



**Western Cape
Government**

Department of the Premier

BETTER TOGETHER.

WC COMMISSIONER FOR CHILDREN BILL

Briefing to the Standing Committee on Premier and
Constitutional Matters

Cape Town |

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SECTION 78 Establishment of and principles governing Commissioner for Children

1

The Commissioner must **assist the Western Cape Government** in protecting and promoting the interests of children in the Western Cape, in particular as regards —

- (a) health services;
- (b) education;
- (c) welfare services;
- (d) recreation and amenities; and
- (e) sport.

SECTION 79 Powers and duties

- 1 Within the context of section 78, the Commissioner has the power as regulated in provincial legislation to **monitor, investigate, research, educate, lobby, advise and report on**, matters pertaining to children.
- 2 The Commissioner —
 - (a) must **report annually** to the Provincial Parliament on the measures taken by the Western Cape Government to protect and promote the interests of children in the Western Cape; and
 - (b) may **report** to the **Provincial Parliament** at any other time.

SECTION 80 Appointment and removal

- 1 The Commissioner is **appointed and removed** by the Premier on the recommendation by the Provincial Parliament

Overview of Commissioner for Children Bill, 2018

CHAPTER 1: Definitions

CHAPTER 2: Appointment
and Office of Commissioner

CHAPTER 3: Functions of
Commissioner

CHAPTER 4: Administration of
Office of Commissioner

CHAPTER 5: General
Provisions

Chapter 2: Appointment and Office of Commissioner

Appointment (Clause 2)

Provides for appointment of the Commissioner for a five-year term, renewable once. The appointment is made on recommendation by the Provincial Parliament.

Nothing prohibits children from participating in this process at the discretion of the Provincial Parliament

Qualifications for appointment (Clause 3)

Provides for the qualifications for appointment of the Commissioner.

Removal and suspension (Clause 4)

Provides for the removal and suspension of the Commissioner upon recommendation by the Provincial Parliament.

30 day window to call for nominations was added to limit the term of the acting Commissioner

Vacancy (Clause 5)

Provides for the filling of a vacancy in the office of the Commissioner. The Premier may appoint an acting Commissioner after consultation with the Provincial Parliament.

Chapter 3: Functions of Commissioner (1)

Principles governing Commissioner's actions (Clause 6)

Provides for the principles that govern the Commissioner in the exercise and performance of his/her powers and functions.

Commissioner has functional independence – must act independently; WCPP drives nomination process; obligations to refrain from interference or obstruction; reports to the WCPP

Monitoring (Clause 7)

Provides for the monitoring function of the Commissioner. The Commissioner must establish monitoring systems and is required to build co-operative relations.

Investigations (Clause 8)

Provides for investigations, enquiries and recommendations. The Commissioner may receive, seek to resolve and investigate complaints about services provided by provincial organs of state that affect children.

Functions must fall within constitutional mandate. E.g. Cannot directly monitor national departments

Research (Clause 9)

Provides for the Commissioner to conduct and initiate research with regard to any matter falling within the scope of his or her functions and to facilitate co-operation with regard to research.

Avoid duplication of investigations on reasonable grounds

Chapter 3: Functions of Commissioner (2)

Education (Clause 10)

Provides for the Commissioner to educate the public about various instruments that promote the rights, needs and interests of children.

Lobbying (Clause 11)

Provides for the Commissioner to lobby and make recommendations concerning existing or proposed legislation, policy or practices that affect or are likely to affect the rights, needs or interests of children.

Advising and making recommendations (Clause 12)

Provides for the Commissioner to advise or make recommendations to any person or organ of state in the Province whose policies and practices relating to children have been monitored, investigated or researched.

Request for matters to be monitored, investigated or researched (Clause 13)

Provides for the process that must be followed when a request is made for a matter to be monitored, investigated or researched by the Commissioner.

Child participation (Clause 14)

Provides for the involvement of children in the work of the Commissioner.

Must provide child-friendly procedures with respect to a request made by a child to investigate, research or monitor.

Chapter 3: Functions of Commissioner (3)

Additional powers and duties (Clause 15)

The Commissioner may accompany the SAPS when carrying out powers of search and seizure, subpoena any person or give notice to any person to appear before him or her and administer an oath or affirmation to any person appearing as a witness.

Reporting (Clause 16)

Provides for the duties of the Commissioner to report annually to the Provincial Parliament, to report on investigations, monitoring and research to the Premier and relevant provincial organs of state, and to submit special reports to the Provincial Parliament at any other time.

Functioning of Commissioner (Clause 17)

Provides that provincial organs of state must assist and protect the Commissioner and that no person or organ of state may interfere with or obstruct the functioning of the Commissioner.

Access to information and institutions (Clause 18)

Provides that all persons, or organs of state that render a service to children must provide any information to the Commissioner. All organs of state that render a service to children must allow the Commissioner access to their premises.

Must perform functions in a manner that is least disruptive to school activities and mindful of a child's right to education

Chapter 4: Administration of Office of Commissioner

Staff (Clause 19)

Provides that the administrative functions of the office of the Commissioner are performed by staff members appointed by the Director-General of the Province in terms of the Public Service Act.

Funding (Clause 20)

Provides that the Provincial Parliament must appropriate funds to enable the Commissioner to perform his or her functions.

Remuneration and conditions of appointment of Commissioner (Clause 21)

Provides for the remuneration and conditions of appointment of the Commissioner.

Donations (Clause 22)

Provides that the office of the Commissioner may receive donations subject to applicable financial prescripts.

Chapter 5: General Provisions

Liability (Clause 23)

Provides that the Commissioner is not liable in respect of any reasonable action performed in good faith under the provisions of the Act or the Provincial Constitution.

Delegation of powers and assignment of duties (Clause 24)

Provides for the delegation of powers and assignment of duties by the Commissioner.

Regulations (Clause 25)

Provides for the Premier to make any regulations in order to achieve the objectives of the Act.

Offences and penalties (Clause 26)

Provides for offences and penalties for the contravention of various provisions of the Act.

Short title and commencement (Clause 27)

Commissioner cannot enforce its recommendations, however he or she can subpoena persons, institute offences and penalties for non-compliance with the law, obstruction and the refusal or failure to furnish information.

Thank you