

TO: **MINISTER OF SOCIAL DEVELOPMENT**
Department Of Social Development
HSRC Building
134 Pretorius Street
PRETORIA
0001
Service by email: ZamaK@dsd.gov.za
JudyB@dsd.gov.za

AND TO: **THE DEPUTY GENERAL**
Department Of Social Development
HSRC Building
134 Pretorius Street
PRETORIA
0001
Service by email: SusanP@dsd.gov.za
petern@dsd.gov.za

AND TO: **THE REGISTRAR**
South African Council for Social Service Professions ("SACSSP")
37 Annie Botha Avenue
RIVIERA
0084
Service by email: Registrar@sacssp.co.za

Dear Honourable Minister,

DELAY IN THE PROMULGATION OF REGULATIONS RELATING TO THE REGISTRATION OF A SPECIALITY IN SCHOOL SOCIAL WORK

1. INTRODUCTION

- 1.1 We address this correspondence on behalf of **Solidarity**, a trade union representing professionals employed within the social development and education sectors.
- 1.2 On 12 February 2020, the erstwhile Minister of Social Development published proposed regulations titled “**Regulations Relating to the Requirements and Conditions for Registration of a Speciality in School Social Work**” for public comment in Government Gazette No. 43343 dated 22 May 2020.
- 1.3 The proposed regulations were issued in terms of *section 28(1)(gA) of the Social Service Professions Act 110 of 1978* (“the Act”).
- 1.4 Interested stakeholders were invited to submit substantiated written comments or representations within 30 days of publication.
- 1.5 **Six years** have lapsed since the publication of the proposed regulations, yet the regulations have not been promulgated.

- 1.6 Solidarity is concerned that this delay undermines the development and recognition of school social work as a professional speciality and weakens psychosocial support systems available to learners in South African schools.

2. ROLE OF SCHOOL SOCIAL WORKERS

- 2.1 School social workers perform a specialised role within the education system by addressing social, emotional, behavioural and environmental barriers that impede learners' ability to benefit from education.

- 2.2 Their work includes, but is not limited to:

- 2.2.1 Identifying learners experiencing psychosocial distress.

- 2.2.2 Assessing learners who experience difficulties such behavioural problems, absenteeism or truancy, emotional distress, bullying, family conflict,

- 2.2.3 Providing counselling and crisis intervention.

- 2.2.4 Supporting families experiencing social or economic challenges.

- 2.2.5 Assisting schools in addressing behavioural and emotional difficulties.

- 2.2.6 Identifying and reporting suspected abuse or neglect.

- 2.2.7 Facilitating referrals to appropriate support services.

- 2.3 School Social Workers play a crucial role in protecting vulnerable children ensuring learners participate meaningfully in the education system.

3. LEGISLATIVE FRAMEWORK

- 3.1 The work performed by school social workers gives practical effect to the objectives of the *Children's Act 38 of 2005* ("the Children's Act").
- 3.2 The Children's Act places a statutory duty on professionals, including social workers and educators, to identify and report circumstances where children may be subjected to abuse, neglect or exploitation.
- 3.3 The Children's Act further affirms that **the best interests of the child are of paramount importance in every matter concerning the child.**
- 3.4 Similarly, the *South African Schools Act 84 of 1996* ("the Schools Act") establishes the legal framework governing the education system and emphasises the importance of creating safe and supportive learning environments for learners.

4. CONSTITUTIONAL CONTEXT

- 4.1 The role of school social workers must also be considered within the framework of *The Constitution of the Republic of South Africa 108 of 1996* ("the Constitution").
- 4.2 Section 28 (1)(c) of the Constitution confirms that **every child has the right to basic nutrition, shelter, basic health care services and social services.**

- 4.3 Section 28(2) of the Constitution provides that **a child's best interests are of paramount importance in every matter concerning the child.**
- 4.4 Section 29(1)(a) guarantees **the right of everyone to basic education.**
- 4.5 School social workers play an essential role in addressing psychosocial barriers that negatively impacts learners and prevents them from fully utilising their rights protected in the Constitution.

5. DUTY OF THE STATE IN TERMS OF SECTION 7(2) OF THE CONSTITUTION

- 5.1 Section 7(2) of the Constitution places a positive obligation on the State to respect, protect, promote and fulfil the rights contained in the Bill of Rights.
- 5.2 This constitutional obligation requires the State to adopt reasonable legislative and administrative measures to ensure that children are protected and learners to access education in a safe and supportive environment.
- 5.3 The establishment of a clear professional framework for school social work is an important measure through which the State can fulfil its constitutional obligations toward vulnerable children.

6. LEGITIMATE EXPECTATION ARISING FROM THE CONSULTATION PROCESS

- 6.1 The publication of the proposed regulations in the Government Gazette and the invitation to submit comments created a legitimate expectation among stakeholders that the regulatory process would be finalised within a reasonable time.
- 6.2 The principle of legitimate expectation is well recognised in South African administrative law and forms part of the broader requirement of procedural fairness.
- 6.3 Stakeholders, including professional bodies and practitioners, were therefore entitled to expect that the consultation process would culminate in a decision regarding the promulgation of the regulations.
- 6.4 The prolonged delay in finalising the regulations undermines this legitimate expectation and creates uncertainty within the profession.

7. CONCERNS REGARDING ADMINISTRATIVE DELAY

- 7.1 The delay in finalising the regulations also raises concerns regarding administrative inaction.
- 7.2 The *Promotion of Administrative Justice Act 3 of 2000* ("PAJA") gives effect to section 33 of the Constitution and requires administrative action to be lawful, reasonable and procedurally fair.

- 7.3 In terms of section 6(2)(g) of PAJA, a court may review administrative action where the action consists of **a failure to take a decision.**
- 7.4 An unreasonable delay in finalising regulations that have already been published for public comment may therefore constitute **reviewable administrative inaction.**
- 7.5 Solidarity trusts that judicial intervention will not become necessary and that the matter can be resolved through constructive engagement with the relevant authorities.

8. REQUEST FOR CLARIFICATION

- 8.1 Solidarity respectfully requests that the Minister and the relevant authorities provide clarity regarding:
- 8.1.1 The current status of the proposed regulations;
 - 8.1.2 The reasons for the delay in their promulgation; and
 - 8.1.3 The anticipated timeframe for the finalisation of the regulations.

9. REQUEST FOR RESPONSE

- 9.1 In order to assist our members and other affected stakeholders, Solidarity respectfully requests a written response to this correspondence within **30 days of receipt hereof.**

9.2 Should we not receive a response within this period, Solidarity reserves its rights to consider any appropriate steps available in law, including the pursuit of remedies relating to administrative inaction.

10. CONCLUSION

10.1 The recognition and regulation of school social work as a professional speciality is an important step in strengthening psychosocial support systems within South African schools.

10.2 School social workers play an indispensable role in protecting vulnerable learners and addressing the social barriers that undermine educational outcomes.

10.3 The promulgation of the proposed regulations will therefore contribute significantly to improving the protection, wellbeing and educational prospects of learners.

10.4 Solidarity accordingly urges the Department to prioritise the finalisation of the regulations and to provide stakeholders with clarity regarding the way forward.

10.5 We look forward to your response.

Yours faithfully



.....

LELANIE C. DU PLESSIS

LEGAL SPECIALIST: PROFESSIONAL NETWORKS & EDUCATION

SOLIDARITY



www.solidariteit.co.za

Solidariteit Hoofkantoor | Solidarity Head Office

T: 012 644 4300

H.v. DF Malanrylaan en Eendrachtstaat, Kloofsig | Cnr DF Malan and Eendracht Streets, Kloofsig

Deel van die Solidariteit Beweging