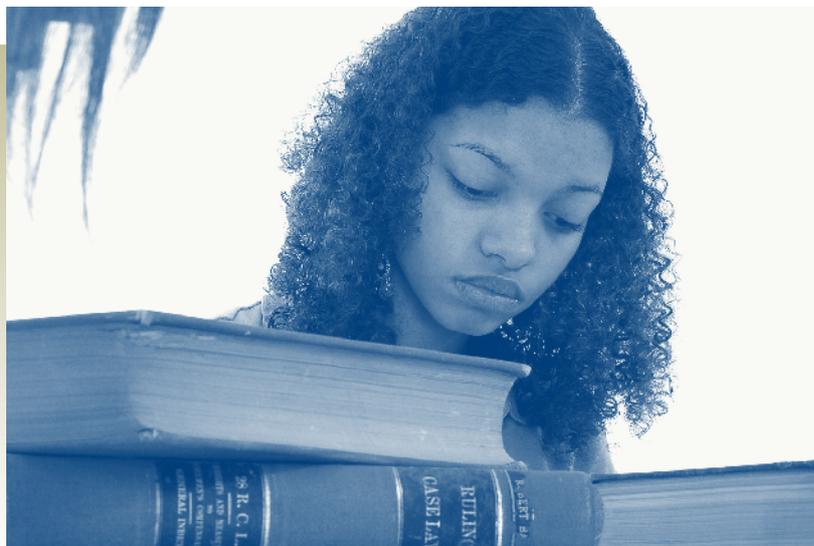


Article 40

The Dynamics of Youth Justice & the Convention on the Rights of the Child in South Africa

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Article 4

“States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention ...”

Introducing the Social Services Professions and Occupations Bill

By Lucy Jamieson

*In January 2008, the Department of Social Development published the draft Social Services Professions Bill in the Government Gazette and called for the public to give their comments. Several redrafts were released, and the latest draft dates from November 2008; it is called the **Social Service Professions and Occupations Bill**. It was released on the South African Council for Social Service Professions’ (SACSSP) website in June 2009¹. Although the subtitle of the Bill declares that it is*

the ‘final draft: post public comment’, as of 1 November 2009, the website reports that the Council is still accepting comments. The Department of Social Development, in conjunction with the Council, is in the process of developing a policy to guide the implementation of the new legislation. After the policy is finalised, the Bill will be tabled in Parliament. This will most probably be in the second half of 2010. Parliament is required to hold public hearings and social service practitioners will have opportunity to make submissions and to voice their opinions. There are a number of sections of the Bill that need to be scrutinised and discussed by social service practitioners.

¹ <http://www.sacssp.co.za/>

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EDITORIAL

As is evidenced by most of the articles in this edition, implementation is what is currently dominating all child justice roleplayers' thoughts and actions. It is not only the national departments that are busy with implementation plans but also provinces and civil society.

Corlia Kok provides an update on what the national Department of Justice and Constitutional Development is working on regarding their implementation plans. In addition, we provide an insight into the recent implementation workshop in Limpopo and we also feature an article on the activities of the Child Justice Alliance as they prepare for the Child Justice Act coming into operation on 1 April 2010.

As the United Nations Committee on the Rights of the Child has noted in its General Comment No. 5 on General Measures of Implementation: '[e]nsuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental'. Therefore it is heartening to recognise the efforts that have occurred thus far, while still acknowledging that much more needs to be done.

Finally, we wish to join in the celebrations around the 20th anniversary of the adoption of the Convention on the Rights of the Child on 20 November 1989. It is indeed a momentous occasion and somewhat gratifying, for our purposes, that the Child Justice Act was finalised before the Convention entered its third decade of existence.

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Why do we need a new Bill?

New laws such as the Sexual Offences Act 32 of 2007, the Child Justice Act 75 of 2008, and the Children's Act 38 of 2005 have come into force, or are due to do so soon. These laws collectively will transform the nature and shape of social services in South Africa. They have all been developed in line with the developmental model of social services outlined in the Department of Social Development's policy papers and require the delivery of a range of prevention and early intervention programmes, diversion programmes and community-based services. The legislation recognises that a range of social service practitioners are required to deliver these services. For example the Children's Act defines the term "social service professional" to include "a probation officer, development worker, child and youth care worker, youth worker, social auxiliary worker and social, security worker". Throughout the Children's Act certain functions that were previously the exclusive responsibility of social workers under the Child Care Act, have been given to social service professionals. The intention of Parliament was to allow the burden of service delivery to be shared between different professions. The existing legal framework regulating the sector does not accommodate this diversity.

At present, the regulatory framework for social service professions is the Social Service Professions Act 110 of 1978. The Act establishes the South African Council for Social Service Professions (SACSSP) and allows for the establishment of Professional Boards, and the registration of professionals. According to Council:

- "The Act has become out-dated and therefore not fully effective.
- Some of the provisions of the Act are vague and lend themselves to misinterpretation.
- The Act does not address the transformation of social services mechanisms envisaged in South Africa today;
- There is need to synergize the Act with other legislation;
- The Act is not well aligned with the provisions of the new Constitution."²

The new Bill should address these concerns. It should be in line with the Constitution and other legislation, and it should provide a clear legal framework for the transformation of social services.

What is in the new Bill?

The purpose of the new Bill is to "advance social justice by promoting developmental social services". To achieve this aim, it contains six chapters that define the categories of practitioners that are to be registered, and deals with other matters such the requirements for registration, and disciplinary procedures.

Broadening the scope of the Bill to include occupations

Clause 1 of the Bill introduces the following definitions:

"social service occupation" means the child and youth care work occupation and any other social service occupation designated by the Minister'.

² South African Council for Social Service Professions (SACSSP) "A Call To Service Providers Appointment Of A Service Provider To Develop The Social Service Professions Policy".

A framework which enables the registration of both occupations and professions would broaden the categories of social service practitioners that are able to register, and hence is a transformative and progressive measure.

“social service profession” means the social work profession, and any other social service profession designated by the Minister as a social service profession.’

The Bill states that the Minister may, on the recommendation of Council, designate any profession as a social service profession (clause 22(1)) and any occupation as a social service occupation (clause 27(1)). The Bill does not stipulate what exactly is required to become a profession or an occupation and there is no clarity on the criteria used to distinguish between a profession and an occupation. Therefore the Bill does not define what a profession is.

However, it is assumed that it will be in line with the National Qualifications Framework Act 67 of 2008 (NQFA). The NQFA provides the main principles and framework for defining areas of work in relation to qualifications. The NQFA notes that a ‘professional body’ means any body of expert practitioners in an occupational field; and ‘professional designation’ means a title or status conferred by a professional body in recognition of a person’s expertise and right to practice in an occupational field. The South African Qualifications Authority does not have an official definition, but have suggested that a profession would be a when the level of qualification is a four-year degree as is the case for social workers, lawyers, teachers and nurses. Occupation therefore appears to be a broad term applying to all practitioners, whereas, the profession is restricted to those recognised as experts with the requisite qualifications.

A framework which enables the registration of both occupations and professions would broaden the categories of social service practitioners that are able to register, and hence is a transformative and progressive measure. However, the lack of clarity on what constitutes an occupation and a profession and how a group is recognised means that the new Bill could be open to misinterpretation when trying to categorise different services or practitioners.

Who is classified as a social service practitioner?

According to clause 32 of the Bill the categories in which a person may register in a social service profession are: social worker; social auxiliary worker; student social worker; and student auxiliary worker. The categories in which a person may register in a social service occupation are: child and youth care worker; and student child and youth care worker. This contradicts the NQFA. Registration is mandatory if a person wants to practice in any of these categories. There is no mention of probation officers anywhere in the Bill.

Exclusive competencies

Section 33 states that “the Minister may, on recommendation of the Council ... identify the type of work which may only be performed by

persons registered in a category contemplated in section 32”, this means that the Minister has the power to restrict certain jobs to a single profession, or occupation, or specialist group, for example only an adoption social workers may provide adoption services.

Composition of Council

Clause 9 deals with the composition of the Council. The following table illustrates how Council is constituted. Practitioner groups should assess whether or not the composition will ensure that they are effectively represented and their interests taken into consideration through the composition of the council.

Each Professional board	3
Each Occupational board	2
NGO forums	1
Department of Social Development	1
Department of Education	1
Trade Unions	1
Community	2

In terms of clause 9(3) the council may co-opt two additional members to supplement its expertise or to accommodate additional constituencies – for example community development workers (CDW) do not have an occupational board at present, this clause would enable Council to ensure that there is representation from the community development sector if they were to consider establishing a board and registering CDW. There are a number of these constituencies e.g. youth workers, home-based carers and early childhood development practitioners. Therefore if there are only two co-opted positions some practitioner groups would not have representation on the Council.

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It is critical to ... motivate for a Bill that serves the best interests of all social service practitioners and empowers this valuable workforce in advancing social justice in communities throughout South Africa.

Composition of boards and representation on SACSSP

Council regulates the professions in the same way as it regulates the occupations; however, there are some notable differences in relation to composition of the boards, and representation on the SACSSP. On professional boards 50% of the members must be elected by members of the profession(s) represented on the board. It should also be noted that a professional board can cover more than one profession. Occupational boards are structured differently: only two practitioners may serve on each occupational board, alongside two community members, Department of Social Development officials and representatives from education and training institutions. The SACSSP is composed of three persons from each profession but only two persons from each occupation. Therefore, it seems at first glance that professions have greater influence on SACSSP. However, professional boards can represent more than one profession, in which case those professions would be under-represented.

Powers of the Council

The Council acts as an advisory board to the Minister of Social Development on matters affecting social service professions and occupations and on matters related to the Act. Council plays an advisory, consultative and liaison role with public authorities in matters affecting social service professions and occupations. It must also promote the interests of the professions, and work to enhance the integrity and prestige of the sector. Council

must develop policy on financial matters; education and training; the registration of social service practitioners; and professional conduct. It must also develop and issue guidelines on any matter affecting social service professions and ensure uniform application of such policies and guidelines by the boards. Council has a responsibility to provide the necessary financial, administrative and other assistance to enable the boards to perform their functions, and must coordinate the activities of the boards. It must also determine the standards of professional conduct and enforce those standards.

Under the existing Act the professional boards should control and exercise authority in respect of all matters affecting training, from determining the minimum standards of education, approving training schools and appointing examiners and moderators. Section 3 (f) of the current Act requires the Council “to determine, on the recommendation of the professional boards, the qualifications for registration of social workers, social auxiliary workers and persons practising other professions in respect of which professional boards have been established.” Clause 6 of the Social Service Professions and Occupations Bill grants these powers to the Council. The Council must consult with relevant authorities in education like SAQA, and the Council for Higher Education.

Responding to the Bill

It is critical that all whose interest are affected by the Bill should respond to these issues and motivate for a Bill that serves the best interests of all social service practitioners and empowers this valuable workforce in advancing social justice in communities throughout South Africa. The Social Service Practitioners’ Advocacy Network is a network. ●

For more information or to join the Social Service Practitioners Advocacy Network contact: Lucy Jamieson or Khululwa Seysisi on 021 689 5404 or email lucy.jamieson@uct.ac.za.