

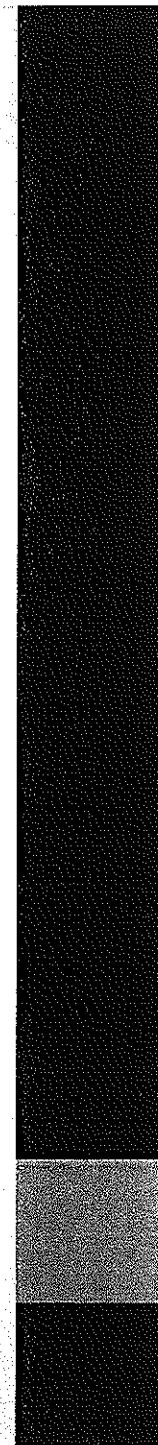


# SUBMISSIONS ON THE PROPOSED AMENDMENTS TO THE CHILDREN'S ACT

## Children's Amendment Bill

Presented by Julie Todd on behalf of  
**CHILD WELFARE SOUTH AFRICA**

2 September 2015





## PURPOSE OF TODAY

TO PRESENT THE SUBMISSIONS OF CHILD  
WELFARE SOUTH AFRICA (CWSA) ON THE  
CHILDREN'S AMENDMENT BILL TO THE STANDING  
COMMITTEE FOR CONSIDERATION.

## WHO ARE WE?

- CHILD WELFARE SOUTH AFRICA (CWSA) IS 92 YEARS OLD
- IT IS THE BIGGEST ACCREDITED NATIONAL NON GOVERNMENT CHILD PROTECTION ORGANISATION IN SOUTH AFRICA
- IT HAS WITH 151 AFFILIATES IN ALL 9 PROVINCES.

CWSA WELCOMES THE OPPORTUNITY TO SHARE THEIR VIEWS AND EXPERIENCES AND TO MAKE SUBMIT THEIR COMMENTS AND INPUTS ON THE PROPOSED AMENDMENTS FOR CONSIDERATION

# PROPOSED AMENDMENTS

THE CHILDREN'S AMENDMENT BILL SEKS 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

# CONT.....

- TO AMEND SECTION 152 TO PROVIDE FOR A JUDICIAL REVIEW OF A DECISION TO REMOVE A CHILD WITHOUT A COURT ORDER.
- TO AMEND SECTION 242 TO PROVIDE CLARITY ON THE LEGAL STATUS OF THE PARENTAL RIGHTS AND RESPONSIBILITIES OF THE BIOLOGICAL PARENT WHEN HIS/HER SPOUSE OR PERMANENT DOMESTIC LIFE PARTNER WHO IS NOT THE BIOLOGICAL PARENT OF SAID CHILD ADOPTS THE CHILD

# CWSA SUBMISSIONS:-

- 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 SERVES 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 :-
- S.120 "(4) IN CRIMINAL PROCEEDINGS, SUBJECT TO THE PROVISIONS OF (4A) A PERSON MUST BE (FOUND) DEEMED UNSUITABLE TO WORK WITH CHILDREN -

# DEEMED - SUBJECTIVE

- 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 .

# SEX OFFENCES REGISTERS: INEFFECTUAL

- 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.
- THE COMMITTEE IS REQUESTED TO NOTE THIS AND ASSIST IN ALIGNING THE REGISTERS BETWEEN THE DEPARTMENTS



# 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”;

# SUBMISSION CWSA: sec 150

- 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 FOSTERCARE

# OSTENSIBLY?

- THE USE OF THE WORD “**OSTENSIBLY**” MUST BE QUESTIONED AS NOT ONLY IS IT ARCHAIC AND CREATE 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.

# SUBMISSION CWSA Sec.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.
- HOWEVER 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)

# SUBMISSION CWSA AMENDMENT OF Sec. 242 OF ACT 38/2005

## **Amendment of section 242 of 38 of 2005**

**10.** Section 242 of the principal Act is hereby amended by the deletion in subsection (2) of the word "and" at the end of paragraph (c), the insertion of the word "and" at the end of end of paragraph (d) and the addition of the following paragraph:

"(e) does not automatically terminate all parental responsibilities and rights of the parent of a child, when an adoption order is granted in favour of the spouse or permanent domestic life-partner of that parent";

THIS IS WELCOMED AS IT CLARIFIES THE LEGISLATURE'S INTENTION FOLLOWING THE RECENT UNINTENDED CONSEQUENCES OF THE CURRENT WORDING OF THE ACT

**THANK -YOU  
TOGETHER – AS PARTNERS – WE  
CAN MAKE A DIFFERENCE  
CWSA**



