

REPUBLIC OF SOUTH AFRICA

CHILDREN'S AMENDMENT BILL

*(As presented by Select Committee on Social Services (National Council of Provinces))
(The English text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

[B 19B—2006]

ISBN

No. of copies printed 1 800

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 and drop-in centres; 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): 5

“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 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; to create certain new offences relating to children; and to provide for matters connected therewith.” 10 15

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— 20
(a) by the insertion after “75. Regulations” of the following:

“CHAPTER 5

PARTIAL CARE

- 76. Partial care
- 77. Strategy concerning partial care 25
- 78. Provision of partial care

79. Norms and standards for partial care	
80. Partial care facility to be registered	
81. Application for registration and renewal of registration	
82. Consideration of application	
83. Conditional registration	5
84. Cancellation of registration	
85. Notice of enforcement	
86. Appeal against and review of certain decisions	
87. Record and inspection of and provision for partial care facility	
88. Assignment of functions to municipality	10
89. Death, abuse or serious injury of child in partial care facility	
90. Regulations	

CHAPTER 6

EARLY CHILDHOOD DEVELOPMENT

91. Early childhood development	15
92. Strategy concerning early childhood development	
93. Provision of early childhood development programmes	
94. Norms and standards for early childhood development	
95. Early childhood development programme to be registered	
96. Application for registration and renewal of registration	20
97. Consideration of application	
98. Conditional registration	
99. Cancellation of registration	
100. Notice of enforcement	
101. Assessment of early childhood development programmes	25
102. Assignment of functions to municipality	
103. <u>Regulations</u> ”;	

(b) by the insertion after “**PROTECTION OF CHILDREN**” of the following:

“Part 1

Child protection system

104. Strategy concerning child protection	30
105. Provision of child protection services	
106. Norms and standards concerning child protection	
107. Designation of child protection organisation	
108. Existing child welfare organisation	35
109. Withdrawal of designation	
110. <u>Reporting of abused or neglected child</u> ”;	

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

“Part 4

Other protective measures

135. Applications to terminate or suspend parental responsibilities and rights	40
136. Child-headed household	
137. Unlawful removal or detention of child	
138. Unlawful taking or sending of child out of Republic	
139. Discipline of child	45
140. Child safety at place of entertainment	
141. <u>Child labour and exploitation of child</u> ”;	

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

“CHAPTER 8

PREVENTION AND EARLY INTERVENTION

- | | |
|--|----|
| 143. Prevention and early intervention programmes | |
| 144. Purposes of prevention and early intervention programmes | 5 |
| 145. Strategy for securing prevention and early intervention | |
| 146. Provision of prevention and early intervention programmes | |
| 147. Norms and standards for prevention and early intervention programmes | |
| 148. Court may order early intervention | |
| 149. Report to include summary of prevention and early intervention programmes”; and | 10 |

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

“CHAPTER 11

ALTERNATIVE CARE

- | | |
|---|----|
| 167. Alternative care | |
| 168. Leave of absence | |
| 169. Child in alternative care prohibited from leaving Republic | |
| 170. Child absconding from alternative care | |
| 171. Transfer of child in alternative care | 20 |
| 172. Change in residential care programme | |
| 173. Removal of child already in alternative care | |
| 174. Provisional transfer from alternative care | |
| 175. Discharge from alternative care | |
| 176. Remaining in alternative care after reaching age of 18 years | 25 |
| 177. Appeal against and review of certain decisions | |
| 178. Death, abuse or serious injury of child in alternative care | |
| 179. Regulations | |

CHAPTER 12

FOSTER CARE

- | | |
|---|----|
| 180. Foster care | |
| 181. Purposes of foster care | |
| 182. Initial proceedings | |
| 183. Prospective foster parent | |
| 184. Determination of placement of child in foster care | 35 |
| 185. Number of children to be placed in foster care per household | |
| 186. Duration of foster care placements | |
| 187. Reunification of child with biological parent | |
| 188. Responsibilities and rights of foster parent | |
| 189. Termination of foster care | 40 |
| 190. Regulations | |

CHAPTER 13

CHILD AND YOUTH CARE CENTRES

- | | |
|--|----|
| 191. Child and youth care centre | |
| 192. Strategy to ensure sufficient provision of child and youth care centres | 45 |
| 193. Provision of child and youth care centres | |
| 194. Norms and standards for child and youth care centres | |

Part 1**Establishment and registration of child and youth care centre**

195. Establishment of child and youth care centre by organ of state	
196. Existing government children's home, place of safety, secure care facility, school of industry and reform school	5
197. Establishment of child and youth care centre by accredited organisation	
198. Existing registered children's home	
199. Notice of enforcement	
200. Application for registration or renewal of registration	
201. Consideration of application	10
202. Conditional registration	
203. Amendment of registration	
204. Cancellation of registration	
205. Voluntary closure of child and youth care centre	
206. Child in child and youth care centre to be closed	15
207. Appeal against and review of certain decisions	

Part 2**Operation and management of child and youth care centre**

208. Management board	
209. Manager and staff of child and youth care centre	20
210. Management system	
211. Quality assurance process	

Part 3**Miscellaneous**

212. Regulations	25
------------------	----

CHAPTER 14**DROP-IN CENTRES**

213. Drop-in centres	
214. Strategy concerning drop-in centres	
215. Provision of drop-in centres	30
216. Norms and standards for drop-in centres	
217. Drop-in centres to be registered	
218. Notice of enforcement	
219. Application for registration and renewal of registration	
220. Consideration of application	35
221. Conditional registration	
222. Cancellation of registration	
223. Appeal against and review of certain decisions	
224. Record and inspection of and provision for drop-in centres	
225. Assignment of functions to municipality	40
226. Death, abuse or serious injury of child in drop-in centre	
227. <u>Regulations</u>	

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:
- “**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
- (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:
- “**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:
- “**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 definitions:
- “**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:
- “**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:
- “**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:
- “**foster care**’ means care of a child as described in section 180(1) and includes foster care in a cluster foster care scheme;
- “**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 “**mental illness**” of the following definition:
- “**midwife**’ means a person registered as a midwife under the Nursing Act, 1978 (Act No. 50 of 1978);”;

- (i) 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;”;
- (j) by the insertion after the definition of “**neglect**” of the following definition:
 “**‘nurse’** means a person registered as a nurse under the Nursing Act, 1978 (Act No. 50 of 1978);”;
- (k) by the insertion after the definition of “**parental responsibilities and rights**” of the following definition:
 “**‘partial care’** means partial care referred to in section 76;”;
- (l) by the insertion after the definition of “**party**” of the following definition:
 “**‘permanency plan’** means a documented plan referred to in section 157(1);”;
- (m) by the insertion after the definition of “**presiding officer**” of the following definition:
 “**‘prevention services’** means services referred to in section 145(2);”;
- (n) by the insertion after the definition of “**psychologist**” 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;”;
- (o) 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;”;
- (p) 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;”.

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, by agreement between the parents or care-givers and the provider of the service, but excludes the taking 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.

Strategy concerning partial care

77. (1) The Minister, after consultation with interested persons and the Ministers of Finance, of Health and of Education, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration as provided in section 11 to children with disability or chronic illness.

(2) The MEC must—

- (a) maintain a record of all the registered partial care facilities in the province concerned;
- (b) within the national strategy referred to in subsection (1), provide for a provincial strategy to ensure an appropriate spread of partial care facilities in the province.

(3) The MEC must compile a provincial profile from time to time in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

Provision of partial care

78. (1) The MEC for social development of a province may, from money appropriated by the relevant provincial legislature, provide and fund partial care facilities and services for that province, taking into consideration the national and provincial strategies contemplated in section 77.

(2) Such partial care facilities—

- (a) must be management and maintained in accordance with this Act; and
- (b) must comply with—
- (i) the prescribed norms and standards contemplated in section 79 and such other requirements as may be prescribed;
 - (ii) the structural safety, health and other requirements of the municipality of the area where the partial care facility is situated.

(3) The owner or manager of a partial care facility or provider of a partial care service only qualifies for funding appropriated as contemplated in subsection (1) if it complies with the prescribed norms and standards contemplated in section 79.

Norms and standards for partial care

79. (1) The Minister must determine national norms and standards by regulation after consultation with interested persons, including local government.

(2) The norms and standards contemplated in subsection (1) must relate to the following:

- (a) A safe environment for the children;
- (b) proper care for sick children or children that fall ill;
- (c) adequate space and ventilation;
- (d) safe drinking water;
- (e) hygienic and adequate toilet facilities;
- (f) safe storage of anything that may be harmful to children;
- (g) access to disposal of refuse services or other adequate means of disposal of refuse generated at the facility;
- (h) a hygienic area for the preparation of food for the children;
- (i) measures for the separation of children of different age groups;
- (j) the drawing up of action plans for emergencies; and
- (j) the drawing up of policies and procedures regarding health care at the centre.

(3) A partial care facility for children with disability and chronic illness must, in addition to the norms and standards contemplated in subsection (1)—

- (a) be accessible to such children;
 - (b) provide facilities that meet the needs of such children; and
 - (c) employ persons that are trained in and provide training to persons employed at the facility on—
 - (i) the needs, health and safety of such children; and
 - (ii) appropriate learning activities and communication strategies for such children.
- (4) A partial care facility may offer such programmes appropriate to the developmental needs of the children in that facility as may be prescribed.

Partial care facility to be registered

- 80.** (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
 - (c) complies with the prescribed norms and standards contemplated in section 79 and such other requirements as may be prescribed.
- (2) The Minister by regulation may exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.
- (3) (a) Partial care facilities operated or managed by a national or provincial state department must comply with subsection (1).
 (b) Notwithstanding the provisions of paragraph (a), partial care facilities operated or managed by a national or provincial state department responsible for social development need not comply with subsection (1).
- (4) As from the date on which this section 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 this section as a partial care facility.
- (5) A facility referred to in subsection (4) is regarded to be a registered partial care facility for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 84 before the expiry of that period.

Application for registration and renewal of registration

- 81.** (1) An application for registration or conditional registration of a partial care facility or for the reinstatement or renewal of a registration must—
- (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—
 - (i) a report by a social service professional on the viability of the application; and
 - (ii) any documents that 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.
- (4) The provincial head of social development must renew the registration of a partial care facility before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as mentioned in subsection (3).

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 a registration and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; 5
 - (b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the form prescribed by regulation if the application is granted; and
 - (c) state in the certificate of registration the period for which the registration will remain valid. 10
- (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 prescribed norms and standards contemplated in section 79 and such other requirements as may be prescribed; 15
 - (b) the applicant is a fit and proper person to operate a partial care facility;
 - (c) the applicant has the necessary funds and resources available to provide the partial care services of the type applied for; 20
 - (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; and
 - (e) each person employed at or engaged in the partial care facility has the prescribed skills to assist in operating that partial care facility. 25
- (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 the report contemplated in section 82(1)(c)(i) of a social service professional before deciding an application for registration, conditional registration or renewal of registration. 30
- (5) Notwithstanding the provisions of section 78(3) a provincial head of social development may assist the owner or manager of a partial care facility to comply with the prescribed norms and standards contemplated in section 79 and such other requirements as may be prescribed.

Conditional registration

- 83.** 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; 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

- 84.** (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— 45
- (a) the facility is not maintained in accordance with the prescribed norms and standards contemplated in section 79 and such other requirements as may be prescribed;
 - (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 a provision of 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. 55

(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 prescribed norms and standards contemplated in section 79, any requirements as may be prescribed or any provisions of this Act where the cancellation was due to non-compliance with those norms and standards, conditions, requirements or provisions.

Notice of enforcement

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

- (a) a person operating an unregistered partial care facility—
 - (i) to stop operating that facility; or
 - (ii) to apply for registration in terms of section 80 within a period specified in the notice; or
- (b) a person operating a registered partial care facility otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(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 80, continue operating the facility during that period and, if that person applies for registration, until that person's application has been processed.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a partial care facility, whether registered or not, to stop operating that facility.

(4) The High Court may grant an order for costs against the owner of manager of the partial care facility referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

Appeal against and review of certain decisions

86. (1) An applicant aggrieved by a decision of a provincial head of social development in terms of section 82 or 83, or a registration holder aggrieved by a decision of a provincial head of social development in terms of section 84, may lodge an appeal against that decision with the MEC for social development.

(2) An applicant that is not satisfied with the outcome of an appeal lodged as referred to in subsection (1) may apply to the competent division of the High Court to review that decision.

Record and inspection of and provision for partial care facility

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

- (a) maintain a record of all available partial care facilities in the province, the types of partial care facility and the number of each type of facility;
- (b) compile a profile of the children in that province in the prescribed manner; and
- (c) conduct regular inspections of partial care facilities in the province to enforce the provisions of this Act.

(2) Provincial strategies must include strategies for the provision of partial care facilities in its area, 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) liaising with municipalities on facilitating the identification and provision of suitable premises.

Assignment of functions to municipality

88. (1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 80, 81, 82, 83, 84, 85 and 87 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a designated social worker in the employ of the municipality.

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

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

(5) The municipal manager 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.

(6) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to an application for registration or renewal of registration in terms of section 81, the conditions on which registration was granted in terms of section 82, conditional registration in terms of section 83 or a registration holder aggrieved by a decision to cancel the registration of a partial care facility in terms of section 84 may lodge an appeal with the municipal council against that decision.

(7) An applicant that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.

(8) (a) The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may—

- (i) amend the written agreement contemplated in subsection (1); or
- (ii) withdraw the assignment of the functions.

Death, abuse or serious injury 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—

- (a) to a police official;
- (b) the provincial head of social development; and
- (c) the parent or guardian of the child.

(2) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African

Police Service if the police official is satisfied that the child did not die of natural causes.

(3) If a child is abused or seriously injured while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility must immediately report such injury or abuse to the provincial head of social development, who must cause an investigation into the circumstances of the abuse or serious injury to be conducted.

Regulations

90. The Minister may make regulations in terms of section 306 concerning—

- (a) the norms and standards that partial care facilities must comply with;
- (b) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter, for the renewal of such registration and for the suspension or cancellation of registration;
- (c) the different types of partial care that may be provided in terms of such registration;
- (d) the period for which registration is valid;
- (e) the requirements that the different types of partial care facilities have to comply with;
- (f) the management of partial care facilities;
- (g) 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; and
- (h) 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, cognitive, 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 within an early childhood development service to provide learning and support appropriate to the child's developmental age and stage.

Strategy concerning early childhood development

92. (1) The Minister, after consultation with interested persons, and the Ministers of Education, of Finance and of Health, must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system, giving due consideration as mentioned in section 11 to children with disability or chronic illness.

(2) The MEC must—

- (a) maintain a record of all the early childhood development programmes registered in the province concerned;
- (b) within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed early childhood development system.

(3) The MEC must compile a provincial profile from time to time in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

Provision of early childhood development programmes

- 93.** (1) The MEC for social development of a province may, from money appropriated by the relevant provincial legislature, provide and fund early childhood development programmes for that province. 5
- (2) Early childhood development programmes must—
- (a) be provided in accordance with this Act; and
 - (b) comply with the prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed.
- (3) The provider of an early childhood development programme only qualifies for funding appropriated as contemplated in subsection (1) if it complies with the prescribed norms and standards contemplated in section 79. 10
- (4) The funding of early childhood development programmes in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children must be given priority. 15
- (5) Early childhood development programmes must be provided by—
- (a) a partial care facility providing partial care services for any children up to school-going age; and
 - (b) a child and youth care centre which has in its care any children up to school-going age. 20
- (6) Any other person or organisation not disqualified in terms of section 96(3) may provide early childhood development programmes, provided that those programmes comply with the prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed. 25

Norms and standards for early childhood development

- 94.** (1) The Minister must determine national norms and standards by regulation after consultation with interested persons, including the Departments of Education and of Health. 30
- (2) The prescribed norms and standards contemplated in subsection (1) must relate to the following:
- (a) The provision of appropriate developmental opportunities;
 - (b) programmes aimed at helping children to realise their full potential;
 - (c) caring for children in a constructive manner, providing support and security; 35
 - (d) ensuring development of positive social behaviour;
 - (e) respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child; and
 - (f) meeting the emotional, cognitive, spiritual, moral, physical and social development needs of the children. 40
- (3) Early childhood development programmes provided in terms of this section must be appropriate to the needs of the children to whom the services are provided, including children with disabilities, chronic illness and other special needs. 45

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 an early childhood development programme is provided must—
- (a) register the programme with the provincial head of social development of the province where that programme is provided; 50
 - (b) provide the programme in accordance with any conditions subject to which the programme is registered; and
 - (c) comply with the prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed. 55
- (2) The Minister by regulation may exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.

(3) (a) Early childhood development programmes provided by a national or provincial state department must comply with subsection (1).

(b) Notwithstanding the provisions of paragraph (a), early childhood development programmes provided by a national or provincial state department responsible for social development or education need not comply with subsection (1).

Application for registration and renewal of registration

96. (1) 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 any documents that 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.

(4) The provincial head of social development must renew the registration of a partial care facility before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

Consideration of application

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

- (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;
- (b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the form prescribed by regulation, if the application is granted; and
- (c) state in the certificate of registration the period for which the registration will remain valid.

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

- (a) the early childhood development programme complies with the prescribed norms and standards as contemplated in section 94 and such other requirements as may be prescribed;
- (b) the applicant is a fit and proper person to provide early childhood development services;
- (c) the applicant has the prescribed skills, funds and resources available to provide the early childhood development programme as applied for; and
- (d) the early childhood development programme meets the emotional, cognitive, spiritual, moral, physical and social development needs of the children in that partial care facility or child and youth care centre.

(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.

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

(5) Notwithstanding the provisions of section 78(3), a provincial head of social development may assist a partial care facility or a child and youth

care centre providing early childhood development programmes to comply with the prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed.

Conditional registration

98. The registration or renewal of the registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including conditions—

- (a) specifying the type of early childhood development programme 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

99. (1) A 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—

- (a) the programme is not run in accordance with the prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed;
- (b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;
- (c) the registration holder contravenes or fails to comply with a provision of this Act;
- (d) the registration holder becomes a person who is not a fit and proper person to provide early childhood development programmes; or
- (e) a person who is not a fit and proper person to provide or assist in the provision of early childhood development programmes provides or assists in the provision of such programmes.

(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 prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed or any provisions of this Act where the cancellation was due to non-compliance with those norms and standards, requirements, conditions or provisions.

(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

100. A provincial head of social development may by way of a written notice of enforcement instruct—

- (a) the person operating or managing a partial care facility or a child and youth care centre which does not provide an early childhood development programme, to comply with that section 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 does provide early childhood development programmes but of a standard that does not comply with the prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed, to comply with those norms and standards and other requirements within a period specified in the notice; or
- (c) a person who provides an early childhood development programme which does not comply with the prescribed norms and standards

contemplated in section 94 and such other requirements as may be prescribed]—

- (i) to stop the provision of that programme; or
- (ii) to comply with those norms and standards and other requirements within a period specified in the notice.

5

Assessment of early childhood development programmes

101. (1) A provincial head of social development must authorise a suitably qualified person to assess the provision and content of early childhood development programmes, in order to determine whether the programme complies with the prescribed norms and standards contemplated in section 94 and such other requirements as may be prescribed.

10

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

Assignment of functions to municipality

102. (1) The provincial head of social development may, by written 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 municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

15

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a designated social worker in the employ of the municipality.

25

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

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

30

(5) The municipal manager 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.

35

(6) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to an application for registration or renewal of registration in terms of section 96, the conditions on which registration was granted in terms of section 97, conditional registration in terms of section 98 or a registration holder aggrieved by a decision to cancel the registration of a partial care facility in terms of section 99 may lodge an appeal with the municipal council against that decision.

40

(7) An applicant that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6), may apply to the competent division of the High Court to review that decision.

45

(8) (a) The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

50

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may—

55

- (i) amend the written agreement contemplated in subsection (1);
or
- (ii) withdraw the assignment of the functions.

Regulations

- 103.** The Minister may make regulations in terms of section 306 concerning—
- (a) the norms and standards that early childhood development programmes must comply with;
 - (b) any other requirements with which early childhood development programmes must comply;
 - (c) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;
 - (d) the assessment and compulsory monitoring of early childhood development programmes offered at partial care facilities and child and youth care centres; and
 - (d) any other matter 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. (1) The Minister, after consultation with interested persons, including the Ministers of Education, of Finance, of Health, of Justice and Constitutional Development and the South African Police Service, must develop a comprehensive inter-sectoral strategy aimed at securing a properly resourced, co-ordinated and managed national child protection system.

(2) The MEC must within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed child protection system.

(3) The MEC must compile a provincial profile from time to time in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

Provision of child protection services

105. (1) The MEC for social development of a province must, from money appropriated by the relevant provincial legislature, provide and fund child protection services for that province.

(2) Such child protection services—

- (a) must be management and maintained in accordance with this Act; and
- (b) must comply with the prescribed norms and standards contemplated in section 106 and such other requirements as may be prescribed.

(3) 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 it complies with the norms and standards mentioned in section 106.

(4) 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.

- (5) Designated child protection services include—
- (a) services aimed at supporting—
 - (i) the proceedings of children’s courts; and
 - (ii) the implementation of court orders;
 - (b) services relating to—
 - (i) prevention services;
 - (ii) early intervention services;
 - (iii) the reunification of children in alternative care with their families;
 - (iv) the integration of children into alternative care arrangements;
 - (v) the placement of children in alternative care; and
 - (vi) 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 individual development plans and permanency plans for children removed, or at risk of being removed, from their family; and
 - (f) any other social work service that may be prescribed by regulation.]

Norms and standard concerning child protection

106. (1) The Minister must determine national norms and standards by regulation after consultation with interested persons.

(2) The norms and standards contemplated in subsection (1) must relate to the following:

- (a) Prevention and early intervention programmes;
- (b) assessment;
- (c) therapeutic programmes;
- (d) after care;
- (e) family reunification and reintegration;
- (f) foster care supervision;
- (g) family preservation;
- (h) integration into alternative care;
- (i) adoption;
- (j) permanency plans;
- (k) development;
- (l) education and information;
- (m) outreach;
- (n) support groups;
- (o) preparation programmes; and
- (p) social security.

(3) Child protection services only qualifies for funding from money appropriated by a provincial legislature if it complies with the prescribed norms and standards contemplated in subseas determined by the Minister by regulation.

Designation of child protection organisation

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

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

- (a) must be in writing;
- (b) may be made on such conditions as the Director-General or provincial head may determine; and
- (c) must be made for such period as may be prescribed.

(3) The Director-General or 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.

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

Existing child welfare organisation

108. (1) Any organisation which, when section 107 takes effect, was 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 109 [110] before the expiry of that period.

Withdrawal of designation

109. (1) The Director-General or 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 a provision of this Act; or

(b) if it is in the best interest of the protection of children.

(2) Before the designation of a child protection organisation is withdrawn as contemplated in subsection (1), the Director-General or provincial head for social development, as the case may be, must conduct quality assurance in the prescribed manner of the child protection organisation concerned.

Reporting of child in need of care and protection

110. (1) Any correctional official, dentist, homeopath; labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, police official, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, shelter, drop-in centre or child and youth care centre who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, if it is in the best interest of the child concerned, must report that conclusion to a designated child protection organisation or the provincial department of social development.

(2) Any person who on reasonable grounds 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 or a police official.

(3) A person referred to in subsection (1) or (2)—

(a) must substantiate that conclusion or belief to the provincial department of social development, a designated child protection organisation or police official;

(b) who makes a report in good faith is not liable to civil action on the basis of the report.

(4) A police official to whom a report has been made in terms of subsection (2) must—

(a) within 24 hours ensure the safety and well-being of the child concerned if the child's safety or well-being is at risk; and

(b) 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.

(5) The provincial department of social development or designated child protection organisation to whom a report has been made in terms of subsection (1), (2) or (4), must—

- (a) ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk; 5
- (b) make an initial assessment of the report;
- (c) submit such particulars concerning the matter as may be prescribed by regulation to the Director-General for inclusion in Part A of the National Child Protection Register;
- (c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated; and 10
- (d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of this Act for the protection of the child.

(7) The provincial department of social development or designated child protection organisation who has conducted an investigation as contemplated in subsection (5) may— 15

- (a) take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation; 20
- (b) 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 the alleged offender from such home or place would secure the safety and well-being of the child, request a police official in the prescribed manner to take the steps referred to in section 153; or 25
- (c) deal with the child in the manner contemplated in sections 151, 152 or 155.”;

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

“Part 4

Other protective measures

Applications 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, or a divorce court in divorce matters or a children's court for an order— 35

- (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 that person has in respect of a child. 40

(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— 45

- (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. 50

(3) When considering an application the court must be—

- (a) 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— 55
 - (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;
- (v) whether there had been any contact between the parent and the child over the year preceding the application; and
- (v) the probabilities of arranging for the child to be adopted or placed in another form of alternative care.

(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

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;
- (c) a child over the age of 15 years has assumed the role of care-giver in respect of the children in the household;
- (d) the children in the household have been investigated by a social worker as contemplated in section 150(2); and
- (e) it is in the best interest of the children in the household.

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

- (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 supervising adult must—

- (a) perform the duties as prescribed in relation to the household;
- (b) may not supervise more than 12 children in child-headed households.

(4) (a) The child at the head of the household or the adult contemplated in subsection (2) may collect and administer for the child-headed household any social security grant or other assistance to which the household is entitled.

(b) An adult that collects and administers money for a child-headed household as contemplated in paragraph (a) is accountable in the prescribed manner to the organ of state or the non-governmental organisation that designated him or her to supervise the household.

(5) (a) The organ of state or non-governmental organisation contemplated in subsection (2) may collect and administer for the child-headed household any social security grant or other grant or assistance to which the household is entitled.

(b) An organ of state or non-governmental organisation 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.

(6) The adult referred to in subsection (2) and the organ of state or non-governmental organisation referred to in subsection (3) may not take any decisions concerning such household and the children in the household without consulting—

- (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.

(7) The child heading the household may take all day-to-day decisions relating to the household and the children in the household as if that child was an adult care-giver.

(8) A child-headed household may not be excluded from any grant, subsidy, aid, relief or other assistance or programmes for poor households and vulnerable children 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.

Unlawful removal or detention of child

137. (1) No person may without lawful authority or reasonable grounds—

- (a) remove a child from the care of a person who lawfully cares for the child; or
- (b) detain a child with the result that the child is kept out of the care of a person entitled to lawful care of the child.

(2) For the purposes of subsection (1) a person must be regarded as detaining a child if that person—

- (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
- (b) without consent—
 - (i) obtained in terms of section 30(5) from persons holding relevant parental responsibilities and rights in respect of that child;
 - (ii) obtained in terms of section 169 with regard to a child in alternative care; or
 - (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—
 - (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.

Discipline of children

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

(2) No child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way.

(3) The common law defence of reasonable chastisement available to persons referred to in subsection (1) in any court proceeding is hereby abolished.

(4) No person may administer corporal punishment to a child or subject a child to any form of cruel, inhuman or degrading punishment at a [any] child and youth care centre, partial care facility or shelter or drop-in centre.

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

- (a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented throughout the Republic; and
- (b) programmes promoting appropriate discipline are available throughout the Republic.

(6) A parent, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.

(7) Prosecution of a parent or person holding parental responsibilities and rights referred to in subsection (6) may be instituted if the punishment constitutes abuse of the child.

Child safety at place of entertainment

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

- (a) access to the premises or enclosure where the entertainment is provided requires the use of doors, stairs, escalators, lifts or other mechanical means; 5
- (b) the majority of the people attending the entertainment are children; and
- (c) the number of people, including children, who attend the entertainment exceeds 50. 10

(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 in the premises or enclosure and each part of the premises or enclosure; 15
- (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) for the premises or enclosure or that part of the premises or enclosure; 20
- (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
- (d) take all reasonable precautions for the safety of the children and other people attending the entertainment. 25

(3) No alcohol or tobacco products may be sold, served or made available to children at places of entertainment.

(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. 30

(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 is or is to be provided, may enter such enclosure in order to inspect whether subsections (2) or (3) are complied with. 35

(b) Section 297(2) and (3), read with such changes as the context may require, applies to any inspection in terms of paragraph (a) of this subsection. 40

Child labour and exploitation of children

141. (1) No person may—

- (a) employ a child contrary to the provisions of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (b) use, procure, offer or employ a child for purposes of commercial sexual exploitation; 45
- (c) use, procure, offer or employ a child for illicit activities, including drug production and trafficking; or
- (d) use, procure, offer or employ a child for child labour;

(2) A social worker or social service professional who becomes aware of instances of child labour or contraventions of the provisions of the Basic Conditions of Employment Act, 1997 must report it to the Department of Labour.”. 50

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; 5
- (b) prescribing norms and standards and 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; 10
- (c) prescribing a broad risk assessment framework to guide decision-making in the provision of designated child protection services; 10
- (d) prescribing— 15
- (i) criteria for determining suitable 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); 15
- (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; 20
- (f) prohibiting or regulating cultural and religious practices violating the physical integrity of children;”.

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** 25**Prevention and early intervention programmes**

- 143.** (1) Early intervention programmes means programmes—
- (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; 30
- (2) Prevention programmes means programmes—
- (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 not attended to, may lead to statutory intervention. 35

Purposes of prevention and early intervention programmes

- 144.** (1) Prevention and early intervention 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; 40
- (c) establishing appropriate interpersonal relationships within the family;
- (d) promoting the well-being of children and the realisation of their full potential; 45
- (e) providing psychological, rehabilitation and therapeutic programmes for children;
- (f) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children’s needs; 50
- (g) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
- (h) diverting children away from the child and youth care system and the criminal justice system; and

- (i) avoiding the removal of a child from the family environment.
- (2) Prevention and early intervention 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 programmes must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems.

Strategy for securing prevention and early intervention

- 145.** (1) The Minister, after consultation with the relevant interested persons, including the Ministers of Education, of Finance and of Health, 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 across the country.
- (2) The MEC must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at properly resourced, co-ordinated and managed prevention and early intervention.
- (3) The MEC must compile a provincial profile from time to time in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

Provision of prevention and early intervention services

- 146.** (1) The MEC for social development of a province may, from money appropriated by the relevant provincial legislature, provide and fund prevention and early intervention programmes for that province.
- (2) Prevention and early intervention programmes must—
 - (a) be provided in accordance with this Act; and
 - (b) comply with the norms and standards prescribed by the Minister.
- (3) The provider of prevention and early intervention programmes only qualifies for funding appropriated as contemplated in subsection (1) if the programmes comply with the prescribed norms and standards mentioned in section 147.
- (4) In implementing prevention and early intervention programmes families who lack the means of providing proper shelter, food and other basic necessities of life to their children must be given priority.

Norms and standards for prevention and early intervention programmes

- 147.** (1) The Minister must determine national norms and standards by regulation after consultation with interested persons, including the Departments of Education and of Health.
- (2) The norms and standards contemplated in subsection (1) must relate to the following:
 - (a) Outreach;
 - (b) education, information and promotion;
 - (c) therapeutic programmes;
 - (d) family preservation;
 - (e) skills development programmes;
 - (f) diversion programmes;
 - (g) protection;
 - (h) temporary safe care;
 - (i) assessment;
 - (j) social security;
 - (k) family participation; and
 - (l) empowerment.
- (3) Prevention and early intervention programmes only qualify for funding from money appropriated by a provincial legislature if it complies with the norms and standards as determined by the Minister by regulation.

Court may order early intervention

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—

- (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 programmes in respect of the child and the family or parent or care-giver of the child if the court considers the provision of such programmes appropriate in the circumstances;
- (b) the child's family and the child to participate in a prescribed family preservation programme.

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

(3) When a case resumes after the expiry of the specified period, a designated social worker's report setting out progress with early intervention programmes provided to the child and the family, parent or care-giver of the child, must be submitted to the court.

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

- (a) decide the question whether the child should be removed; or
- (b) order the continuation of the early intervention programme for a further specified period not exceeding six months.

(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 programmes

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 programmes provided in respect of that child and the family, parent or care-giver of the child.”.

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;”.

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**

167. (1) 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.

(2) A child may not be cared for, kept or retained at a facility or a place other than a registered child and youth care centre or in foster care for longer than the prescribed period without a court order placing the child in alternative care.

(3) (a) The head of social development must approve a person, facility, place or premises for temporary safe care in the prescribed manner.

(b) A person, facility, place or premises for temporary safe care must comply with the prescribed criteria.

Leave of absence

168. (1) Leave of absence may, subject to subsection (2) and such limitations and conditions as may be prescribed by regulation, be granted to a child in alternative care—

(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; and

(c) by the head of social development in the relevant province, in the case of a child in temporary safe care.

(2) If a child has been placed in alternative care under the supervision of a designated social worker, leave of absence may only be granted with the approval of that social worker.

(3) The management, person referred to in subsection (1), designated social worker or the head of social development in the province may at any time cancel any leave of absence granted in terms of subsection (1).

(4) 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).

(5) When a child's leave of absence has been cancelled, the management, person referred to in subsection (1), designated social worker or the 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.

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 provincial head of social development first being obtained.

(2) In granting approval in terms on subsection (1), the provincial head of social development may prescribe any terms and conditions to protect the best interest of the child in alternative care.

Child absconding from alternative care

170. (1) Any police official or designated social worker 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 temporary safe care that child has been placed; or

(b) has been granted leave of absence by the child and youth care centre or person in whose foster care or temporary safe care that child has been placed and who on cancellation or expiration of such leave of absence fails to return to that centre or person.

(2) If a police official or designated social worker contemplated in subsection (1) has reasonable grounds to believe that a child is in or on certain premises, the police official or designated social worker may, without a warrant, enter and search the premises for the purpose of apprehending the child.

(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 as contemplated in subsection (1), 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.

(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.

(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— 5

(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. 10

(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; 15

(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 20

(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 provincial head of social development in the relevant province 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 25

(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— 30

(a) report to the provincial head of social development in the relevant province the result of an inquiry in terms of subsection (6); and

(b) notify the provincial head of any order made in terms of subsection (6) (c). 35

(8) When an order has been made in terms of subsection (6)(c)(ii) the provincial head may, after consideration of the report of the children's court and such inquiry as the provincial head may consider necessary—

(a) transfer the child in terms of section 171;

(b) remove the child from alternative care in terms of section 173; 40

(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 provincial head of social development in the relevant province 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. 45

(2) The provincial head may not transfer a child to a child and youth care centre in another province without the permission of the provincial head of social development in that other province and without the prescribed financial arrangements regarding the placement being made. 50

(3) (a) If the provincial head 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. 55

(b) If any requirement referred to in paragraph (a) is breached or not complied with, the designated social worker concerned may bring the child 60

before a children's court, which may, after an inquiry, vary the order issued by the provincial head or make a new order in terms of section 156.

(4) Before the provincial head issues an order in terms of subsection (1), a designated social worker must consult—

- (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 provincial head 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 provincial head 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 or more restrictive child and youth care centre.

Change in residential care programme

172. (1) The provincial head of social development in the relevant province 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 provincial head 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.

Removal of child already in alternative care

173. (1) The provincial head of social development in the relevant province 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 provincial head 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 provincial head 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) issue a notice directing 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 subsection (1) notice 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 the 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 of provisional transfer 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 provincial head of social development.
- (3) Provisional transfer must be managed by a designated social worker to establish the feasibility of—
- (a) reunification of the child with the child's immediate family or other family members;
 - (b) integration into another family; or
 - (c) a transfer to another child and youth care centre of any other form of placement.
- (4) The provincial head—
- (a) must revoke the transfer if the child so requests and the social worker so recommends; and
 - (b) may at the end of or at any time during the trial period confirm the child's placement or permanently discharge the child from alternative care in terms of section 175.
- (5) The notice of provisional transfer shall be considered proof of eligibility for any form of state support which would have been payable if the transfer had been permanent.

Discharge from alternative care

- 175.** (1) The provincial head of social development in the relevant province 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 of discharge 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 provincial head of social development.
- (3) A notice of discharge relieves the alternate care-giver from any further responsibilities in relation to the child.

Remaining in alternative care after reaching age of 18 years

- 176.** (1) A person placed in alternative care as a child is entitled, after having reached the age of 18 years, to remain in that care until the end of the year in which that person reached the age of 18 years.
- (2) A provincial head of social development may on application by a person placed in alternative care as a child, 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.

- (1) A child or person aggrieved by a decision in terms of section 168 or a decision or action in terms of section 170(8), 171, 172, 173, 174, 175, or 176 may lodge an appeal with the MEC against that decision.

(2) An applicant that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1), may apply to the competent division of the High Court to review that decision.

Death, abuse or serious injury 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 or foster care the child has been placed must immediately after the child's death report such death—

- (a) to a police official;
- (b) the provincial head of social development;
- (c) the parent or guardian of the child, if he or she can be traced; and
- (d) the social worker dealing with the matter.

(2) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service if the police official is satisfied that the child did not die of natural causes.

(3) If a child in alternative care is abused or seriously injured, the management of the child and youth care centre or person in whose care the child has been placed must immediately report the matter to the provincial head of social development who must cause an investigation into the circumstances of the abuse or serious injury to be conducted.

Regulations

179. 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 prescribing—

- (a) the manner in which a person, facility, place or premises for temporary safe care must be approved;
- (b) the criteria that a person, facility, place or premises for temporary safe care must comply with;
- (c) limitations or conditions for leave of absence from alternative care;
- (d) the manner in which children in alternative care must be transferred or provisionally transferred, their residential care programmes changed, be removed or permanently discharged from alternative care;
- (e) fees payable to a child and youth care centre on transfer or provisional transfer of a child in alternative care to that centre;
- (f) the manner in which applications for extension of alternative care beyond 18 years of age are to be made; and
- (g) 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; or
- (b) a transfer in terms of section 171.

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

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

(3) A children's court may place a child in foster care—

- (a) with a person who is not a family member of the child;
- (b) with a family member who is not the parent or guardian of the child; or
- (c) in a cluster foster care scheme.

Purposes of foster care

181. The purposes of foster care are to—

- (a) protect and nurture children by providing a safe, healthy environment with positive support;
- (b) promote the goals of permanency planning, first towards family reunification, or by connecting children to other safe and nurturing family relationships intended to last a lifetime; and
- (c) respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity.

5

Initial proceedings

10

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 10 to the extent that the provisions of that Part are applicable to the particular case.

Prospective foster parent

15

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).

20

(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.

(3) Subsections (1) and (2), read with such changes as the context may require, apply to any organisation or a group of individuals managing a cluster foster care scheme.

25

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—

30

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

35

- (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

40

185. (1) Not 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 blood relations; or
- (b) the court considers this for any other reason to be in the best interest of all the children.

45

(2) More than six children may be placed in foster care in terms of a cluster foster care scheme as prescribed.

Duration of foster care placements

186. (1) A children's court may, despite the provisions of section 159(1)(a) regarding the duration of a court order, after a child has been in foster care with a person other than a family member for more than two

50

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)(a) 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, extend such an order for more than two years at a time or order that the foster care placement subsists until the child turns 18 years, 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 (2) and (3), a social service professional 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; or
- (b) order the termination of the reunification services if there are no prospects of reunification.

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) the responsibilities and rights of foster parents as may be prescribed;
- (c) an order of the children's court amending the initial order;
- (d) an order of court assigning parental responsibilities and rights in terms of section 23;
- (e) a parenting plan between the parent or guardian of the child and the foster parent in terms of section 33;
- (f) 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 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) prescribing the responsibilities and rights of foster parents;
- (b) regulating the establishment, functioning and management of cluster foster care schemes;
- (c) prescribing the requirements with which cluster foster care schemes and any foster care programmes provided in terms of such schemes, must comply; and
- (d) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

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 for the children in the facility, but excludes—

- (a) a partial care facility;
- (b) a drop-in centre;
- (c) a boarding school;
- (d) a school hostel or other residential facility attached to a school;
- (e) a prison; or
- (f) 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.

(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—

- (a) the reception, care and development of children otherwise 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, psychological 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 street children; or
- (k) the reception and care of children for any other purpose that may be prescribed by regulation.
- (3) A child and youth care centre may in addition to its residential care programmes, offer—
- (a) the provision of appropriate care and development of children with disabilities or chronic illnesses;
 - (b) therapeutic programmes;
 - (c) the treatment of children for addiction to dependence-producing substances;
 - (d) a programme for the treatment of children with a psychiatric condition;
 - (e) a programme to assist a person with the transition when leaving a child and youth care centre after reaching the age of 18; or
 - (f) any other service that may be prescribed by regulation.

Strategy to ensure sufficient provision of child and youth care centres

192. (1) The Minister, after consultation with the Ministers of Education, of Health and of Justice and Constitutional Development, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions, giving due consideration as provided in section 11 to children with disability or chronic illness.

(2) The MEC must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at the establishment of an appropriate spread in the province of properly resourced, co-ordinated and managed child and youth care centres providing the required range of residential care programmes.

(3) The MEC must compile a provincial profile from time to time in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

(4) The provincial head of social development must maintain a record of all available child and youth care centres in the province concerned and of the programmes contemplated in section 191 offered by each centre.

Provision of child and youth care centres 193.

(1) The MEC for social development of a province must, from money appropriated by the relevant provincial legislature, provide and fund child and youth care centres for that province.

(2) Such child and youth care centres—

- (a) must be managed and maintained in accordance with this Act; and
- (b) must comply with—
 - (i) the prescribed norms and standards contemplated in section 194 and such other requirements as may be prescribed;

- (ii) the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is situated.

(3) An accredited organisation operating a child and youth care centre only qualifies for funding from money appropriated by a provincial legislature if it complies with the norms and standards as determined by the Minister by regulation.

Norms and standards for child and youth care centres

194. (1) The Minister must determine national norms and standards by regulation after consultation with interested persons.

(2) The norms and standards contemplated in subsection (1) must relate to the following:

- (a) A residential care programme;
- (b) therapeutic programmes;
- (c) development programmes;
- (d) permanency plans for children;
- (e) individual development plans;
- (f) temporary safe care;
- (g) protection from abuse and neglect;
- (h) assessment of children;
- (i) family reunification and reintegration;
- (j) after-care with the purpose of prevention and early intervention;
- (k) access to and provision of adequate health care;
- (l) access to schooling and education; and
- (m) measures for the separation of children in secure care programmes from children in other programmes.

Part 1

Establishment and registration of child and youth care centre

Establishment of child and youth care centre by organ of state

195. The MEC for social development of a province must, from money appropriated by the relevant provincial legislature, establish and operate child and youth care centres for that province.

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

- 196.** (1) As from the date on which section 195 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 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(a);
 - (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 195 as a child and youth care centre providing residential care programmes referred to in section 191(2)(c) and (d);
 - (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 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(g);
 - (d) a government industrial school established in terms of section 33 of the Children's Protection Act, 1913 (Act No. 25 of 1913) must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(h);

(e) a reformatory established in terms of section 52 of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911) must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(i).

(3) The provincial department of education must provide education to the children in the facilities mentioned in paragraphs (d) and (e).

Establishment of child and youth care centre by accredited organisation

197. (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;
- (b) is managed and maintained in accordance with this Act and any conditions subject to which the centre is registered;
- (c) complies with the prescribed norms and standards for child and youth care centres as contemplated in section 194 and such other requirements as may be prescribed; and
- (d) complies with 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.

(2) Subsection (1) also applies to a child and youth care centre established by an organ of state in terms of section 195 if the centre is operated by an accredited organisation.

(3) With the exception of partial care facilities operated or managed by a national or provincial state department responsible for social development, all partial care facilities operated or managed by a national or provincial state department must comply with subsection (1).

Existing registered children's home and registered shelter

199. (1) As from the date on which section 197 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).

(2) A children's home referred to in subsection (1) is regarded to be a registered child and youth care centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 204 before the expiry of that period.

(3) An existing shelter registered in terms of the Child Care Act must register as a child and youth care centre within a period of five years from the date on which this section takes effect.

Notice of enforcement

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

- (a) a person or organisation operating an unregistered child and youth care centre—
 - (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 the provisions of 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 regarding the establishment of child and youth care centres by

accredited organisations, 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.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a person or organisation operating a child and youth care centre, whether registered or not, to stop operating that centre.

(4) The High Court may grant an order for costs against the person or organisation referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

Application for registration or renewal of registration

200. (1) An application for registration of a child and youth care centre established by an accredited organisation as referred to in section 196 or for the renewal of such a registration must—

- (a) be lodged with the provincial head of social development in the relevant province in accordance with a procedure prescribed by regulation;
- (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; and
 - (iii) any documents that 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.

(4) The provincial head of social development must renew the registration of a partial care facility before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

Consideration of application

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

- (a) consider an application for registration or for the renewal of a registration and either refuse the application or grant the registration or renewal with or without conditions, having regard to subsection (2);
- (b) issue to the applicant a certificate of registration or renewal of registration in the form prescribed by regulation if the application is granted; and
- (c) state in the certificate of registration the period for which the registration will remain valid.

(2) When deciding 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—
 - (i) the prescribed norms and standards for child and youth care centres contemplated in section 194 and such other requirements as may be prescribed; 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;
- (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;
 - (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; and
 - (e) each person employed at or engaged in the child and youth care centre has the prescribed skills to assist in operating a child and youth care centre.
- (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 an application for registration or renewal of registration.
- (5) Notwithstanding the provisions of section 193(3) a provincial head of social development may assist the person or organisation operating a child and youth care centre to comply with the prescribed norms and standards contemplated in section 194 and such other requirements as may be prescribed.

Conditional registration

- 202.** 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—
- (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.

Amendment of registration

- 203.** The provincial head of social development in the relevant province may, on application in the prescribed circumstances 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

- 204.** (1) The provincial head of social development in the relevant province may cancel the 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 prescribed norms and standards contemplated in section 194 for child and youth care centres and such other requirements as may be prescribed;
 - (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 requirements of this Act;
 - (b) any condition subject to which the registration or renewal of registration was issued is breached;
 - (c) the registration holder or the management of the centre contravenes or fails to comply with a provision of 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 involved 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 prescribed norms and standards for child and youth care centres contemplated in section 194 and such other requirements as may be prescribed;
 - (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 the cancellation was due to a failure to comply with those norms and standards, requirements or process.
- (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

- 205.** (1) The holder of a registration of a child and youth care centre may close the centre by—
- (a) giving written notice to the provincial head of social development in the relevant province; 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

- 206.** (1) If a child and youth care centre is to be closed as a result of the cancellation of its registration in terms of section 204 or voluntary closure of the centre in terms of section 205 every child placed in that centre must be transferred in terms of section 171.

Appeal against and review of certain decisions

- 207.** (1) 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 204, may lodge an appeal against that decision with the MEC for social development.

- (2) An applicant that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1), may apply to the competent division of the High Court to review that decision.

*Part 2***Operation and management of child and youth care centre****Management board**

- 208.** (1) Each child and youth care centre must have a management board consisting of no fewer than six and no more than nine members. 5
- (2) The members of a management board are appointed by—
- (a) the MEC for social development in the relevant province in accordance with a procedure prescribed by regulation, in the case of a child and youth care centre which is operated by the province; 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. 10
- (3) In 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. 15
- (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. 20
- (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

- 209.** (1) The person or organisation operating a child and youth care centre must appoint or designate— 25
- (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— 30
- (a) after following an interview process prescribed by regulation;
- (b) if that person has the skills and training as prescribed; and
- (c) if that 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 assist in operating or serving 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— 40
- (a) prescribed by regulation; or
- (b) required in the conditions of registration of the centre.

Management system

- 210.** A child and youth care centre must be managed—
- (a) in accordance with— 45
- (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 50
- (b) in a manner that is conducive to implementing the residential care programme and other programmes offered at the centre.

Quality assurance process

211. (1) The provincial head for 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 as 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 in the province.

(3) A provincial head of social development may give advice to a child and youth care centre on carrying out the quality assurance process as contemplated in subsection (1).

Part 3**Miscellaneous****Regulations**

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

- (a) the procedure to be followed 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 sub-paragraphs (i) and (ii);
- (b) the norms and standards that child and youth care centres must comply with;
- (c) the matters with which applicants must comply before, during or after the lodging of their applications;
- (d) consultation processes that must be followed in connection with such applications;
- (e) any additional factors that must be taken into account when deciding such applications;
- (f) 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;
- (g) the format and contents of registration certificates;
- (h) methods and procedures to enforce compliance with registration conditions;
- (i) matters in connection with the physical attributes, operation and management of child and youth care centres;
- (j) matters in connection with residential care programmes provided at child and youth care centres, including the setting of criteria for—
 - (i) the core components of such programmes; and
 - (ii) the implementation of such programmes;
- (k) the provision of programmes at child and youth care centres to meet the developmental, therapeutic and recreational needs of children;
- (l) an assessment of and the formulation of an individual developmental and permanency plan for each child;
- (m) the powers and duties of the management boards of child and youth care centres;
- (n) the composition of management boards, which may include representation for staff and residents;
- (o) 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;

- (p) 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;
- (q) matters relating to training, qualifications and experience of staff of child and youth care centres;
- (r) matters relating to the responsibilities of and interaction between the management board and the staff and residents of a child and youth care centre;
- (s) the reporting responsibilities of management boards and staff to the department, person or organisation operating the child and youth care centre;
- (t) 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;
- (u) the rights of children in child and youth care centres;
- (v) management, disciplinary and other practices in child and youth care centres;
- (w) 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 reporting of violations of such plans; and
 - (vii) the qualifications, functions and remuneration of mentors appointed to oversee the implementation of such plans; and
- (x) any other matter that may facilitate the implementation of this Chapter.

CHAPTER 14

DROP-IN CENTRES

Drop-in centres

213. 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.

Strategy concerning drop-in centres

214. (1) The Minister, after consultation with civil society and the relevant interested parties, including the Ministers of Finance and Health, must include in the departmental strategy a strategy aimed at ensuring an appropriate spread of drop-in centres throughout the Republic, giving due consideration as provided in section 11 to children with disability or chronic illness.

(2) The MEC must—

- (a) maintain a record of all the registered drop-in centres in the province concerned;
- (b) within the national strategy referred to in subsection (1), provide for a provincial strategy to ensure an appropriate spread of drop-in centres in the province.

(3) The MEC must compile a provincial profile from time to time in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

Provision of drop-in centres

215. (1) The MEC for social development of a province may, from money appropriated by the relevant provincial legislature, provide and fund drop-in centres for that province. 5

(2) Such drop-in centres—

(a) must be management and maintained in accordance with this Act; and 10
(b) must comply with—

(i)

the prescribed norms and standards contemplated in section 216 and such other requirements as may be prescribed;

(ii)

the structural safety, health and other requirements of the municipality of the area where the drop-in centre is situated. 15

(3) The owner or manager of a drop-in centre only qualifies for funding appropriated as contemplated in subsection (1) if the centre complies with the prescribed norms and standards contemplated in section 216 and such other requirements as may be prescribed. 20

Norms and standards for drop-in centres

216. (1) The Minister must determine norms and standards by regulation after consultation with interested persons, including local government.

(2) The norms and standards contemplated in subsection (1) must relate to the following: 25

(a) A safe environment for the children;

(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 shelter or drop-in centre; 30

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

(g) providing adequate care for the children.

(h) providing programmes in life and social skills, as well as psychosocial services, education, primary health care and recreation. 35

(i) reporting of all children residing the drop-in centres to a social worker for intervention and family reunification.

(j) drop-in centres should not be seen as a permanent or long term placement.

(k) drop-in centres should have screened and trained staff and care givers. 40

(l) shelters and drop-in centres should have management committees.

(3) A drop-in centre only qualifies for funding from money appropriated by a provincial legislature if it complies with the prescribed norms and standards as contemplated in section 216 and such other requirements as may be prescribed. 45

(4) A drop-in centre may offer such programmes appropriate to the developmental needs of the children in that centre as may be prescribed.

Drop-in centres to be registered

217. (1) Any person or organisation may establish or operate a drop-in centre provided that the drop-in centre— 50

(a) is registered with the provincial head of social development of the province where that drop-in centre is situated;

(b) is managed and maintained in accordance with any conditions subject to which the drop-in centre is registered; and

(c) complies with— 55

- (i) the prescribed norms and standards for drop-in centres contemplated in section 216 and such other requirements as may be prescribed; and
- (ii) the structural, safety, health and other requirements of the municipality.

(2) As from the date on which this section takes effect an existing drop-in centre registered in terms of the Child Care Act must be regarded as having been registered as a drop-in centre in terms of this section.

(3) A drop-in centre referred to in subsection (4) is regarded to be a registered drop-in centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 84 before the expiry of that period.

Notice of enforcement

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

- (a) a person or organisation operating an unregistered drop-in centre—
 - (i) to stop operating that drop-in centre; or
 - (ii) to apply for registration in terms of section 217 within a period specified in the notice; or
- (b) a person or organisation operating a registered drop-in centre otherwise than in accordance with the conditions subject to which the registration was issued, to comply with those conditions.

(2) A person or organisation operating an unregistered 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 217 be given permission by the provincial head of social development to continue operating the drop-in centre during that period and, if that person applies for registration, until that person's application has been finalised.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a drop-in centre, whether registered or not, to stop operating that centre.

(4) The High Court may grant an order for costs against the owner of manager of the drop-in care centre referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

Application for registration and renewal of registration

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

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

(4) The provincial head of social development must renew the registration of a drop-in centre before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

Consideration of application

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

- (a) consider an application for registration or conditional registration or for the renewal of a registration, and either reject the application or

- grant the registration or renewal with or without conditions, having regard to subsection (2); 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. 5
- (2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether—
- (a) the drop-in centre complies with— 10
- (i) the prescribed norms and standards for drop-in centres contemplated in section 216; and
- (ii) the structural, safety, health and other requirements of the municipality;
- (b) the applicant is a fit and proper person to operate a drop-in centre;
- (c) the applicant has the necessary skills, funds and resources available to operate the drop-in centre; 15
- (d) each person employed or engaged in the drop-in centre is a fit and proper person to assist in operating a drop-in centre; and
- (e) each person employed at or engaged in the drop-in centre has the prescribed skills to assist in operating a drop-in centre. 20
- (3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a drop-in centre.
- (4) The provincial head of social development must consider a report of a social service professional before deciding an application for registration, conditional registration or renewal of registration. 25
- (5) Notwithstanding the provisions of section 215(3) a provincial head of social development may assist the person or organisation operating a drop-in centre to comply with the prescribed norms and standards contemplated in section 216 and such other requirements as may be prescribed. 30

Conditional registration

- 221.** (1) The registration or renewal of the registration of a drop-in centre may be granted on such conditions as the provincial head of social development may determine, including conditions— 35
- (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) providing for any other matters that may be prescribed by regulation.
- (2) A provincial head of social development may give advice to a drop-in centre on complying with the prescribed norms and standards contemplated in section 216 and such other requirements as may be prescribed. 40

Cancellation of registration

- 222.** (1) A provincial head of social development may cancel the registration of a drop-in centre by written notice to the registration holder if— 45
- (a) the drop-in centre is not maintained in accordance with—
- (i) the prescribed norms and standards for drop-in centres contemplated in section 216 and such other requirements as may be prescribed; and
- (ii) any other requirements of this Act; 50
- (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 drop-in centre contravenes or fails to comply with any provision of this Act;
- (d) the registration holder becomes a person who is not a fit and proper person to operate a drop-in centre; or 55
- (e) a person who is not a fit and proper person to assist in operating a drop-in centre is employed at or engaged in operating 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 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 prescribed norms and standards for drop-in centres contemplated in section 216 and such other requirements as may be prescribed.

Appeal against and review of certain decisions

223. (1) 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 drop-in centre in terms of section 222 may lodge an appeal with the MEC for social development against that decision.

(2) An applicant that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1), may apply to the competent division of the High Court to review that decision.

Record and inspection of and provision for drop-in centres

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

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

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

- (a) facilitating the establishment of sufficient drop-in centres in the province;
- (b) prioritising those types of 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 written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 215, 217, 218, 219, 221 and 222 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a designated social worker in the employ of the municipality.

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

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

(5) The municipal manager 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.

(6) 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 220, 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 partial care facility in terms of section 222 may lodge an appeal with the municipal council against that decision.

(7) An applicant that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6), may apply to the competent division of the High Court to review that decision.

(8) (a) The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may—

- (i) amend the written agreement contemplated in subsection (1); or
- (ii) withdraw the assignment of the functions.

Death, abuse or serious injury of child in drop-in centre

226. (1) If a child is seriously injured or abused while in a drop-in centre or following an occurrence at a drop-in centre, the person operating the drop-in centre must immediately report such injury or abuse to the provincial head of social development.

(2) The provincial head of social development must cause the serious injury or abuse of the child to be investigated.

(3) If a child dies while in partial care or following an occurrence at a drop-in centre, the person operating the drop-in centre must immediately after the child's death report such death to a police official and the provincial head of social development.

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

Regulations

227. The Minister, after consultation with the Minister of 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 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 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 in terms of section 251.” 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 prescribed 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

15

12. Section 305 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(a) fails to comply with section 12(5), 12(9), 57(2), 110(1), 124, 126(1), 134(1) or 232(6);” 20

(b) by the insertion after paragraph (d) of subsection (1) of the following paragraphs:

“(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 of enforcement in terms of section 80, 99, 198 or 217 to comply with the relevant section;

(g) fails to stop operating an unregistered child and youth care centre, partial care facility or drop-in centre after that person has been instructed by way of a notice of enforcement in terms of section 80, 198 or 217 to stop operating that child and youth care centre, partial care facility or drop-in centre;

(h) fails to stop providing early childhood development services after that person has been instructed by way of a notice of enforcement 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 expiration of the period of leave or after the cancellation of such leave;

(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;” 45

Short title and commencement

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

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

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 with the full spectrum of 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 Act, 1996 (functional area of concurrent national and provincial legislative competence). It was later found to be a "mixed" Bill, including elements to be dealt with in terms of both section 75 (functional area of national legislative competence) 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 was 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 is 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.

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:

- The Age of Majority Act, 1972 (Act No. 57 of 1972)
- The Child Care Act 1960 (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 local legislation.

During 1997 the Minister for Social Development requested the South African Law Reform Commission to investigate the Child Care Act, 1983 and to make recommendations to the Minister for the reform of this particular branch of the law. After an extensive process of research and consultation, the 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 Act was finally passed by Parliament in December 2005 and the President assented to the Children's Act on 8 June 2006. The Children's Act will take effect on a date fixed by the President by proclamation in the Government Gazette.

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 has 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 amongst others 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, be registered, 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 section in line with the amendments to be effected by this Bill.

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 also 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 Gazette on 13 August 2004. During the course of 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.

FINANCIAL IMPLICATIONS FOR STATE

The Children's Act and the proposed Amendment Bill has 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.

PARLIAMENTARY PROCEDURE

The Department of Social Development and the State Law Advisors are of the view that this Amendment Bill must be dealt with by Parliament in accordance with the procedure established by Section 76 of the Constitution.

Printed by Creda Communications

ISBN