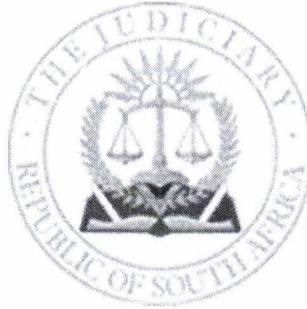




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 163185/2025

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES:
NO
- (3) REVISED.
- (4) Date: 07 August 2026

Signature: 

THE TEDDY BEAR FOUNDATION

Applicant

And

**MINISTER OF WOMEN, YOUTH AND PEOPLE
WITH DISABILITIES**

First Respondent

MINISTER OF SOCIAL DEVELOPMENT

Second Respondent

DIRECTOR-GENERAL OF SOCIAL DEVELOPMENT

Third Respondent

MINISTER OF THE DEPARTMENT OF BASIC EDUCATION

Fourth Respondent

**DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Fifth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
GAUTENG DEPARTMENT OF EDUCATION**

Sixth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
WESTERN CAPE DEPARTMENT OF EDUCATION**

Seventh Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
KWA-ZULU-NATAL DEPARTMENT OF EDUCATION**

Eighth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
FREE STATE DEPARTMENT OF EDUCATION**

Ninth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
MPUMALANGA DEPARTMENT OF EDUCATION**

Tenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
EASTERN CAPE DEPARTMENT OF EDUCATION**

Eleventh Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
NORTHERN CAPE DEPARTMENT OF EDUCATION**

Twelfth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
LIMPOPO DEPARTMENT OF EDUCATION**

Thirteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
NORTH-WEST DEPARTMENT OF EDUCATION**

Fourteenth Respondent

**NATIONAL COMMISSIONER OF SOUTH AFRICAN
POLICE SERVICES**

Fifteenth Respondent

SOUTH AFRICAN COUNCIL OF EDUCATORS

Sixteenth Respondent

EDUCATORS LABOUR RELATIONS COUNCIL

Seventeenth Respondent

JUDGMENT

NYATHI J

Introduction

[1] This application concerns the proper functioning, maintenance and utilisation of Part B of the National Child Protection Register ("the NCPR") established under section 111 of the Children's Act 38 of 2005 ("the Children's Act"). The litigation is directed at securing the effective implementation of statutory mechanisms designed to protect children from persons found unsuitable to work with them.

[2] The applicant contends that systemic failures by several organs of state have undermined the effectiveness of the NCPR and consequently impaired the rights of children protected under sections 10, 12, 28 and 29 of the Constitution.

[3] Before the hearing of the matter was completed, the applicant concluded a settlement agreement with the fourth respondent and the sixth to fourteenth respondents. On 28 July 2026 that settlement agreement was made an order of this Court. The agreement contains extensive undertakings relating to employee vetting, reporting mechanisms, periodic verification procedures and ongoing compliance measures within the education sector.

[4] Consequently, the dispute has narrowed considerably. The principal remaining controversy concerns the obligations of the second and third respondents, namely the Minister of Social Development and the Director-General of Social Development ("the DSD").

The Issues

[5] The questions which remain for determination are:

- (a) whether the second and third respondents have fulfilled their statutory and constitutional obligations concerning the maintenance of Part B of the NCPR;
- (b) whether declaratory relief is warranted; and
- (c) whether a structural interdict should issue.

Constitutional and Legislative Framework

[6] Section 28(1)(d) of the Constitution guarantees every child protection from maltreatment, neglect, abuse and degradation. Section 28(2) provides that a child's best interests are of paramount importance in every matter concerning the child.

[7] The Constitutional Court has repeatedly recognised the existence of positive constitutional obligations resting upon the State to protect vulnerable persons against harm. In ***Carmichele v Minister of Safety and Security*** 2001 (4) SA 938 (CC), the Court emphasised that the State is obliged to provide protection through laws and structures designed to safeguard vulnerable members of society.

[8] The Children's Act constitutes one such protective structure. Section 111 requires the Director-General to "keep and maintain" the National Child Protection Register. Part B of the Register records persons found unsuitable to work with children and serves as one of the principal legislative mechanisms for preventing such persons from obtaining access to children through employment or otherwise.

[9] The Act expressly requires implementation in an integrated and coordinated manner. Sections 4 and 5 mandate cooperation among all organs of state involved in the care and protection of children.

The Parties' Contentions

[10] The applicant submits that the DSD has adopted an unduly narrow conception of its statutory obligations. According to the applicant, the duty to "keep and maintain" the Register extends beyond the passive capture of information received from other institutions. The applicant argues that the DSD bears responsibility for ensuring that the Register functions effectively as a child-protection mechanism.

[11] The DSD submits that it has discharged its obligations. It points to the digitisation of the Register, staffing allocations, audit controls, identity verification mechanisms, training initiatives and the absence of any backlog in relation to compliant referrals. It further

contends that historical shortcomings were attributable primarily to failures by upstream reporting institutions rather than any dereliction on its part.

Discussion

[12] It is common cause that the NCPR forms a critical component of the statutory architecture created to protect children. The DSD correctly accepts that it occupies a central custodial position in that architecture.

[13] The dispute concerns the proper interpretation of the duty imposed by section 111 of the Children's Act.

[14] Modern principles of statutory interpretation require a court to consider language, context and purpose as part of a single interpretive exercise. ***Natal Joint Municipal Pension Fund v Endumeni Municipality*** 2012 (4) SA 593 (SCA) at para 18 remains the authoritative statement of that approach.

[15] The words "keep and maintain" cannot be interpreted in isolation. They must be construed in the context of a statute whose dominant purpose is the protection of children and whose implementation is expressly required to occur through coordinated action between organs of state.

[16] I am unable to accept the proposition that the DSD's obligation is exhausted once information reaches its offices in a technically compliant form.

[17] The statutory purpose would be frustrated if the custodian of the Register were entitled simply to await information while remaining indifferent to systemic deficiencies that prevent qualifying findings from reaching the Register in the first place.

[18] The papers reveal longstanding concerns regarding reporting failures across several institutions. Indeed, the DSD itself acknowledges the existence of upstream reporting failures and what it describes as a "troubling pattern of institutional weakness".

[19] It is true, as the DSD submits, that every institutional failure cannot automatically be attributed to it. Equally true, however, is that a statutory custodian cannot ignore defects within a system whose effectiveness depends upon coordinated functioning.

[20] In ***Government of the Republic of South Africa v Grootboom*** 2001 (1) SA 46 (CC) and ***Minister of Health v Treatment Action Campaign (No 2)*** 2002 (5) SA 721 (CC), the Constitutional Court made plain that constitutional compliance is measured not simply by the existence of programmes but by the reasonableness of their implementation.

[21] The evidence demonstrates that critical reporting failures persisted for years. The incident that ultimately catalysed this litigation revealed that a perpetrator was entered on the Register only after prolonged delay and repeated intervention. Further concerns arose when specific perpetrators identified by the applicant had not appeared on the Register despite the existence of qualifying findings.

[22] While the DSD has implemented notable improvements, those improvements do not negate the historical and systemic deficiencies disclosed by the evidence.

[23] In my view, the applicant has established that the DSD's understanding of its statutory obligations is unduly narrow and that further measures directed at ensuring the efficacy of the Register are constitutionally required.

Declaratory Relief

[24] Declaratory relief is discretionary. ***Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd*** 2005 (6) SA 205 (SCA) confirms that a declarator must serve a useful purpose in clarifying legal rights and obligations.

[25] Such relief will serve a useful purpose in the present matter. It will clarify that section 111 requires the second and third respondents to take reasonable measures to ensure that Part B of the NCPR remains an effective instrument for the protection of children.

Structural Relief

[26] The Constitutional Court has consistently recognised the propriety of structural interdicts where ordinary relief may prove insufficient to secure constitutional compliance. See *Treatment Action Campaign (No 2)*; *Pheko v Ekurhuleni Metropolitan Municipality (No 3)* 2015 (5) SA 600 (CC); and *Black Sash Trust v Minister of Social Development* 2017 (3) SA 335 (CC).

[27] The present matter concerns a protective mechanism affecting the rights and safety of children. The evidence discloses systemic shortcomings extending across multiple institutions and over an extended period.

[28] I am mindful of the need to respect the separation of powers. Courts do not administer government departments. Nevertheless, where constitutional rights are implicated and historical non-compliance has been demonstrated, supervisory relief may be necessary to ensure meaningful implementation.

[29] The settlement agreement made an order of court on 28 July 2026 is itself premised upon the existence of a functional and reliable Register maintained by the DSD. The obligations assumed by the education authorities necessarily depend upon the integrity and availability of the Register.

[30] A limited supervisory order is therefore justified.

Costs

[31] This matter plainly falls within the realm of constitutional and public-interest litigation.

[32] The applicant has sought to vindicate the constitutional rights of children. The principles articulated in *Biowatch Trust v Registrar, Genetic Resources* 2009 (6) SA 232 (CC) are therefore applicable.

[33] The applicant has achieved substantial success and there is no reason why it should be deprived of its costs.

Order

[34] The following order is made:

The draft order filed on CaseLines file 072-19 to 072-26 is made an order of court and is attached hereto marked "Annexure A".



J.S. NYATHI

Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 28 July 2026

Date of Judgment: 07 August 2026

Appearances:

On behalf of the Applicant: Adv. Kameshni Pillay SC

With her: Adv. Casey Juries

Applicants' attorneys: Section 27

On behalf of the Respondents: Adv. Sibahle Jozana

Attorneys for the Respondents: State Attorney, Pretoria.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 07 August 2026.



Annexure 'A'
07/08/2026

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

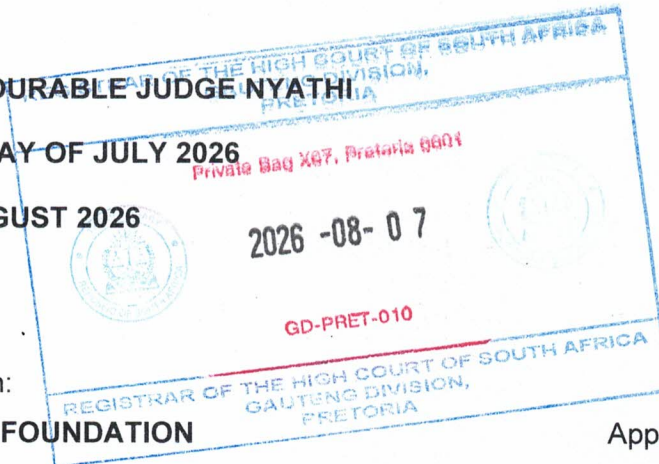
CASE NO: 2025/163185

BEFORE THE HONOURABLE JUDGE NYATHI

ON THIS THE 28th DAY OF JULY 2026

Order made: 07 AUGUST 2026

COURT ROOM: 4F



In the matter between:

THE TEDDY BEAR FOUNDATION

Applicant

And

MINISTER OF WOMEN, YOUTH

First Respondent

AND PEOPLE WITH DISABILITIES

Second Respondent

MINISTER OF SOCIAL DEVELOPMENT

DIRECTOR-GENERAL

Third Respondent

OF SOCIAL DEVELOPMENT

Fourth Respondent

**MINISTER OF THE DEPARTMENT OF BASIC
EDUCATION**

Fifth Respondent

DEPARTMENT OF JUSTICE

AND CONSTITUTIONAL DEVELOPMENT

Sixth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
GAUTENG DEPARTMENT OF EDUCATION**

Seventh Respondent

**MEMBER OF THE EXECUTIVE COUNCIL OF THE
WESTERN CAPE DEPARTMENT OF**

EDUCATION

Eighth Respondent

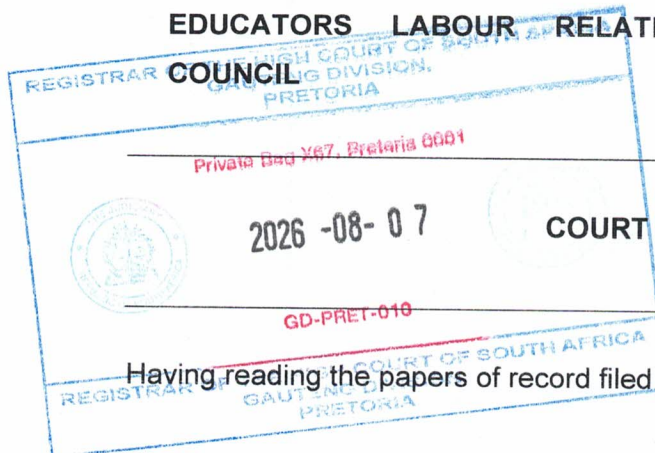
**MEMBER OF THE EXECUTIVE COUNCIL OF THE
KWA-ZULU-NATAL DEPARTMENT**

OF EDUCATION

MEMBER OF THE EXECUTIVE COUNCIL OF THE

KM

FREE STATE DEPARTMENT OF EDUCATION	Ninth Respondent
MEMBER OF THE EXECUTIVE COUNCIL OF THE MPUMALANGA DEPARTMENT OF EDUCATION	Tenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL OF THE EASTERN CAPE DEPARTMENT OF EDUCATION	Eleventh Respondent
MEMBER OF THE EXECUTIVE COUNCIL OF THE NORTHERN CAPE DEPARTMENT OF EDUCATION	Twelfth Respondent
MEMBER OF THE EXECUTIVE COUNCIL OF THE LIMPOPO DEPARTMENT OF EDUCATION	Thirteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL OF THE NORTH-WEST DEPARTMENT OF EDUCATION	Fourteenth Respondent
NATIONAL COMMISSIONER OF SOUTH AFRICAN POLICE SERVICES	Fifteenth Respondent
SOUTH AFRICAN COUNCIL OF EDUCATORS	Sixteenth Respondent
EDUCATORS LABOUR RELATIONS COUNCIL	Seventeenth Respondent



Having read the papers of record filed and having heard the counsel:

IT IS ORDERED THAT:-

1. The **DEPARTMENT OF SOCIAL DEVELOPMENT'S** failure to adequately keep and maintain the National Child Protection

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Register ("**the Register**") is unlawful and inconsistent with the Constitution of the Republic of South Africa, 1996 in that it violates:

1.1. Sections 112, 119, 120 and 122 (2) of the Children's Act 38 of 2005 ("**the Children's Act**") and;

1.2. Sections 9, 10, 12, 28 and 29 (1)(a) of the Constitution.

2. The the **DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT'S** failure to ensure that Registrars of Courts report

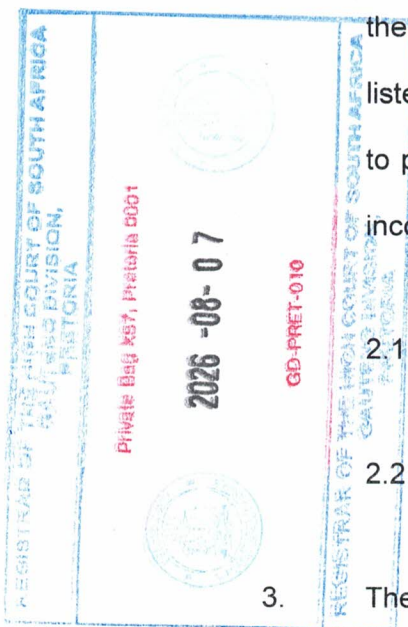
the names of the sexual perpetrators found guilty of the offences listed in the Children's Act to the Department of Social Development to place on the National Child Protection Register is unlawful and inconsistent with the Constitution in that it violates:

2.1. Section 122 (1)(a) and (b) and of the Children's Act;

2.2. Sections 9, 10, 12, 28, and 29 (1)(a) of the Constitution.

3. The **NATIONAL COMMISSIONER OF THE SOUTH AFRICAN**

POLICE SERVICE'S failure to ensure that all particulars referred to in sections 120 (4) and 120 (5) of the Children's Act and of any criminal conviction contemplated in section 120 (4A) of the Children's Act are furnished to the Director-General to be placed on



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the Register is unlawful and inconsistent with the Constitution in that it violates sections 9, 10, 12, 28, and 29 (1)(a) of the Constitution.

4. The **SOUTH AFRICAN COUNCIL OF EDUCATORS'** failure to vet and report educators listed on its Education Register on the National Child Protection Register, is unlawful and inconsistent with the Constitution in that it violates;

4.1. Section 120 (1)(c), 122(1)(a) and 123 (2) of the Children's Act;

4.2. Sections 9, 10, 12, 28 and 29 (1)(a) of the Constitution.

STRUCTURAL INTERDICT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA	5.	REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag 267, Pretoria 0001	2026-08-07	6. GD-PRET-010

The **DEPARTMENT OF SOCIAL DEVELOPMENT** is directed to put in place mechanisms to discharge of its obligation to adequately maintain and regularly update the National Child Protection Register.

The **DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT** is directed to report, through Registrars of Courts, to the Department of Social Development all names of perpetrators found guilty of the offences listed in the Children's Act.

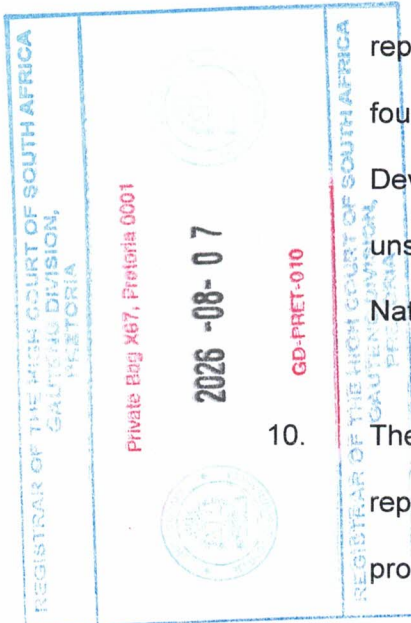
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7. The **DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT** is directed to report to the Department of Social Development on a quarterly basis, the numbers of sexual violence matters reported and finalised and the outcomes of those matters which have been finalised.

8. The **SOUTH AFRICAN COUNCIL OF EDUCATORS** is directed report to the Department of Social Development on a quarterly basis, the number of sexual violence cases it received, and completed and the details of persons found unsuitable to work with children.

9. The **SOUTH AFRICAN COUNCIL OF EDUCATORS** is directed to report the names and details of all educators and other persons found unsuitable to work with Children to the Department of Social Development, within 7 (seven) days of vetting or finding that person unsuitable to work with Children, for the details to be placed on the National Child Protection Register.

10. The **SOUTH AFRICAN COUNCIL OF EDUCATORS** is directed to report the names and details of all educators guilty in its disciplinary proceedings of conduct which renders such educators unsuitable to work with Children, to the Department of Social Development, within



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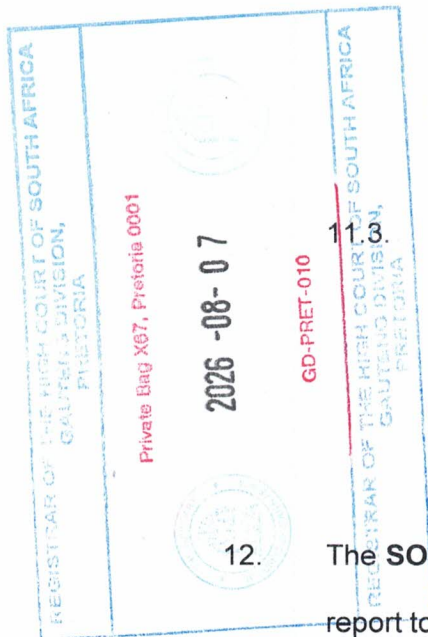
7 (seven) days of the disciplinary findings, for the details of those educators to be placed on the National Child Protection Register.

11. The **SOUTH AFRICAN COUNCIL OF EDUCATORS** is directed to report to the Court within six months of an Order being made by this Honourable Court:

11.1. The total number of educators on its Educator's Register.

11.2. The total number of educators on its Educator's Register that have been vetted against the National Child Protection Register.

The total number of existing sexual violence cases that SACE has not finalised. This list must include the dates when SACE received the matter and the status of each matter.



12.

The **SOUTH AFRICAN COUNCIL OF EDUCATORS** is directed to report to the Court within twelve months after an order of this Court, and every twelve months thereafter, the following information:

- 12.1. A report on the number of new entrants on the Educator's Register during a reporting period.

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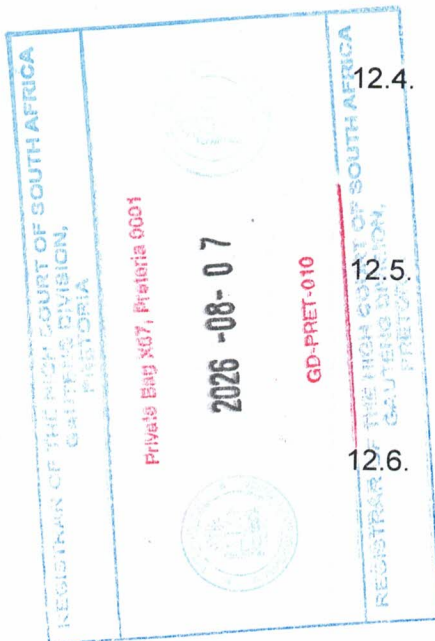
12.2. A report on whether the new educators placed on the Educators Register have been vetted against the National Child Protection Register.

12.3. A report on the list of educators who have been found guilty in disciplinary proceedings and whether those educators' details and been provided to the Department of Social Development to place on the National Child Protection Register.

12.4. The number of sexual violence cases received over a period of 12 months.

12.5. The number of perpetrators found guilty and unsuitable to work with children; and

12.6. Whether the names of the perpetrators referred above were reported to the Department of Social Development to be included on the National Child Protection Register.



13. Directing, subject to the taxed contribution towards costs provided for in paragraph 9 of the settlement agreement entered into between the 4th respondent and 6th to 14th respondents and the applicant,

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the second and third respondents are directed to pay the residual costs of this application, jointly and severally.

BY ORDER


REGISTRAR



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