

PRESIDENT'S OFFICE

No. 1895. 22 November 1996

NO. 96 OF 1996: CHILD CARE AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Child Care Act, 1983, so as to amend, insert or delete certain definitions; to provide for legal representation for children; to shift the focus from the unable or unfit parent to the child in need of care; to further regulate the provisions relating to the adoption of children; to provide for the registration of shelters; to extend the inspection of children's homes and places of care; to further regulate the medical treatment of children; to further regulate the notification in respect of injured children; to provide for the delegation of powers to the provinces; to extend the application of the Act to the former TBVC states and self-governing territories; to repeal certain laws; and to provide for incidental matters.

(Afrikaans text signed by the President.)

(Assented to 12 November 1996)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 74 of 1983, as amended by section 2 of Act 34 of 1986 and section 1 of Act 86 of 1991

1. Section 1 of the Child Care Act, 1983 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the insertion before the definition of "adopted child" of the following definition:

" 'accredited social worker' means a registered social worker in private practice who has registered a speciality in adoption services under the Social Work Act, 1978 (Act No. 110 of 1978);";

(b) by the deletion of the definition of "Black";

(c) by the insertion after the definition of "child" of the following definitions:

" 'child born out of wedlock' means a child born outside a marriage; child in need of care' means a child referred to in section 14(4); children in especially difficult circumstances' means children in circumstances which deny them their basic human needs, such as children living on the streets and children exposed to armed conflict or violence;";

(d) by the insertion after the definition of "management" of the following definition:

" 'marriage' means any marriage which is recognised in terms of South African law or customary law, or which was concluded in accordance with a system of religious law subject to specified procedures, and any reference to a husband, wife, widower, widow, divorced person, married person or spouse shall be construed accordingly;";

(e) by the insertion after the definition of "prescribed" of the following definition:

" 'psychologist' means a psychologist registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);";

(f) by the insertion after the definition of "school of industries" of the following definition:

" 'shelter' means any building or premises maintained or used for the reception, protection and temporary care of more than six children in especially difficult circumstances;";

(g) by the substitution for the definition of "social worker" of the following definition:

" 'social worker' means any person registered as a social worker under the Social Work Act, 1978 (Act No. 110 of 1978), or deemed to be so registered, and who, save for the purposes of section 42, is in the service of a state department under the control of the Minister or a provincial administration or a prescribed welfare organization;"; and

(h) by the substitution for the definition of "welfare organization" of the following definition:

" 'welfare organization' means a welfare organization registered in terms of section 13 of the National Welfare Act, 1978 (Act No. 100 of 1978), or approved by the Premier of a province."

Insertion of section 8A in Act 74 of 1983

2. The following section is hereby inserted in the principal Act after section 8:

"Legal representation

8A. (1) A child may have legal representation at any stage of a proceeding under this Act.

(2) A children's court shall inform a child who is capable understanding, at the commencement of any proceeding, that he or she has the right to request legal representation at any stage of the proceeding.

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(3) A children's court may approve that a parent may appoint a legal practitioner for his or her child for any proceeding under this Act, should the children's court consider it to be in the best interest of such child.

(4) A children's court may, at the commencement of a proceeding or at any stage of the proceeding, order that legal representation be provided for a child at the expense of the state, should the children's court consider it to be in the best interest of such child.

(5) If a children's court makes an order referred to in subsection (4), the clerk of the children's court shall request the Legal Aid Board, established under section 2 of the Legal Aid Act, 1969

(Act No. 22 of 1969), to appoint a legal practitioner to represent the child.

(6) (a) After the appointment of a legal practitioner referred to in subsection (5), the children's court shall refer the matter to the Legal Aid Board for evaluation and a report thereon.

(b) The Legal Aid Board shall, subject to the provisions of the Legal Aid Guide referred to in section 3A of the Legal Aid Act, 1969, evaluate the matter and compile a report thereon.

(c) The report shall be in writing and shall include–

(i) particulars relating to the financial circumstances of the child concerned;

(ii) particulars relating to the financial circumstances of the parent or parents or guardian, as the case may be, of the child concerned;

(iii) whether any other legal representation at the expense of the State is available or has been provided; and

(iv) any other particulars which, in the opinion of the Legal Aid Board, have to be taken into account.

(d) The report shall be submitted by the Legal Aid Board to the clerk of the children's court, who shall make a copy thereof available to the children's court.

(7) After the children's court has considered the report the children's court may order that the cost of the legal representation be recovered from–

(a) the parties or any one of the parties to the proceeding in question;

(b) the parents or any one of the parents of the child concerned; or

(c) the guardian of the child concerned."

Amendment of section 10 of Act 74 of 1983

3. Section 10 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) any illegitimate child born out of wedlock under the age of seven years; or".

Amendment of section 13 of Act 74 of 1983, as amended by section 4 of Act 86 of 1991

4. Section 13 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

"(2) Any child in regard to whom a children's court assistant is of opinion that he has no parent or guardian, or has a parent or guardian who cannot be traced, or has a parent or guardian or is in the custody of a person unable or unfit in terms of section 14(4) to have the custody of him or she is a child in need of care may be brought before the children's court of the district in which the child resides or happens to be, by any policeman, social worker or authorized officer, or by a parent, guardian or other person having the custody of the child.

(3) The children's court before which a child is brought in terms of subsection (1) or (2) shall hold an inquiry in the prescribed manner and determine whether the child has no parent or guardian, or has a parent or guardian who cannot be traced, or has a parent or a guardian or is in the custody of a person unable or unfit to have the custody of that child is a child in need of care: Provided that if the child ordinarily resides in the district of another children's court the first-mentioned children's court may refer the inquiry to the children's court of that other district."

Amendment of section 14 of Act 74 of 1983, as amended by section 5 of Act 86 of 1991

5. Section 14 of the principal Act is hereby amended–

(a) by the substitution for subsections (1) and (2) of the following subsections:

"(1) Any children's court holding an inquiry in terms of section 13(3) may at any time during the inquiry order any medical

officer or psychologist to examine the child concerned and to report to the court thereanent.

(2) The commissioner presiding over a children's court holding such inquiry may at any time shall during that inquiry request any social worker to furnish a report on any matter affecting the circumstances of the child concerned or and his or her parents or guardian or the person having the custody of that child.";

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"At such inquiry the children's court shall determine whether the child before the court is a child in need of care in that-";

(c) by the insertion after paragraph (aA) of subsection (4) of the following paragraph:

"(aB) the child–

(i) has been abandoned or is without visible means of support;

(ii) displays behaviour which cannot be controlled by his or her parents or the person in whose custody he or she is;

(iii) lives in circumstances likely to cause or conduce to his or her seduction, abduction or sexual exploitation;

(iv) lives in or is exposed to circumstances which may seriously harm the physical, mental or social wellbeing of the child;

(v) is in a state of physical or mental neglect;

(vi) has been physically, emotionally or sexually abused or ill-treated by his or her parents or guardian or the person in whose custody he or she is; or

(vii) is being maintained in contravention of section 10."; and

(d) by the deletion of paragraph (b) of subsection (4).

Amendment of section 15 of Act 74 of 1983, as amended by section 6 of Act 86 of 1991

6. Section 15 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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"A children's court which, after holding an inquiry in terms of section 13, is satisfied that the child concerned has no parent or guardian, or has a parent or guardian who cannot be traced, or has a parent or guardian or is in the custody of a person unable or unfit to have the custody of the child is a child in need of care may-".

Amendment of section 18 of Act 74 of 1983

7. Section 18 of the principal Act is hereby amended-

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

"(1) (a) The adoption of a child shall be effected by an order of the children's court of the district in which the child concerned resides.

(b) The childrens' court shall not make any order referred to in paragraph (a) before the consideration of a prescribed report from a social worker or an accredited social worker.";

(b) by the substitution for paragraph (d) of subsection (4) of the following paragraph:

"(d) that consent to the adoption has been given by both parents of the child, or, if the child is illegitimate born out of wedlock, by the mother of the child, whether or not such mother is a minor or married woman and whether or not she is assisted by her parent, guardian or husband, as the case may be; and";

(c) by the substitution for paragraph (g) of subsection (4) of the following paragraph:

"(g) in the case of an application for the adoption of a foster child by a person other than his or her foster parent, that the foster parent consented has stated in writing to the adoption of that he or she does not wish to adopt the child: Provided that such consent statement shall not be necessary if the foster parent

refuses or fails, within one month after being called upon in writing by an assistant of the children's court to do so, to indicate to him or her in writing whether he so consents or not that he or she does not wish to adopt the child."; and

(d) by the addition of the following subsections:

"(8) Notwithstanding the provisions of any other law the parent of a child who has given consent to the adoption of his or her child shall have the right to withdraw such consent up to 60 days after such consent has been given.

(9) A children's court shall not make any order of adoption before the expiration of the period of 60 days referred to in subsection (8).".

Amendment of section 19 of Act 74 of 1983

8. Section 19 of the principal Act is hereby amended–

(a) by the substitution for subparagraphs (iii) and (iv) of paragraph (b) of the following subparagraphs:

"(iii) who has physically, emotionally or sexually assaulted, or ill-treated or abused the child or allowed him or her to be so assaulted, or ill-treated or abused; or

(iv) who has caused or conduced to the seduction, abduction or prostitution sexual exploitation of the child or the commission by the child of immoral acts; or"; and

(b) by the deletion of subparagraph (v) of paragraph (b).

Amendment of section 24 of Act 74 of 1983, as amended by section 8 of Act 86 of 1991

9. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No person shall, save with the consent of the Minister as prescribed under the Social Work Act, 1978 (Act No. 110 of 1978), give, undertake to give, receive or contract to receive any consideration, in cash or kind, in respect of the adoption of a child.".

Repeal of section 27 of Act 74 of 1983

10. Section 27 of the principal Act is hereby repealed.

Amendment of section 30 of Act 74 of 1983

11. Section 30 of the principal Act is hereby amended–

(a) by the insertion after subsection (2) of the following subsection:

" (2A) No child may, save as prescribed, be received in any shelter unless that shelter has been registered under this section, or otherwise than in accordance with the conditions on which that shelter has been so registered."; and

(b) by the substitution for subsections (3) and (4) of the following subsections:

"(3) Application for the registration of a children's home, or a place of care or a shelter shall be made to the Director-General in the prescribed manner, and the Director-General may–

(a) before considering any such application, require that he or she be furnished with any information in connection with the application concerned or the proposed children's home, or place of care or shelter which he or she may desire to obtain;

(b) reject any such application or, if he or she is satisfied that the children's home, or place of care or shelter complies with the prescribed requirements and that it will be so managed and conducted that it will be suitable for the reception, care and bringing-up or for the reception, care and custody of children, grant the application either unconditionally or on such prescribed and other conditions as he or she may deem fit, and issue to the applicant a certificate of registration in the prescribed form.

(4) The Director-General may, at the time of registration of any children's home, or place of care or shelter or at any time thereafter, classify any such children's home, or place of care or shelter or may after due notice to the person in whose name the relevant certificate of registration was issued, amend any earlier classification, and any such classification may differ according to the population group sex or age or to the physical, mental or

spiritual needs of the children in respect of whom the children's home, or place of care or shelter is being maintained and according to whether it is children who were dealt with under this Act or under the Criminal Procedure Act, 1977 (Act No. 51 of 1977).".

Amendment of section 31 of Act 74 of 1983

12. Section 31 of the principal Act is hereby amended–

(a) by the substitution for subsections (1) and (2) of the following subsections:

"(1) A social worker, a nurse or any other person, authorized thereto by the Director-General, or any commissioner, may and shall if so directed by the Minister enter any children's home, or place of care, other than a children's home or place of care maintained and controlled by the State, and shelter or place of safety in order to–

(a) inspect that children's home, or place of care, shelter or place of safety and the books and documents appertaining thereto; and

(b) observe and interview any child therein, or cause such child to be examined by a medical officer, psychologist or psychiatrist.

(2) Any social worker, nurse or other person so authorized shall be furnished with a certificate to that effect, signed by the Director-General, which he or she, when acting in terms of subsection (1), shall produce at the request of any manager or staff member of the children's home, or place of care, shelter or place of safety concerned.";

(b) by the addition of the following subsections:

"(4) The social worker, nurse or other person so authorized, or the commissioner, shall submit a report to the Director-General after the performance of a function referred to in subsection (1).

(5) The powers of the Director-General on receipt of a report referred to in subsection (4) shall be as prescribed.".

Amendment of section 32 of Act 74 of 1983

13. Section 32 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The managers of a children's home or shelter shall within three months after written notice has been given of the cancellation or surrender of the certificate of registration of that children's home or shelter in terms of subsection (1), transfer to his or her parents or guardian or to any children's home or other suitable place approved by the Minister, every child in such first-mentioned children's home or shelter other than a child placed in the custody of that children's home under this Act. "

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Amendment of section 39 of Act 74 of 1983, as amended by section 13 of Act 86 of 1991

14. Section 39 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If the medical superintendent of a hospital or the medical practitioner acting on his or her behalf is of opinion that an operation or medical treatment is necessary to preserve the life of a child or to save him or her from serious and lasting physical injury or disability and that the need for the operation or medical treatment is so urgent that it ought not to be deferred for the purpose of consulting the person who is legally competent to consent to the operation or medical treatment, that superintendent or the medical practitioner acting on his or her behalf may give the necessary consent."

Amendment of section 42 of Act 74 of 1983, as substituted by section 15 of Act 86 of 1991

15. Section 42 of the principal Act is hereby amended–

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

"(1) Notwithstanding the provisions of any other law every dentist, medical practitioner, nurse, or social worker or teacher, or any person employed by or managing a children's home, place of care or shelter, who examines, attends or deals with any child in circumstances giving rise to the suspicion that that child has been ill-treated, or suffers from any injury, single or multiple,

the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease, shall immediately notify the Director-General or any officer designated by him or her for the purposes of this section, of those circumstances."; and

(b) by the substitution for subsections (5) and (6) of the following subsections:

"(5) Any dentist, medical practitioner, nurse, or social worker or teacher, or any person employed by or managing a children's home, place of care or shelter, who contravenes any provision of this section shall be guilty of an offence.

(6) No legal proceedings shall lie against any dentist, medical practitioner, nurse, or social worker or teacher, or any person employed by or managing of a children's home, place of care or shelter, in respect of any notification given in good faith in accordance with this section."

Substitution of section 59 of Act 74 of 1983

16. Section 59 of the principal Act is hereby substituted for the following section:

"59. (1) The Minister may–

(a) delegate to any officer of his or her department any power conferred upon the Minister by this Act, except the power under section 60 to make regulations;

(b) authorize any such officer to perform any duty imposed upon the Minister by this Act.

(2) The Minister may, with the concurrence of the Premier of a province–

(a) delegate to the member of the Executive Council of that province responsible for welfare matters in the province any power conferred upon the Minister by this Act, except the power under section 60 to make regulations;

(b) authorize that member of the Executive Council to perform any duty imposed upon the Minister by this Act.

(3) The member of the Executive Council of a province responsible for welfare matters in the province may–

(a) delegate to any officer of the provincial administration concerned any power delegated to that member under subsection (2);

(b) authorize any such officer to perform any duty which that member is authorized to perform under subsection (2).

(4) The Director-General may–

(a) delegate to any other officer of his or her department any power conferred upon the Director-General by this Act;

(b) authorize any such officer to perform any duty imposed upon the Director-General by this Act.

(5) The Director-General may, with the concurrence of the Director-General of a provincial administration (in this section referred to as a "provincial Director-General")–

(a) delegate to a provincial Director-General any power conferred upon the Director-General by this Act;

(b) authorize a provincial Director-General to perform any duty imposed upon the Director-General by this Act.

(6) A provincial Director-General may–

(a) delegate to any other officer of the provincial administration in question any power delegated to him or her under subsection (5);

(b) authorize any such officer to perform any duty he or she is authorized to perform under subsection (5).

(7) Any person to whom any power has been delegated or who has been authorized to perform a duty under this section, shall exercise that power or perform that duty subject to such conditions as the person who effected the delegation or granted the authorization, considers necessary.

(8) Any delegation of a power or authorization to perform a duty under this section–

(a) shall be done in writing;

(b) shall not prevent the person who effected the delegation or granted the authorization from exercising that power or performing that duty himself or herself;

(c) may at any time be withdrawn in writing by that person."

Amendment of section 60 of Act 74 of 1983, as amended by section 22 of Act 86 of 1991

17. Section 60 of the principal Act is hereby amended by the substitution for paragraphs (c), (d) and (e) of subsection (1) of the following paragraphs:

"(c) as to the procedure relating to the registration of children's homes, and places of care and shelters under section 30, the requirements with which they shall comply and the cancellation and surrender of certificates of registration issued under that section;

(d) as to the classification of children's homes, and places of care and shelters registered under section 30, and the amendment of such classification"

(e) as to the care, control, bringing up and training of pupils in institutions, shelters and places of safety;"

Repeal of laws, and savings

18. (1) Subject to subsection (2), the laws mentioned in the Schedule to this Act are hereby repealed to the extent indicated in the third column thereof.

(2) (a) Anything done under a law repealed by subsection (1) shall be deemed to have been done under the corresponding provision of the principal Act.

(b) If the principal Act does not contain such a corresponding provision it shall be finalised as if the law has not been repealed, unless the Minister determines otherwise.

(3) Notwithstanding the provisions of this Act any social worker who is accredited by the South African Association of Social

Workers in Private Practice to do adoption work shall, at the date of the commencement of this Act, be deemed to be an accredited social worker for a period not exceeding a date fixed by proclamation in the Gazette, which date shall not exceed one year after sections 1 and 7 of this Act have come into operation.

Application of Act 74 of 1983

19. The principal Act shall apply throughout the Republic.

Short title and commencement

20. This Act shall be called the Child Care Amendment Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette, and different dates may be so fixed in respect of different provisions thereof.\$

SCHEDULE

LAWS REPEALED

Number and year of law	Short title	Extent of repeal
Act No. 33 of 1960	(Gazankulu) Children's Act,	The whole
Act No. 33 of 1960	(Lebowa) Children's Act,	The whole
Act No. 33 of 1960	(Venda) Children's Act, 1960	The whole
Act No. 70 of 1983	(Kwandebele) Child Care Act,	The whole
Act No. 12 of 1986	(Transkei) Children's Act,	The whole
Act No. 14 of 1987	(Kwazulu) Kwazulu Child Care Act, 1987	The whole
Act No. 23 of 1988	(Ciskei) Childship Act, 1988	The whole
Act No. 2 of 1992	(Kangwane) Kangwane Child Care Harmonization Act,	1992
Act No. 12 of 1992	(Qwaqwa) Child Care Act,	The whole
Act No. 39 of 1992	(Bophuthatswana) Children's Act, 1992	The whole