



**CHILD WELFARE
SOUTH AFRICA**

**SUBMISSIONS & COMMENTS BY CHILD WELFARE
SOUTH AFRICA ON THE CHILDREN'S AMENDMENT BILL
& CHILDREN'S SECOND AMENDMENT BILL**

**PRESENTATION ON BEHALF OF CHILD WELFARE SOUTH AFRICA
(CWSA) TO THE NATIONAL PORTFOLIO COMMITTEE ON SOCIAL
DEVELOPMENT**

BY:

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PREAMBLE

Whilst the Children's Act 38 of 2005 is regarded as a progressive piece of legislation a number of shortcomings have been identified since its implementation. In response the Children's Amendment Bill and The Children's Second Amendment Bill were drafted and submitted to Parliament.

Child Welfare South Africa is 92 years old and the biggest national non-government Child Protection Organisation in South Africa with 151 affiliates in all 9 provinces.

Child Welfare SA welcomes the opportunity to share their views and experiences and to make and submit their comments and inputs on the proposed amendments for consideration.

INTRODUCTION

On 5 August the Department of Social Development (DSD) briefed the Portfolio Committee on the Children's Amendment Bill and the Children's Second Amendment Bill.

The Children's Amendment Bill seeks to introduce the following main amendments:

- To insert a definition of sexual offence, thereby aligning the Children's Act to the Sexual Offences Act.
- To create a deeming provision in section 120, thereby making it easier to detect adult offenders unsuitable to work with children
- To amend section 150 in order to clarify the requirements for finding an orphaned or abandoned child in need of care and protection
- To amend section 152 to provide for a judicial review of a decision to remove a child without a court order.

Amendment of section 1 of the Children’s Act 38/2005, as amended by section 3 of Act 41 2007 and amendment of section 120

This amendment to align the Children’s Act with the Sexual Offences Act and the inclusion of section 4(A) is welcomed, however, the following submissions are made in relation to specific sections :-

Amendment of section 120 (4) and (4)(a) to read

- s.120 “(4) In criminal proceedings, subject to the provisions of (4A) a person must be **(found)** deemed unsuitable to work with children -

By substituting the word “deemed” for found the legislative intention is not clear.

The word deemed is a subjective term with broad usage and open to individual interpretation which is problematic. The Collins Dictionary gives the words *“regard suppose believe (to be)”* “Within the judicial process the use of words open to individual interpretation have been seen to create problem areas and conflicting interpretations.

For purposes of clarity and definitive interpretation and implementation the definitive word “found” is preferred.

Furthermore we wish to bring to the Committees attention that currently there is no alignment or linkage between the two sexual offences registers created and administered by the Department of Justice and the DSD both of whom do not speak to each other in terms of consolidation and unanimity. There is no adequate resourcing of the DSD register to render its administration and usage to be of effect for the purpose it was created.

Until these issues are addressed the register itself remains a “white elephant “and is ineffectual for the purpose it was set up to achieve – the protection of our children.

We would request that the Committee interact with their colleagues to in order to establish one common register accessible and available to all.

Amendment of section 128 of Act 38 of 2005

- Section 128 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person whose name appears in Part B of the Register, or a person who was under the age of 18 years when he or she committed the offence in respect of which the finding was made, may in terms of subsection (2) apply for the removal of his or her name and any information relating to that person from the Register.”.

It is not clear why this amendment is necessary since “a person whose name appears in Part B of the Register “would be inclusive of all ages

Amendment of section 150 of Act 38 of 2005

- Section 150 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) A child is in need of care and protection if **[the]** such a child—”;

and

by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) has been abandoned or orphaned and **[is without any visible means of support]** does not ostensibly have the ability to support himself or herself;”.

It is not clear as to why the word “**the**” requires substitution for such a

The amendment of section 150 (1) (a) attempts to clarify the confusion in the interpretation created by the current section but in fact does not address what in essence is a flawed

system within the oversight, management and provision of Foster care services in the country..

The use of the word “ostensibly” must be questioned as not only is it archaic and creates problems in a layman’s understanding but is also open to individual interpretation. The purpose of legislation is to be clear concise and understandable and the use of this word does not accord with this purpose.

It is our submission that the use of this word will serve to confuse the intent of the amendment and should be omitted from the proposed amendment.

Amendment of section 152 of Act 38 of 2005

The insertion of section 152A is welcomed as a judicial review of a removal without a court order should happen but it appears that the wrong section is referenced in the first sentence and so an amendment to the proposed first sentence is being made – **section 152(2) (c)** should read section 152 (1) (c)

THE CHILDREN'S SECOND AMENDMENT BILL

This amendment seeks to introduce the following main amendments

- To extend the definition of "adoption social worker" to include social workers in the employ of the state, to enable them to also do adoptions
- To amend sections 151 and 152 so as to provide a speedy review mechanism to remove a child, using an interim order and placing him or her in temporary safe care

- To amend section 171 by empowering the provincial Head of Social Development to transfer a person placed in alternative care as a child, who had remained in alternative care after having reached the age of 18, from one alternative care to another
- To amend section 176(2)(b), by replacing the words "education and training" with "grade 12, higher education, further education and training" so as to clarify what was intended and in order to empower the provincial Head of Social Development to extend an alternative care placement for persons who were still doing their secondary and tertiary education

Amendment of section 1 relating to definition of an adoption social worker

Whilst CWSA welcomes the broadening of this definition to include social workers in the employ of the State it is our view that it will not be a “magic wand” which increases the number of adoptions finalized.

The rationale behind the decision is cause for concern and reflects a failure to grasp and understand the actual causes which delay adoptions. The drop in the number of adoptions finalized has, in our experience, very little to do with the charging of fees but more to do with systems and processes that do little to expedite and facilitate the adoption itself.

Fees, if charged, are generally charged on a sliding scale so as not to exclude lower income earners. The major cause of delays in adoption, in our experience in the field, are the numerous administrative delays experienced by social workers which negatively impact on an adoption.

These include:

- Delays in the issuing of a Form 39 by DSD officials
- Delays in section 239 (1) (d) letters being issued by DSD and in the scheduling and holding of the panel discussions that precede these

- Delays and costs in advertising
- The 90 days required to wait following advertising for “missing parents” when only 60 days wait is required following signing of consent by birth parents
- Delays in referrals from hospitals
- Lengthy delays in obtaining clearance in terms of the National Child Protection Register (Form 30 application)
- Delays in scheduling the finalization of the adoption by some courts

** We trust that these issues will hopefully be addressed in future amendments being considered.

Whilst reiterating our support for the inclusion of State Social Workers in this field, it must be done in a manner which ensures the specialization required to practice in the sphere of adoption.

The sector cannot lose the specialization required of Social Workers working with adoptions. The same Accreditation and/or a minimum qualification must be required of State employed social workers who specialise in adoptions as it is for any social worker currently practicing in this sector so as to align with the requirements of existing practitioners in the sector. These accreditations needs to be independently made i.e. DSD cannot accredit itself.

Amendment of sections 151 and 152 of Act 38 of 2005

These amendments are supported and welcomed as the need exists to have a comprehensive and speedy review process of any child removed into temporary safe care and the current sections were found wanting.

Amendment of section 171 of Act 38 of 2005 by the insertion after sub-section (1) of subsection (1A)

- “(1A) The provincial head of social development in the relevant province may, subject to subsection (5), transfer in writing a person referred to in section 176(2) from one form of alternative care to another”

This section is welcomed as it will now allow for children in care to be transferred from one placement to another after 18yrs. This is sometimes necessitated due to a change in family circumstances. (For example - the death of a care-giver.) Currently a transfer of care is not possible which has negative consequences for the young person as the placement is terminated and the young person is left without any visible means of support.

Amendment of section 176 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

- The amendment of section 176(2) (a) is broadened to also allow for someone other than the child to request extension in alternative care by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“A provincial head of social development may on application by a person placed in alternative care as a child, or by a person acting on his or her behalf...”

This is welcomed as the burden and onus in making the application is no longer solely on the young person.

- The amendment of section 176(2) (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) the continued stay in that care is necessary to enable that person to complete his or her grade 12, higher education, further education [or] and training or vocational training.”; and

by the addition of the following subsection:

“(3) An application contemplated in subsection (2) must be submitted before the end of the year in which the relevant child reaches the age of 18 years, but a late application may be condoned, upon good cause shown, if such application is submitted within three months after such date.”.

These amendments are supported as clarity is now provided on what was previously referred to as “education and training” which was interpreted differently by different departmental officials.

It allows for a young person to complete education beyond grade 12 whilst still remaining in care.

A further extension to this proposed amendment is being submitted viz that the words **internships and learnerships** be added to follow the words **vocational training**.

It is our view that this will, for many children in care, be a more appropriate and enabling option to help capacitate and empower them for future independent living.

CONCLUSION

In conclusion – It is our considered view that the proposed amendments and the additional edits submitted by CWSA and Civil Society representatives will clarify areas of the current legislation where clarity was lacking and ensure that the intent of the Act to protect the children we serve is more effective and efficient.

We appreciate the opportunity to be allowed to briefly submit our point of view and those of our constituents as Child Welfare South Africa to the Portfolio Committee on Social Development and we trust that you will find value and incorporate the proposals as submitted.



PETER JOHN CLOETE
NATIONAL EXECUTIVE DIRECTOR
CWSA



JULIE TODD
NATIONAL HEAD OF ADVOCACY
CWSA

Biography: Julie Todd BSocSc (social work) LLB

Julie Todd is a registered social worker with an additional qualification in law who has been practising in the field of child protection for more than 25 years. For the past 14 years she has been the Director of The Child and Family Welfare Society of Pietermaritzburg which is the largest local non-governmental child protection agency in the district. She currently serves on a number of local and regional boards and committees has served on the KZN Provincial Board of CWSA for more than 12 yrs. Ms Todd is also a double past chairperson of the South African Society for the Prevention of Child Abuse and Neglect. She was part of the initial South African NGO Working Group on the Children's Bill (now Children's Act) and over the past 8 yrs has been involved in local trainings on the Act, and draft regulations. In 2000 she successfully co-chaired the 13th International Society for the Prevention of Child Abuse and Neglect (Ispcan) Congress held in Durban South Africa (the first such Congress in Africa). Two years later 2002 she became only the 3rd person from Africa and the 1st from South Africa to be elected onto the Ispcan Council since its inception in 1976. She has twice held Executive positions in Ispcan most recently being the Chairperson for Congresses and

Conferences. She completed her second elected 6yr term of office in September 2014 after also successfully Co-chairing the 20th International Child Protection Congress held in Nagoya Japan that same month.

Julie has also presented at a number of International Conferences on a wide range of child protection issues in India (Oct 2011) where she presented a paper on 'Indigenous issues relating to the protection of children and in Northern Ireland in September 2012 on Child participation issues and the challenges faced' and more recently in Japan in December 2013 on 'listening to children'.

Julie Todd BSocSc LLB

July 2015

Biography: PETER JOHN CLOETE

NATIONAL EXECUTIVE DIRECTOR CWSA

Peter John Cloete better known as "PJ" is based at the CWSA National Head Office in Johannesburg.

His family home is in [Queenstown](#) in the Eastern Cape. His wife Rensie and he have been married for 25 years and have 5 children: Rosemary (23), the triplets - Jennifer, Mariska and Jonathan (18) and Amy (14).

He was educated at [Queens College Boys High, Queenstown and matriculated in 1979](#). After School he obtained his Bachelor of Military Science from the University of Stellenbosch in 1984 and his Post Graduate Degree in Law (LLB) at [Rhodes University](#).

He is a qualified Attorney, Notary Public and Conveyancer and specialised in Local Government and Labour Law.

He is a local preacher in the Wesley Methodist Church in Queenstown and served as a Local Government Councillor from 1999 at Lukhanji Municipality and from 2000 until 2006 served on a full time basis being appointed to the Mayoral Committee as Head of the Finance Portfolio.

Qualifications

PJ has a passion for serving those less fortunate and served as a member and Chairman of Queenstown Child Welfare and as Chairman of the Regional Board of Child Welfare of South Africa as well as being a National Board member. He is the Chairman of the Board of Trustees of the Child Welfare SA Pension and Provident Fund. His association with CWSA stretches over 22 years. He is the Patron of both the Queenstown Child Welfare Society and Tsolwana Child Welfare Society and Sparrows Children's Home. He has dedicated his life to working for the good of children especially those most vulnerable and as NED he has focussed on building CWSA into the leading advocacy organisation for vulnerable children whilst ensuring the affiliate members have the resources to render excellent services in their communities.