



**SUBMISSION TO THE PORTFOLIO COMMISSION ON SOCIAL  
DEVELOPMENT  
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## **1 INTRODUCTION**

**SASPCAN** is a non-governmental organisation which has been in existence since 1984. It is a registered non-profit organisation (NPO 011-262). It was founded to act as a forum for support for anyone wishing to combat child abuse. It is a networking organisation which provides information and training in the field and promotes inter-disciplinary co-operation in the co-ordination of services to abused children and their families. SASPCAN initiates services where gaps exist. SASPCAN branches can be found in Johannesburg, Cape Town, Mthatha, Durban and Pietermaritzburg.

The **Johannesburg Child Welfare Society** is a non-governmental organisation serving children and families in the Johannesburg Metropolitan region. Its activities include statutory child protection services, adoption, foster care, residential care, outreach and developmental services to girls on the street, support for orphans and vulnerable children, specialist treatment and training services in relation to child sexual abuse, and advocacy.

Both organisations have a particular interest in the development and implementation of legislation and policy that articulate the protection and realisation of the rights of children in South Africa. We welcome this opportunity to make a submission on the Children's Amendment Bill.

## **2 OUR EXPECTATIONS OF THE CHILDREN'S BILL**

South African children are vulnerable in a range of situations and in a range of ways. Currently, childhood in South Africa is characterised by high levels of interpersonal violence, of sexual assault, and of poverty, as well as lack of access to the basics of human survival – including adequate housing, health care, nutrition and education. These problems are significantly (and increasingly) exacerbated by the HIV pandemic. Such factors, which make our country a fertile breeding ground for the social ills which challenge our children, are inextricably interlinked with our colonial and apartheid history.

We know from research that many children who grow up in such difficult circumstances perpetuate the circumstances under which they were raised, in their adult lives and as parents. It is for this reason that we feel that the incoming legislation is overdue, and that it must ensure that that childhood is restructured for South African children in general, and those that are vulnerable in particular.

This means a far greater emphasis is needed on prevention and early intervention than is currently the case. Many of the broad prevention strategies that are required (affordable housing, free education, social security, capacity-building for parenting, income support, access to health care) are beyond the scope of this submission and this Bill. Others, such as access to ECD services and effective protection are relevant and dealt with in other submissions to this process.

## **3 OUR BROAD CONCERNS**

### **3.1 Resourcing**

Our first concern is the funding of prevention and early intervention and ECD services. Currently, where they are available, they are mostly delivered by NGOs and CBOs – which too often lack resources and are as a result not well represented in rural areas. While it is clear that such services could continue to be delivered by civil society organisations, they need significant government support to do so. Where no services exist, it will be necessary to establish them.

There are concerns about the costs of broad prevention and universal access to these. We acknowledge that effective and far-reaching prevention will be costly; however, we know that the cost of *failing to prevent* abuse and neglect exceeds that of prevention many times over.

According to a study undertaken by the Michigan State University, the cost of prevention is 19 times less than the cost of non-prevention. Factors considered included the impacts of child maltreatment on health, development and social adjustment including juvenile and adult criminality, and the resultant costs of provision for special education, protective services, foster care, social services and the criminal justice system. The most expensive long-term consequences of child abuse and neglect are related to criminality. The cost has been estimated to be over US\$55 billion per annum. An Australian study found the long-term costs of child abuse and neglect to be in the order of Aus\$1,3 billion per annum.

Also costly is the loss of productivity to society from adult survivors of child abuse, who are disproportionately affected by unemployment, substance abuse and many other problems – estimated in the USA to be \$656 million per annum. A New Zealand study found that the loss of earnings, extra health bills, and unmet potential of adult survivors was costing NZ\$2.4 billion per year.

Although we as yet do not have equivalent estimates for the South African context, the costs of failure to address the needs of our children are undoubtedly extremely high. Child abuse and neglect damage our human capital and are serious threats to our nation's developmental agenda.

### **3.2 An appropriate balance between prevention and early intervention services and formal child protection services**

SASPCAN notes with concern that the Children's Amendment Bill, like the present Child Care Act, relies disproportionately on the formal child protection system, which operates in large measure through the country's overstretched children's courts and its shrinking pool of social workers. This system is urgently in need of upgrading to enable it to be more effective in dealing with cases of active maltreatment of children.

But it cannot effectively address the mass-based problems facing the hundreds of thousands of orphans and vulnerable children in our country whose problems arise from poverty in combination with HIV/AIDS and other pervasive hazards. The needs of these children can only be met through a combination of improved access to social security and a national roll-out of easily accessible community-based support and empowerment programmes. These should work through voluntary, supportive alliances with families and communities, rather than through the legal authority which is a strong feature of formal protective services. Such services could make judicious use of social workers where necessary, while also mobilising all other categories of social service professionals, along with community developers and volunteers. They should involve all spheres of government in partnership with available NGOs, FBOs and CBOs, and could be linked to, if not built into, the Integrated Development Plans of local authorities. The work of the Child Care Forums which have been coming into being in all provinces under the leadership of the Department of Social Development could play a key role.

In this way a layer of promotive, preventive and early intervention services would be readily accessible to hundreds of thousands of vulnerable children who could be prevented from falling into deepening levels of marginalisation, and the increasing destruction of their potential. They would also serve those who are permanently in the care of their extended families due to the death or incapacitation of their parents. Vast numbers of such children are currently being inappropriately channelled into formal foster care because there is no other way of giving them access to social security.

The number of children in court-ordered foster care has increased by 600% since 2000, and is continuing to skyrocket. Such an approach is inappropriate and unsustainable in a country where the majority of children are poor, and where deaths of parents are occurring on a massive scale. The result is that the formal child protection system has become an income maintenance system, and is now paralysed by the sheer numbers involved. This approach has also created a number of perverse incentives, one of which is for moving children away from their biological parents to give someone access to a grant for which the parents themselves are not eligible.

Through the strengthening of Chapter 8 of the Bill, a strong and dependable layer of preventive and early intervention services could be put in place. This would enable vulnerable children ready access to effective support in their immediate environment without their having to enter the endless queues for admission to social work caseloads and children's court procedures. It would in addition enable certain children who would qualify for statutory protective services but would not necessarily respond well to such an approach, to be linked with alternative forms of assistance better suited to their needs. Children on the streets and in certain forms of labour are good examples. This layer of services would also free up the courts and the social workers to carry out urgently needed protective and rehabilitative tasks which require their specific skills and training. In addition this layer could respond to the special needs of children at risk of marginalisation due to disability and chronic illness, and it could be tasked with education of families and other community members in non-violent methods of discipline.

The proposed amendments which are listed later in this submission have the above considerations in mind.

### **3.3 Interdepartmental co-operation and co-ordination**

Service delivery to vulnerable children in South Africa continues to be bedevilled by a lack of co-operation and co-ordination across various sectors. It is fragmented and not holistic in dealing with vulnerable children – giving rise frequently to unnecessary expenses, high levels of frustration and hopelessness, and further trauma. Under these conditions, it lacks impact and effectiveness. It is essential that a national plan for prevention and early intervention is developed in consultation with ALL role-players, including civil society. It is especially important that the Departments of Education and Social Development work closely together.

The importance of the involvement of the Department of Education in the provision of prevention and early intervention programmes cannot be over-emphasised. Firstly, compulsory education is a critical component of prevention and early intervention in its own right.

Secondly, the fact that children are at school and in the class of the same teacher each day provides a unique opportunity for the early identification of vulnerable children – and a chance to do something while prevention or early intervention is still a realistic option, i.e. before the problem becomes such that a tertiary-level intervention is required.

Clearly neither the Department of Social Development nor the Department of Education can implement effective prevention and early intervention programmes without an involvement of both departments at all levels – from decision-making, policy and budgeting, through to implementation.

The pages which follow contain recommendations for amendments to the Bill.

CLAUSES IN BILL	PROPOSED AMENDMENTS
<p><b>Prevention and early intervention programmes</b></p> <p><b>143. (1)</b> Early intervention programmes means programmes —</p> <p>(a) designed to serve the purposes mentioned in section 144; and</p> <p>(b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care;</p> <p><b>(2)</b> Prevention means programmes —</p> <p>(a) designed to serve the purposes mentioned in section 144; and</p> <p>(b) provided to families with children in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment which, if not attended to, may lead to statutory intervention.</p>	<p><b>Prevention and early intervention <del>programmes</del> <u>services</u></b></p> <p><b>143. (1)</b> Prevention services means <del>social development</del> services which are —</p> <p>(a) designed to serve the purposes mentioned in section 144; and</p> <p>(b) provided to families with children in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment which, if unchecked, may lead to statutory intervention.</p> <p><b>(2)</b> Early intervention services means <del>social development</del> services which are—</p> <p>(a) designed to serve the purposes mentioned in section 144; and</p> <p>(b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care.</p> <p><i>Notes: i) “Social development” should be removed as this narrows the concept to only those services rendered by the Department of Social Development. ii) The order in which these two sets of services are dealt with has been changed around to emphasise the priority that should be given to prevention, and in order to render the flow of the text more logical as prevention should take place before early intervention. iii) “Statutory intervention” needs to be defined.</i></p>

**Purposes of prevention and early intervention programmes**

**144.** (1) Prevention and early intervention programmes must focus on -

- (a) Preserving a child’s family structure;
- (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children;
- (c) establishing appropriate interpersonal relationships within the family;
- (d) promoting the well-being of children and the realisation of their full potential;
- (e) providing psychological, rehabilitation and therapeutic programmes for children
- (f) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children’s needs;
- (g) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
- (h) diverting children away from the child and youth care system and the criminal justice system; and
- (i) avoiding the removal of a child from the family

**Purposes of prevention and early intervention services**

**144.** (1) Prevention and early intervention services must focus on:

- (a) preserving a child’s family structure in situations of vulnerability;
- (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline of children;
- (c) establishing appropriate interpersonal relationships within the family;
- (d) promoting the well-being of children and the realisation of their full potential;
- (e) providing psychological, rehabilitation and therapeutic programmes for children with issues of trauma and grief in families affected by illness, death, separation, violence or natural disasters;
- (f) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children’s needs;
- (g) preventing the recurrence of problems in the family

	<p>environment that may harm children or adversely affect their development;</p> <p>(h) diverting children away from the child and youth care system and the criminal justice system; <del>and</del></p> <p>(i) avoiding the removal of a child from the family environment;</p> <p><u>(j) providing practical assistance and guidance for older persons, children and young adults who are serving as caregivers for children;</u></p> <p><u>(k) providing assistance to families with children with disabilities;</u></p> <p><u>(l) providing assistance to families with children with chronic illnesses;</u></p> <p><u>(m) providing assistance to children in families with sick or terminally ill caregivers and children living in child-headed households;</u></p> <p><u>(n) providing assistance to children suffering from substance abuse or children living with caregivers suffering from substance abuse; and</u></p> <p><u>(o) providing aftercare services and support to children when they leave residential care.</u></p>
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<p>(2) Prevention and early intervention programmes may include –</p> <ul style="list-style-type: none"> <li>(a) assisting families to obtain the basic necessities of life;</li> <li>(b) empowering families to obtain such necessities for themselves.</li> </ul> <p>(3) Prevention and early intervention services must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems.</p> <p><b>Strategies for securing prevention and early intervention</b></p> <p>145.(1) The Minister, after consultation with interested persons, including the Ministers of Education, Finance and Health, must include in the departmental strategy a comprehensive national strategy aimed at securing the provision of prevention and early intervention services to families, parents, care-givers and children across the Republic.</p> <p>(2) The MEC for Social Development must within the national strategy referred to in subsection (1) provide for a provincial</p>	<p>(2) Prevention and early intervention services or programmes <del>may</del> <u>must where necessary include –</u></p> <ul style="list-style-type: none"> <li>(a) assisting families to obtain the basic necessities of life <u>and to access essential services;</u></li> <li>(b) empowering families to obtain such necessities <u>and access essential services</u> for themselves.</li> <li>(c) <u>providing families in desperate need with the basic necessities of life including food, clothing, and shelter</u></li> </ul> <p>(3) Prevention and early intervention services must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems.</p> <p><b>Strategies for securing prevention and early intervention</b></p> <p>145. (1) The Minister, after consultation with interested persons, including the Ministers of Education, Finance, <u>Community Safety and Health, the provincial MECs for Social Development, and members of civil society,</u> must include in the departmental strategy a comprehensive national strategy aimed at securing the provision of prevention and early intervention services to families, parents, care-givers and children across the Republic.</p> <p>(2) The MEC for Social Development must within the national</p>
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strategy aimed at properly resourced, co-ordinated and managed prevention and early intervention.

(3) The MEC must compile a provincial profile from time to time in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

**Provision of prevention and early intervention services**

**146.** (1) The MEC for social development of a province may, from money appropriated by the relevant provincial legislature, provide and fund prevention and early intervention programmes for that province.

(2) Prevention and early intervention programmes must—

- (a) be provided in accordance with this Act; and
- (b) comply with the norms and standards prescribed by the Minister.

(3) The provider of prevention and early intervention programmes only qualifies for funding appropriated as contemplated in subsection (1) if the programmes comply with the prescribed norms and standards mentioned in section 147.

(4) In implementing prevention and early intervention programmes

strategy referred to in subsection (1) provide for a provincial strategy aimed at properly resourced, co-ordinated and managed prevention and early intervention.

(3) The MEC must compile a provincial profile from time to time in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

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(4) In implementing prevention and early intervention programmes

families who lack the means of providing proper shelter, food and other basic necessities of life to their children must be given priority.

**Norms and standards for prevention and early intervention programmes**

**147.** (1) The Minister must determine national norms and standards by regulation after consultation with interested persons, including the Departments of Education and of Health.

(2) The norms and standards contemplated in subsection (1) must relate to the following:

- (a) Outreach;
- (b) education, information and promotion;
- (c) therapeutic programmes;
- (d) family preservation;
- (e) skills development programmes;
- (f) diversion programmes;
- (g) protection;
- (h) temporary safe care;
- (i) assessment;
- (j) social security;

families who lack the means of providing proper shelter, food and other basic necessities of life to their children must be given priority.

(k) family participation; and

(l) empowerment.

(3) Prevention and early intervention programmes only qualify for funding from money appropriated by a provincial legislature if it complies with the norms and standards as determined by the Minister by regulation.

**Court may order early intervention**

**148.** (1) Before making an order concerning the temporary or permanent removal of a child from that child's family environment, a children's court may order—

(a) the provincial department of social development, a designated child protection organisation, any other relevant organ of state or any other person or organisation to provide early intervention programmes in respect of the child and the family or parent or care-giver of the child if the court considers the provision of such programmes appropriate in the circumstances;

(b) the child's family and the child to participate in a prescribed family preservation programme.

(2) An order made in terms of subsection (1) must be for a specified period not exceeding six months.

(3) When a case resumes after the expiry of the specified period, a designated social worker's report setting out progress with early intervention programmes provided to the child and the family, parent or care-giver of the child, must be submitted to the court.

(4) After considering the report, the court may—

(a) decide the question whether the child should be removed; or

(b) order the continuation of the early intervention programme for a further specified period not exceeding six months.

(5) Subsection (1) does not apply where the safety or well-being of the child is seriously and imminently at risk.

**Report to include summary of prevention and early intervention programmes**

**149.** When a report of a designated social worker is produced before a court in order to assist a court in determining a matter concerning a child, the report must contain a summary of any prevention and early intervention programmes provided in respect

of that child and the family, parent or care-giver of the child.”

**Amendment of section 156 of Act 38 of 2005**

8. Section 156 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (e) of the following paragraph:

- (f) if the child lives in a child-headed household, that the child must remain in that household subject to section 136;

In addition, SASPCAN proposed two new clauses, neither of which is in the Bill in its current form. These where:

**Proposal with regard to the roles of local authorities and schools:**

**147a**

- (i) Every Local Authority must take children’s needs into account when developing its Integrated Development Plan, particularly in the areas of:
- Water, sanitation and refuse removal
  - Electricity
  - Housing
  - District level health services
  - Partial care facilities (crèches)
  - Road building and maintenance
  - Traffic control and road safety enforcement
  - Safety at public entertainment facilities
- (ii) Every Local Authority must to develop, in cooperation with all relevant local roleplayers, an intersectoral plan

for supportive services to orphans and vulnerable children.

**148.** The principal of a public or private school must on a confidential basis –

- (a) identify children who are frequently absent from school, where this may be due to their becoming involved in exploitative child labour or excessive household responsibilities, or to lack of appropriate family care;
- (b) take all reasonable steps to assist them in returning to school or to discourage them from leaving school;
- (c) submit the names and addresses of those children to an appropriate prevention or early intervention programme or alternative support service, or to the nearest office of the Department of Social Development for assistance; and
- (d) submit the names and addresses of those children to the provincial head of Social Development, for purposes of data-gathering and planning.

*Note: This is an amended version of clause 236 in the original SA Law Commission Draft Bill. It recognises the school as a vital context for identifying children who are in the beginning stages of falling onto the social margins due to poverty and/or the death or illness of caregivers, and/or of being caught up in child labour including worst forms such as prostitution, and/or of moving onto the streets. There is no other context which has the same potential for prevention and early intervention, and there is no possibility of an effective and comprehensive approach to prevention and early intervention which does not utilise schools as focal points. In response to any argument that such a function is not within the ambit of the Children's Amendment Bill, it can be argued that the Minister of Education and the education sector are already required to perform a number of functions in terms of the Bill, and also of the present Child Care Act. Areas of responsibility include certain categories of child and youth care centre as well early childhood development. All teachers are also mandatory reporters of child abuse in terms of clause 105.*