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CONTENTS • INHOUD*No.**Page
No. Gazette
 No.***GENERAL NOTICE****Parliament of South Africa***General Notice*

164	Children's Act (38/2005): Invitation for public comment on draft Children's Amendment Bill.....	3	36196
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GENERAL NOTICE

NOTICE 164 OF 2013

INVITATION FOR PUBLIC COMMENT ON DRAFT CHILDREN'S AMENDMENT BILL

In accordance with Rule 241(1)(b) of the Rules of the National Assembly, notice is hereby given that Michael Waters, MP, intends introducing a private member's bill shortly in order to effect a correction to the Children's Act, No 38 of 2005.

A copy of the draft Children's Amendment Bill and a memorandum setting out its objectives are included in the Schedule to this Notice in fulfillment of the requirements of Rule 241(1)(c) of the Rules of the National Assembly.

Interested parties and institutions are invited to submit written representations on the draft bill to the Secretary to Parliament within 40 days of the publication of this notice. Representations can be delivered to the Secretary to Parliament, Old Assembly Building, Parliament Street, Cape Town; or mailed to the Secretary to Parliament, P O Box 15, Cape Town 8000; or emailed to mcoetzee@parliament.gov.za and copied to mwaters@parliament.gov.za.

15 February 2013
M Waters MP

SCHEDULE

REPUBLIC OF SOUTH AFRICA

**CHILDREN'S
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75)
(Bill and prior notice of its introduction published in Government Gazette 36196 of 27 February 2013)
(The English text is the official text of the Bill)*

(Mr M Waters, MP)

[PMB - 2013]

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.

BILL

To amend the Children's Act, 2005, to provide for a person convicted of attempted rape to be unsuitable to work with children; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 120 of Act 38 of 2005

1. Section 120 of the Children's Act 2005, Act 38 of 2005 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the substitution for subsection (4) of the following subsection:

“(4) in criminal proceedings, a person must be found unsuitable to work with children –

(a) on conviction of murder, attempted murder, rape, attempted rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child; or

(b) if a court makes a finding and gives a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act 51 of 1977) that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was by reason of mental illness or mental defect not criminally responsible for the act which constituted murder, attempted murder, rape, attempted rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child.”; and

(b) by the substitution for subsection (5) of the following subsection:

“(5) Any person who has been convicted of murder, attempted murder, rape, attempted rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child during the five years preceding the commencement of this Chapter, is deemed to have been found unsuitable to work with children.”.

Short title and commencement

2. This Act is called the Children's Amendment Act, 2013, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTIVES OF THE CHILDREN'S AMENDMENT BILL, 2013

1. BACKGROUND

Part B of the Child Protection Register was introduced to protect children from people who have been found unsuitable to work with them. At present the Act determines that such people include those convicted of murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regards to a child.

The crime of "attempted rape" was inadvertently omitted from the Act and ought to be added to the crimes listed in the Act that constitute a disqualification when it comes to working with children.

2. OBJECTIVE OF THE BILL

The objective of the Bill is to amend sections 120(4) and (5) of the Children's Act 2005 to provide for a person who has been convicted of attempted rape to be unsuitable to work with children.

3. FINANCIAL IMPLICATIONS FOR THE STATE

None, as the Child Protection Register already exists.

4. PARLIAMENTARY PROCEDURE

4.1 The Legal Advisers of Parliament are of the opinion that the bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.

4.2 The Legal Advisers of Parliament are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No 41 of 2003), as it does not contain provisions pertaining to customary law or customs of traditional communities.

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