

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 1346

19 June 1991

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

No. 86 of 1991: Child Care Amendment Act, 1991.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Child Care Act, 1983, so as to substitute certain definitions; to abolish the Child Welfare Advisory Council; to provide that a child who has a parent or guardian who cannot be traced, may be brought before a children's court, which can hold an inquiry and make an order in respect of such a child; to further regulate the powers of the children's courts; to further regulate the designation of a children's home or school of industries as a result of an order of a children's court; to further regulate the qualifications for adoption of children; to increase fines; to provide for the observation, examination and treatment of children in places of safety; to further regulate the transfer of a child from an institution or custody to the custody of his parents or guardian; to make it an offence to counsel, to induce or to aid a pupil or child to whom leave of absence was granted not to return or to prevent him from returning to the institution or custody from which leave of absence was granted; to further regulate the medical treatment of children; to abolish the requirement that the race classification of a child and the person in whose custody the child is placed should be the same; to further regulate the notification of injured children and children who suffer from a nutritional deficiency disease; to make the offence relating to the ill-treatment of children applicable to all persons; to prohibit the employment of certain children; to further regulate the financial support for the maintenance of pupils and certain children; and to authorize the Minister to make regulations as to the search of children in places of safety; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 5 June 1991.)

BE IT ENACTED by the State President and 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

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

(a) by the substitution for the definition of "local authority" of the following definition:

"local authority" means an institution, council or body contemplated in section 84 (1) (f) of the **[Republic of South Africa Constitution]** Provincial Government Act, 1961 (Act No. 32 of 1961), and includes **[a town council as defined in section 1 of the Black Local Authorities Act, 1982 (Act No. 102 of 1982)]**—

(a) a board of management as defined in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);

(b) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act No. 102 of 1982);

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- (c) a regional services council established under the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
- (d) a local government body established or deemed to be established under section 30 of the Black Administration Act, 1927 (Act No. 38 of 1927);"; and
- (b) 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 **[and Associated Workers] 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 **[prescribed] department [of State]** under the control of the Minister or prescribed welfare organization;"

Repeal of Chapter 1 of Act 74 of 1983

2. Chapter 1 of the principal Act is hereby repealed.

Amendment of section 8 of Act 74 of 1983

3. Section 8 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding the proviso in the Afrikaans text of the following words:

"Niemand mag op enige wyse hoegenaamd enige inligting met betrekking tot die verrigtings in 'n kindershof publiseer wat die **[indentiteit] identiteit** van 'n kind wat by daardie verrigtings betrokke is of was, openbaar of kan openbaar nie:"

Amendment of section 13 of Act 74 of 1983

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

"(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, 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 guardian or is in the custody of a person unable or unfit to have the custody of that child: Provided that if the child ordinarily resides in the district of another children's court the first-mentioned court may refer the inquiry to the children's court of that other district."

Amendment of section 14 of Act 74 of 1983

5. Section 14 of the principal Act is hereby amended by the insertion in subsection (4) after paragraph (a) of the following paragraph:

"(aA) the child has a parent or guardian who cannot be traced; or"

Amendment of section 15 of Act 74 of 1983

6. Section 15 of the principal Act is hereby amended—

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

"(1) 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, may—

- (a) order that the child be returned to or remain in the custody of his parents or, if the parents live apart or are divorced, the parent designated by the court or of his guardian or of the person in whose custody he was immediately before the commencement of the proceedings, under the supervision of a social worker, on condition that the child or his parent or guardian or such person complies or the parents of the child comply with such of the prescribed requirements as the court may determine; or 5
- (b) order that the child be placed in the custody of a suitable foster parent designated by the court under the supervision of a social worker; or 10
- (c) order that the child be sent to a children's home designated by the Director-General; or
- (d) order that the child be sent to a school of industries designated by the Director-General."; and
- (b) by the addition of the following subsection: 15
- "(5) (a) If the Director-General cannot designate a children's home in terms of subsection (1) (c) or a school of industries in terms of subsection (1) (d), he shall without delay furnish the Minister with a report in connection with the child concerned.
- (b) The Minister may, after consideration of the Director-General's report referred to in paragraph (a), deal with the child concerned in terms of section 34 or 37 as if the child has been admitted to a children's home or a school of industries, as the case may be." 20

Substitution of section 17 of Act 74 of 1983

7. The following section is hereby substituted for section 17 of the principal Act: 25

"Qualifications for adoption of children

17. A child may be adopted—

- (a) by a husband and his wife jointly [if the child is not a child born of one of them];
- (b) [with the consent of the Minister] by a widower or widow or unmarried or divorced person [if the child is not a child born of him or her]; 30
- (c) by a married person [of] whose spouse [the child is born] is the parent of the child." 35

Amendment of section 24 of Act 74 of 1983

8. Section 24 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding [R2 000] R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment." 40

Amendment of section 28 of Act 74 of 1983

9. Section 28 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for the purpose establish and maintain places of safety for the reception [and detention], custody, observation, examination and treatment of children under this Act, and the detention of children awaiting trial or sentence." 45

Amendment of section 34 of Act 74 of 1983

10. Section 34 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) (a) When the Minister transfers a child under subsection (1) to the custody of his parent or guardian or of the person mentioned in section 15 (1) (a), under the supervision of a social worker, the Minister shall determine in the order the requirements with which the child or his parent or guardian or the person mentioned in section 15 (1) (a) shall comply. 5
- (b) If any requirement referred to in paragraph (a) is in the opinion of the social worker concerned not being complied with, the child concerned may be brought by that social worker before the children’s court of the district in which the child resides, which shall hold an inquiry in terms of section 13 (3), after which the court may vary the order issued by the Minister or make a new order under section 15 (1).” 10

Amendment of section 35 of Act 74 of 1983

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11. Section 35 of the principal Act is hereby amended by the addition of the following subsection:

- “(3) Any person who directly or indirectly counsels, induces or aids any child or pupil to whom leave of absence has been granted under subsection (1) not to return to the custody of the foster parent or the institution, or who prevents him from returning to such custody or institution after the expiration of the period of leave or after the cancellation of such leave, shall be guilty of an offence.” 20

Amendment of section 36 of Act 74 of 1983

12. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25

- “(1) The Minister may, if he considers it desirable in the interest of any pupil or foster child who is in an institution to which he has been sent under this Act or any other law or in the custody of a foster parent in which he has been placed under this Act or any other law, by order in writing direct that that pupil or foster child be taken to a place of safety and be kept therein for observation or to be examined and treated.” 30

Amendment of section 39 of Act 74 of 1983

13. Section 39 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) Notwithstanding any rule of law to the contrary— 35
- (a) any person over the age of 18 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any operation upon [or any medical treatment of] himself; and
- (b) any person over the age of 14 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any medical treatment of himself or his child.” 40

Substitution of section 40 of Act 74 of 1983

14. The following section is hereby substituted for section 40 of the principal Act:

“Determination of custody of children

40. In the application of the provisions of section 15 (1) (b) or 34 regard shall be had to the religious and cultural background of the child concerned and of his parents as against that of the person in or to whose custody he is to be placed or transferred.” 45

Substitution of section 42 of Act 74 of 1983

15. The following section is hereby substituted for section 42 of the principal Act:

“Notification of injured children and children who suffer from nutritional deficiency disease

42. (1) Every dentist, medical practitioner **[or]**, nurse or social worker who examines **[or]**, 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 **[is undernourished]** suffers from a nutritional deficiency disease, shall immediately **[in the prescribed manner]** notify the **[Regional Director of Health and Welfare of the district in which the child happens to be]** Director-General or any officer designated by him for the purposes of this section of those circumstances.

(2) On receipt of a notification in terms of subsection (1) the Director-General or the said **[Regional Director of Health and Welfare]** officer may issue a warrant in the prescribed form and manner for the removal of the child concerned to a place of safety or a hospital.

(3) The Director-General or the said **[Regional Director of Health and Welfare]** officer shall thereupon arrange that the child and his parents receive such **[prescribed]** treatment as the Director-General or the said **[Regional Director]** officer may determine.

(4) This section shall not exclude any other action against or treatment of the parent and his child in terms of this Act.

(5) Any dentist, medical practitioner, **[or]** nurse or social worker who contravenes any provision of this section shall be guilty of an offence.

(6) No legal proceedings shall lie against any dentist, medical practitioner, **[or]** nurse or social worker in respect of any notification given in good faith in accordance with this section.”

Amendment of section 49 of Act 74 of 1983

16. Section 49 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any summons, subpoena or notice in connection with any proceedings under this Chapter may be served without fee by any policeman in the manner prescribed by the rules framed under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), **[or the regulations made under the Black Administration Act, 1927 (Act No. 38 of 1927), as the case may be]** for the service of similar documents in civil proceedings in magistrates’ courts **[or Commissioners’ courts]**, unless any other manner of service has been prescribed.”

Substitution of heading to Chapter 8 of Act 74 of 1983

17. The following heading is hereby substituted for the heading to Chapter 8 of the principal Act:

“PREVENTION OF ILL-TREATMENT AND UNLAWFUL REMOVAL OF CHILDREN, AND PROHIBITION OF EMPLOYMENT OF CERTAIN CHILDREN”.

Amendment of section 50 of Act 74 of 1983

18. Section 50 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words following upon paragraph (b) of the following words:

“or any other person who ill-treats a child, shall be guilty of an offence.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) Any person convicted of any offence under this section shall be liable to a fine not exceeding ~~[R5 000]~~ R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”

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Insertion of section 52A in Act 74 of 1983

19. The following section is hereby inserted in the principal Act after section 52:

“Prohibition of employment of certain children

52A. (1) Subject to the provisions of this Act or any other law, no person may employ or provide work to any child under the age of 15 years.

(2) The Minister may, on the conditions determined by him—

(a) by notice in the *Gazette* exclude any employment or work from the provisions of subsection (1); and

(b) grant any particular person, or persons generally, exemption from the provisions of subsection (1).

(3) An exemption under subsection (2) (b) shall—

(a) in the case of the exemption of a particular person be granted by issuing to such person a certificate of exemption in which his name and the conditions of the exemption and the name of the child or a description of the category of children with respect to whom exemption is granted are specified;

(b) in the case of the exemption of persons generally, be granted by the publication in the *Gazette* of a notice in which such persons are described and the conditions of the exemption and a description of the category of children with respect to whom exemption is granted are specified.

(4) A certificate of exemption contemplated in subsection (3) (a) and a notice contemplated in subsection (3) (b) may at any time be amended or withdrawn by the Minister.

(5) Any person who contravenes any provision of this section shall be guilty of an offence.”

Amendment of section 56 of Act 74 of 1983

20. Section 56 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph:

“(c) in any institution of any child who is admitted with the approval of the Director-General.”

Substitution of section 58 of Act 74 of 1983

21. The following section is hereby substituted for section 58 of the principal Act:

“Penalties

58. Any person who is convicted of an offence under any provision of this Act for which no punishment is specially provided shall be liable to a fine not exceeding ~~[R1 000]~~ R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”

Amendment of section 60 of Act 74 of 1983

22. Section 60 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (e) of the following paragraph:

“(eA) as to the search of children in places of safety;”

Amendment of section 63 of Act 74 of 1983

23. Section 63 of the principal Act is hereby amended by the addition of the following subsections:

“(3) Any order made under section 31 (1) (a) of the Children’s Act, 1960 (Act No. 33 of 1960), shall be deemed to have lapsed with effect from the date of commencement of this Act. 5

(4) Any order made under paragraph (b), (d) or (e) of section 31 (1) of the Children’s Act, 1960 (Act No. 33 of 1960), that was in force immediately prior to the commencement of the Child Care Amendment Act, 1991, shall remain in force and shall be deemed to have been made on the date of such commencement under paragraphs (b), (c) and (d) of section 15 (1) of this Act, respectively.”. 10

Substitution of long title of Act 74 of 1983

24. The following long title is hereby substituted for the long title of the principal Act: 15

“ACT

To provide for the establishment of [a Child Welfare Advisory Council; for the establishment of] children’s courts and the appointment of commissioners of child welfare; for the protection and welfare of certain children; for the adoption of children; for the establishment of certain institutions for the reception of children and for the treatment of children after such reception; and for contribution by certain persons towards the maintenance of certain children; and to provide for incidental matters.”. 20

Short title

25. This Act shall be called the Child Care Amendment Act, 1991. 25