

REPUBLIC OF SOUTH AFRICA

**ADOPTION MATTERS
AMENDMENT BILL**

(As amended by the Portfolio Committee on Welfare (National Assembly))

(MINISTER FOR WELFARE AND POPULATION DEVELOPMENT)

[B 80B—98]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
AANNEMINGSAANGELEENTHEDE**

(Soos gewysig deur die Portefeuljekomitee oor Welsyn (Nasionale Vergadering))

(MINISTER VIR WELSYN EN BEVOLKINGSONTWIKKELING)

[W 80B—98]

ISBN 0 621 28491 2

- (c) by the insertion after the definition of “Minister” of the following definition:
“ ‘natural father’ means a male person whose gamete has contributed to the conception of a child as a result of a sexual relationship with the mother of such child;”.

Amendment of section 8A of Act 74 of 1983, as inserted by section 2 of Act 96 of 1996 5

2. Section 8A of the principal Act is amended by the substitution for subsections (5), (6) and (7) of the following subsections:

(5)(a) If a children’s court makes an order referred to in subsection (4), the clerk of the children’s court shall be responsible for requesting the [Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969)] legal aid officer in respect of the magisterial district concerned, to appoint a legal practitioner, **[to represent the child]** in accordance with the legal aid guide determined by the Legal Aid Board, to represent the child. 10

(b) The Legal Aid Board, established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), is designated to provide legal representation at the expense of the State pursuant to an order made by the children’s court in terms of subsection (4). 15

(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.** 20

(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—]** 25
hold an enquiry to establish—

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

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

[(iii)] (c) whether any other legal representation at the expense of the State is available or has been provided; and 30

[(iv)] (d) any other particulars which, in the opinion of the **[Legal Aid Board]** children’s court 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.] 35

(7) (a) After the children’s court has **[considered the report]** held an enquiry contemplated in subsection (6), **[the children’s court]** it may order that the cost of the legal representation be recovered from—

[(a)] (i) the parties or any one of the parties to the proceeding in question; 40

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

[(c)] (iii) the guardian of the child concerned.

(b) Prior to making an order in terms of paragraph (a), the children’s court shall have regard to any recommendation made by the legal representative appointed by the legal aid officer in terms of subsection (5) so as to make an appropriate order regarding the recovery of costs in terms of paragraph (a). 45

(c) The order in terms of paragraph (a) shall be deemed to be an order as to costs in favour of and recoverable by the Legal Aid Board.”

Amendment of section 17 of Act 74 of 1983, as substituted by section 7 of Act 86 of 1991 50

3. Section 17 of the principal Act is amended by the addition of the following paragraph:

“(d) by the natural father of a child born out of wedlock.”.

Amendment of section 18 of Act 74 of 1983, as amended by section 7 of Act 96 of 1996

4. Section 18 of the principal Act is amended 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 born out of wedlock, by both the mother and the natural father of the child, whether or not such mother or natural father is a minor or a married **[woman]** person and whether or not he or she is assisted by his or her parent, guardian or **[husband]** in the case of a married person, spouse, as the case may be: Provided that such natural father has acknowledged himself in writing to be the father of the child and has made his identity and whereabouts known as contemplated in section 19A; and”.

Amendment of section 19 of Act 74 of 1983, as amended by section 8 of Act 96 of 1996

5. Section 19 of the principal Act is amended—

(a) by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph:

“(ii) who deserted the child **[and]** or whose whereabouts are unknown; or”; and

(b) by the addition in paragraph (b) of the following subparagraphs:

“(vii) who, in the case of a child born out of wedlock, has failed to acknowledge himself as the father of the child or has, without good cause, failed to discharge his or her parental duties with regard to the child; or

(viii) whose child, in the case of a child born out of wedlock, was conceived as a result of an incestuous relationship between himself and the mother of the child; or

(ix) who, in the case of a child born out of wedlock—

(aa) was convicted of the crime of rape or assault of the mother of the child; or

(bb) was, after an enquiry by the children’s court following an allegation by the mother of the child, found, on a balance of probabilities, to have raped or assaulted the mother of the child: Provided that such a finding shall not constitute a conviction for the crime of rape or assault, as the case may be; or

(x) who, in the case of a child born out of wedlock, has failed to respond, within 14 days, to a notice served upon him as contemplated in section 19A.”.

Insertion of section 19A in Act 74 of 1983

6. The following section is inserted in the principal Act after section 19:

“Notice of consent to adoption

19A. (1) If only one parent has given consent in terms of section 18(5), where the other parent is not available to give consent or where such parent’s consent is not required in terms of section 19, the commissioner concerned shall, after attesting such consent and in the prescribed manner, cause a notice to be served on the other parent within a period of 14 days, informing him or her of the consent that has been given and affording him or her the opportunity to—

(a) also give or withhold his or her consent; or

(b) advance reasons why his or her consent should not in terms of section 19 be dispensed with; or

(c) in the case of a natural father of a child born out of wedlock, apply in terms of section 18 for the adoption of the child.

(2) A notice contemplated in subsection (1) shall, in the case of a natural father of a child born out of wedlock, not be required unless—

(a) he has acknowledged himself in writing to be the father of the child and has entered the particulars regarding himself in the registration of birth of the child in terms of section 10(1)(b) or section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), and ensures that the particulars so entered are correct at all times; or

(b) the mother of the child, at the time of giving her consent—
 (i) confirms in writing that he has acknowledged himself to be the father of the child; and
 (ii) furnishes particulars regarding his identity and his whereabouts; or

(c) a social worker, within the period of 60 days after the mother has given her consent or at any stage before the order of adoption is granted by the children's court, submits a report to the commissioner who has attested the mother's consent or to the children's court to which the application for the adoption has been made, as the case may be, confirming the identity and whereabouts of the father.

(3) A social worker referred to in subsection (2)(c) shall, in the event where he or she has obtained information of the identity and whereabouts of the natural father of the child concerned, submit a report to the children's court of such information.

(4) For the purposes of this section, the commissioner for child welfare who is responsible for giving notice to the natural father of a child born out of wedlock may require that the Director-General: Home Affairs furnish him or her with any information contained in the registration of birth of the child, including information regarding the identity and other particulars of a person who has acknowledged himself as the father of the child born out of wedlock in terms of section 10 or 11 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).

(5) The notice referred to in subsection (1) shall not be required if the whereabouts of the parent to whom the notice is to be served, are unknown.

(6) A parent who has given consent in terms of section 18(5) and who wishes to have the other parent's consent dispensed with in terms of section 19, shall inform the commissioner upon attestation of his or her consent, accordingly.

(7) The commissioner referred to in subsection (6) shall forthwith issue the father of the child concerned with the notice contemplated in subsection (1), and such father may, if he wishes, acknowledge himself as the father of the child in terms of section 10 or 11 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).

(8) A father of a child born out of wedlock contemplated in subsection (2)(b) or (c) shall, within a period of 14 days of notification contemplated in subsection (1), cause an amendment to be effected to the registration of birth of his child in terms of section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), if the mother of the child has consented to such amendment.

(9) Where, in the case of a pending adoption, the mother of the child has withheld her consent to an amendment to be effected to the registration of birth of her child in terms of section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), the person who wishes to acknowledge himself as the father of such child shall apply to the children's court concerned for a declaratory order which confirms his paternity of the child and dispenses with the requirement of consent of the mother.”.

Repeal of section 6 of Act 86 of 1997

7. Section 6 of the Natural Fathers of Children Born out of Wedlock Act, 1997, is repealed.

Amendment of section 11 of Act 51 of 1992

8. Section 11 of the Births and Deaths Registration Act, 1992, is amended by the addition of the following subsections:

“(4) A person who wishes to acknowledge himself to be the father of a child born out of wedlock, may, in the prescribed manner, with the consent of the mother of the child, apply to the Director-General, who shall amend the registration of the birth of such child by recording such acknowledgement and by entering the prescribed particulars of such person in the registration of the birth of such child. 5

(5) Where the mother of a child has not given her consent to the amendment of the registration of the birth of her child in terms of subsection (4), the father of such a child shall apply to the High Court of competent jurisdiction for a declaratory order which confirms his paternity of the child and dispenses with the requirement of consent of the mother contemplated in subsection (4). 10

(6) When the court considers the application contemplated in subsection (5) the provisions of sections 1 and 2 of the Children’s Status Act, 1987 (Act No. 82 of 1987), shall apply.”. 15

Short title and commencement

9. This Act shall be called the Adoption Matters Amendment Act, 1998, and comes 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. 20

**MEMORANDUM ON THE OBJECTS OF THE ADOPTION
MATTERS AMENDMENT BILL, 1998**

PART 1

OBJECTS

This Bill purports to amend the following laws:

1.1 The Child Care Act, 1983 (Act No. 74 of 1983), is to be amended by the—

- (a) substitution, in section 1, of the definition of “accredited social worker” in order to further regulate the practice of a speciality in adoption by social workers in private practice;
- (b) substitution, in section 1, of the definition of “child born out of wedlock” so as to exclude from that definition children whose parents were married subsequent to their conception or birth;
- (c) insertion, in section 1, of a definition of “natural father”, which definition limits the meaning thereof to instances where a child is conceived as a result of a sexual relationship between a man and a woman;
- (d) amendment of subsections (5) to (7) of section 8A, which provides for the legal representation of children in children’s court proceedings, so as to—
 - (i) transfer the functions of the Legal Aid Board to the legal aid officer of the Board at the relevant magisterial district;
 - (ii) designate the Legal Aid Board as the authority responsible for the provision of legal representation for children under the Act; and
 - (iii) provide for the order for the recovery of costs to be an order in favour of the Legal Aid Board;
- (e) addition of paragraph (d) in section 17, so as to expressly provide for the right of the natural father to adopt his child born out of wedlock;
- (f) substitution of section 18(4)(d), so as to require the consent of the natural father who has acknowledged himself to be the father of the child for the adoption of his child born out of wedlock.
- (g) insertion of section 19A after section 19, so as to—
 - (i) provide for the natural father to be given notice of consent given by the mother for the adoption of their child born out of wedlock;
 - (ii) provide for notification of a parent of consent given by the other parent for the adoption of their child born out of wedlock; and
 - (iii) afford the natural father the opportunity to acknowledge paternity prior to making an order of adoption of his child born out of wedlock so as to enable him to exercise his rights regarding the adoption of the child.

1.2 The Natural Fathers of Children Born Out of Wedlock Act, 1997 (Act No. 86 of 1997), is to be amended by the repeal of section 6, which provides for the notification of the natural father of pending adoption proceedings concerning his child born out of wedlock, so as to consolidate the law on adoption under the Child Care Act, 1983.

1.3 The Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), is to be amended by the addition in section 11 of three subsections, providing for—

- (a) a natural father of a child born out of wedlock to cause the child’s registration of birth, with the consent of the mother, to be amended in order to enter his acknowledgement that he is the father of the child and his personal particulars;
- (b) the natural father to approach the High Court for a declaratory order where the mother does not give her consent for the amendment of registration of the birth of her child; and

- (c) instances where the mother of a child disputes the paternity of the person who wishes to amend the registration of birth of her child.

PART 2

CONSULTATION

The Departments of Justice and Home Affairs were approached for comment. The recommendations made by the Legal Aid Board for the amendment of section 8A of the Child Care Act regarding legal representation for children were circulated amongst the commissioners of child welfare and a positive response was received. Extensive consultation took place with all the key stakeholders in the field of child welfare with regard to the amendments to the law on adoption, which substantially reflect a consensus position.

PART 3

PARLIAMENTARY PROCEDURE

3.1 Implications for provinces

All the provisions contained in this Bill fall within the exclusive competence of the national sphere of government. This Bill must therefore be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996.

3.2 Implications for local government

Local government will not be affected by this Bill.