Child and youth care workers and centres/care in the community/ and child headed households: Zeni Thumbadoo 082 418 7915
- Children on the streets: Sam Mgopha 083 488 0955
- Foster care: Dr Jackie Loffell: 082 454 0991
- Training: Prof. Rose September: 082 202 3453
- Implementation and monitoring: Joan van Niekerk 083 303 8322
- Child Labour: Dawie Bosch 012 -431 8826

*Networks and key organisations in the Children's Bill Working Group:*

Aids Law Project, University of Witwatersrand

Aids Legal Network (ALN)

Alliance for Children's Entitlement to Social Security (ACCESS)

CASNET  
Centre for Early Childhood Development (CECD)  
Child Welfare South Africa  
Childline SA  
Children's HIV/AIDS Network WC (CHAIN)  
Children's Institute, University of Cape Town  
Children's Litigation Project, University of Pretoria  
CINDI  
Community Law Centre, UWC  
Dikwankwetla  
Disability Action Research Team  
Disabled Children's Action Group (DICAG)  
Early Learning Resources Unit (ELRU)  
Johannesburg Child Welfare Society  
Lawyers for Human Rights  
Molo Songololo  
National Alliance for Street Children  
National Association of Child and Youth Care Workers (NACCW)  
National Early Childhood Development Alliance  
National Welfare and Social Development Forum  
Network Against Child Labour (NACL)  
Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)  
SANAC children's sector network  
SA Congress for Early Childhood Development  
Soul City  
South African Council of Churches (SACC)  
South African Society for the Prevention of Child Abuse and Neglect  
Southern African Catholic Bishops Congress (SACBC)  
TECL  
Trafficking Task Team

If have any questions about this update or you want more information, please contact:

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For copies of the Bill and submissions please see the Children's Institute website  
[www.ci.org.za](http://www.ci.org.za)