

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.

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DATE: 10 August 2011

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Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
Section (150)(1)(a)	“A child is in need of care and protection if, the child has been abandoned or orphaned and is without any visible means of support”.	<p>The ‘and’ is deliberately highlighted as this is the phrase we would like to see amended. The Black Sash advocates that the wording to be changed from ‘and’ back to ‘or’ so that poor relatives of children in need of care, in the interim, access the higher value Foster Child Grant.</p> <p>DSD should then facilitate a national debate (with those in the children’s sector as well as other interested parties) around the most appropriate grant system to ensure decent financial support for those poor people who are looking after children in need of care</p>	<p>Family members who look after children considered “wards of state” should be entitled to appropriate financial assistance.</p> <p>Poor relatives who take on the responsibility of looking after orphans need sufficient financial support in order to provide children with the required care and protection.</p> <p>Most magistrates interpret this clause to mean that children who are abandoned or orphaned, are generally not ‘without visible means of support’ so just require care and protection.</p> <p>This is clearly not the case for poor households who do need the additional assistance provided by the Foster Child Grant.</p>		

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		and protection.	<p>The Child Support Grant (which is worth substantially less than the Foster Child Grant) cannot be viewed by magistrates as providing the child with sufficient ‘visible means of support’. Those caring for these vulnerable children should correctly be awarded the Foster Child Grant which provides more significant financial assistance to poor relatives.</p> <p>Black Sash client case : A woman applied for the Foster Child Grant for 5 children in April 2010. She still has not received it. She is currently getting a Child Support Grant for 4 of the children but the 5th child is over the current age limit for CSG. The woman says she is unable to feed and provide for these children adequately without the assistance of the FCG.</p> <p>The interpretation of the provision by magistrates acts as a barrier to providing care and protection to vulnerable children as thousands of relatives and other carers are being denied access to the Foster Child Grant.</p> <p>The fact that magistrates deem ‘visible</p>		

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			<p>means of support' to sometimes mean a roof over your head and income of a CSG , disregards the very real expenses relating to raising a child. It is also contrary to the intention of the legislator and to many within the Department of Social Development. The Black Sash and other organisations have cases to illustrate this point).</p> <p>Black Sash Client Case: The child was born on 26th February 2000 in the Eastern Cape. He lived with his mother and grandmother. His mother never married and she did not disclose the identity of the child's father before her death in 2007.</p> <p>When the grandmother passed away in 2002, the mother gave the child to her paternal aunt and uncle in Krugersdorp. The couple have been looking after the boy for nine years and are the current caregivers and prospective foster parents of the child.</p> <p>This case is common in South Africa where children who are orphaned or left vulnerable and are often cared for by family members but they have difficulty obtaining a Foster</p>		

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		<p>Within the spirit of the progressive formulation of policies, all pieces of existing legislation should be considered collectively. In this case, this section does not speak to the Social Assistance Act as sighted, especially when considering the interests of this category of high need children.</p>	<p>Child Grant. Because the paternal aunt and uncle have cared for the child for so long, magistrates regard them as having the ‘visible means of support’ to continue looking after the boy without the assistance of a FCG.</p> <p>The same section presents a challenge in relation to accessing social assistance and securing the right of a child to social protection and support. The mention of ‘visible means’ in the Children’s Act denies poor relatives the opportunity to seek assistance on behalf of the vulnerable child.</p> <p>It also contradicts the Social Assistance regulations on means testing for foster care. The Foster Child Grant is not a grant that requires a means test. By denying the relatives of orphaned children the FCG because of ‘visible means of support’, you are indirectly means testing them.</p> <p>This may even block the relatives from accessing the lesser CSG which is means tested. Relatives are also pushed into adopting the child in order to secure financial assistance. Adoption is meant to be</p>		

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			<p>a choice rather than a requirement of the system.</p> <p>Another problem with this section is that it contributes to the backlogs experienced at many levels of the application process associated with foster placement.</p> <p>Social workers are experiencing massive backlogs. Application processes are slow and are further delayed by missing documentation. At the end of October 2008, there were 157 000 cases of foster care waiting to be finalised due to a shortage of social workers (Magome, 2008). This area needs urgent attention.</p> <p>Black Sash Client Case: Our client says that her late mother applied for a Foster Child Grant for her late sister's child in 2003. Her mother passed away in Feb 2010 without having received any response over the seven years.</p> <p>Our client then went to see the social workers in Vereeniging to ask for assistance for the child. She was referred to Houtkop and was told that she would be contacted.</p>		

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		<p>More effective co-operation between DSD and DoJ is critical. Poor communication and co-operation has resulted in huge backlogs which have a negative effect on those that have followed the correct procedures and submitted all the necessary information towards their application.</p> <p>The long court roll, especially at the Children's Court, needs to be addressed as a matter of urgently. This does not only apply to the renewal cases but also the new applicants as demonstrated in the two cases</p>	<p>She has still not received any response and when she went back to the social workers, she was told to wait.</p> <p>The backlogs continue to grow at the Department of Justice. The court roll is burdened with foster care applications by poor relatives who seek the financial assistance given after being awarded a Foster Care Order. These delays daily jeopardise the care and protection of vulnerable children.</p> <p>Black Sash Client Case: Our client is a foster parent for an 8 year old child called MM. In October last year, she was informed that she will need to renew her Foster Care Order. Despite the fact that she has completed all the necessary processes, the Foster Child Grant was cut in February as she still hasn't been awarded the court order. The client alleges that the delay is with the social worker.</p> <p>Black Sash Client Case: in this case, our client applied for a Foster Care Order in 2005 at the office of Social Services in Lenasia. A social worker was appointed to</p>		

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		<p>submitted as examples. There are sadly many more of these cases.</p>	<p>attend to her case. However, no progress has yet been made on her application. Every time she queries the delay, she is told by an official at Lenasia (contact details: 011 213 1327) that the government is changing systems and there is nothing they can do but wait.</p> <p>South Africa is desperately short of social workers. The Black Sash advocates that more financial resources be invested in educating and training social workers. We therefore reiterate our call. That Section 150 (1) (a) be amended to ensure that poor relatives in the interim have access to foster care placement and therefore access to the Foster Child Grant if they so needed – and the DSD in the long term work with The Children’s Sector to work towards the introduction of a more effective system to support children in need of care and protection by providing appropriate financial assistance to their poor relatives and parents.</p>		