

**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE CHILDREN'S  
AMENDMENT BILL, TO AMEND THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF  
2005)**

**1. Introduction and General Overview**

The Minister of Social Development has invited public comments to the Children's Amendment Bill, 2025 to amend the Children's Act, 2005 (Act No. 38 of 2005) (Act). The aims of the Bill are to strengthen the existing Act across various areas related to the children such as, amongst others, parental responsibilities, conception by artificial insemination, and the regulation of designated childcare organisations.

Due to the volume of the amendment Bill, the draft amendments on which the Law Society of South Africa (LSSA) does not provide specific provide on, must be understood as the LSSA having no objection to the amendment.

As per the direction of the Minister in the invitation on the format of the comments, the LSSA hereby submits its comments on the Bill:

<b>CLAUSE ON</b>	<b>COMMENTED</b>	<b>PROPOSAL</b>	<b>MOTIVATION</b>
	1(c)	The insertion of the word 'psychosocial' after the word 'supportive'.	The word "supportive" as utilised in the Bill is wide in its meaning, without qualification. The proposed

		insertion of the word brings clarity to the legislation.
2(a)	The insertion of the words 'the Constitution of the Republic of South Africa, 2006' after the word 'in'.	Considerations of unfair discrimination are rooted firstly in the Constitution of the Republic. The Constitution is therefore a supreme and critical point of reference when speaking to issues of unfair discrimination, followed by other laws of general application.
6(b)	The insertion of the words 'on any grounds or for any reason' after the word 'children'.	In its current form, the amendment provision is indeed prohibitive but to ensure that no grounds of, for example religion, traditional or ethnic practices, we are of the view that it is important to completely seal off opportunity to bring in grounds for the act of genital mutilation on children or

		create a gap for an opportunity to do so. This is so to protect children from genital mutilation and the wellbeing of children.
7(2)	To rephrase the words after the word 'of' as follows: children <u>living</u> with disabilities.'	The general and more accepted public reference is 'people living with disabilities', and the Bill should align accordingly.
10(f)	The words after 'applicable' are proposed: 'and, if not already complied with, be recorded in an agreement following a mediation process between the biological parents upon the acquisition of full parental rights and responsibilities by the biological father'	The proposed insertion poses a condition precedent in its current form, that community and cultural practices must be taken into account <b>before</b> full parental rights may be acquired by the biological father. The use of the word 'before' gives this impression and the view is that the welfare of the child must rank of paramount importance and above other cultural or and traditional practices, which

		<p>may carry a financial obligation and consequently, delay the acquisition of full parental responsibilities.</p> <p>It is further proposed the that proposal herein be captured as a separate subsection in the Act as (1B)(2).</p>
10(e)	Deletion of the word 'passed away'.	The words 'passed away' and 'deceased' bear the same meaning and using both in the proposed insertion is repetitive.
33(2)	<p>To amend the word 'may' to 'must'.</p> <p>The inclusion on the limitation on the quantity of children (six) being cared for is noted in the draft provision, however, there is no such limitation in section 80. It is proposed that the</p>	The proposal is to put forth to make the draft provision consistent with section 80 of the Act which when read, requires a partial care facility to registered; it does not suggest that registration of a partial care facility is voluntary.

	<p>limitation on the number of children be removed from the proposal.</p>	<p>The limitation on the quantity of children being cared for in a partial care facility is simply being highlighted to bring harmonisation between the draft provision and other provision in the Act that support this provision.</p>
<p>34(b)</p>	<ul style="list-style-type: none"> <li>▪ The insertion of the word ‘and’ after the word ‘conditions’.</li> <li>▪ Removal of the word ‘notwithstanding’ and the insertion the following words: ‘must comply with the prescribed norms and standards set out in section 79 as far as practicably possible</li> </ul>	<p>Section 79 of the Act lists the basic and crucial norms and standards for the wellbeing of children being looked after in partial care facility and it is the view of the LSSA that, full compliance with the prescribed norms and standards should be required to the extent practicably possible. If the draft provision is left in this form, particularly with the inclusion of the word “notwithstanding”, the</p>

		<p>LSSA is of the view that it stands to be misused or misconstrued that state funding will be automatically granted even if the prescribed norms and standards are not satisfied.</p>
<p>47(b)</p>	<p>The insertion of the following words in section 109(2) of the Act after the word 'must': 'grant the affected child protection organisation the right to submit representations on the pending withdrawal and...'</p>	<p>Section 109 of the Act does not provide an opportunity for a child protection organisation that faces potential withdrawal of designation the right to make representations prior thereto. This is recommendation is made in order to make the administrative action of the Director-General compliant with the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) that require that persons that will be negatively affected a</p>

		negative decision be afforded a prior opportunity to be heard.
82(b)	After the word 'must', the insertion of the words, ', subject to continued compliance with the prescribed registration requirements in the Act.'	It is important that the renewal of a child and youth care centre is not understood to be automatic. The inclusion of the proposed words will ensure that those facilities which are registered continuously uphold the registration requirements for the welfare the children to are under the care of such facilities.

**GENERAL COMMENTS:**

- The words “provincial head of social development” and “MEC for social development” appear to be used interchangeably throughout the amendment Bill. In the government structures, the provincial head of department of is referred to as the MEC. It is recommended that one term be used for consistency and clarity in the legislation that will come into effect.
- It is recommended that the word “forthwith” be replaced with the word “immediately” rather, as a more contemporary language for statutes in the Republic of South Africa.

- It has been identified that the Act does not have a general all-encompassing provision to address the issues of natural justice as envisaged in the Promotion of Administrative Justice Act, 2000 which requires the state or organs of state to follow a fair administrative process when making adverse decisions. Included in such a provision must be the obligation of the state decision-maker to inform the aggrieved party of the right of appeal of a decision.

## **2. Concluding Remarks**

Children are vulnerable members of society and in any society, its moral fabric is judged by how it treats the most vulnerable. The proposed amendments in the Bill strengthen the current Act and the greater protection to the children in our society, is welcome.

We trust that comments provided will assist the Department of Social Development in its mandate to look after children.