



*Southern African Catholic Bishops' Conference*  
**PARLIAMENTARY LIAISON OFFICE**



# **SUBMISSION**

**to the**

**Department of Social Development**

**on the**

**DRAFT AMENDMENT REGULATIONS  
REGARDING CHILDREN  
(CHILDREN'S Amendment Act 17, 2022)**

**18 July 2024**

## **1. Introduction**

The SACBC Parliamentary Liaison Office is glad of the opportunity to comment on these regulations. The Children's Amendment Act No 17 of 2022 marks a significant stride in the evolution of child protection legislation, amending and refining the existing Children's Act of 2005. The new Act strengthens the safeguarding of children's rights by addressing the nuances in the definitions and addresses the guardianship of children by expanding the authority of children's courts, and enhancing the welfare of abandoned, orphaned, and alternatively cared-for children. It significantly strengthens the protective measures in place for vulnerable children and prioritizes the best interests of the child and ensures their holistic well-being.<sup>i</sup>

We agree with the following assessment: "The Children's Amendment Act 17 of 2022 represents a transformative shift in South African family law. By expanding the jurisdiction of Children's Courts to include guardianship matters, the Act aims to make legal recourse more accessible and less complex for individuals. While the amendments bring several advantages, they also present challenges, such as increased caseloads and potential case backlogs. It is essential to strike a balance between the benefits and drawbacks, ensuring that the amendments fulfil their purpose of increased access to justice for children and families in South Africa".<sup>ii</sup>

There is an increased emphasis on updating criteria for identifying children in need of care and protection. This includes a sharper focus on those who are abandoned, orphaned, incapable of self-support, or victims of abuse, trafficking, or sale by creating a more effective and responsive approach to such vulnerable children.<sup>iii</sup>

## **2. The Draft Regulations**

These draft regulations are intended to provide the nuts and bolts to effective implementation of this critical Act. While the regulations are welcomed, we have concerns that on a practical level there remain serious challenges in providing child protection services. We are especially mindful about the significant challenges facing social workers and associated social service professionals charged with the application of the Act and its regulations.

### ***2.1. Social Service Professionals***

These challenges have far-reaching effects on the social service professionals and the families they aim to assist. We hope that awareness of the issues will lead to dialogue and the development of strategies that will promote effective service delivery through encouragement of a multi-disciplinary approach.<sup>iv</sup> It is essential that these services are made more accessible in poor and rural communities where social workers are scarce. High caseloads have had a severe negative effects on the delivery of quality services, which affects both social workers and their supervisors.

## ***2.2. Caseloads***

Statistics have shown that the ratio of social workers to population in South Africa is estimated at 1:5000.<sup>v</sup> These unrealistically high caseloads lead to stress and depression, specifically caused by the social worker's constant exposure to traumatic situations on the field. And although the need for self-care, debriefing and counselling of practitioners has been highlighted, practical implementation due to time and resource restraints is lacking.

Moreover, the high caseloads may result in delays in responding to emergencies. Social service professionals end up only responding to crises and neglecting prevention and early intervention services, and they render remedial services as opposed to the comprehensive developmental services that are legislated for in the Children's Act.

## ***2.3. Children's Courts***

A further challenge is that it is extremely difficult for social workers managing high caseloads to have all documents and attachments to reports for extending orders ready for courts on due dates. It is therefore inevitable for orders to lapse, with far-reaching consequences for the affected children. This is particularly the case with foster care orders. To be effective, these "social workers must be linked to families as soon as possible, have sufficient supervision and support, a manageable workload, access to necessary resources such as transportation, as well as adequate pay to enable adequate attention to the children and families concerned".<sup>vi</sup>

Furthermore, family lawyers point out that "despite the benefits, the increased responsibilities placed upon Children's Courts will result in systemic strain. The courts are sure to face challenges in managing a heavier caseload, which could lead to further delays and longer resolution times for cases involving children. While it aims to make guardianship matters more accessible and efficient, it also places additional demands on the Children's Court system. Balancing these factors will be key to ensuring that the amendments fulfil their purpose of increased access to justice".<sup>vii</sup>

### 3. Conclusion

We do not comment on the numerous technical and operational aspects of the Draft, as these are not within our area of competence. We hope that the comments above will be of some assistance, and we wish the Department well in its endeavours to protect South Africa's children and to advance their interests.

For further information please contact:

**Ms Lois Law**

**Catholic Parliamentary Liaison Office**

[lois@cplo.org.za](mailto:lois@cplo.org.za)

021 461 1417

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<sup>i</sup> <https://www.tmfattorneys.co.za/new-update-to-the-childrens-act-in-south-africa/#:~:text=Procedurally%2C%20the%20amendments%20empower%20children's,foster%20care%20as%20deemed%20appropriate.>

<sup>ii</sup> <https://familylaws.co.za/understanding-childrens-act-17-2022-south-africa>

<sup>iii</sup> <https://familylaws.co.za/understanding-childrens-act-17-2022-south-africa>

<sup>iv</sup> <https://tmsafri.com/challenges-facing-social-workers-in-south-africa/>

<sup>v</sup> <https://tmsafri.com/challenges-facing-social-workers-in-south-africa/#:~:text=Statistics%20have%20shown%20that%20the,traumatic%20situations%20on%20the%20field.>

<sup>vi</sup> <https://theconversation.com/social-workers-can-help-children-more-effectively-by-assessing-the-needs-of-the-whole-family-215909>

<sup>vii</sup> <https://www.vermeulenlaw.co.za/category/family-law/maintenance/>