

REPUBLIC OF SOUTH AFRICA

CHILDREN'S AMENDMENT BILL

*(As introduced in the National Council of Provinces (proposed section 76); explanatory
summary published in Government Gazette No. 29150 of 23 August 2006)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON SOCIAL SERVICES ON REQUEST OF MINISTER OF SOCIAL DEVELOPMENT)

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Children’s Act, 2005, so as to insert certain definitions; to provide for partial care of children; to provide for early childhood development; to make further provision regarding the protection of children; to provide for prevention and early intervention services; to provide for children in alternative care; to provide for foster care; to provide for child and youth care centres, shelters and drop-in centres; and to create certain new offences relating to children; and to provide for matters connected therewith.

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

Amendment of long title of Act 38 of 2005

1. The following long title is substituted for the long title to the Children’s Act, 2005 (hereinafter referred to as the principal Act):

“To give effect to certain rights of children as contained in the Constitution; to set out principles relating to the care and protection of children; to define parental responsibilities and rights; to make further provision regarding children’s courts; to provide for partial care of children; to provide for early childhood development; to provide for the issuing of contribution orders; to provide for prevention and early intervention services; to provide for children in alternative care; to provide for foster care; to provide for child and youth care centres, shelters and drop-in centres; to make new provision for the adoption of children; to provide for inter-country adoption; to give effect to the Hague Convention on Inter-country Adoption; to prohibit child abduction and to give effect to the Hague Convention on International Child Abduction; to provide for surrogate motherhood; and to create certain new offences relating to children; and to provide for matters connected therewith.”

Amendment of Table of Contents of Act 38 of 2005

2. The Table of Contents after the long title of the principal Act is hereby amended—
 (a) by the insertion after “75. Regulations” of the following:

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99.	Notice of enforcement	
100.	Advice	
101.	Assessment of early childhood development services	
102.	Assignment of functions to municipality	
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- (b) by the insertion after “**PROTECTION OF CHILDREN**” of the following:

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110.	Withdrawal of designation”;	

(c) by the insertion after “134. Access to contraceptives” of the following:

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| 138. Unlawful taking or sending of child out of Republic | |
| 139. Corporal punishment | |
| 140. Child safety at place of entertainment | 10 |
| 141. <u>Worst forms of child labour prohibited</u> ”; | |

(d) by the insertion after “142. Regulations” of the following:

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(e) by the insertion after “166. Change of residence or work by respondent” of the following:

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- 204. Voluntary closure of child and youth care centre
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- 220. Minimum norms and standards for shelters and drop-in centres
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224.	Record, inspection and provision of shelters and drop-in centres	
225.	Assignment of functions to municipality	
226.	Death of child in shelter or drop-in centre	5
227.	Regulations.”.	

Amendment of section 1 of Act 38 of 2005

3. Section 1 of the principal Act is hereby amended—

- (a) by the insertion after the definition of “**adoptive parent**” of the following definitions: 10
- “**‘alternative care’** means care of a child in accordance with section 167;
- ‘area’**, in relation to—
- (a) a metropolitan or local municipality, means the area for which the municipality has been established; and 15
- (b) a district municipality, means those parts of the area for which the municipality has been established which do not fall within the area of a local municipality;”;
- (b) by the insertion after the definition of “**child**” of the following definition: 20
- “**‘child and youth care centre’** means a facility described in section 191(1);”;
- (c) by the insertion after the definition of “**Child Care Act**” of the following definition: 25
- “**‘child-headed household’** means a household recognised as such in terms of section 136;”;
- (d) by the insertion after the definition of “**clerk of the court**” of the following definition: 30
- “**‘cluster foster care scheme’** means a scheme providing for the reception of children in foster care in accordance with a foster care programme operated by—
- (a) a social, religious or other non-governmental organisation; or
- (b) a group of individuals, acting as care-givers of the children, and managed by a provincial department of social development or a designated child protection organisation;”;
- (e) by the insertion after the definition of “**Department**” of the following definitions: 35
- “**‘designated child protection organisation’** means an organisation designated in terms of section 107 to perform designated child protection services;
- ‘designated child protection service’** means a child protection service referred to in section 106;”;
- (f) by the insertion after the definition of “**divorce court**” of the following definitions: 40
- “**‘drop-in centre’** means a facility referred to in section 213(2);
- ‘early childhood development programme’** means a programme referred to in section 91(3);
- ‘early childhood development services’** means services referred to in section 91(2);
- ‘early intervention service’** means a service referred to in section 143(1);”;
- (g) by the insertion after the definition of “**family member**” of the following definitions: 50
- “**‘foster care’** means care of a child as described in section 180(1);
- ‘foster parent’** means a person who has foster care of a child by order of the children’s court, and includes an active member of an organisation operating a cluster foster care scheme and who has been assigned responsibility for the foster care of a child;”;

- (h) by the insertion after the definition of “**Minister**” of the following definition:
 “**‘municipality’** means a metropolitan, district or local municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), but to the extent that a municipality may or must implement a provision of this Act in or in relation to an area which falls within the area of both a district municipality and a local municipality, ‘municipality’ in such a provision means the relevant local municipality;”;
- (i) by the insertion after the definition of “**party**” of the following definition:
 “**‘permanency plan’** means a documented plan referred to in section 157(1);”;
- (j) by the insertion after the definition of “**presiding officer**” of the following definition:
 “**‘prevention services’** means services referred to in section 145(2);”;
- (k) by the insertion after the definition of “**Public Service Act**” of the following definition:
 “**‘quality assurance process’** means a developmental quality assurance process in terms of which—
 (a) a team of people connected to a child and youth care centre makes an internal assessment of the centre;
 (b) a team of people unconnected to the centre conducts an independent assessment of the centre;
 (c) an organisational development plan for the centre covering matters prescribed by regulation is established by agreement between the teams; and
 (d) the unconnected team appoints a mentor to oversee implementation of the plan by the management of the centre;”;
- (l) by the insertion after the definition of “**removal of body parts**” of the following definition:
 “**‘residential care programme’** means a programme described in section 191(2) which is or must be offered at a child and youth care centre;”;
- (m) by the insertion after the definition of “**school**” of the following definition:
 “**‘secure care’** means the physical containment of children in a safe and healthy environment conducive to addressing behavioural or emotional difficulties;”;
- (n) by the insertion after the definition of “**sexual abuse**” of the following definition:
 “**‘shelter’** means a facility referred to in section 213(1);”.

Insertion of chapters 5 and 6 in Act 38 of 2005

4. The following chapters are hereby inserted in the principal Act after Chapter 4:

“CHAPTER 5

PARTIAL CARE

Partial care

76. Partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents or care-givers during specific hours of the day or night, or for a temporary period, in terms of a private arrangement between the parents or care-givers and such person, but excludes the care of a child—
 (a) by a school as part of tuition, training and other activities provided by the school;
 (b) as a boarder in a school hostel or other residential facility managed as part of a school; or
 (c) by a hospital or other medical facility as part of the treatment provided to the child.

Provision of partial care

77. (1) A facility established or service provided by an organ of state or a non-governmental organisation for the provision of partial care only qualifies for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2). 5

(2) The Minister must determine the national norms and standards after consultation with the MECs for social development, the Financial and Fiscal Commission and the Minister of Finance.

Partial care facility to be registered 10

78. (1) Any person may establish or operate a partial care facility provided that the facility—

- (a) is registered with the provincial government of the province where that facility is situated;
- (b) is managed and maintained in accordance with any conditions subject to which the facility is registered; and 15
- (c) complies with the minimum norms and standards mentioned in section 83.

(2) The Minister may by regulation exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed. 20

Existing place of care

79. As from the date on which section 78 takes effect an existing place of care registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of section 78 as a partial care facility. 25

Notice of enforcement

80. (1) A provincial head of social development may by way of a written notice instruct—

- (a) a person operating an unregistered partial care facility— 30
 - (i) to stop operating that facility; or
 - (ii) to apply for registration in terms of section 78 within a period specified in the notice; or
- (b) a person operating a registered partial care facility otherwise than in accordance with this Act or any conditions subject to which the registration was issued to comply with those provisions or conditions. 35

(2) A person operating an unregistered partial care facility and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 78, continue operating the facility during that period and, if that person applies for registration, until that person's application has been processed. 40

Application for registration and renewal of registration

81. (1) An application for registration or conditional registration of a partial care facility or for the renewal of registration must— 45

- (a) be lodged with the provincial head of social development of the province where the facility is situated in accordance with a procedure prescribed by regulation;
- (b) contain the particulars prescribed by regulation; and
- (c) be accompanied by— 50
 - (i) a report by a designated social worker on the viability of the application;
 - (ii) any documents that may be prescribed by regulation; and
 - (iii) such fee as may be prescribed by regulation.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

Consideration of application

82. (1) The provincial head of social development must—

(a) consider an application for registration or conditional registration or for the renewal of registration and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; and

(b) issue to the applicant a certificate of registration or conditional registration or renewal of registration on a form prescribed by regulation if the application is granted.

(2) When considering an application the provincial head of social development must take into account all relevant factors, including whether—

(a) the facility complies with the minimum norms and standards mentioned in section 83;

(b) the applicant is a fit and proper person to operate a partial care facility;

(c) the applicant has the necessary skills, funds and resources available to provide the partial care services of the type applied for; and

(d) each person employed at or engaged in the partial care facility is a fit and proper person to assist in operating a partial care facility.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a partial care facility.

(4) The provincial head of social development must consider a report of a designated social worker before deciding on an application for registration, conditional registration or renewal of registration.

Minimum norms and standards for partial care facility

83. Premises or a place used as a partial care facility must have—

(a) a safe area for the children to play;

(b) adequate space and ventilation;

(c) safe drinking water;

(d) hygienic and adequate toilet facilities;

(e) access to disposal of refuse services or other adequate means of disposal of refuse generated at the facility; and

(f) a hygienic area for the preparation of food for the children.

Conditional registration

84. The registration or renewal of the registration of a partial care facility may be granted on such conditions as the provincial head of social development may determine, including conditions—

(a) specifying the type of partial care that may or must be provided in terms of the registration;

(b) stating the period for which the registration will remain valid; and

(c) providing for any other matters that may be prescribed by regulation.

Cancellation of registration

85. (1) The provincial head of social development may cancel the registration or conditional registration of a partial care facility by written notice to the registration holder if—

- (a) the facility is not maintained in accordance with—
 - (i) the minimum norms and standards mentioned in section 83; or
 - (ii) this Act;
- (b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;
- (c) the registration holder or the management of the facility contravenes or fails to comply with this Act;
- (d) the registration holder becomes a person who is not a fit and proper person to operate a partial care facility; or
- (e) a person who is not a fit and proper person to assist in operating a partial care facility is employed at or engaged in operating the facility.

(2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)—

- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
- (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(3) The provincial head of social development may assist a registration holder to comply with the minimum norms and standards mentioned in section 83 or any provision of this Act where the cancellation was due to non-compliance with those norms and standards or provision.

Appeal

86. An applicant aggrieved by a decision of a provincial head of social development in terms of section 82 or 84, or a registration holder aggrieved by a decision of a provincial head of social development in terms of section 85, may—

- (a) lodge an appeal against that decision with the MEC for social development; or
- (b) apply to a court of competent jurisdiction to review that decision.

Record, inspection and provision of partial care facility

87. (1) A provincial head of social development must—

- (a) maintain a record of all partial care facilities in the province; and
- (b) conduct regular inspections of partial care facilities in the province in collaboration with the municipality where the partial care facilities are situated to enforce the provisions of this Act.

(2) Provincial strategies must include strategies for the provision of partial care facilities in each province, which must include measures—

- (a) facilitating the establishment and operation of sufficient partial care facilities in the province;
- (b) prioritising those types of partial care facilities most urgently required; and
- (c) facilitating the identification and provision of suitable premises.

Assignment of functions to municipality

88. (1) The provincial head of social development may, by agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 78, 80, 81, 82, 84, 85 and 87 to the most senior official responsible for social welfare services in the municipality if the provincial head of social development is satisfied that the municipality has the capacity to perform the functions concerned.

- (2) The senior official referred to in subsection (1) may delegate any power conferred or duty assigned to him or her in terms of this section to an official in the employ of the municipality.
- (3) A delegation in terms of subsection (2)—
- (a) is subject to any limitations, conditions and directions which the delegating official may impose;
 - (b) must be in writing; and
 - (c) does not divest the delegating official of the responsibility concerning the exercise of the power or the performance of the duty.
- (4) The delegating official may—
- (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
 - (b) at any time withdraw a delegation.
- (5) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 82 or the conditions on which registration was granted in terms of section 84 or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a partial care facility in terms of section 85 may—
- (a) lodge an appeal with the municipal council against that decision; or
 - (b) apply to the competent division of the High Court to review that decision.

Death of child in partial care facility

- 89.** (1) If a child dies while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility must immediately after the child's death report such death to a police official and the Director-General.
- (2) The police official must investigate the circumstances of the death of such child.

Regulations

- 90.** The Minister may make regulations in terms of section 306 concerning—
- (a) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;
 - (b) the different types of partial care that may be provided in terms of such registrations;
 - (c) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;
 - (d) the management of partial care facilities; and
 - (e) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 6

EARLY CHILDHOOD DEVELOPMENT

Early childhood development

- 91.** (1) Early childhood development, for the purposes of this Act, means the process of emotional, mental, spiritual, moral, physical and social development of children from birth to school-going age.
- (2) Early childhood development services means services—
- (a) intended to promote early childhood development; and
 - (b) provided by a person, other than a child's parent or caregiver, on a regular basis to children up to school-going age.

(3) An early childhood development programme means a programme structured to provide early childhood development services.

Strategy concerning early childhood development

92. The Minister, after consultation with the Minister of Education, must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system.

Provision of early childhood development services

93. (1) Early childhood development services provided by an organ of state or a designated child protection organisation only qualify for funding from money appropriated by a provincial legislature if such services comply with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine national norms and standards for early childhood development services after consultation with the MECs for social development, the Financial and Fiscal Commission and the Ministers of Finance and of Education.

Minimum standards for early childhood development services

94. (1) Early childhood development services complying with minimum requirements prescribed by regulation must be provided by—

- (a) a partial care facility providing partial care services to children up to school-going age;
- (b) a child and youth care centre which has in its care children up to school-going age.

(2) Any other person or organisation not disqualified in terms of section 96(3) may provide early childhood development services, provided that those services comply with the minimum requirements prescribed by regulation.

(3) Any early childhood development services provided in terms of this section must be appropriate to the needs of the children to whom the services are provided.

Early childhood development programme to be registered

95. (1) A person operating or managing a partial care facility or a child and youth care centre where early childhood development services are provided must register the early childhood development programme with the provincial head of social development.

(2) An application for registration or conditional registration of an early childhood development programme or for the renewal of a registration must—

- (a) be lodged with the provincial head of social development of the province where the partial care facility or child and youth care centre is situated in accordance with a procedure prescribed by regulation;
- (b) contain the particulars prescribed by regulation; and
- (c) be accompanied by—
 - (i) any documents that may be prescribed by regulation; and
 - (ii) such fee as may be prescribed by regulation.

(3) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(4) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(5) The Minister may by regulation exempt any person or organisation from the requirement to register, on conditions that the Minister may prescribe.

Consideration of application

- 96.** (1) The provincial head of social development must— 5
- (a) consider an application for registration or conditional registration or for the renewal of a registration, and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; and
 - (b) issue to the applicant a certificate of registration or conditional registration or renewal of registration on a form prescribed by regulation, if the application is granted. 10
- (2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether— 15
- (a) the early childhood development programme complies with the minimum requirements prescribed by regulation;
 - (b) the applicant is a fit and proper person to provide early childhood development services;
 - (c) the applicant has the necessary skills, funds and resources available to provide the early childhood development services in accordance with the early childhood development programme to be registered; and 20
 - (d) the early childhood development programme meets the emotional, mental, spiritual, moral, physical and social development needs of the children in that partial care facility or child and youth care centre. 25
- (3) A person unsuitable to work with children is not a fit and proper person to provide or assist in the provision of early childhood development services or programmes. 30
- (4) The provincial head of social development must consider a report of a social worker before deciding on an application for registration, conditional registration or renewal of registration.

Conditional registration

- 97.** The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including conditions— 35
- (a) specifying the type of early childhood development service that may or must be provided in terms of the registration; 40
 - (b) stating the period for which the registration will remain valid; and
 - (c) providing for any other matters that may be prescribed by regulation.

Cancellation of registration

- 98.** (1) The provincial head of social development may cancel the registration or conditional registration of an early childhood development programme by written notice to the registration holder if— 45
- (a) the programme is not run in accordance with the minimum requirements prescribed by regulation;
 - (b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with; 50
 - (c) the registration holder or the management of the facility contravenes or fails to comply with this Act;
 - (d) the registration holder becomes a person who is not a fit and proper person to provide early childhood development services; or 55
 - (e) a person who is not a fit and proper person to provide or assist in the provision of early childhood development services provides or assists in the provision of such services.

- (2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1) (a), (b), (c) or (e)—
- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
 - (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.
- (3) A provincial head of social development may assist a registration holder to comply with the minimum requirements prescribed by regulation or any provision of this Act where the cancellation was due to non-compliance with such minimum requirements or provision.
- (4) The cancellation of the registration or conditional registration of an early childhood development programme in terms of subsection (1) does not affect the registration or conditional registration of a partial care facility or a child and youth care centre.

Notice of enforcement

- 99.** A provincial head of social development may by way of a written notice instruct—
- (a) the person operating or managing a partial care facility or a child and youth care centre which does not provide early childhood development services to comply with section 94 within a period specified in the notice;
 - (b) the person operating or managing a partial care facility or a child and youth care centre which provides early childhood development services which do not comply with the minimum requirements prescribed by regulation to comply with such minimum requirements within a period specified in the notice; or
 - (c) a person who provides early childhood development services which do not comply with the minimum requirements prescribed by regulation—
 - (i) to stop providing those services; or
 - (ii) to comply with those minimum requirements within a period specified in the notice.

Advice

100. A provincial head of social development may give advice to a partial care facility or a child and youth care centre which provides early childhood development services on complying with the minimum requirements contemplated in section 94.

Assessment of early childhood development services

101. (1) A provincial head of social development may authorise a person to assess the provision of early childhood development services or the content of early childhood development programmes, in order to determine whether the provision of the services or the content of the programme complies with the minimum requirements contemplated in section 94.

(2) Section 304(2) and (3), read with such changes as the context may require, applies to any assessment in terms of subsection (1).

Assignment of functions to municipality

102. (1) The provincial head of social development may, by agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99, 100 and 101 to the most senior official responsible for social welfare services in the municipality if the provincial head of social development is satisfied that the municipality has the capacity to perform the functions concerned.

- (2) The senior official referred to in subsection (1) may delegate any power conferred or duty assigned to him or her in terms of this section to an official in the employ of the municipality.
- (3) A delegation in terms of subsection (2)—
- (a) is subject to any limitations, conditions and directions which the delegating official may impose;
 - (b) must be in writing; and
 - (c) does not divest the delegating official of the responsibility concerning the exercise of the power or the performance of the duty.
- (4) The delegating official may—
- (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
 - (b) at any time withdraw a delegation.
- (5) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 96 or the conditions on which registration was granted in terms of section 97 or a registration holder aggrieved by a decision of such official to cancel the registration of an early childhood development programme in terms of section 98 may—
- (a) lodge an appeal with the municipal council against that decision; or
 - (b) apply to the competent division of the High Court to review that decision.

Regulations

- 103.** The Minister may make regulations in terms of section 306 concerning—
- (a) the minimum requirements with which early childhood development services or programmes must comply;
 - (b) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;
 - (c) the assessment and compulsory monitoring of early childhood development services or programmes offered at partial care facilities and child and youth care centres; and
 - (d) any other matter that may be necessary to facilitate the implementation of this Chapter.”.

Amendment of chapter 7 of Act 38 of 2005

- 5.** Chapter 7 of the principal Act is hereby amended—
- (a) by the insertion before Part 2 of the following Part:

“Part 1

Child protection system

Strategy concerning child protection

- 104.** The Minister must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, coordinated and managed child protection system.

Reporting of child in need of care and protection

- 105.** (1) Any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health practitioner, legal practitioner, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official who on personal observation

concludes that a child has been sexually abused, deliberately neglected or abused in a manner causing physical injury must report that conclusion to the provincial department of social development, a designated child protection organisation, police official or clerk of the children's court.

(2) Any person who believes that a child is in need of care and protection because of abuse, sexual abuse or deliberate neglect may report that belief to the provincial department of social development, a designated child protection organisation, police official or clerk of the children's court.

(3) A person referred to in subsection (1) or (2) must substantiate that conclusion or belief to the provincial department of social development, designated child protection organisation, police official or clerk of the children's court.

(4) A medical practitioner or a registered midwife performing a termination of pregnancy on a child must, despite any provision of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), requiring confidentiality, comply with subsection (1) if the pregnancy was due to sexual abuse of the child.

(5) The provincial department of social development, designated child protection organisation, clerk of the children's court or police official to whom a report has been made in terms of subsection (1), (2) or (6), must—

- (a) make an initial assessment of the report;
- (b) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated; and
- (c) if the report is substantiated by such investigation, without delay—
 - (i) ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;
 - (ii) initiate proceedings in terms of this Act for the protection of the child; and
 - (iii) submit such particulars concerning the matter as may be prescribed by regulation to—
 - (aa) the Director-General for inclusion in Part A of the National Child Protection Register if there are reasonable grounds to believe that the child has been abused or deliberately neglected; and
 - (bb) the provincial head of social development.

(6) A police official to whom a report has been made in terms of subsection (1) or (2) must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk, and notify the provincial department of social development or a designated child protection organisation of the report and any steps that have been taken with regard to the child.

(7) The provincial department of social development, designated child protection organisation or clerk of the children's court who has conducted an investigation as contemplated in subsection (5) may, if he or she is satisfied that it is in the best interest of the child not to be removed from his or her home or place where he or she resides, but that the removal of an alleged offender from such home or place would secure the safety and well-being of the child, request a police official to take the steps referred to in section 153.

Provision of designated child protection services

106. (1) Designated child protection services provided by an organ of state or a designated child protection organisation only qualify for funding from money appropriated by a provincial legislature if such services comply with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine national norms and standards for designated child protection services after consultation with the MECs for social development, the Financial and Fiscal Commission and the Minister of Finance.

- (3) Designated child protection services may be provided by—
 - (a) the Department;

- (b) a provincial department responsible for social development in a province; and
- (c) a designated child protection organisation.
- (4) Designated child protection services include—
 - (a) services aimed at supporting—
 - (i) the performance by clerks of the children’s court of their functions;
 - (ii) the proceedings of children’s courts; and
 - (iii) the implementation of court orders;
 - (b) services relating to—
 - (i) early intervention services ordered by the court;
 - (ii) the reunification of children in alternative care with their families;
 - (iii) the integration of children into alternative care arrangements;
 - (iv) the placement of children in alternative care; and
 - (v) the adoption of children, including inter-country adoptions;
 - (c) the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children;
 - (d) intervention and removal of children in appropriate cases;
 - (e) the drawing up of permanency plans for children removed, or at risk of being removed, from their family; and
 - (f) other social work services that may be prescribed by regulation.

Designation of child protection organisation

107. (1) The Director-General or a provincial head of social development may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform all or any specific designated child protection services in the relevant province.

(2) A designation in terms of subsection (1)—

- (a) must be in writing; and
- (b) may be made on such conditions as the Director-General or provincial head of social development may determine.

Existing child welfare organisation

108. (1) Any organisation which, when section 107 takes effect, is a designated welfare organisation within the meaning of the Child Care Act must be regarded as having been designated in terms of section 107 as a child protection organisation to perform the designated child protection services which it performed immediately before that section took effect.

(2) An organisation referred to in subsection (1) is regarded to be a designated child protection organisation for a period of five years from the date on which section 107 takes effect, unless its designation is withdrawn in terms of section 110 before the expiry of that period.

Delegation of powers and duties to designated child protection organisation

109. (1) The Director-General or a provincial head for social development may delegate to a designated child protection organisation such powers and duties in terms of this Act as may be necessary for the proper provision of designated child protection services by the organisation.

(2) Sections 303 and 304, read with such changes as the context may require, apply to any delegation in terms of subsection (1).

Withdrawal of designation

110. The Director-General or a provincial head for social development may withdraw the designation of a child protection organisation to perform any, or any specific, designated child protection service—

- (a) if the organisation—

- (i) breaches or fails to comply with any conditions subject to which the designation was made;
 - (ii) contravenes or fails to comply with this Act; or
- (b) if it is in the best interest of the protection of children.”; and

(b) by the insertion after section 134 of the following Part:

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“Part 4

Other protective measures

Application to terminate or suspend parental responsibilities and rights

135. (1) The Director-General, a provincial head of social development or a designated child protection organisation may apply to a High Court, a divorce court in divorce matters or a children’s court for an order—

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- (a) suspending for a period, terminating or transferring any or all of the parental responsibilities and rights which a specific person has in respect of a child; or
- (b) restricting or circumscribing the exercise by that person of any or all of the parental responsibilities and rights which that person has in respect of a child.

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(2) An application in terms of subsection (1) may be brought without the consent of a parent or care-giver of the child if the child, at the time of the application—

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- (a) is older than seven years and has been in alternative care for more than two years;
- (b) is older than three years, but not older than seven years, and has been in alternative care for more than one year; or
- (c) is three years or younger and has been in alternative care for more than six months.

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(3) When considering an application the court must—

- (a) be guided by the principles set out in Chapters 2 and 3 to the extent that those principles are applicable to the matter before it; and
- (b) take into account all relevant factors, including—
 - (i) the need for the child to be permanently settled, preferably in a family environment, taking into consideration the age and stage of development of the child;
 - (ii) the success or otherwise of any attempts that have been made to reunite the child with the person whose parental responsibilities and rights are challenged;
 - (iii) the relationship between the child and that person;
 - (iv) the degree of commitment that that person has shown towards the child; and
 - (v) the probability of arranging for the child to be adopted or placed in another form of alternative care.

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(4) Section 29, read with such changes as the context may require, applies in respect of any proceedings in terms of this section.

Child-headed household

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136. (1) A provincial head of social development may recognise a household as a child-headed household if—

- (a) the parent or care-giver of the household is terminally ill or has died;
- (b) no adult family member is available to provide care for the children in the household; and
- (c) a child has assumed the role of care-giver in respect of a child in the household.

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(2) A child-headed household must function under the general supervision of an adult designated by—

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- (a) a children’s court; or

- (b) an organ of state or a non-governmental organisation determined by the provincial head of social development.
- (3) The organ of state or non-governmental organisation contemplated in subsection (2)—
- (a) may collect and administer for the child-headed household any social security grant or other grant or assistance to which the household is entitled; 5
- (b) may place a child-headed household in a cluster foster care scheme; and
- (c) is accountable to the provincial department of social development or the children's court for the administration of any money received on behalf of the household. 10
- (4) The adult referred to in subsection (2)(a) and the organ of state or non-governmental organisation referred to in subsection (2)(b) may not take any decisions concerning a child-headed household and the children in such household without consulting— 15
- (a) the child at the head of the household; and
- (b) given the age, maturity and stage of development of the other children, also those other children.
- (5) The child heading a child-headed household may take all day-to-day decisions relating to the household and the children in the household as if that child is an adult care-giver. 20
- (6) A child-headed household may not be excluded from any aid, relief or other programme for poor households provided by an organ of state in the national, provincial or local sphere of government solely by reason of the fact that the household is headed by a child. 25

Unlawful removal or detention of child

- 137.** (1) No person may without lawful authority or reasonable grounds—
- (a) remove a child from the control of a person who has lawful control of the child; or 30
- (b) detain a child with the result that the child is kept out of the control of a person entitled to lawful control of the child.
- (2) For the purposes of subsection (1) a person must be regarded as detaining a child if that person— 35
- (a) causes the child to be detained; or
- (b) induces the child to remain with him or her or any other person.

Unlawful taking or sending of child out of Republic

- 138.** (1) No person may take or send a child out of the Republic—
- (a) in contravention of an order of a court prohibiting the removal of the child from the Republic; or 40
- (b) without consent—
- (i) obtained in terms of section 18(3) from persons holding relevant parental responsibilities and rights in respect of that child; or 45
- (ii) of a court.
- (2) For the purposes of subsection (1) a person must be regarded as—
- (a) taking a child out of the Republic if that person— 50
- (i) causes the child to be taken, or in any way assists in taking the child, out of the Republic; or
- (ii) causes or induces the child to accompany or to join him or her or any other person when departing from the Republic; or
- (b) sending a child out of the Republic if that person causes the child to be sent, or in any way assists in sending the child, out of the Republic. 55

Corporal punishment

139. (1) A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child's right to physical integrity as conferred by section 12(1)(c), (d) and (e) of the Constitution. 5

(2) Any legislation and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorises such punishment. 10

(3) No person may administer corporal punishment to a child at any child and youth care centre, partial care facility or shelter or drop-in centre. 10

(4) The Department must take all reasonable steps to ensure that—

(a) education and awareness-raising programmes concerning the effect of subsections (1), (2) and (3) are implemented across the country; and 15

(b) programmes promoting appropriate discipline at home and at school are available across the country. 15

Child safety at place of entertainment

140. (1) A person providing entertainment to children on any premises or in any enclosure must comply with subsection (2) if— 20

(a) access to the premises or enclosure where the entertainment is provided requires the use of stairs, escalators, lifts or other mechanical means;

(b) the majority of the people attending the entertainment are children; and 25

(c) the number of people, including children, who attend the entertainment exceeds 50.

(2) A person providing entertainment to children in the circumstances specified in subsection (1) must—

(a) determine the number of people, including children, who can safely be accommodated on the premises or in the enclosure and each part of the premises or enclosure; 30

(b) station a sufficient number of adult attendants to prevent more people, including children, being admitted to the premises or enclosure, or any part of the premises or enclosure, than the number of people determined in terms of paragraph (a); 35

(c) control the movement of people admitted to the premises or enclosure, or any part of the premises or enclosure, while entering or leaving the premises or enclosure or that part of the premises or enclosure; and 40

(d) take all reasonable precautions for the safety of the children and other people attending the entertainment.

(3) No alcohol or tobacco products may be sold to children at places of entertainment. 45

(4) If the person providing the entertainment is not the owner of the premises or enclosure where the entertainment is provided, the owner or the owner's agent must take all reasonable steps to ensure that subsections (2) and (3) are complied with. 45

(5) (a) A person authorised by a municipality in whose area a premises or enclosure is situated where entertainment described in subsection (1) is or is to be provided, or on reasonable suspicion that such entertainment is or is to be provided, may enter such enclosure in order to inspect whether subsections (2) and (3) are complied with. 50

(b) Section 304(2) and (3), read with such changes as the context may require, applies to any inspection in terms of paragraph (a) of this subsection. 55

Worst forms of child labour prohibited

- 141.** (1) No person may—
- (a) employ a child who is under the age of 15 years;
 - (b) use, procure, offer or employ a child for purposes of commercial sexual exploitation; 5
 - (c) use, procure, offer or employ a child for illicit activities, including drug production and trafficking;
 - (d) force a child to perform labour for that or any other person, whether for reward or not; or
 - (e) encourage, induce or force a child, or allow a child, to perform labour that— 10
 - (i) by its nature or circumstances is likely to harm the health, safety or morals of a child; or
 - (ii) places the child’s well-being, education, physical or mental health, or spiritual, moral or social development at risk. 15
- (2) Subsection (1)(a) does not prevent the performance of labour by a child, whether for reward or not—
- (a) subject to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), in an advertisement, in sport or in an artistic or cultural event, provided that such engagement does not place the child’s well-being, education, physical or mental health or spiritual, moral or social development at risk; or 20
 - (b) in work which is carried out within the framework of a programme registered in terms of the Non Profit Organisations Act, 1997 (Act No. 71 of 1997), and that is designed to promote personal development and vocational training. 25
- (3) The Minister must take all reasonable steps to assist in ensuring the enforcement of the prohibition on the worst forms of child labour, including steps providing for the confiscation in terms of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), of assets acquired through the use of such child labour.”. 30

Amendment of section 142 of Act 38 of 2005

- 6.** Section 142 of the principal Act is hereby amended by the insertion in subsection (1) before paragraph (g) of the following paragraphs:
- “(a) prescribing criteria for determining organisations which may be designated as child protection organisations; 35
 - (b) prescribing codes of good practice to guide designated child protection organisations, organs of state and social workers involved in the provision of designated child protection services;
 - (c) prescribing a broad risk assessment framework to guide decision making in the provision of designated child protection services; 40
 - (d) prescribing—
 - (i) criteria for determining persons who may conduct investigations into cases of alleged child abuse or neglect; and
 - (ii) the powers and responsibilities of persons contemplated in subparagraph (i); 45
 - (e) prescribing the conditions for the examination or assessment of children who have been abused or neglected, including the consent of the child for any such examination or assessment, given the age and maturity of the child;
 - (f) prohibiting or regulating cultural and religious practices violating the physical integrity of children;” 50

Insertion of chapter 8 in Act 38 of 2005

7. The following chapter is hereby inserted in the principal Act after Chapter 7:

“CHAPTER 8**PREVENTION AND EARLY INTERVENTION SERVICES****Prevention and early intervention services**

143. (1) Early intervention services means social development services which are—

- (a) designed to serve the purposes mentioned in section 144; and
- (b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care.

(2) Prevention services means social development services—

- (a) designed to serve the purposes mentioned in section 144; and
- (b) provided to families with children in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment which, if unchecked, may lead to statutory intervention.

Purposes of prevention and early intervention services or programmes

144. (1) Prevention and early intervention services or programmes must focus on—

- (a) preserving a child’s family structure;
- (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children;
- (c) establishing appropriate interpersonal relationships within the family;
- (d) promoting the well-being of children and the realisation of their full potential;
- (e) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children’s needs;
- (f) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
- (g) diverting children away from the child and youth care system and the criminal justice system; and
- (h) avoiding the removal of a child from the family environment.

(2) Prevention and early intervention services or programmes may include—

- (a) assisting families to obtain the basic necessities of life;
- (b) empowering families to obtain such necessities for themselves.

(3) Prevention and early intervention services must involve and promote the participation of families, parents, care-givers and children in identifying and resolving their problems.

Provision of prevention and early intervention services

145. (1) Prevention and early intervention services provided by an organ of state, a designated child protection organisation or a non-governmental organisation only qualify for funding from money appropriated by a provincial legislature if such services comply with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine national norms and standards for prevention and early intervention services after consultation with the MECs for social development, the Financial and Fiscal Commission and the Minister of Finance.

(3) In implementing subsection (1) families who lack the means to provide proper shelter, food and other basic necessities of life for their children must be given priority.

Strategy for securing provision of prevention and early intervention services

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146. The Minister must include in the departmental strategy a comprehensive national strategy aimed at securing the provision of prevention and early intervention services to families, parents, care-givers and children.

Assignment of functions to municipality

147. The provincial head of social development may assign the performance of a service referred to in section 145(1) to a municipality by agreement, if the provincial head of social development is satisfied that the municipality has the necessary capacity to provide the assigned services.

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Court may order early intervention services

148. (1) Before making an order concerning the temporary or permanent removal of a child from that child's family environment, a children's court may order—

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(a) the provincial department of social development, a designated child protection organisation, any other relevant organ of state or any other person or organisation to provide early intervention services in respect of the child and the family, parent or care-giver of the child if the court considers the provision of such services appropriate in the circumstances;

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(b) the child's family and the child to participate in a recognised family preservation programme.

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(2) An order made in terms of subsection (1) must be for a specified period not exceeding six months.

(3) After the expiry of the period specified in subsection (2), a designated social worker's report setting out progress with early intervention services rendered to the child and the family, parent or care-giver of the child must be submitted to the court.

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(4) After considering the report, the court may—

(a) decide whether the child should be removed; or

(b) order the continuation of the early intervention services for a further specified period not exceeding six months.

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(5) Subsection (1) does not apply where the safety or well-being of the child is seriously and imminently at risk.

Report to include summary of prevention and early intervention services

149. When a report of a designated social worker is produced before a court in order to assist a court in determining a matter concerning a child, the report must contain a summary of any prevention and early intervention services provided in respect of that child and the family, parent or care-giver of the child.”.

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Amendment of section 156 of Act 38 of 2005

8. Section 156 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (e) of the following paragraph:

“(f) if the child lives in a child-headed household, that the child must remain in that household subject to section 136;”.

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Insertion of chapters 11, 12, 13 and 14 in Act 38 of 2005

9. The following chapters are hereby inserted in the principal Act after Chapter 10:

“ CHAPTER 11**ALTERNATIVE CARE****Alternative care**

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167. A child is in alternative care if the child has been placed—

- (a) in foster care;
- (b) in the care of a child and youth care centre following an order of a court in terms of this Act or the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
- (c) in temporary safe care.

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Leave of absence

168. (1) Leave of absence may, subject to such limitations and conditions as may be prescribed by regulation, be granted to a child in alternative care—

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- (a) by the management of a child and youth care centre in whose care the child has been placed;
- (b) by the person in whose alternative care the child has been placed, but if the child has been placed in the care of such a person under the supervision of a designated social worker, leave of absence may be granted by that person only with the approval of that social worker; and
- (c) by the relevant provincial head of social development, in the case of a child in temporary safe care.

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(2) The management, person, designated social worker, referred to in subsection (1), or the provincial head of social development—

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- (a) may at any time cancel any leave of absence granted in terms of subsection (1); and
- (b) must cancel such leave if the MEC for social development so directs.

(3) In the case of foster care, the supervising designated social worker may at any time cancel any leave of absence granted in terms of subsection (1).

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(4) When a child’s leave of absence has been cancelled, the management of the child and youth care centre, person, designated social worker, referred to in subsection (1)(b), or the provincial head of social development must request the child to return to the child and youth care centre or person, or to the place where the child is in temporary safe care.

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Child in alternative care prohibited from leaving Republic

169. (1) A child in alternative care may not leave the Republic without the written approval of the Director-General first being obtained.

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(2) In granting approval in terms of subsection (1), the Director-General may prescribe terms and conditions to protect the best interest of the child in alternative care.

Child absconding from alternative care

- 170.** (1) Any police official, designated social worker or authorised officer may apprehend a child in alternative care who—
- (a) has absconded from the child and youth care centre or person in whose foster care or court-ordered kinship care or temporary safe care that child has been placed; or 5
 - (b) has been granted leave of absence by the child and youth care centre or person in whose foster care or court-ordered kinship care or temporary safe care that child has been placed and who on cancellation or expiry of such leave of absence fails to return to that centre or person. 10
- (2) If a police official, designated social worker or authorised officer contemplated in subsection (1) has reasonable grounds to believe that a child is in or on certain premises, the police official, designated social worker or authorised officer may, without a warrant, enter and search the premises for the purpose of apprehending the child. 15
- (3) A police official referred to in subsection (1) may use such force as may be reasonably necessary to overcome any resistance against the entry or search of the premises contemplated in subsection (2), including the breaking of any door or window of such premises: Provided that the police official shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises. 20
- (4) On apprehending a child in alternative care who has absconded or failed to return in terms of subsection (1), the police official must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk, and notify the provincial department of social development or a designated child protection organisation of the fact the child has been apprehended and of any steps that have been taken with regard to the child. 25
- (5) A child so apprehended or a child who returns, of his or her own accord, to the centre or person in whose alternative care he or she was before absconding— 30
- (a) must without delay be brought before a presiding officer of a children's court; and
 - (b) may, until brought before a presiding officer of a children's court, be kept in temporary safe care in terms of section 152. 35
- (6) When the child is brought before a presiding officer of a children's court, the presiding officer must—
- (a) order that the child be put in the temporary safe care of a child and youth care centre or appropriate facility or person determined by the presiding officer and kept there until the proceedings in terms of this section are completed and any order made or action taken in terms of this section is given effect to; 40
 - (b) inquire into the reasons why the child absconded from, or failed to return to, the relevant child and youth care centre or person, and may for this purpose question the child; and 45
 - (c) order that the child—
 - (i) be returned to that centre or person;
 - (ii) may not be returned to that centre or person pending any action by the relevant MEC for social development in terms of subsection (8), if the presiding officer is of the opinion that there are good reasons why the child should not be returned to that centre or person; or 50
 - (iii) be placed in another form of alternative care.
- (7) The presiding officer of the children's court must order the clerk of the children's court to— 55
- (a) report to the relevant MEC for social development the result of an inquiry in terms of subsection (6); and
 - (b) notify the MEC for social development of any order made in terms of subsection (6)(c).
- (8) When an order has been made in terms of subsection (6)(c)(ii) the MEC for social development may, after consideration of the report of the 60

children's court and such inquiry as the MEC for social development may consider necessary—

- (a) transfer the child in terms of section 171;
- (b) remove the child from alternative care in terms of section 173;
- (c) discharge the child from alternative care in terms of section 175; or
- (d) order that the child be returned to the child and youth care centre or person in whose care or temporary safe care that child has been placed.

Transfer of child in alternative care

171. (1) The relevant MEC for social development may, subject to subsection (5), by order in writing transfer a child in alternative care from the child and youth care centre or person in whose care or temporary safe care that child has been placed to any other child and youth care centre or person.

(2) The MEC for social development may not transfer a child to a child and youth care centre in another province without the permission of the MEC for social development in that other province and without the prescribed financial arrangements regarding the placement having been made.

(3) (a) If the MEC for social development transfers a child in terms of subsection (1) to the care of the child's parent, guardian or former care-giver under the supervision of a designated social worker, the order must specify the requirements with which the child and that parent, guardian or former care-giver must comply.

(b) If any requirement referred to in paragraph (a) is breached or not complied with, the designated social worker concerned may bring the child before a children's court, which may, after an inquiry, vary the order issued by the MEC for social development or make a new order in terms of section 156.

(4) Before the MEC for social development issues an order in terms of subsection (1), a designated social worker must report to the MEC for social development on consultations with—

- (a) the child;
- (b) the parent or primary care-giver of the child, if available;
- (c) the child and youth care centre or person in whose care or temporary safe care that child has been placed; and
- (d) the child and youth care centre or person to whom the child is to be transferred.

(5) If the MEC for social development transfers a child from a secure care child and youth care centre to a less restrictive child and youth care centre or to the care of a person, the MEC for social development must be satisfied that the transfer will not be prejudicial to other children.

(6) No order in terms of subsection (1) may be carried out without ratification by a children's court if the child is transferred—

- (a) from the care of a person to a child and youth care centre; or
- (b) from the care of a child and youth care centre to a secure care facility or more restrictive child and youth care centre.

(7) An order in terms of subsection (1) may not have the effect of extending the original placement order made by the court in terms of section 156 unless the order has been extended in terms of section 159(1)(b).

Change in residential care programme

172. (1) The relevant MEC for social development may, subject to subsection (3), determine that—

- (a) a child in a child and youth care centre be released from a residential care programme;
- (b) another residential care programme be applied to such a child; or
- (c) an additional residential care programme be applied to such a child.

(2) To give effect to subsection (1), the MEC for social development may transfer the child to another child and youth care centre or to a person in terms of section 171.

(3) No determination in terms of subsection (1) may be carried out without ratification by a children's court if that determination requires the application to the child of a residential care programme—

- (a) which includes the secure care of the child; or
- (b) which is more restrictive than the child's current programme.

(4) A determination in terms of subsection (1) may not have the effect of extending the original placement order made by the court in terms of section 156 unless the order has been extended in terms of section 159(1)(b).

Removal of child already in alternative care

173. (1) A presiding officer of a children's court or the relevant MEC for social development may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child, pending any action in terms of subsection (3)—

- (a) be removed from the child and youth care centre or person in whose care or temporary safe care the child is; and
- (b) be put in temporary safe care at a place specified in the notice.

(2) The presiding officer of the children's court issuing a notice in terms of subsection (1) must order the clerk of the children's court to submit a report to the relevant MEC for social development on the reasons for the notice.

(3) The MEC for social development must, within six months from the date on which a child has been moved and put in temporary safe care in terms of subsection (1) and after such inquiry as the MEC for social development may consider necessary—

- (a) transfer the child in terms of section 171;
- (b) discharge the child from alternative care in terms of section 175; or
- (c) order that the child be returned to the child and youth care centre or person in whose care or temporary care the child was immediately before the notice in terms of subsection (1) was issued.

Provisional transfer from alternative care

174. (1) A provincial head of social development may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that a child be provisionally transferred from alternative care into another form of care that is not more restrictive, as from a date specified in the notice, for a trial period of not more than six months.

(2) A notice in terms of subsection (1) may be issued only after—

- (a) procedures prescribed by regulation have been followed—
 - (i) to assess the best interest of the child; and
 - (ii) to reunite the child with the child's immediate family or other family members, if applicable; and
- (b) a report on such assessment and reunification has been submitted to and considered by the MEC for social development.

(3) A notice in terms of subsection (1) is subject to the condition that—

- (a) the provisional transfer must be managed under the supervision of a designated social worker to establish and test the feasibility of—
 - (i) reunification of the child with the child's immediate family or other family members;
 - (ii) the child's integration into another family; or
 - (iii) a transfer of the child to another child and youth care centre or any other form of placement;
- (b) the MEC for social development may at any time revoke the provisional transfer; and
- (c) the MEC for social development must revoke the transfer if the child and the designated social worker so request.

(4) The MEC for social development may at the end of or at any time during the trial period referred to in subsection (1) confirm the child's placement or permanently discharge the child from alternative care in terms of section 175.

(5) A notice in terms of subsection (1) must be considered proof of eligibility for any form of state support which would have been payable if the transfer had been permanent.

Permanent discharge from alternative care

175. (1) The relevant MEC for social development may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child be discharged from alternative care as from a date specified in the notice.

(2) A notice in terms of subsection (1) may be issued only after—

- (a) procedures prescribed by regulation have been carried out—
 - (i) to assess the best interest of the child; and
 - (ii) to reunite the child with the child's immediate family or other family members, if applicable; and
- (b) a report on such assessment and reunification by a designated social worker has been submitted to and considered by the MEC for social development.

(3) A notice in terms of subsection (1) relieves the child and youth care centre from any further responsibilities in relation to the child.

Discharge from alternative care after reaching age of 18 years

176. (1) A child placed in alternative care is entitled, after having reached the age of 18 years, to continue staying in that care until the end of the year in which that person reached the age of 18 years.

(2) An MEC for social development may, on application by a person placed as a child in alternative care, allow that person to remain in that care until the end of the year in which that person reaches the age of 21 years if—

- (a) the current alternative care-giver is willing and able to care for that person; and
- (b) the continued stay in that care is necessary to enable that person to complete his or her education or training.

Appeal against and review of certain decisions

177. A child or person aggrieved by a decision of an MEC for social development in terms of section 170(8), 171, 172, 173, 174, 175 or 176 may—

- (a) lodge an appeal with the Minister against that decision; or
- (b) apply to the competent division of the High Court to review that decision.

Death of child in alternative care

178. (1) If a child in alternative care dies, the management of the child and youth care centre or person in whose care the child has been placed must immediately after the child's death report such death to a police official and the Director-General.

(2) The police official must investigate the circumstances of the death of such child.

Regulations

179. The Minister, after consultation with the Minister for Justice and Constitutional Development in the case of regulating of court orders, may make regulations in terms of section 306 prescribing—

- (a) limitations or conditions for leave of absence from alternative care;

- (b) the manner in which children in alternative care must be transferred or provisionally transferred, removed or permanently discharged from alternative care or their residential care programmes changed;
- (c) fees payable to a child and youth care centre on transfer or provisional transfer of a child in alternative care to that centre;
- (d) the manner in which applications for extension of alternative care beyond 18 years of age are to be made; and
- (e) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 12

FOSTER CARE

Foster care

180. (1) A child is in foster care if the child has been placed in the care of a person who is not the parent or guardian of the child as a result of—

- (a) an order of a children's court;
- (b) a transfer in terms of section 171; or
- (c) a discharge in terms of section 175.

(2) Foster care excludes the placement of a child—

- (a) in court-ordered kinship care;
- (b) in temporary safe care; or
- (c) in the care of a child and youth care centre.

(3) A children's court may place a child in foster care with a family member who is not the parent or guardian of the child.

Purposes of foster care

181. The purposes of foster care are to—

- (a) protect and nurture children by providing a safe and healthy environment with positive support;
- (b) support, encourage and facilitate relationships between children and their parents and other family members and to strengthen and preserve families and family relationships whenever it is in the best interest of the child;
- (c) promote the goals of permanency planning towards family reunification as a priority option or by connecting children to other safe and nurturing family relationships intended to last a lifetime; and
- (d) respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity.

Initial proceedings

182. Before a children's court places a child in foster care, the court must follow the children's court processes stipulated in Part 2 of Chapter 9 to the extent that the provisions of that Part are applicable to the particular case.

Prospective foster parent

183. (1) A prospective foster parent must be—

- (a) a fit and proper person to be entrusted with the foster care of the child;
- (b) willing and able to undertake, exercise and maintain the responsibilities of such care; and
- (c) properly assessed by a designated social worker for compliance with paragraphs (a) and (b).

(2) A person unsuitable to work with children is not a fit and proper person to be entrusted with the foster care of a child.

Determination of placement of child in foster care

184. (1) Before a children's court places a child in foster care by court order in terms of section 156, the court must consider a report by a designated social worker about—

- (a) the cultural, religious and linguistic background of the child; and
- (b) the availability of a suitable person with a similar background to that of the child who is willing and able to provide foster care to the child.

(2) A designated social worker must, in the case of a refugee or undocumented migrant child, make inquiries with the United Nations High Commissioner for Refugees, a service agency working in a relevant refugee community or the relevant government department to identify suitable persons who are willing and able to provide foster care to the child.

(3) A child may be placed in the foster care of a person from a cultural, religious and linguistic background different to that of the child, but only if—

- (a) there is an existing bond between that person and the child; or
- (b) a suitable and willing person with a similar background is not readily available to provide foster care to the child.

Number of children to be placed in foster care per household

185. (1) No more than six children may be placed in foster care with a single person or two persons sharing a common household, except where—

- (a) the children are siblings or related; or
- (b) the court considers this for any other reason to be in the best interest of all the children.

(2) More than six children may be placed in foster care in terms of a cluster foster care scheme which provides for the children to be grouped in houses accommodating not more than six children per house or such other number of children per house as the court may determine.

Duration of foster care placements

186. (1) A children's court may, despite the provisions of section 159(1) regarding the duration of a court order, after placement of a child in foster care with a person other than a family member for more than two years and after having considered the need for creating stability in the child's life, order that—

- (a) no further social worker supervision is required for that placement;
- (b) no further social worker reports are required in respect of that placement; and
- (c) the foster care placement subsists until the child turns 18 years, unless otherwise directed.

(2) A children's court may, despite the provisions of section 159(1) regarding the duration of a court order and after having considered the need for creating stability in the child's life, place a child in foster care with a family member for more than two years or extend such an order for more than two years at a time, if—

- (a) the child has been abandoned by the biological parents;
- (b) the child's biological parents are deceased;
- (c) there is for any other reason no purpose in attempting reunification between the child and the child's biological parents; and
- (d) it is in the best interest of the child.

(3) Despite the provisions of subsections (1) and (2), a social worker must visit a child in foster care at least once every two years to evaluate the placement.

Reunification of child with biological parent

187. (1) If a children's court placing a child in foster care is of the view that reunification between the child and the child's biological parents is possible and in the best interest of the child, the court must issue the

placement order subject to conditions providing for a designated social worker to facilitate such reunification as contemplated in section 156(3)(a).

(2) If the child has not been reunited with the child's biological parents two months before the expiry of the initial court order or any extension of the order, the designated social worker appointed to facilitate the reunification must submit a report to the children's court—

- (a) explaining why the child was not reunited with the biological parents; and
- (b) recommending any steps that may be taken to stabilise the child's life.

(3) The children's court considering the report may—

- (a) order that the designated social worker must continue facilitating the reunification;
- (b) order the termination of the reunification services if there are no prospects of reunification; or
- (c) terminate the services of the designated social worker with respect to the child.

Responsibilities and rights of foster parent

188. (1) The foster parent of a child has those parental responsibilities and rights in respect of the child as set out in—

- (a) the order of the children's court placing the child in the foster care of that foster parent;
- (b) an order of the children's court amending the initial order;
- (c) an order of court assigning parental responsibilities and rights in terms of section 23;
- (d) a parenting plan between the parent or guardian of the child and the foster parent in terms of section 33; or
- (e) any applicable provisions of this Act.

(2) An order of the children's court may give parental rights and responsibilities to a foster parent in addition to those normally necessary for a foster parent if—

- (a) the child has been abandoned;
- (b) the child is an orphan; or
- (c) family reunification is not in the best interest of the child.

(3) A children's court may in terms of section 65 monitor the suitability of the placement of a child in foster care.

Termination of foster care

189. (1) Foster care may be terminated by a children's court only if it is in the best interest of the child.

(2) Before terminating the foster care of a child, the court must take into account all relevant factors, including—

- (a) the bond that exists between the child and the child's biological parent, if the biological parent reclaims care of the child;
- (b) the bond that developed between—
 - (i) the child and the foster parent; and
 - (ii) the child and the family of the foster parent; and
- (c) the prospects of achieving permanency in the child's life by—
 - (i) returning the child to the biological parent;
 - (ii) allowing the child to remain permanently in foster care with the foster parent;
 - (iii) placing the child in any other alternative care; or
 - (iv) adoption of the child.

Regulations

190. The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 306—

- (a) regulating the establishment, functioning and management of cluster foster care schemes;

- (b) prescribing minimum norms and standards with which cluster foster care schemes and any foster care programmes provided in terms of such schemes must comply; and
- (c) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

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CHAPTER 13

CHILD AND YOUTH CARE CENTRES

Child and youth care centre

191. (1) A child and youth care centre is a facility for the provision of residential care to more than six children outside the child's family environment in accordance with a residential care programme or programmes suited to the children in the facility, but excludes—

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- (a) a partial care facility;
- (b) a shelter or drop-in centre;
- (c) a boarding school;
- (d) a school hostel or other residential facility attached to a school; or
- (e) any other establishment which is maintained mainly for the tuition or training of children other than an establishment which is maintained for children ordered by a court to receive tuition or training.

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(2) A child and youth care centre must offer a therapeutic programme designed for the residential care of children outside the family environment, which may include a programme designed for—

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- (a) the reception, care and development of children other than in their family environment;
- (b) the reception, care and development of children on a shared basis with the parent or other person having parental responsibilities;
- (c) the reception and temporary safe care of children pending their placement;
- (d) the reception and temporary safe care of children to protect them from abuse or neglect;
- (e) the reception and temporary safe care of trafficked or commercially sexually exploited children;
- (f) the reception and temporary safe care of children for the purpose of—
 - (i) observing and assessing those children;
 - (ii) providing counselling and other treatment to them; or
 - (iii) assisting them to reintegrate with their families and the community;
- (g) the reception, development and secure care of children awaiting trial or sentence;
- (h) the reception, development and secure care of children with behavioural and emotional difficulties;
- (i) the reception, development and secure care of children in terms of an order—
 - (i) under the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (ii) in terms of section 156(1)(h) placing the child in a child and youth care centre which provides a secure care programme; or
 - (iii) in terms of section 171 transferring a child in alternative care;
- (j) the reception and care of children for any other purpose that may be prescribed by regulation.

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(3) A child and youth care centre may, in addition to its residential care programmes, offer—

- (a) the provision of programmes for appropriate care and development of children with physical or mental disabilities or chronic illnesses;
- (b) a programme for the treatment of children for addiction to dependence-producing substances; or
- (c) any other service that may be prescribed by regulation.

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Strategy to ensure sufficient provision of child and youth care centres

192. (1) The Minister, after consultation with the Ministers of Education and of Health, must include in the departmental strategy a strategy framework aimed at ensuring an appropriate spread throughout the Republic of child and youth care centres providing the required range of residential care programmes in the various regions. 5

(2) The MEC for social development must—

- (a) maintain a record of all available child and youth care centres in the province concerned; and
- (b) plan strategies for the establishment of an appropriate spread in the province of child and youth care centres providing the required range of residential care programmes. 10

Establishment of child and youth care centre

193. (1) A child and youth care centre established by an organ of state or a designated child protection organisation only qualifies for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2). 15

(2) The Minister must determine national norms and standards for child and youth care centres after consultation with the MECs for social development, the Financial and Fiscal Commission and the Ministers of Finance and of Education. 20

Part 1

Establishment and registration of child and youth care centre

Establishment of child and youth care centre by organ of state

194. (1) The MEC for social development must, from money appropriated by the relevant provincial legislature, establish and operate child and youth care centres for that province. 25

(2) Such child and youth care centres—

- (a) must be managed and maintained in accordance with this Act; and
- (b) must comply with— 30
 - (i) the minimum norms and standards for child and youth care centres contemplated in section 209; and
 - (ii) the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is or is to be situated. 35

Existing state-operated children's home, place of safety, secure care facility, school of industry and reform school

195. As from the date on which section 194 takes effect—

- (a) an existing state-operated children's home established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 194 as a child and youth care centre providing a residential care programme referred to in section 191(2)(a); 40
- (b) an existing state-operated place of safety established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 194 as a child and youth care centre providing residential care programmes referred to in section 191(2)(c) and (d); 45
- (c) an existing state-operated secure care facility established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 194 as a child and youth care centre providing a residential care programme referred to in section 191(2)(h); 50

- (d) a public school for learners with special education needs contemplated in section 12(3) of the South African Schools Act, 1996 (Act No. 84 of 1996), must be regarded as having been established in terms of section 194 as a child and youth care centre providing a residential care programme referred to in section 191(2)(g) or (j), as the case may be; and 5
- (e) the facilities mentioned in paragraphs (c) and (d) may be assigned to the MEC for social development by the relevant Premier.

Establishment of child and youth care centre by accredited organisation 10

196. (1) Any accredited organisation may establish or operate a child and youth care centre provided that the centre—

- (a) is registered with the relevant provincial department of social development; 15
- (b) is managed and maintained in accordance with this Act and any conditions subject to which the centre is registered; and
- (c) complies with the minimum norms and standards for child and youth care centres contemplated in section 209.

(2) Subsection (1) also applies to a child and youth care centre established in terms of section 194 and operated by an accredited organisation. 20

Existing registered children's home

197. As from the date on which section 196 takes effect an existing privately operated children's home registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of section 196 as a child and youth care centre providing a residential care programme mentioned in section 191(2)(a). 25

Notice of enforcement

198. (1) A provincial head of social development may by way of a written notice instruct— 30

- (a) a person or organisation operating an unregistered child and youth care centre— 35
- (i) to stop operating that centre; or
- (ii) to apply for registration in terms of section 199 within a period specified in the notice; or
- (b) a person or organisation operating a registered child and youth care centre otherwise than in accordance with this Act or any conditions subject to which the registration was issued to comply with those provisions or conditions.

(2) A person or organisation operating an unregistered child and youth care centre and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 196, be given permission by the provincial head of social development to continue operating the centre during that period and, if that person applies for registration, until that person's application has been finalised. 40 45

Application for registration and renewal of registration

199. (1) An application for registration or conditional registration of a child and youth care centre or for the renewal of registration must— 50

- (a) be lodged with the relevant provincial head of social development in accordance with a procedure prescribed by regulation; 55
- (b) contain the particulars prescribed by regulation; and
- (c) be accompanied by—
- (i) a certified copy of the constitution or founding document of the child and youth care centre;

- (ii) a certificate issued by the municipality in which the child and youth care centre is or is to be situated certifying that the premises in which the centre is or is to be accommodated complies with all structural, safety, health and other requirements of the municipality; 5
 - (iii) any documents that may be prescribed by regulation; and
 - (iv) such fee as may be prescribed by regulation.
- (2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.
- (3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown. 10

Consideration of application

- 200.** (1) The provincial head of social development must—
- (a) consider an application for registration, conditional registration or for renewal of registration and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; and 15
 - (b) issue to the applicant a certificate of registration or renewal of registration on a form prescribed by regulation if the application is granted. 20
- (2) When considering an application the provincial head of social development must take into account all relevant factors, including whether—
- (a) the child and youth care centre complies with— 25
 - (i) the minimum norms and standards for child and youth care centres contemplated in section 209; and
 - (ii) the structural, safety, health and other requirements of the municipality in which the child and youth care centre is or is to be situated; 30
 - (b) the applicant is a fit and proper person to operate a child and youth care centre;
 - (c) the applicant has the necessary skills, funds and resources available to operate the child and youth care centre; and
 - (d) each person employed at or engaged in the child and youth care centre is a fit and proper person to assist in operating a child and youth care centre. 35
- (3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.
- (4) The provincial head of social development must consider a report of a designated social worker before deciding on an application for registration, conditional registration or renewal of registration. 40

Conditional registration

- 201.** The registration or renewal of the registration of a child and youth care centre may be granted on such conditions as the provincial head of social development may determine, including conditions— 45
- (a) specifying the type of residential care programme or programmes that may or must be provided in terms of the registration;
 - (b) stating the period for which the registration will remain valid; and
 - (c) providing for any other matters that may be prescribed by regulation. 50

Amendment of registration

- 202.** The provincial head of social development may, on application by the holder of a registration of a child and youth care centre, amend the registration by written notice to that person.

Cancellation of registration

203. (1) The provincial head of social development may cancel the registration or conditional registration of a child and youth care centre by written notice to the registration holder if—

- (a) the centre is not maintained in accordance with—
 - (i) the minimum norms and standards contemplated in section 209;
 - (ii) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated;
 - (iii) any organisational development plan established for the centre as part of the quality assurance process in terms of section 211; or
 - (iv) any other requirement of this Act;
- (b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;
- (c) the registration holder or the management of the centre contravenes or fails to comply with this Act;
- (d) the registration holder becomes a person who is not a fit and proper person to operate a child and youth care centre; or
- (e) a person who is not a fit and proper person to assist in operating a child and youth care centre is employed at or engaged in activities at the centre.

(2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.

(3) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)—

- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
- (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) The Director-General or a provincial head of social development may assist a registration holder to comply with—

- (a) the minimum norms and standards contemplated in section 209;
- (b) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated; or
- (c) any provisions of the organisational development plan established for the centre in terms of the quality assurance process contemplated in section 211,

where cancellation was due to a failure to comply with those norms and standards, requirements or provisions.

(5) The cancellation of a registration which has not been suspended takes effect from a date specified in the notice referred to in subsection (1), which may not be earlier than 90 days from the date on which that notice was given, except if—

- (a) the provincial head of social development and the holder of the registration agree on an earlier date; or
- (b) the safety or protection of the children in the centre requires an earlier date.

Voluntary closure of child and youth care centre

204. The holder of a registration of a child and youth care centre may close the centre by—

- (a) giving written notice to the relevant provincial head of social development; and
- (b) surrendering the certificate of registration to the provincial head of social development for cancellation.

Child in child and youth care centre to be closed

205. If a child and youth care centre is to be closed as a result of the cancellation of its registration in terms of section 203 or section 204 every child placed in that centre must be transferred in terms of section 171.

Appeal against and review of certain decisions

206. An applicant aggrieved by a decision of a provincial head of social development with regard to the consideration of an application for registration or renewal of registration in terms of section 200, or the conditions on which registration was granted in terms of section 201, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a child and youth care centre in terms of section 203, may apply to the MEC for social development or the High Court to review that decision.

Part 2

Operation and management of child and youth care centre

Management board

207. (1) Each child and youth care centre must have a management board consisting of no fewer than six and no more than nine members.

(2) The members of a management board are appointed by—

- (a) the relevant MEC for social development, in the case of a state-operated child and youth care centre; and
- (b) the registration holder in accordance with a procedure prescribed by regulation, in the case of a privately operated child and youth care centre.

(3) When appointing members of the management board, equitable representation by all stakeholders, including the community in which the child and youth care centre is located, must be ensured.

(4) No person unsuitable to work with children may be appointed or continue to serve as a member of a management board.

(5) A management board functions in terms of the regulations, and may exercise the powers and must perform the duties conferred on it in terms of this Act.

(6) The management board must create a children's forum as part of the management board to ensure the participation of resident children in the operation of the centre.

Manager and staff of child and youth care centre

208. (1) The person or organisation operating a child and youth care centre must appoint or designate—

- (a) a person as the manager of the centre; and
- (b) a sufficient number of staff or other appropriate persons to assist in operating the centre.

(2) A person may be appointed or designated in terms of subsection (1) only after an interview process prescribed by regulation.

(3) No person unsuitable to work with children may be appointed or designated in terms of subsection (1) or continue to serve at a child and youth care centre.

(4) The number of staff appointed or designated must be in accordance with any staff-to-children ratios that may be—

- (a) prescribed by regulation; or
- (b) required as a condition of registration of the centre.

Minimum norms and standards for child and youth care centre

209. The management of a child and youth care centre must take all reasonable steps to ensure that the centre complies with the minimum norms and standards for child and youth care centres as prescribed.

Management system

- 210.** A child and youth care centre must be managed—
- (a) in accordance with—
 - (i) a system of management that allows for a division of responsibilities between the management board and the manager of the centre and an appropriate interaction in the exercise of those responsibilities, as may be prescribed by regulation;
 - (ii) the organisational development plan established for the centre in terms of its quality assurance process; and
 - (iii) any other requirements of this Act; and
 - (b) in a manner that is conducive to implementing the residential care programme or programmes offered at the centre.

Quality assurance process

211. (1) The provincial head of social development must ensure that a quality assurance process is carried out in respect of each child and youth care centre in the manner and at the intervals prescribed.

(2) The management board of a child and youth care centre must without delay, after completion of the quality assurance process, submit a copy of the organisational development plan established for the centre in terms of the quality assurance process to the MEC for social development.

Part 3

Miscellaneous

Regulations

212. The Minister may, where appropriate after consultation with the Ministers of Education and of Health, in terms of section 306 make regulations prescribing—

- (a) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of—
 - (i) applications for registration of child and youth care centres;
 - (ii) applications for renewal or amendment of such registrations; and
 - (iii) objections to applications made in terms of subparagraphs (i) and (ii);
- (b) the matters with which applicants must comply before, during or after the lodging of their applications;
- (c) consultation processes that must be followed in connection with such applications;
- (d) any additional factors that must be taken into account when deciding such applications;
- (e) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;
- (f) the format and content of registration certificates;
- (g) methods and procedures to enforce compliance with registration conditions;
- (h) matters in connection with the physical attributes, operation and management of child and youth care centres, including the setting of minimum norms and standards in this regard;

- (i) matters in connection with residential care programmes provided at child and youth care centres, including the setting of minimum norms and standards for—
 - (i) the core components of such programmes; and
 - (ii) the implementation of such programmes;
- (j) the provision of programmes at child and youth care centres to meet the developmental, therapeutic and recreational needs of children;
- (k) an assessment of and the formulation of an individual developmental and permanency plan for each child;
- (l) the powers and duties of the management boards of child and youth care centres;
- (m) the composition of management boards, which may include representation for staff and residents;
- (n) matters relating to members of management boards, including—
 - (i) appointment procedures;
 - (ii) qualifications for membership;
 - (iii) term of office;
 - (iv) filling of vacancies; and
 - (v) suspension or termination of membership;
- (o) matters relating to the functioning of management boards, including—
 - (i) designation and functions of presiding members;
 - (ii) the convening and conduct of meetings;
 - (iii) quorums; and
 - (iv) the appointment and functioning of committees of a board;
- (p) matters relating to training, minimum qualifications and experience of staff of child and youth care centres;
- (q) matters relating to the responsibilities of and interaction between the management board and the staff and residents of a child and youth care centre;
- (r) the reporting responsibilities of management boards and staff to the department, person or organisation operating the child and youth care centre;
- (s) the format of the constitution or founding document of a child and youth care centre and the matters to be regulated in such constitution or founding document;
- (t) the rights of children in child and youth care centres;
- (u) management, disciplinary and other practices in child and youth care centres;
- (v) matters in connection with quality assurance processes and organisational development plans established in terms of such processes for child and youth care centres, including—
 - (i) the composition of teams to conduct internal and independent assessments;
 - (ii) the qualifications of team members and the remuneration payable to members of independent teams;
 - (iii) the manner in which internal and independent assessments must be conducted;
 - (iv) the core components of organisational development plans;
 - (v) the implementation, revision and amendment of such plans;
 - (vi) the monitoring of implementation and the reporting of violations of such plans; and
 - (vii) the qualifications, functions and remuneration of mentors appointed to oversee the implementation of such plans; and
- (w) any other matter that may facilitate the implementation of this Chapter.

CHAPTER 14

SHELTERS AND DROP-IN CENTRES

Shelters and drop-in centres

213. (1) A shelter is a facility located at a specific place which is managed for the purpose of providing basic services, including overnight accommodation and food, to children, including street children, who voluntarily attend the facility but who are free to leave. 5

(2) A drop-in centre is a facility located at a specific place which is managed for the purpose of providing basic services, excluding overnight accommodation, to children, including street children, who voluntarily attend the facility but who are free to leave. 10

Establishment of shelters and drop-in centres

214. (1) Shelters and drop-in centres established by an organ of state, a designated child protection organisation or a non-governmental organisation only qualify for funding from money appropriated by a provincial legislature if they comply with the national norms and standards mentioned in subsection (2). 15

(2) The Minister must determine national norms and standards for shelters and drop-in centres after consultation with the MECs for social development, the Financial and Fiscal Commission and the Minister of Finance. 20

Shelters and drop-in centres to be registered

215. Any person or organisation may establish or operate a shelter or drop-in centre provided that the shelter or drop-in centre— 25

- (a) is registered with the provincial head of social development of the province where that shelter or drop-in centre is situated; 25
- (b) is managed and maintained in accordance with any conditions subject to which the shelter or drop-in centre is registered; and
- (c) complies with— 30
 - (i) the minimum norms and standards for shelters and drop-in centres mentioned in section 220; and
 - (ii) the structural, safety, health and other requirements of the municipality. 30

Existing shelter

216. As from the date on which section 215 takes effect an existing shelter registered in terms of the Child Care Act must be regarded as having been registered as a shelter in terms of section 215. 35

Notice of enforcement

217. (1) The provincial head of social development may by way of a written notice instruct— 40

- (a) a person or organisation operating an unregistered shelter or drop-in centre— 40
 - (i) to stop operating that shelter or drop-in centre; or
 - (ii) to apply for registration in terms of section 215 within a period specified in the notice; or 45
- (b) a person or organisation operating a registered shelter or drop-in centre otherwise than in accordance with the conditions subject to which the registration was issued, to comply with those conditions. 45

(2) A person or organisation operating an unregistered shelter or drop-in centre and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 215, be given permission by the provincial head of social development to continue operating the shelter or drop-in centre during that period and, if 50

that person applies for registration, until that person's application has been finalised.

Application for registration and renewal of registration

218. (1) An application for registration or conditional registration of a shelter or drop-in centre or for the renewal of registration must—

- (a) be lodged with the provincial head of social development of the province in which the facility is or will be situated, in accordance with a procedure prescribed by regulation;
- (b) contain the particulars prescribed by regulation; and
- (c) be accompanied by—
 - (i) any documents that may be prescribed by regulation; and
 - (ii) such fee as may be prescribed by regulation.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

Consideration of application

219. (1) The provincial head of social development must—

- (a) consider an application for registration, conditional registration or for the renewal of registration, and either reject the application or, having regard to subsection (2), grant the registration, conditional registration or renewal with or without conditions; and
- (b) issue to the applicant a certificate of registration, conditional registration or renewal of registration on a form prescribed by regulation if the application is granted.

(2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether—

- (a) the shelter or drop-in centre complies with—
 - (i) the minimum norms and standards for shelters and drop-in centres mentioned in section 220; and
 - (ii) the structural, safety, health and other requirements of the municipality;
- (b) the applicant is a fit and proper person to operate a shelter or drop-in centre;
- (c) the applicant has the necessary skills, funds and resources available to operate the shelter or drop-in centre; and
- (d) each person employed or engaged in the shelter or drop-in centre is a fit and proper person to assist in operating a shelter or drop-in centre.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a shelter or drop-in centre.

(4) The provincial head of social development must consider a report of a designated social worker before deciding an application for registration, conditional registration or renewal of registration.

Minimum norms and standards for shelters and drop-in centres

220. (1) Premises used as a shelter or drop-in centre must have—

- (a) a safe area for the children to play;
- (b) adequate space and ventilation;
- (c) safe drinking water;
- (d) hygienic and adequate toilet facilities;
- (e) access to refuse disposal services or other adequate means of disposal of refuse generated at the shelter or drop-in centre; and
- (f) a hygienic area for the preparation of food for the children.

(2) Premises used as a shelter must, in addition, have—

- (a) safe sleeping facilities; and
- (b) staff available at the shelter 24 hours a day.

Conditional registration

221. The registration or renewal of registration of a shelter or drop-in centre may be granted on such conditions as the provincial head of social development may determine, including conditions—

- (a) specifying the type of services that may or must be provided in terms of the registration;
- (b) stating the period for which the registration will remain valid; and
- (c) relating to any other matter that may be prescribed by regulation.

Cancellation of registration

222. (1) A provincial head of social development may cancel the registration or conditional registration of a shelter or drop-in centre by written notice to the registration holder if—

- (a) the shelter or drop-in centre is not maintained in accordance with—
 - (i) the minimum norms and standards mentioned in section 220; and
 - (ii) this Act;
- (b) any condition subject to which the registration, conditional registration or renewal of registration was issued is breached or not complied with;
- (c) the registration holder or the management of the shelter or drop-in centre contravenes or fails to comply with this Act;
- (d) the registration holder becomes a person who is not a fit and proper person to operate a shelter or drop-in centre; or
- (e) a person who is not a fit and proper person to assist in operating a shelter or drop-in centre is employed at or engaged in activities at the shelter or drop-in centre.

(2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a shelter or drop-in centre.

(3) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)—

- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
- (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) A provincial head of social development may assist a registration holder to comply with the minimum norms and standards mentioned in section 220.

Appeal against and review of certain decisions

223. An applicant aggrieved by a decision of a provincial head of social development with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 219, or the conditions on which registration was granted in terms of section 221, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a shelter or drop-in centre in terms of section 222, may—

- (a) lodge an appeal with the MEC for social development against that decision; or
- (b) apply to the competent division of the High Court to review that decision.

Record, inspection and provision of shelters and drop-in centres

224. (1) A provincial head of social development must—

- (a) maintain a record of all shelters and drop-in centres in its area; and
- (b) conduct regular inspections of shelters and drop-in centres in the province in collaboration with the municipality where the shelters and drop-in centres are situated.

(2) A province must determine strategies for the provision of shelters and drop-in centres in the province, which must include measures—

- (a) facilitating the establishment of sufficient shelters and drop-in centres in the province;
- (b) prioritising those types of shelters and drop-in centres most urgently required; and
- (c) facilitating the identification and provision of suitable premises.

Assignment of functions to municipality

225. (1) The provincial head of social development may, by agreement with a municipality, assign the performance of specific or all of the functions contemplated in sections 215, 217, 218, 219, 221 and 222 to the most senior official responsible for social welfare services in the municipality if the provincial head of social development is satisfied that the municipality has the capacity to perform the functions concerned.

(2) The senior official referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to an official in the employ of the municipality.

(3) A delegation in terms of subsection (2)—

- (a) is subject to any limitations, conditions and directions which the delegating official may impose;
- (b) must be in writing; and
- (c) does not divest the delegating official of the responsibility concerning the exercise of the power or the performance of the duty.

(4) The delegating official may—

- (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
- (b) at any time withdraw a delegation.

(5) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 219, or the conditions on which registration was granted in terms of section 221, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a shelter or drop-in centre in terms of section 222, may—

- (a) lodge an appeal with the municipal council against that decision; or
- (b) apply to the competent division of the High Court to review that decision.

Death of child in shelter or drop-in centre

226. (1) If a child dies on the premises of a shelter or drop-in centre or following an occurrence at the shelter or drop-in centre, the person operating the shelter or drop-in centre must immediately after the child's death report such death to a police official and the Director-General.

(2) The police official must investigate the circumstances of the death of such child.

Regulations

227. The Minister, after consultation with the Minister for Justice and Constitutional Development where review of decisions by the courts are regulated, may make regulations in terms of section 306 concerning—

- (a) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of registration;
- (b) the different services that may be provided in terms of such registrations;
- (c) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;
- (d) the management of shelters and drop-in centres;
- (e) any other matter that may be necessary to facilitate the implementation of this Chapter.”.

Amendment of section 250 of Act 38 of 2005

10. Section 250 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) A welfare organisation referred to in section 108 which was lawfully engaged in providing adoption services when this section took effect may, despite the provisions of subsection (1), continue with such services for a period of two years without being accredited in terms of section 251 to provide adoption services, but must within that period apply for such accreditation.” 5

Amendment of section 304 of Act 38 of 2005

11. Section 304 of the principal Act is hereby amended by the insertion before subparagraph (iii) of paragraph (a) of subsection (3) of the following subparagraphs: 10

“(i) the minimum norms and standards referred to in section 83, 209 or 220 applicable to it;
(ii) other norms and standards as may be prescribed by regulation;”.

Amendment of section 305 of Act 38 of 2005

12. Section 305 of the principal Act is hereby amended by the insertion after paragraph (d) of subsection (1) of the following paragraphs: 15

“(e) misappropriates money for which that person is accountable in terms of section 136(3);
(f) fails to comply with section 78(1), 95(1), 196(1) or 215(1) after that person has been instructed by way of a notice in terms of section 80, 99, 198 or 217 to comply with the relevant section; 20
(g) fails to stop operating an unregistered child and youth care centre, partial care facility, shelter or drop-in centre after that person has been instructed by way of a notice in terms of section 80, 198 or 217 to stop operating that child and youth care centre, partial care facility, shelter or drop-in centre; 25
(h) fails to stop providing early childhood development services after that person has been instructed by way of a notice in terms of section 99 to stop providing those services;
(i) directly or indirectly counsels, induces or aids any child to whom leave of absence has been granted in terms of section 168 not to return to the child and youth care centre or person in whose care or temporary safe care that child has been placed, or prevents the child from returning to that centre or person after the expiry of the period of leave or after the cancellation of such leave; 30
(j) remove a child in alternative care from the Republic without the prior written approval for such removal first being obtained in terms of section 169;” 35

Short title and commencement

13. This Act is called the Children’s Amendment Act, 2006, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CHILDREN'S AMENDMENT BILL, 2006

1. LEGAL-TECHNICAL BACKGROUND OF THE BILL

This Amendment Bill contains part of the envisaged Children's Act. The Bill that was initially submitted to Parliament (the "consolidated Bill") dealt in totality with the protection of children in both national and provincial spheres and was to be dealt with in terms of section 76 of the Constitution of the Republic of South Africa, 1996, (functional area of concurrent national and provincial legislative competence). It was later found to be a "mixed" Bill, i.e. it included elements to be dealt with in terms of both section 75 and section 76 of the Constitution.

Due to its mixed character, the Deputy Speaker of the National Assembly requested the Executive to split the consolidated Bill, which was subsequently done. The provisions of the consolidated Bill that will apply to the national government were passed by Parliament during 2005 as the Children's Act, No. 38 of 2005. The provisions of the consolidated Bill that will apply to the provincial government are contained in the current Amendment Bill as an amendment to the Children's Act, 2005 (the "Children's Act"). This Amendment Bill will be dealt with in terms of section 76 of the Constitution and will complete the Children's Act by inserting the provisions that deal with welfare services as delivered by the provinces into the Children's Act.

2. GENERAL BACKGROUND AND OVERVIEW

The lives of children are affected by various pieces of legislation and international conventions. Apart from section 28 of the Constitution, which deals with the rights of children specifically, some of the statutes pertaining to children currently on the statute book are the following:

- Age of Majority Act, 1972 (Act No. 57 of 1972)
- Child Care Act, 1983 (Act No. 74 of 1983)
- Children's Status Act, 1987 (Act No. 82 of 1987)
- Guardianship Act, 1993 (Act No. 192 of 1993)
- Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996)
- Natural Fathers of Children born out of Wedlock Act, 1997 (Act No. 86 of 1997)

Over the past few years, it has become clear that existing legislation is not in keeping with the realities of current social problems and no longer protects children adequately. In addition thereto, the Republic of South Africa has acceded to various international conventions, such as the United Nations Declaration on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, the principles of which have to be incorporated into domestic law.

During 1997 the Minister of Social Development requested the South African Law Reform Commission to investigate the Child Care Act, 1983 (Act No. 74 of 1983), and to make recommendations to the Minister for the reform of this particular branch of law. After an extensive process of research and consultation, the South African Law Reform Commission finalised its report and proposed a draft Children's Bill in January 2003.

The Department of Social Development then took the process further through close liaison with the national Departments of Justice and Constitutional Development, Education, Health, Labour, the South African Police Service, the provinces, national non-governmental organisations and service providers as well as the Office on the Rights of the Child in the Presidency. After extensive discussions in the parliamentary committees and two rounds of public hearings, the Children's Bill was finally passed by Parliament in December 2005 and the President assented to the Children's Bill on 8 June 2006. The Children's Act will take effect on a date determined by the President by proclamation in the *Government Gazette*.

3. OBJECTS

The objects of the Children's Act are:

- (a) To promote the preservation and strengthening of families;
- (b) to give effect to certain constitutional rights of children;
- (c) to give effect to the Republic's obligations concerning the well-being of children in terms of international instruments binding on the Republic;
- (d) to make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;
- (e) to strengthen and develop community structures which can assist in providing care and protection for children;
- (f) to protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards;
- (g) to provide care and protection for children who are in need of care and protection;
- (h) to recognise the special needs that children with disabilities may have; and
- (i) generally, to promote the protection, development and well-being of children.

The Amendment Bill further expands on the above-mentioned objects of the Children's Act by proposing to insert the sections that pertain to the provincial sphere of government. The parts to be inserted may be summarised as follows:

- Chapter 5 deals with partial care and the approval and registration of partial care facilities, while Chapter 6 regulates early childhood development and the approval and registration of early childhood development programmes.
- Part 1 of Chapter 7 makes further provision for the protection of children by providing for a strategy for child protection and the reporting of children that have been seriously abused, sexually abused or deliberately neglected. The designation of child protection organisations is also regulated in this part of the Amendment Bill. Part 4 of Chapter 7 deals with child-headed households, the unlawful removal or detention of children and corporal punishment.
- Chapter 11 provides for alternative care of children and Chapters 12 and 13 further expand on alternative care by respectively regulating foster care and child and youth care centres.
- Chapter 13 determines that child and youth care centres must comply with certain requirements, must be registered, must offer certain programmes to children in the care of these centres, must have a management system and that a quality assurance process must be carried out in respect of the centres.
- Chapter 14 regulates the establishment and registration of and norms and standards for shelters and drop-in centres.
- Other amendments proposed are amendments to bring the long title, regulations provided for and the offences in line with the amendments to be effected by this Bill.

4. CONSULTATION

Apart from the broad consultation process followed by the South African Law Reform Commission during its review of the Child Care Act, 1983, the Department of Social Development distributed the original consolidated Bill to national departments, the provinces, non-governmental organisations and other service providers for comment. The consolidated Bill was also published for general comment in the *Government Gazette* on 13 August 2004. During 2006, the Department of Social Development consulted other national departments, the provinces and non-governmental organisations through the holding of a series of workshops. It is also envisaged that public hearings on the Amendment Bill will be held once the Bill is in the parliamentary process.

5. FINANCIAL IMPLICATIONS FOR STATE

The Children's Act and the proposed Amendment Bill have been through an extensive and detailed costing process. The process involved all national and provincial departments that play a part in the implementation of the Children's Act and the proposed Children's Amendment Bill. The final costing report was submitted to the Minister of Social Development in July 2006.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Department of Social Development and the State Law Advisers are of the view that this Bill must be dealt with by Parliament in accordance with the procedure established by section 76 of the Constitution, since it falls within a functional area listed in Schedule 4 to the Constitution, namely Welfare services.
- 6.2 The State Law Advisers are of the opinion that it is 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), since it contains provisions pertaining to customary law or customs of traditional communities.

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