

Submission from the
LEGAL RESOURCES CENTRE (LRC)
to the Portfolio Committee on Social Development
on the
Children's Amendment Bill [B19B-2006]

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Introduction

The Legal Resources Centre [LRC] of South Africa is an independent, client-based, non-profit public interest law center, which uses law as an instrument of justice. It works for the development of a fully democratic society based on the principle of substantive equality, by providing legal services for the vulnerable and marginalised who suffer discrimination by reason of race, class, gender, disability or by reason of social, economic, and historical circumstances.

- The Children's Rights Project seeks long-term remedies to social inequalities by representing children whose concerns are symptomatic of the plight of rural and impoverished communities throughout South Africa and addressing their socio economic needs. **It acts to compel the state to honour its obligations to children.** Section 28(1)(c) of the Constitution singles out children's rights stipulating that - over and above the right to access socio-economic rights contained in section 27 of the Constitution - children have the right to basic nutrition, shelter, basic health care services and social services.

Social development programmes include the payment of social grants to advance the rights of vulnerable children in South Africa and a range of interventions where children are victim to or at risk of abuse, neglect or exploitation. These include children's court services; the running of children's homes; the provision of early childhood development; adoption services; services to provide assistance to children living and/or working on the street; foster care placement; and care for children affected by HIV/AIDS.

Working in conjunction with social welfare organizations, children's homes, crèches (or Early Childhood Development centres), and individual caregivers; our office has had much success in motivating the provincial department responsible for administering social welfare services (the Department of Social Development or "DOSD") to improve its administration and delivery of services and programmes relating to children. Here are examples of some of the gains our office has made that has had direct impact on children and their caretakers:

- *Improved delivery of safety grants:*

When a child is removed from their home and ordered to 'place of safety', which can either be a private citizen's home or a registered children's home, the DOSD can be obligated by order of a Commissioner of Child Welfare to provide the appointed caregiver with a 'place of safety' grant (more commonly known as 'place of safety' fee). At present, the fee is set at R12 per day per child, and is supposed to be issued on a monthly basis.

In February 2006, the Commissioner for Child Welfare in Grahamstown advised our office that none of the families/children's homes in whose care children were placed by her orders were receiving their safety grants. After her own enquiries she determined that this was due to administrative failure by the DOSD. We began researching this matter by first contacting and interview local families with whom the Commissioner put us in contact. We found that all of the families were experiencing difficulty in collecting fees, and confirmed the information provided to us by the Commissioner. We then decided to determine to what extent this problem was occurring in the Eastern Cape, and so began systematically contacting Commissioners of Child Welfare in other magisterial districts who then put us in touch with families and children's homes they placed children. After making contact with over 50 families, individuals, and children's homes throughout the province, we were able to determine that due to poor administration by the DOSD families and children's homes had been experiencing inordinate delays in receiving safety fees – in some instances people had been waiting for months or years.

After making a number of attempts to address this issue through negotiation with DOSD with no success, we filed a legal application against the Department for its failure to issue safety grants in October 2006. And, in May 2007, the matter was settled by consent order and the Department was required to: pay out grants to families and children's homes that were applicants in the matter, develop a concise policy for the submission of claims for safety grants, and provide our office with a list of individuals in the province that should be receiving grants. In July 2007, the DOSD finally paid out grants to families and children's homes throughout the province to a total of over half a million rands.

- *Dianne Lang Foundation:*

Mrs Dianne Lang, the Director of Dianne Lang Foundation, operates a children's home in rural town in the Eastern Cape called Middelburg. Our office has worked quite closely with Ms Lang and the children's home for approximately two years: assisting them with securing grants and petitioning the provincial government for funding.

Quite recently we secured a favorable consent order in resolution of a myriad of administrative problems the home was encountering in its interactions with the DOSD. The most significant of these problems was the delay in the Department issuing safety grants. As a result of our intervention, the home received a lump sum payment of outstanding grants in the amount of approximately R75,000 and an ad hoc grant in the amount of R120,000 to assist in the maintenance of the home until the

Department could take a decision on providing the home with medium-to-long term funding

- Uitenhage Children's Home:

In South Africa, there exists no government scheme for the automatic funding of private children's home, they must apply to the local Department for funding and have their application approved before they are issued grants to assist in caring for the children. Therefore, children's homes that have not received approval go without the necessary financial support from the government that would allow them to operate securely.

In another instance through advocacy on behalf of a children's home in Uitenhage that had been struggling for funding from the Department since 1998, despite submitting several applications in the form of business plans to the Department for funding.

We began petitioning the Department on behalf of this home in February of this year and by June the home was advised that they would be receiving funding in the amount of R600,000, and further consideration for long-term funding.

Our submissions below are based on the practical experiences of our clients and our attempts at ensuring that the Government of the Eastern Cape Province actually provides the grants available to children.

CHAPTER 6: ECD

Section	Recommended amendment	Motivation
Section 93 (1)	Delete the word may and replace it with MUST	Section 92 puts an obligation on the Minister and the MEC to have a strategy to provide and establish ECD's in the province but section 93(1) gives the MEC a discretion: The MEC for social development of a province may, from money appropriated by the relevant provincial legislature, provide and fund early childhood development programmes for that province. This should be an obligation not a discretion.
Section 96	Put in time frames for the Provincial Head of social development to register a facility or respond to an application. 30 days would be appropriate.	Section 95 sets out the requirement that a person running a partial care facility or a child and youth care centre where an early childhood development programme must register it and comply with norms and standards. Section 96 sets out the procedure for registration but there MUST be a time frame within which the Provincial head of social services must respond to this application either by registering it, or making suggested amendments prior to registration or by refusing to register with reasons. In the Eastern Cape applications are made for registration of facilities, they are simply not responded to ever.
Section 97	97 (2)(c)Delete the word "funds"	Without subsidies from the State many facilities or youth care centres do not have the necessary funds or resources to operate. The requirement that they have funds prior to registration is an unfair one and places them in a catch 22 situation. They need to get registered to receive the funds. To deny them registration in the basis that they do not have funds makes a mockery of the provision that they must receive subsidies.

	<p>97 (4)</p> <p>97 (5) delete the word may and replace with must.</p>	<p>This section says that the provincial head of social development must consider a report of a social service professional before deciding an application for registration, conditional registration or renewal of registration. Most importantly this section should say who the social service professional must be . Is this someone employed by the District office or a can it be a private social service professional in the employ of an NGO. It should also place time frames on the delivery of the report. In the Eastern Cape social service profesionas employed by the State often fail/refuse to visit these centres and do not bother to make reports and then this gives the Provincial head good cause to simply ignore the applications.</p> <p>In our experience in the Eastern Cape social development officials appear lazy or incompetent and take NO steps to assist these organizations in establishing themselves, or operating within prescribed norms and standards.</p>
Section 101	<p>By the addition of the words: An applicant aggrieved by a decision of a Provincial Head of social Development or an official in the employ of The Department of Social Development with regard to an application for registration or renewal of registration in terms of section 96, the conditions on which registration was granted in terms of section 97, conditional registration in terms of section 98 or a registration holder aggrieved by a decision to cancel the registration</p>	<p>Appeals against decisions of the municipal manger are provided for in section 102 but this same appeal procedure against decisions of the provincial head are not provided.</p>

	<p>of a partial care facility in terms of section 99 may lodge an appeal with the Minister against that decision.</p> <p>(7)An applicant that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6), may apply to the competent division of the High Court to review that decision.</p>	
Section 102	<p>102 (8)(c) by the deletion of the word may and replacement of the word MUST</p>	<p>The assignment of these functions to the municipalities is welcomed but there is no indication of what would happen to the existing district office employees of the Department of Social Development.</p> <p>If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development MUST and not MAY take steps to withdraw this assignment.</p>

CHAPTER 7 - Child protection system

Section	Recommended amendment	Motivation
Clause 110 Reporting a child in need of care and protection	(1) [...who on reasonable grounds concludes...] ... <u>who on reasonable grounds suspects...</u>	It may not be possible for someone to conclusively state that abuse is happening. However, if they suspect that this is so, they are responsible for reporting it. Only an official investigation can lead to a conclusion.
	(3) (a) must substantiate that <u>suspicion</u> to the provincial department...	(3) (a) The term “must substantiate that conclusion or belief” is problematic.
	(4) A police official to whom a report has been made in terms of subsection (2) must- <u>(c) be appropriately trained to respond to the report</u>	The appropriate training is necessary to enable police officials to effectively communicate with children, including those children with communication and intellectual disabilities, and to ensure that these children are treated with respect and dignity.
		It is critical that (mandatory) reporting of a child being abused or neglected be accompanied by the provision of services which are required in response.

CHAPTER 8 - PREVENTION AND EARLY INTERVENTION

Section 146	Delete word may and replace with MUST	It is critical that all provinces fund early intervention programmes and do not have the discretion to fund them.
Section 147(3)		if the court orders a child to be placed in an early intervention programme then there should be automatic qualification for funding
	<p>Insert the following clause:</p> <p><u>The MEC of Education in each province must establish and maintain for all schools in the province a mechanism for the identification, referral and support of children¹.</u></p>	<p>This would facilitate the early identification of children experiencing difficulties, both at home and at school. This clause needs to be read in conjunction with Education White Paper 6 (Inclusive Education), which provides for screening, identification, assessment and support for learners. In addition, the White Paper envisages the setting up of District Support Teams, which could be a mechanism to ensure intersectoral collaboration in addressing specific issues e.g. substance abuse.</p>
	<p>Insert the following clause:</p> <p><u>The MEC of Education in each province must establish and maintain for all schools in the province a mechanism for</u></p>	<p>This would facilitate the early identification of children experiencing difficulties, both at home and at school. This clause needs to be read in conjunction with Education White Paper 6 (Inclusive Education), which provides for screening,</p>

¹ See CASNET submission to the Department of Social Development, August 2007

	<u>the identification, referral and support of children².</u>	identification, assessment and support for learners. In addition, the White Paper envisages the setting up of District Support Teams, which could be a mechanism to ensure intersectoral collaboration in addressing specific issues e.g. substance abuse.
	Insert the following clauses <u>1) Every local authority must take children's needs into account when developing its Integrated Development Plan</u> <u>2) Every local authority must develop, in co-operation with all relevant local role-players, including parents of disabled children, an intersectoral plan for supportive services to children with disability or chronic illness³</u>	It is essential that the needs of all children are considered in the development of the IDPs. This would ensure that the appropriate resources are allocated and would promote the progressive realization of the goal of inclusion of all children.
Section 148(6)		148(6) 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 <i>This is necessary of course but in practice because of the shortage of social workers reports are not finalized in the given time period and orders are simply reissued for the care of the children. In the Eastern Cape temporary care orders are often postponed for periods of up to five years.</i>

² See CASNET submission to the Department of Social Development, August 2007

³ See SASPCAN submission to Department of Social Development, August 2007

CHAPTER 11 ALTERNATIVE CARE

Section 173 (1)	Replace the word Provincial head with the word the Court	The Court and not the provincial head should order the removal of a child from a facility after an enquiry
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CHAPTER 13 – CHILD AND YOUTH CARE CENTRES

Section	Recommended amendment	Motivation
Section 199 (1)	By the addition of the word existing shelter	As with childrens homes existing shelters should also be deemed to be registered and not have to take steps to reregister. Drop in centres are also deemed to be registered (s217) and so must shelters.
Section 200		This process bypasses district offices completely, is this desirable?
Section 215	Delete the word MAY and replace with MUST	Section 214 obliges the Minister to ensure an appropriate spread of drop-in centres throughout the Republic, yet gives the MEC the discretion in section 215 to fund these Centres. There should be no discretion.