

CHILD LAW MATTERS

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THE NATIONAL REGISTER FOR SEX OFFENDERS

CHILD WELFARE SOUTH AFRICA v MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND ANOTHER, CASE NO: 68184/09 (NORTH GAUTENG HIGH COURT)

The new Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 ("the Act") provides for a National Register for Sex Offenders.^{1[1]} Section 48 of the Act provides that where consideration is being given to placing a child in temporary safe care, foster care or adoption, the details of the person in whose care the child will be placed must be checked against the register.

Section 48(1) of the Act provides that:

"A relevant authority may not consider an application or approve the appointment of a person as a foster parent, kinship care-giver, temporary safe care-giver, an adoptive parent or curator without having determined, by way of an application to the Registrar for a prescribed certificate, whether or not the particulars of such person have been recorded in the Register."

Upon first glance, this provision aims to advance and protect the rights of vulnerable children, but difficulties soon emerged which further compromised the position of such children. Section 48 came into operation in June 2009. However the Sex Offenders

^{1[1]} In terms of section 72(2)(b) of the Act, Chapter 6 of the Act (which includes section 48) took effect on 16 June 2008. However, section 42 of the Act, as amended, provided that the Sex Offenders Register was only to have been established by 30 June 2009

Register had not been made operational. Some magistrates in the Children's Courts refused to place children in care because they could not comply with section 48.2[2]

The Centre was approached by Child Welfare South Africa for assistance, to be their attorneys, as they had backlogs of cases where children could not be legally placed in place of safety, foster care or adoption. On 4 December 2009 a court order was obtained (unopposed by the respondent: the Minister of Justice and Constitutional Development) which provided that the relevant authorities need not comply with the provisions of section 48 until the Register becomes fully operational. The court order was subsequently published in the Government Gazette. This is a prime example of the precarious position of children in need of care and of how easily this position can deteriorate: even by a provision enacted to aid them.

The court order, government gazette and a newspaper article with regard to this matter are attached hereto for your information.

[2] Section 48(3) of the Act section appears to render failure to comply with section 48(1) of the Act criminal.