

# **BILL**

**To define the rights and responsibilities of children; to define parental responsibilities and rights; to determine principles and guidelines for the protection of children and the promotion of their well-being; to regulate matters concerning the protection and well-being of children, especially those that are the most vulnerable; to consolidate the laws relating to the welfare and protection of children; and to provide for incidental matters.**

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## CHAPTER 1

### INTERPRETATION, OBJECTS AND APPLICATION OF THIS ACT

#### Interpretation

1. (1) In this Act, unless the context otherwise indicates -

“**abandoned**”, in relation to a child, means when a child -

(a) has obviously been deserted by the parent or care-giver; or

(b) is without contact with the parent or guardian for no apparent reason for a period of at least three months;

“**abuse**”, in relation to a child, means any form of harm or ill-treatment deliberately inflicted on a child, and includes -

(a) assaulting a child or inflicting any other form of deliberate injury on a child;

(b) sexually abusing a child;

(c) committing an exploitative labour practice in relation to a child; or

(d) exposing or subjecting a child to behaviour that may psychologically harm the child;

**“adoption compliance certificate”** -

(a) in relation to a convention country, means a certificate issued in terms of Article 23 of the Hague Convention on Inter-country Adoption; or

(b) in relation to a prescribed overseas jurisdiction, means a similar certificate prescribed in the relevant bilateral or multilateral agreement;

**“adopted child”** means a child adopted by a person in terms of this Act or any legislation regulating the adoption of children before this Act took effect;

**“adoption social worker”** means -

(a) a social worker in private practice -

(i) who has a speciality in adoption services registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978); and

(ii) accredited in terms of section **278** (1) to provide adoption services; or

(b) a social worker in the employ of a designated child protection organisation which is accredited in terms of section **278** (1) to provide adoption services;

**“adoptive parent”** means a person who adopted a child in terms of this Act or any legislation regulating the adoption of children before this Act took effect;

**“alternative care”** means care of a child in accordance with section **187**;

**“annual Division of Revenue Act”** means the Act of Parliament that must be enacted annually in terms of section 214 of the Constitution;

**“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;



“**authorised officer**”, in relation to any specific act, means a person who has no financial interest in the performance of that act who is authorised in writing by a child and family magistrate to perform that act;

“**Bill of Rights**” means the Bill of Rights contained in Chapter 2 of the Constitution;

“**care**”, in relation to a child, includes -

(a) within available means, providing the child with -

(i) a suitable place to live; and

(ii) living conditions that are conducive to the child’s health, well-being and development;

(b) safeguarding and promoting the well-being of the child;

(c) protecting the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical and moral harm or hazards;

(d) respecting, protecting, promoting and securing the fulfilment and guarding against any infringement of the child’s rights set out in the Bill of Rights and the rights set out in Chapter 4 of this Act;

(e) guiding and directing the child’s education and upbringing, including religious and cultural education and upbringing, in a manner appropriate to the child’s age, maturity and stage of development;

(f) guiding, advising and assisting the child in decisions to be taken by the child, taking into account the child’s age, maturity and stage of development;

(g) guiding the behaviour of the child in a humane manner;

(h) maintaining a sound relationship with the child; and

(i) generally, ensuring that the best interest of the child is the paramount concern in all matters affecting the child;

“**care-giver**” means any person other than the biological or adoptive parent who factually cares for a child, whether or not that person has parental responsibilities or rights in respect of the child, and includes -

(a) a foster parent;

(b) a kinship care-giver;

(c) a relative who cares for a child in terms of an informal kinship care arrangement;

(d) a staff member at a child and youth care centre where a child has been placed;

(e) a person who cares for a child whilst in temporary safe care;

(f) a primary care-giver who is not the biological or adoptive parent of the child; or

(g) the child at the head of a child-headed household to the extent that that child has assumed the role of primary care-giver;

**“Central Authority” -**

(a) in relation to the Republic, means the Director-General; or

(b) in relation to convention country, means a person or office designated for a convention country under Article 6 of the Hague Convention on Inter-country Adoption;

**“child”** means a person under the age of 18 years, regardless of nationality;

**“child affected by HIV/AIDS”** means a child who is -

(a) part of a household in which a person is ill with AIDS;

(b) orphaned or abandoned because of AIDS;

(c) HIV positive; or

(d) ill with AIDS;

**“child and family court magistrate”** means -

(a) a person appointed in terms of section 72 (1) as a child and family court magistrate; or

(b) any existing magistrate assigned by the Minister of Justice to be a child and family court magistrate;

**“child and family court registrar”** or **“registrar”** means -

(a) the child and family court registrar appointed in terms of section **92** (1) (a) for the area of a child and family court; or

(b) an assistant child and family court registrar appointed in terms of section **92** (1) (b);

**“child and youth care centre”** means a facility described in section **210** (1);

**“Child Care Act”** means the Child Care Act, 1983 (Act No. 74 of 1983);

**“child-headed household”** means a household recognised as such in terms of section **221**;

**“child in kinship care”** means any child who has been placed in court-ordered kinship care;

**“Children’s Protector”** means the person appointed in terms of section **318** (1);

**“collective 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;

**“commercial sexual exploitation”**, in relation to a child, means -

(a) the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or care-giver of the child, or any other person; or

(b) the trafficking of a child for use in sexual activities, including prostitution or pornography;

**“contact”**, in relation to a child, means -

(a) maintaining a personal relationship with the child; and

(b) if the child lives with someone else -

(i) communication on a regular basis with the child in person, including -

(aa) visiting the child; or

(bb) being visited by the child; or

(ii) communication on a regular basis with the child in any other manner,  
including -

(aa) through the post; or

(bb) by telephone or any other form of electronic communication;

**“contribution order”** means an order referred to in section **181**, and includes a provisional contribution order referred to in section **182** (2);

**“control”**, in relation to a child, means to be factually responsible for the safety, protection and well-being of the child at any point in time;

**“convention country”** means, in accordance with the wording of Article 45 of the Hague Convention on Inter-country Adoption -

(a) a country specified in column A in Schedule **1** to this Act; or

(b) any other country in which the Convention has entered into force, except for a country against whose accession the Republic has raised an objection under Article 44 of the Convention;

**“court”** -

(a) means a child and family court established by section **54**; and

(b) except where the wording or the context indicates otherwise, includes any other court;

**“court-ordered kinship care”** means care of a child as described in section **198** (2);

**“delegation”**, in relation to a duty, includes an instruction to perform the duty;

**“Department”** means the national department responsible for the provision of social development services;

**“designated child protection organisation”** means an organisation designated in terms of section **116** to perform designated child protection services;

**“designated child protection service”** means a child protection service referred to in section **115**;

**“designated social worker”** means a social worker in the service of -

(a) the Department or a provincial department of social development; or

(b) a designated child protection organisation;

**“Director-General”** -

(a) means the head of the Department; or

(b) in relation to a provision of this Act of which the administration has been assigned by the President by proclamation to another national department or a provincial department, means the head of that national or provincial department;

**“drop-in centre”** means a facility referred to in section **244** (2);

**“early childhood development services”** means services referred to in section **106** (2);

**“early intervention services”** means services referred to in section **158** (1);

**“employ”**, for purposes of section **240** means, any situation in which a child provides labour in exchange for payment;

**“exploitative labour practice”** means performing, or assisting another person in performing, an act in contravention of section **240** (1);

**“family advocate”** means a family advocate appointed in terms of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987);

**“family member”**, in relation to a child, means -

(a) a parent of the child;

(b) any other person who has parental responsibilities and rights in respect of the child;

(c) a primary care-giver of the child;

(d) a grandparent, brother, sister, uncle or aunt of the child;

(e) any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship;

**“foster care”** means care of a child as described in section 198 (1);

**“foster child”** means any child who has been placed in foster care;

**“foster parent”** means a person who has foster care of a child, and includes an active member of an organisation operating a collective foster care scheme and who has been assigned responsibility for the foster care of a child, but excludes a kinship care-giver;

**“guardian”** means a parent or other person who has guardianship of a child;

**“guardianship”**, in relation to a child, means -

(a) administering and safeguarding the child’s property and property interests;

(b) assisting or representing the child in administrative, contractual and other legal matters;  
or

(c) giving or refusing any consent required by law in respect of the child, including -

(i) consenting to the child’s marriage;

(ii) consenting to the child’s adoption;

(iii) consenting to the child’s departure or removal from the Republic;

(iv) consenting to the child’s application for a passport; and

(v) consenting to the alienation or encumbrance of any immovable property

of the child;

**"Hague Convention on Inter-country Adoption "** means the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption signed at the Hague on 29 May 1993, a copy of the English text of which is set out in Schedule 2 to this Act;

**"Hague Convention on International Child Abduction"** means the Hague Convention on the Civil Aspects of International Child Abduction, adopted on 25 October 1980 at the Hague, a copy of the English text of which is set out in Schedule 3 to this Act;

**"informal kinship care arrangement"** means an informal arrangement in terms of which a relative who is not the parent or guardian of a child cares for the child otherwise than in terms of an order of a child and family court;

**"in especially difficult circumstances"**, in relation to a child, means when a child is in a category referred to in section 231 (1);

**"in need of care and protection"**, in relation to a child, means when a child is in a situation set out in section 166;

**"integrated development plan"**, in relation to a municipality, means the integrated development plan a municipality must adopt in terms of section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**"kinship care-giver"** means a relative of a child who has court-ordered kinship care of a child;

**"marriage"** means a marriage -

(a) recognised in terms of South African law or customary law; or

(b) concluded in accordance with a system of religious law subject to specified procedures, and any reference to a husband, wife, widower, widow, divorced person, married person or spouse must be construed accordingly;

**"MEC for social development"** means the member of the Executive Council of a province who is responsible for social development in the province;

**"medical practitioner"** means a medical practitioner, including a dentist, registered or deemed to be registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

**"mental illness"** means mental illness as defined in the Mental Health Act, 1973 (Act No. 18 of 1973);

“**Minister**” means the Cabinet member responsible for the protection and well-being of children;

“**Minister of Justice**” means the Cabinet member responsible for the administration of justice;

“**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 both a district municipality and a local municipality, “**municipality**” in that provision means the local municipality;

“**National Child Protection Register**” means the register referred to in section 120;

“**neglect**”, in relation to a child, means a failure in the exercise of parental responsibilities to provide in the child’s basic physical, intellectual, emotional or social needs;

“**nurse**” means a person registered as a nurse under the Nursing Act, 1978 (Act No. 50 of 1978);

“**organ of state**” -

(a) means an organ of state as defined in paragraphs (a) and (b) of section 239 of the Constitution; and

(b) when appropriate, includes a court or a judicial officer;

“**orphan**” means a child who has no surviving parent caring for him or her after one of them has died;

“**parent**”, in relation to a child, includes the adoptive parent of a child, but excludes -

(a) the biological father of a child conceived through the rape of the child’s mother;

(b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial procreation; and

(c) a parent whose parental responsibilities and rights in respect of a child have been terminated;

“**parental responsibilities**”, in relation to a child means the responsibility -

(a) to care for the child;



(b) to have and maintain contact with the child; and

(c) to act as the guardian of the child;

**“parental rights”**, in relation to a child means the right -

(a) to care for the child;

(b) to have and maintain contact with the child; and

(c) to act as the guardian of the child;

**“parent-substitute”** means a person appointed in terms of section 38;

**“partial care”** means taking care of a child in accordance with section 145;

**“partial care facility”** means any premises or other place used partly or exclusively for the partial care of six or more children, which place may include -

(a) a private home;

(b) other privately owned or managed premises: or

(b) a school, hospital or other state managed premises where partial care is provided by a person other than the school, hospital or other organ of state;

**“party”**, in relation to a matter before a child and family court, means -

(a) a child involved in the matter;

(b) a parent;

(c) a person who has parental responsibilities and rights in respect of the child;

(d) a primary care-giver of the child;

(e) a prospective adoptive or foster parent or kinship care-giver of the child;

(f) the department or the designated child protection organisation managing the case of the child; or

(g) any other person admitted or recognised by the court as a party;

**“permanency plan”** means a documented plan referred to in section **176** (1) (a) (iii);

**“person unsuitable to work with children”** means a person listed in Part B of the National Child Protection Register;

**“prescribed overseas jurisdiction”** means a country specified in column B in Schedule **1** with whom the Republic has concluded a bilateral or multilateral agreement on inter-country adoptions;

**“prevention services”** means services referred to in section **158** (2);

**“primary care-giver”**, in relation to a child, means a person -

(a) who has the primary parental responsibility or right in caring for the child and exercises that responsibility and right;

(b) who cares for a child with the implied or express consent of a person referred to in paragraph (a); or

(c) who cares for a child whilst the child is in temporary safe care,

but excludes a person who receives remuneration other than a social security grant to care for the child;

**“provincial department of social development”** means the department within a provincial administration responsible for social development in the province;

**“provincial head of social development”** means the head of the provincial department of social development;

**“psychologist”** means a psychologist registered in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“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 make an internal assessment of the centre;

(b) a team of people unconnected to the centre conduct 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;

**“regulation”** means a regulation made in terms of this Act;

**“residential care programme”** means a programme described in section **210** (2) which is or may be offered at a child and youth care centre;

**respondent**” means any person legally liable to maintain or to contribute towards the maintenance of a child for whose maintenance a contribution order is sought or was made in terms of Chapter **12**;

**“secure care”** means the physical containment of children in a safe and healthy environment conducive to address behavioural or emotional difficulties;

**“serve”**, in relation to any notice, document or other process in terms of this Act, means to serve such notice, document or other process in accordance with the procedure provided for the serving of process in terms of the Magistrates’ Courts Act, 1944 (Act No 32 of 1944), and the rules applying to the proceedings of magistrates’ courts;

**“sexual abuse”**, in relation to a child, means -

(a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;

(b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person; or

(b) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child;

**“shelter”** means a facility referred to in section **244** (1);

**“social security grant”** means any of the grants or subsidies provided for in Chapter **23**;

**“social worker”** means a person who is registered or deemed to be registered as a social worker in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978);

**“street child”** means a child who -

(a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets for survival; or

(b) because of inadequate care, begs or works on the streets for survival but returns home at night;

**“temporary safe care”**, in relation to a child, means care of a child in a child and youth care centre, shelter or private home or any other place of a kind that may be prescribed by regulation, where the child can safely be accommodated pending a decision or court order concerning the placement of the child;

**“this Act”** includes -

(a) any regulation made in terms of this Act;

(b) the national policy framework referred to in section 5;

(b) the rules regulating the proceedings of the child and family courts in terms of section 75 (1) or (2);

**“traffic”**, in relation to a child, means to take a child from one place to another for the purposes of financial gain or favour and without lawful authority to do so;

**“undocumented migrant child”** means a child who is unlawfully in the Republic after an illicit entry into the Republic by the child or the child’s parents;

**“UN Protocol to Prevent Trafficking in Persons”** means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime, 2000, a copy of the English text of which is set out in Schedule 4.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

## **Objects of this Act**

2. The objects of this Act are -

(a) to make provision for structures, services and means for promoting and monitoring the

sound physical, intellectual, emotional and social development of children;

(b) to strengthen and develop community structures which can assist in providing care and protection for children;

(c) to protect children from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical and moral harm or hazards;

(d) to provide care and protection for children who are -

(i) suffering from maltreatment, abuse, neglect, degradation, discrimination, exploitation or any other physical and moral harm or hazards;

(ii) in need of care and protection; or

(iii) in especially difficult circumstances;

(e) to give effect to the Republic's obligations concerning the well-being of children in terms of international instruments binding on the Republic; and

(f) generally, to promote the protection, development and well-being of children.

### **Conflicts with other legislation**

**3. (1)** In the event of a conflict between a section of this Act and -

(a) other national legislation relating to the protection and well-being of children, the section of this Act prevails;

(b) provincial legislation relating to the protection and well-being of children, the conflict must be resolved in terms of section 146 of the Constitution; and

(c) a municipal by-law relating to the protection and well-being of children, the section of this Act prevails.

(2) In the event of a conflict between a regulation made in terms of this Act and -

(a) an Act of Parliament, the Act of Parliament prevails;

(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and

(c) a municipal by-law, the regulation made in terms of this Act prevails.

(3) For the proper application of subsection (2) (b) the Minister must in terms of section 146 (6) of the Constitution submit all regulations made in terms of this Act and which affects a province, to the National Council of Provinces for approval.

(4) In this section “**regulation**” means -

(a) a regulation made in terms of this Act;

(b) the national policy framework referred to in section 5; or

(c) a rule regulating the proceedings of child and family courts in terms of section 75 (1).

## **CHAPTER 2**

### **INTER-SECTORAL IMPLEMENTATION OF THIS ACT**

#### **Implementation of this Act**

**4.** This Act must be implemented by organs of state in the national, provincial and local spheres of government subject to -

(a) any specific section of this Act and regulations allocating roles and responsibilities; and

(b) the national policy framework published in terms of section 5.

#### **National policy framework**

**5.** (1) The Minister -

(a) must prepare a national policy framework to guide the implementation, enforcement and administration of this Act in order to secure the protection and well-being of children in the Republic;

(b) must review the policy framework at least once every five years; and

(c) may, when necessary, amend the policy framework.

(2) The Minister must publish the national policy framework and each amendment of the framework by notice in the Government Gazette.

(3) The national policy framework binds -

(a) all organs of state in the national, provincial and local spheres of government;

(b) all designated child protection organisations; and

(c) any other non-governmental organisations involved in implementing government or government-aided programmes and projects concerning children.

## **Contents**

**6.** (1) The national policy framework must -

(a) be a coherent policy directive appropriate for the Republic as a whole to guide the protection and well-being of children;

(b) provide for an integrated, coordinated and uniform approach by organs of state in all spheres of government and non-governmental organisations on which it is binding; and

(c) be consistent with the provisions of this Act.

(2) The national policy framework must reflect the following core components:

(a) national objectives to secure the protection and well-being of all children in the Republic;

(b) priorities and strategies to achieve those objectives, including strategies referred to in sections **106, 113, 161, 211** and **232**;

(c) performance indicators to measure progress with the achievement of those objectives;

(d) a framework for co-operative governance on a cross-functional and multi-disciplinary basis in the implementation of this Act;

(e) the allocation to the different spheres of government and to different organs of state of primary and supporting roles and responsibilities in this regard;

(f) the engagement of non-governmental organisations in the implementation, enforcement and administration of this Act and in the development and implementation of programmes and projects giving effect to this Act; and

(g) measures to ensure adequate funds.

## **Consultative process**

**7.** (1) Before publishing the national policy framework or any amendment to the framework, the Minister must -

(a) generally follow a consultative process as may be appropriate in the circumstances;

(b) consult with -

(i) Cabinet members whose departments are affected by the **framework** or amendment; and

(ii) organs of state in other spheres of government in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution; and

(c) allow public participation in the process in accordance with section **8**.

(2) The Minister may not publish the national framework, or any amendment to the framework, **except with the concurrence of the Cabinet members whose departments are directly affected by the framework or amendment.**

## **Public participation**

**8.** (1) To allow the public to participate in the preparation of the national policy framework, or any amendment to the framework, the Minister must -

(a) publish for public comment -

(i) the proposed framework, or the proposed amendment, in the *Government Gazette*; and

(ii) a brief summary of the proposed framework or amendment in one or more national newspapers; and

(b) in a notice published in the *Government Gazette* and those newspapers, invite the public to submit to the Minister written representations on or objections to the proposed framework, or the proposed amendment, within 30 days of the date of publication of the notice in the *Government Gazette*.



(2) The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.

(3) The Minister must give due consideration to all representations or objections submitted or presented in terms of subsections (1) and (2).

(4) This section need not be applied in respect of a minor or mere technical change to the national policy framework.

## **CHAPTER 3**

### **GENERAL PRINCIPLES**

#### **General principles**

**9.** (1) The general principles set out in this section guide -

(a) the passing of all provincial legislation, municipal by-laws and subordinate national legislation to the extent that such legislation and by-laws are applicable to children;

(b) the implementation of all legislation applicable to children, including this Act; and

(c) all proceedings, actions and decisions by any organ of state in any matter concerning a child or children in general.

(2) In all matters concerning a child the standard referred to in section 28 (2) of the Constitution that the child's best interest is of paramount importance, must be applied. What is in the best interest of a child must be determined with reference to section **10** of this Act.

(3) All proceedings, actions or decisions in a matter concerning a child must -

(a) respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, and the rights set out in Chapter 3 of this Act, subject to any lawful limitation;

(b) respect the child's inherent dignity;

(c) treat the child fairly and equitably; and

(d) protect the child from unfair discrimination on any ground, including on the grounds of the health or HIV/AIDS-status of the child or a family member of the child.

(4) If a matter concerning a child involves a selection between one parent and the other, or between one person and another, there should be no preference in favour of any parent or person solely on the basis of that parent or person's gender.

(5) If it is in the best interest of the child, the child's family must be given the opportunity to express their views in any matter concerning the child.

(6) If a child is in a position to participate meaningfully in any decision-making process in any matter concerning the child -

(a) the child must be given that opportunity; and

(b) proper consideration must be given to the child's views and preferences, bearing in mind the child's age, maturity and stage of development.

(7) In any matter concerning a child -

(a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and

(b) a delay in any action or decision to be taken must be avoided as far as possible.

(8) A person who has parental responsibilities and rights in respect of a child, and given the age, maturity and stage of development of the child, the child as well, must be informed of any action or decision taken in a matter concerning the child which significantly affects the child.

### **Best interest of the child standard**

**10.** (1) Whenever a provision of this Act requires the best interest of the child standard to be applied, the following factors must be taken into consideration where relevant -

(a) the nature of the personal relationship between -

(i) the child and the parents, or any specific parent; and

(ii) the child and any other person relevant in those circumstances;

(b) the attitude of the parents, or any specific parent, towards -

(i) the child; and

(ii) the exercise of parental responsibilities or rights in respect of the child;

(c) the capacity of the parents, or any specific parent, or of any other person, to provide in the needs of the child, including emotional and intellectual needs;

(d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from -

(i) both or either of the parents; or

(ii) any brother or sister or other child, or any other person, with whom the child has been living;

(e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;

(f) the need for the child -

(i) to remain in the care of his or her parent, family and extended family;

(ii) to maintain a connection with his or her family, extended family, tribe, culture or tradition;

(g) the child's -

(i) age, maturity and stage of development;

(ii) sex; and

(iii) background and any other relevant characteristics of the child;

(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;

(i) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a family environment;

(j) the need to protect the child from any physical or psychological harm that may be caused by -

(i) subjecting the child to maltreatment, abuse, neglect or degradation or exposing the child to violence or other harmful behaviour; or

(ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;

(k) any family violence involving the child or a family member of the child; and

(l) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

(2) In this section “**parent**” includes -

(a) the care-giver of a child; or

(b) any person who has parental responsibilities and rights in respect of a child.

## **CHAPTER 4**

### **CHILDREN’S RIGHTS**

#### **Application**

**11.** (1) The rights which a child has in terms of this Chapter supplement the rights which a child has in terms of the Bill of Rights.

(2) All organs of state in any sphere of government and all officials, employees and representatives of an organ of state must respect, protect, promote and fulfil the rights of children contained in this Chapter.

(3) A provision of this Chapter binds all persons, natural or juristic, if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

#### **Conflicts with other legislation**

**12.** In the event of a conflict between a provision of this Chapter and any other legislation, the provision of this Chapter prevails except -

(a) to the extent that such other legislation is or could be interpreted as a limitation of general application on such provision that is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including those listed in section 36 (1) (a) to (e) of the Constitution; or

(b) as otherwise provided in section 3 (1) (b).

### **Unfair discrimination**

**13.** (1) No organ of state, and no official, employee or representative of an organ of state, and no other person may unfairly discriminate directly or indirectly against a child on the ground of -

(a) the race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth of any parent, guardian, care-giver or family member of the child; or

(b) the family status, health status, socio-economic status, HIV-status or nationality of the child or of any parent, guardian, care-giver or family member of the child.

(2) Discrimination on any of the grounds listed in subsection (1) is presumed to be unfair unless it is established that the discrimination is fair.

### **Best interest of the child**

**14.** (1) An organ of state, an official, employee or representative of an organ of state, or any other person in authority who has official control over a child, must, when acting in any matter concerning the child, apply the standard referred to in section 28 (2) of the Constitution that the child's best interest is of paramount importance.

(2) Every child capable of participating meaningfully in any judicial or administrative proceedings in a matter concerning that child has the right to participate in an appropriate way in those proceedings. Views expressed by the child must be given due consideration.

### **Name, nationality and identity**

**15.** Every child has the right -

(a) to be promptly registered in terms of the Registration of Births Act, 1992 (Act No. 51 of 1992), if that child is a South African citizen; and

(b) to the preservation of his or her identity and nationality, subject to the other provisions of this Act.

### **Family relationship**

**16.** (1) Every child has the right not to be separated from his or her family or primary care-giver against

the will of the family or primary care-giver and of the child where the child is capable of expressing a choice, except when that separation is in the best interest of the child.

(2) Every child separated from his or her parents has the right to maintain a personal relationship and regular contact with the parents, except when those personal relations and that contact are not in the best interest of the child.

## **Property**

**17.** Every child who owns property has the right to the administration of that property in the best interest of that child.

## **Maltreatment, abuse, neglect, degradation, exploitation and other harmful practices**

**18.** (1) Every child has the right to be protected, through administrative, social, educational, punitive or other suitable measures and procedures, from all forms of torture, physical violence, mental harassment, injury, maltreatment, abuse, neglect, degradation and exploitation.

(2) Every child who has been tortured, maltreated, harassed, abused, neglected, degraded or exploited has the right to have access to support services and, where appropriate, to medical treatment at state expense.

## **Harmful social and cultural practices**

**19.** (1) Every child has the right not to be subjected to harmful social and cultural practices which affect the well-being, health or dignity of the child.

(2) Every child -

(a) below the minimum age set by law for a valid marriage has the right not to be given out in marriage or engagement; and

(b) above that minimum age has the right not to be given out in marriage or engagement without his or her consent.

(3) Female genital mutilation or the circumcision of female children as a cultural practice is prohibited.

(4) Every male child has the right -

(a) to refuse circumcision; and

(b) not to be subjected to unhygienic circumcision.

(5) Every child has the right -

(a) to refuse to be subjected to virginity testing, including virginity testing as part of a cultural practice; and

(b) not to be subjected to unhygienic virginity testing.

### **Economic exploitation**

**20.** Every child has the right to be protected, through administrative, social, educational, punitive or other suitable measures and procedures, from -

(a) economic exploitation; and

(b) performing any work -

(i) that is inappropriate for a person of that child's age; and

(ii) that places at risk the child's well-being, education, physical and mental health, and spiritual, moral or social development.

### **Education**

**21.** (1) Every child has the right to -

(a) have access to education on the basis of equal opportunities for all;

(b) have access to educational and vocational information and guidance; and

(c) receive education and information through a medium which makes such education and information accessible to the child, having regard to the child's personal circumstances and any disability from which the child may suffer.

(2) The education of a child must be directed towards -

(a) the development of the child's personality, talents and intellectual and physical abilities to their fullest potential;

(b) the development of respect for the democratic values of human dignity, equality and freedom enshrined in our Constitution;

(c) the development of respect for the child's parents, cultural identity and values, and language;

(d) the preparation of the child for a responsible life in a free society, in the spirit of peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities on the basis of equality, non-discrimination and free association; and

(e) the development of respect for our natural and cultural heritage.

### **Confidentiality regarding health matters**

**22.** Every child has the right to -

(a) have confidential access to health related information on sexuality, reproduction and sexual transmitted diseases, including HIV/AIDS; and

(b) confidentiality regarding his or her health status and the health status of a parent, care-giver or family member.

### **Social security**

**23.** (1) Every child has the right to social security, including access to social assistance if the parent or care-giver cannot or does not provide in the basic needs of a child.

(2) A child suffering from malnutrition or who is at risk of malnutrition has the right to have access to sufficient and appropriate food, including emergency measures by the state for a child whose survival is at stake.

### **Refugee and undocumented migrant children**

**24.** Every child who is a refugee or seeking refugee status in accordance with international or domestic law, and every undocumented migrant child, whether unaccompanied or accompanied by a parent or other adult person, has -

(a) the rights set out in this Chapter, as may be appropriate in the circumstances;

(b) the right to be re-united with his or her parents or family if the child was separated from



his or her parents or family; and

(c) the right to receive humanitarian protection and assistance to realise the rights referred to in paragraphs (a) and (b).

### **Children with disabilities and chronic illnesses**

**25.** (1) Every child with a physical, intellectual or psychiatric disability has the right -

(a) to enjoy life in conditions which ensure dignity, promote self-reliance and facilitate active participation in the community; and

(b) to receive special care; and

(c) to receive fair financial assistance from the state.

(2) Every child who is chronically ill has the right to receive special care and fair financial assistance from the state.

### **Leisure and recreation**

**26.** Every child has the right to rest and leisure and to engage in play and recreational activities appropriate to the child's age.

### **Access to child and family courts**

**27.** Every child has the right to bring a matter to a child and family court, provided that matter falls within the jurisdiction of that court.

### **Responsibilities of children**

**28.** Every child has responsibilities appropriate to the child's age and ability towards his or her family, society, the state, other legally recognised communities and the international community.

### **Age of majority**

**29.** A child, whether male or female, attains the age of majority and become a major upon reaching the age of 18 years.

## **CHAPTER 5**

## PARENTAL RESPONSIBILITIES AND RIGHTS

### *Part 1: Acquisition and loss of parental responsibilities and rights*

#### **Parental responsibilities and rights**

**30.** A person may have either full or specific parental responsibilities and rights in respect of a child.

#### **Parental responsibilities and rights of mothers**

**31.** (1) The mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child.

(2) If the child's mother is an unmarried child and the child's father does not have full parental responsibilities and rights, or has no parental responsibilities and rights in respect of the child, the guardian of the mother has those parental responsibilities and rights in respect of the child that that guardian has in respect of the mother.

(3) This section does not apply in respect of a child born from a surrogacy agreement.

#### **Parental responsibilities and rights of married fathers**

**32.** The biological father of a child has full parental responsibilities and rights in respect of the child -

(a) if he is married to the child's mother; or

(b) if he was married to her at -

(i) the time of the child's conception;

(ii) the time of the child's birth; or

(iii) any time between the child's conception or birth.

#### **Parental responsibilities and rights of unmarried fathers**

**33.** (1) The biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of section **32**, acquires parental responsibilities and rights in respect of the child -

(a) if at any time after the child's birth he has lived with the child's mother -

(i) for a period of no less than 12 months; or

(ii) for periods which together amount to no less than 12 months;

(b) if he, regardless of whether he has lived or is living with the mother, has cared for the child with the mother's informed consent -

(i) for a period of no less than 12 months; or

(ii) for periods which together amount to no less than 12 months;

(c) upon confirmation by a court of a parental responsibilities and rights agreement in respect of the child in terms of section **34**; or

(d) if, and to the extent that, parental responsibilities and rights have been granted to him by an order of court.

(2) This section does not affect the duty of a father of a child to contribute towards the maintenance of the child.

### **Parental responsibilities and rights agreements**

**34.** (1) Subject to subsection (2), the biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of either section **32** or **33** may enter into an agreement with the mother or other person who has parental responsibilities and rights in respect of the child, providing for the acquisition by the father of such parental responsibilities and rights in respect of the child as set out in the agreement.

(2) The mother or other person who has parental responsibilities and rights in respect of the child may only assign by agreement to another person those parental responsibilities and rights she or that other person has in respect of the child at the time of the assignment.

(3) A parental responsibilities and rights agreement must be in the format and contain the particulars prescribed by regulation.

(3) A parental responsibilities and rights agreement -

(a) takes effect only if -

(i) registered with a child and family court registrar; or

(ii) made an order of court on application by the parties to the agreement; and

(b) may be amended or terminated only by an order of a court on application -

(i) by a person having parental responsibilities and rights in respect of the child;

(ii) by the child, acting with leave of the court; or

(iii) in the child's interest by any other person, acting with leave of the court.

### **Assignment of parental responsibilities and rights by orders of court**

**35.** (1) Any person having an interest in the care, well-being or development of a child may apply to a court for an order assigning to the applicant full or any specific parental responsibilities and rights in respect of the child.

(2) When considering an application the court must take into account -

(a) the relationship between the applicant and the child, and any other relevant person and the child;

(b) the degree of commitment that the applicant has shown towards the child; and

(c) the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child.

(3) If in the course of the court proceedings it is brought to the attention of the court that an application for the adoption of the child has been made by another applicant, the court -

(a) must request a family advocate to furnish it with a report and recommendations; and

(b) may suspend the first-mentioned application on any conditions it may determine.

(4) The assignment of parental responsibilities and rights to a person in terms of this section does not affect the parental responsibilities and rights that any other person may have in respect of the same child.

## **Certain applications regarded as inter-country adoptions**

**36.** When application is made in terms of section **35** (1) by a non-South African citizen for the allocation of full parental responsibilities and rights in respect of a child or to act as guardian of a child, the application must be regarded to be an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 19 of this Act.

## **Persons claiming paternity**

**37.** (1) A person who is not married to the mother of a child and who is or claims to be the biological father of the child may -

(a) apply for an amendment to be effected to the registration of birth of the child in terms of section 11 (4) of the Births, Deaths and Marriages Registration Act, 1992 (Act No. 51 of 1992), indicating him as the father of the child, if the mother consents to such amendment;  
or

(b) apply to a court for an order confirming his paternity of the child, if the mother -

(i) refuses to consent to such amendment;

(ii) is incompetent to give consent due to mental illness;

(iii) cannot be traced; or

(iv) is deceased.

(2) This section does not apply to -

(a) the biological father of a child conceived through the rape of the child's mother; or

(b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial procreation.

## **Assignment of parental responsibilities and rights to parent-substitutes**

**38.** (1) A parent who has parental responsibilities and rights in respect of a child may appoint a suitable person as a parent-substitute and assign to that person that parent's parental responsibilities and rights in respect of the child in the event of the parent's death.

(2) An appointment in terms of subsection (1) -

(a) must be in writing and signed by the parent;

(b) may form part of the will of the parent;

(c) replaces any previous appointment, including any such appointment in a will whether made before or after this section took effect; and

(d) may at any time be revoked by the parent by way of a written instrument signed by the parent.

(3) A parent-substitute appointed in terms of subsection (1) acquires parental responsibilities and rights in respect of a child -

(a) after the death of the parent; and

(b) upon the parent-substitute's express or implied acceptance of the appointment.

(4) If two or more persons are appointed as parent-substitutes, any one or more or all of them may accept the appointment except if the appointment provides otherwise.

(5) A parent-substitute acquires only those parental responsibilities and rights -

(a) which the parent had at his or her death; or

(b) if the parent died before the birth of the child, which the parent would have had had the parent lived until the birth of the child.

(6) The assignment of parental responsibilities and rights to a parent-substitute does not affect the parental responsibilities and rights which another person has in respect of the child.

(7) In this section "**parent**" includes a person who has acquired parental responsibilities and rights in respect of a child.

### **Termination, extension, suspension or restriction of parental responsibilities and rights**

**39.** (1) A person referred to in subsection (3) may apply to a court for an order -

(a) suspending for a period, or terminating, any or all of the parental responsibilities and rights which a specific person has in respect of a child; or

(b) extending 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.

(2) An application in terms of subsection (1) may be combined with an application in terms of section **35** for the granting of parental responsibilities and rights in respect of the child to the applicant in terms of that section.

(3) An application in terms of subsection (1) may be brought -

(a) by a co-holder of parental responsibilities and rights in respect of the child;

(b) by any other person having a sufficient interest in the care, protection, well-being or development of the child;

(c) by the child, acting with leave of the court;

(d) in the child's interest by any other person, acting with leave of the court; or

(e) by a family advocate or the representative of any interested organ of state.

(4) When considering an application the court must take into account -

(a) the relationship between the child and the person whose parental responsibilities and rights are challenged; and

(b) the degree of commitment that that person has shown towards the child.

### **Extension of parental responsibilities and rights after child reaches age of 18 years**

**40.** (1) A court may on application by a person referred to in subsection (2) order that parental responsibilities and rights of a person in respect of a child be extended for a period of not more than three years after that child has reached the age of 18 years, if special circumstances exist with regard to the protection and well-being of that child to warrant such an extension.

(2) An application in terms of this section -

(a) must be made before the child reaches the age of 18 years; and

(b) may be brought by -

(i) the child;

(ii) the parent or primary care-giver of the child;

(iii) any other person who has parental responsibilities and rights in respect of the child; or

(iv) the Director-General or the head of social development in a province.

## **Court proceedings**

**41.** (1) An application in terms of section **34** (3), **35** (1), **37** (1) (b), **39** (1) or **40** (1) may be brought before any court within whose area of jurisdiction the child concerned is ordinarily resident or happens to be.

(2) An application in terms of section **35** (1) for the allocation of full parental rights and responsibilities or to act as guardian of a child must contain reasons as to why the applicant does not apply for the adoption of the child.

(3) The court hearing an application may grant the application unconditionally or on conditions it may determine, or may refuse an application, but an application may be granted only if it is in the best interest of the child.

(4) When considering an application the court must be guided by the principles set out in Chapter **3** to the extent that those principles are applicable to the matter before it.

(5) The court may for the purposes of the hearing order that -

(a) a report and recommendations of a family advocate, a social worker or other professional person must be submitted to the court;

(b) a matter specified by the court must be investigated by a person designated by the court;

(c) a person specified by the court must appear before it to give or produce evidence; or

(d) the applicant or any party opposing the application must pay the costs of any such investigation or appearance.

(6) The court may -

(a) appoint a legal practitioner to represent the child at the court proceedings; and



(b) order the parties to the proceedings, or any one of them, or the state, to pay the costs of such representation.

(7) If it appears to a court in the course of any criminal or civil proceedings that a child involved in or affected by those proceedings is in need of care and protection, the court may order that the question whether the child is in need of care and protection be referred to a child and family court for decision.

(8) If the court hearing the application is a child and family court, this section must be read with Chapter 6.

## ***Part 2: Co-exercise of parental responsibilities and rights***

### **Co-holders of parental responsibilities and rights**

**42.** (1) More than one person may hold parental responsibilities and rights in respect of the same child.

(2) When more than one person holds the same parental responsibilities and rights in respect of a child, each of the co-holders may act without the consent of the other co-holder or holders when exercising those responsibilities and rights, except where this Act or an order of court provides otherwise.

(3) A co-holder of parental responsibilities and rights may not surrender or transfer those responsibilities and rights to another co-holder or any other person, but may by agreement with that other co-holder or person allow the other co-holder or person to exercise any or all of those responsibilities and rights on his or her behalf.

(4) An agreement in terms of subsection (3) does not divest a co-holder of his or her parental responsibilities and rights of those responsibilities and rights, and that co-holder remains competent and liable to exercise those responsibilities and rights.

(5) Except where this Act or an order of court provides otherwise, the following acts may not be concluded without the consent of all persons holding parental responsibilities and rights in respect of those acts:

(a) the contracting of a marriage by the child;

(b) the adoption of the child;

(c) the departure or removal of the child from the Republic;

(d) the application for a passport by or on behalf of the child; or

(e) the alienation or encumbrance of immovable property belonging to the child, including any right to or interest in immovable property.

## **Major decisions involving a child**

**43.** (1) Before a person holding parental responsibilities and rights in respect of a child takes any major decision involving the child, that person must give due consideration to any views and wishes expressed -

(a) by the child, bearing in mind the child's age, maturity and stage of development; and

(b) by any co-holder of parental responsibilities and rights in respect of the child.

(2) The expression "**major decision involving the child**" for purposes of -

(a) subsection (1) (a), means any decision -

(i) in connection with a matter listed in section **42** (5);

(ii) affecting contact between the child and a co-holder of parental responsibilities and rights; If it appears to a court in the course of any criminal or civil proceedings that a child involved in or affected by those proceedings is in need of care and protection, the court may order that the question whether the child is in need of care and protection be referred to a child and family court for decision.

(iii) regarding the assignment of parental responsibilities and rights in respect of the child to a parent-substitute in terms of section **38**; or

(iv) which is likely to change significantly, or to have an adverse effect on, the child's living conditions, education, health, personal relations with a parent or family member or, generally, the child's well-being; and

(b) subsection (1) (b), means any decision which is likely to change significantly, or to have a significant adverse effect on, the co-holder's exercise of parental responsibilities and rights in respect of the child.

## **Care of child by persons not holding parental responsibilities and rights**

**44.** (1) A person who has no parental responsibilities and rights in respect of a child but voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no

parental responsibilities and rights in respect of a child , must, whilst the child is in that person's care -

(a) safeguard the child's health, well-being and development; and

(b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical or mental harm or hazards.

(2) A person referred to in subsection (1) may exercise any parental responsibilities and rights reasonably necessary to comply with that subsection, including the right to consent in terms of section **135** (3) to any medical examination or treatment of the child if such consent cannot reasonably be obtained from the parent or primary care-giver of the child.

(3) A court may limit or restrict the parental responsibilities and rights which a person may exercise in terms of subsection (2).

(4) A person referred to in subsection (1) may not -

(a) give himself or herself out as the biological or adoptive parent of the child; or

(b) deceive the child or any other person into believing that that person is the biological or adoptive parent of the child.

### ***Part 3: Parenting plans***

#### **Contents of parenting plans**

**45.** (1) If the co-holders of parental responsibilities and rights in respect of a child are experiencing difficulties in exercising their responsibilities and rights, those persons, before seeking the intervention of a court, must first seek to agree on a parenting plan determining their respective responsibilities and rights in respect of the child.

(2) A parenting plan may determine any matter in connection with parental responsibilities and rights, including -

(a) where and with whom the child is to live;

(b) the maintenance of the child;

(c) contact between the child and -

(i) any of the parties; and

(ii) any other person; and

(d) guardianship of the child.

(3) A parenting plan must comply with the best interest of the child standard.

(4) In preparing a parenting plan the parties may seek -

(a) the assistance of a family advocate; or

(b) mediation through a social worker or other appropriate person.

### **Formalities**

**46.** (1) A parenting plan -

(a) must be in writing and signed by the parties to the agreement; and

(b) may be registered with a child and family court registrar or made an order of court if the plan complies with section **45** and subsection (2) of this section.

(2) An application for registration of a parenting plan must -

(a) be in the format and contain the particulars prescribed by regulation; and

(b) be accompanied by -

(i) a copy of the plan; and

(ii) a statement by -

(aa) a family advocate that the plan was prepared after consultation with the family advocate, if section **45** (4) (a) applies; or

(bb) a social worker or other person contemplated in paragraph (b) of section 45(4) that the plan was prepared after mediation by such social worker or such person, if section **45** (4) (b) applies.

## **Amendment or termination of registered parenting plans**

**47.** (1) A registered parenting plan may be amended or terminated only by an order of court on application -

- (a) by the co-holders of the parental responsibilities and rights;
- (b) by the child, acting with leave of the court; or
- (c) in the child's interest, by any other person acting with leave of the court.

(2) Section **41** applies to any application in terms of subsection (1).

## ***Part 4: Miscellaneous***

### **Presumption of paternity in respect of child born out of wedlock**

**48.** If in any legal proceedings at which it has been placed in issue whether any particular person is the father of a child born out of marriage it is proved by judicial admission or otherwise that that person had sexual intercourse with the mother of the child at any time when that child could have been conceived, that person must, in the absence of evidence to the contrary, be presumed to be the biological father of the child.

### **Presumption on refusal to submit to taking of blood samples**

**49.** If in any legal proceedings at which the paternity of a child has been placed in issue it is adduced in evidence or otherwise that any party to those proceedings has refused to submit himself or herself, or the child, to the taking of a blood sample in order to carry out scientific tests relating to the paternity of the child, it must be presumed, until the contrary is proved, that such refusal is aimed at concealing the truth concerning the paternity of the child.

### **Effect of subsequent marriage of parents on children**

**50.** (1) A child born of parents who marry each other after the birth of the child must for all purposes be regarded as a child born from parents married at the time of birth.

(2) Subsection (1) applies despite the fact that the parents could not have legally married each other at the time of conception or birth of the child.

### **Rights of children born of voidable marriages**

**51.** (1) The rights of a child conceived or born of a voidable marriage are not be affected by the annulment of that marriage.

(2) No voidable marriage may be annulled until the relevant court has inquired into and considered the safeguarding of the rights and interests of a child of that marriage.

(3) Section 6 of the Divorce Act, 1979 (Act No. 70 of 1979), and section 4 of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), with the necessary changes as the context may require, apply in respect of such a child as if the proceedings in question were proceedings in a divorce action and the annulment of the marriage were the granting of a decree of divorce.

(4) Section 8 (1) and (2) of the Divorce Act, 1979 (Act No. 70 of 1979), with the necessary changes as the context may require, applies to the rescission or variation of a maintenance order, or an order relating to the care or guardianship of, or access to, such a child, or the suspension of a maintenance order or an order relating to access to a child, made by virtue of subsection (3) of this section.

(5) A reference in any legislation -

(a) to a maintenance order or an order relating to the care or guardianship of, or access to, a child in terms of the Divorce Act, 1979 (Act No. 70 of 1979), must be construed as a reference also to a maintenance order or an order relating to the care or guardianship of, or access to, a child in terms of that Act as applied by subsection (3);

(b) to the rescission, suspension or variation of such an order in terms of the Divorce Act, 1979, must be construed as a reference also to the rescission, suspension or variation of such an order in terms of that Act as applied by subsection (4).

### **Rights of children conceived by artificial insemination**

**52.** (1) (a) Whenever the gamete or gametes of any person other than a married person or his or her spouse has been used with the consent of both spouses for the artificial insemination of one spouse, any child born of that spouse as a result of such artificial insemination must for all purposes be regarded to be the child of those spouses as if the gamete or gametes of those spouses were used for such artificial insemination.

(b) For purpose of paragraph (a) it must be presumed, until the contrary is proved, that both spouses have granted the relevant consent.

(2) Whenever the gamete or gametes of any person have been used for the artificial insemination of a woman with her written consent, any child born of that woman as a result of such artificial insemination must for all purposes be regarded to be the child of that woman.

(3) No right, responsibility, duty or obligation arises between a child born of a woman as a result of artificial insemination and any person whose gamete or gametes have been used for such artificial insemination and the blood relations of that person, except when -

(a) that person is the woman who gave birth to that child; or

(b) that person is the husband of such woman at the time of such artificial insemination.

(4) For purposes of this section -

(a) **“artificial insemination”**, in relation to a woman -

(i) means the introduction by other than natural means of a male gamete or gametes into the internal reproductive organs of that woman;

(ii) means the extraction of female gametes from one woman and the transfer of these gametes into the uterus of another woman, followed by fertilization of these gametes through natural means either *in utero* or *in vivo*;

(iii) means the flushing and transfer of the product of a union of a male and female gamete or gametes which have been brought together outside the human body, in the womb of that woman, or

(iv) means the flushing and transfer of the product of a union of a male and female gamete or gametes which has been created by natural means, either *in utero* or *in vivo*, from one woman to the uterus of another woman, for the purpose of human reproduction; and

(b) **“gamete”** means either of the two generative cells essential for human reproduction.

### **Access to biographical and medical information concerning genetic parents**

**53.** A child born as a result of artificial insemination is entitled to have access to any biographical and medical information concerning that child’s genetic parents, but not before the child reaches the age of 18 years.

### **Effect of surrogate motherhood agreement on status of child**

**53A.** (1) The effect of a valid surrogate motherhood agreement will be that -

(a) a child or children born of a surrogate mother in accordance with the agreement is for all purposes the child of the commissioning parent or parents from the moment of the child's birth;

(b) the surrogate mother will be obliged to hand the child over to the commissioning parent or parents as soon as is reasonably possible after the birth;

(c) the surrogate mother or her husband, partner or relatives will have no rights of parenthood or custody of the child;

(d) the surrogate mother or her husband, partner or relatives will have no right of access to the child unless provided for in the agreement between the parties;

(e) subject to section 53B of this Act and the provisions of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), no surrogate mother may terminate the agreement and end the pregnancy after the artificial fertilization of the surrogate mother has taken place;

(f) the child will have no claim for maintenance or of succession against the surrogate mother, her husband or partner or any of their relatives.

(2) Failure to comply with the requirements of the Surrogacy Act, 2002 (Act No.xx of 2002) or the surrogate motherhood agreement will not affect the determination of parenthood under this Act.

### **Termination of surrogate motherhood agreement**

**53B.** (1) A surrogate mother who is also a genetic parent of the child concerned, may, at any time prior to the lapse of a period of sixty days after the birth of the child, terminate the surrogate motherhood agreement by filing written notice with the court.

(2) The court will vacate the order entered pursuant to section xy of the Surrogacy Act, 2002 (Act No.xx of 2002) upon finding, after notice to the parties to the agreement and a hearing, that the surrogate mother has voluntarily terminated the agreement and that she understands the effects of the termination.

(3) The surrogate mother will incur no liability to the commissioning parents for exercising her rights of termination pursuant to this section, except for compensation for any payments made by the commissioning parents in terms of the Surrogacy Act, 2001 (Act No. xx of 2001).

### **Effect of termination of surrogate motherhood agreement**

**53C.** The effect of the termination of a surrogate motherhood agreement in terms of section 53B of this Act will be that -

(a) where the agreement is terminated after the child is born any parental rights established in terms of section 1 above will be terminated and will be vested in the surrogate mother



and her husband or life-long partner, if any.

(b) where the agreement is terminated before the child is born, the child is the child of the surrogate mother and her husband or life-long partner, if any, from the moment of the child's birth;

(c) the surrogate mother and her husband or life-long partner, if any, shall be obliged to accept the obligation of parenthood;

(d) subject to subsections (1) and (2) above, the commissioning parents will have no rights of parenthood and can only obtain such rights through adoption;

(e) subject to subsections (1) and (2) above, the child shall have no claim for maintenance or of succession against the commissioning parents or any of their relatives.

## **CHAPTER 6**

### **CHILD AND FAMILY COURTS**

#### ***Part 1: Establishment, status and jurisdiction***

##### **Establishment**

**54.** (1) A child and family court is hereby established for -

(a) each magisterial district determined in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); and

(b) each magisterial region determined in terms of that Act.

(2) Child and family courts function under the administrative control of the chief magistrate of the area.

##### **Status**

**55.** A child and family court is a court of record with a similar status to that of a magistrate's court.

##### **Seat of court**

**56.** (1) A child and family court sits -

(a) at a place within its area designated by the Minister of Justice; and

(b) in a room which -

(i) is located and designed in a manner aimed at putting children at ease;

(ii) is conducive to the informality of the proceedings and the active participation of all persons involved in the proceedings; and

(iii) may not be a room in which a court of another kind ordinarily sits.

(2) Subsection (1) (b) does not apply if no other room than a court room is available and suitable.

## **Jurisdiction**

**57.** (1) (1) A child and family court has jurisdiction in respect of -

(a) all matters mentioned in section **58**; and

(b) all matters in which application is made for an order mentioned in section **59**.

(2) The child and family court that has jurisdiction in a particular matter is -

(a) the court of the area in which the child involved in the matter is ordinarily resident or happens to be; or

(b) if more than one child is involved in the matter, the court of the area in which any of those children is ordinarily resident or happens to be..

(3) If there is uncertainty with regard to which court has jurisdiction in a particular matter, the child and family court of the area where the child happens to be at the time of the referral of the matter to the court has jurisdiction in that matter.

Matters court may adjudicate

**58.** (1) A child and family court may adjudicate any matter involving -

(a) the care or guardianship of, or access to, a child;

(b) the assignment, exercise, restriction, suspension or termination of parental responsibilities or rights;

(d) paternity of a child;

(e) artificial procreation of a child, excluding a dispute between contracting parties regarding compensation;

(f) maintenance and support of a child;

(g) the provision of -

(i) early childhood development services; or

(ii) prevention or early intervention services;

(h) a child in need of care and protection or in especially difficult circumstances;

(i) maltreatment, abuse, neglect, degradation or exploitation of a child;

(k) domestic violence affecting a child;

(l) the protection of a child;

(m) the temporary safe care of a child;

(n) alternative care of a child;

(o) the adoption of a child, including an inter-country adoption;

(p) the appointment of a parent-substitute;

(q) the departure, removal or abduction of a child from the Republic;

(r) a refugee child or undocumented child or the repatriation of such a child or the parent;

(s) a social security grant to or in respect of a child;

(t) a child and youth care centre, a partial care facility or a shelter or drop-in centre, or any other facility purporting to be a care facility for children;

(u) the age of majority or the contractual or legal capacity of a child;

(v) the safeguarding of a child's interest in property;

(w) any other matter relating to the care, protection or well-being of a child provided for in this Act; or

(x) a delictual claim arising from a matter referred to above.

(2) A child and family court -

(a) may try or convict a person for non-compliance with an order of a child and family court or contempt of such a court;

(b) may not try or convict a person in respect of a criminal charge other than in terms of paragraph (a); and

(c) is bound by the law as applicable to magistrates' courts when exercising criminal jurisdiction in terms of paragraph (a).

Orders court may make

**59.** (1) A child and family court may make the following orders:

(a) An alternative care order, which includes an order placing a child -

(i) in the care of a person designated by the court to be the foster parent of the child;

(ii) in the care of a relative designated by the court to be the kinship care-giver of the child;

(iii) in the care of a child and youth care centre; or

(iv) in temporary safe care;

(b) An order placing a child in a child-headed household in the care of the child heading the household under the supervision of an adult person designated by the court;

(c) An adoption order which includes an inter-country adoption order;

(d) A partial care order instructing the parent or care-giver of the child to make arrangements with a partial care facility to take care of the child during specific hours of the day or night or for a specific period;

(e) A supervision order, placing a child, or the parent or care-giver of a child, or both the child and the parent or care-giver, under the supervision of a social worker or other person designated by the court;

(f) An order subjecting a child, a parent or care-giver of a child, or any person holding parental responsibilities and rights in respect of a child, to -

(i) early intervention services;

(ii) a family preservation programme; or

(iii) both early intervention services and a family preservation programme;

(g) A child protection order, which includes an order -

(i) that a child remains in, be released from, or returned to the care of a person, subject to conditions imposed by the court;

(ii) giving consent to medical treatment of, or to an operation to be performed on, a child;

(iii) instructing a parent or care-giver of a child to undergo professional counselling, or to participate in mediation, a family group conference, or other appropriate problem solving forum;

(iv) instructing a child or other person involved in the matter concerning the child to participate in a professional assessment;

(v) instructing a hospital to retain a child who on reasonable grounds is suspected of having been subjected to abuse or deliberate neglect, pending further inquiry;

(vi) instructing a person to undergo a specified skills development, treatment or rehabilitation programme where this is necessary for the protection or well-being of a child;

(vii) instructing a person who has failed to fulfil an obligation towards a child to appear before the court and to give reasons for the failure;

(viii) instructing an organ of state to assist a child in obtaining access to a public service to which the child is entitled, failing which, to appear through

its representative before the court and to give reasons for the failure;

(ix) instructing that a person be removed from a child's home;

limiting access of a person to a child or prohibiting a person from contacting a child;

allowing a person to contact a child on the conditions as specified in the court order;

(xii) directing that a person's name be listed in or removed from -

(aa) the National Child Protection Register; or

(bb) any other record concerning child abusers;

(xiii) instructing the deportation of a person; or

(xiv) instructing the return of a child to South Africa from abroad;

(h) A parental responsibilities and rights order, which includes an order -

(i) assigning some or all parental responsibilities or rights in respect of a child to any person;

(ii) extending any parental responsibilities or rights in respect of a child;

(iii) suspending or restricting a person's capacity to exercise any parental responsibilities or rights in respect of a child;

(iv) terminating a person's parental responsibilities or rights in respect of a child: Provided that a parent may not be deprived of the right to have contact with a child except when contact with the child is not in the child's best interest;

(v) restoring a person's parental responsibilities or rights in respect of a child; or

(vi) instructing a person to sign a parental responsibilities and rights undertaking in respect of a child.

(i) A contribution order, or a maintenance order in terms of the Maintenance Act, 1998 (Act

No. 99 of 1998);

(j) An order granting damages or compensation to or by a child arising from a matter referred to in section **58** (1) (v) or (x);

(k) An order instructing a person to carry out an investigation in terms of section **67**;

(l) Any other order a child and family court may make in terms of this Act.

(2) A child and family court may withdraw, suspend or amend an order made in terms of subsection (1), or replace such an order with a new order.

Competence of child and family district court

**60.**

(2) A district child and family district court is a court of first instance in respect

of -

(a) any uncontested cases concerning -

(i) a matter which a child and family court may adjudicate in terms of section **58** mentioned in section...; ; or

(ii) an application for an order which a child and family court may make in terms of section **59**; and/or

(b) any contested cases concerning -

(i) concerning a matter which a child and family court may adjudicate in terms of section **58** mentioned in section ...and which is referred to it by the child and family court registrar, but excluding a matter mentioned in section **61** (2); or

(ii) an application for an order which a child and family court may make in terms of section **59** and which is referred to it by the registrar, but excluding an application for an order that may be made in a matter mentioned in section **61** (2).

**Competence of child and family regional court**

**61.**

(13) A regional child and family regional court is -

(a) a court of first instance in respect of any contested cases concerning -

(i) a matter mentioned in subsection ... (2);

(ii) any other matter which a child and family court may adjudicate in terms of section **58** and which is referred to that regional court by the child and family court registrar;

(iii) an application for an order that may be made in a matter mentioned in subsection (2);

(iv) any other application for an order a child and family court may make in terms of section **59** and which is referred to it that regional court by the registrar; or

(v) any matter or issue referred to it by a child and family district court in terms of section **62**; and

(b) a court of appeal or review in respect of all judgements and orders made by a child and family district court within its region.

(2) A child and family regional court is a court of first instance, to the exclusion of a child and family district court, in contested cases concerning the following matters, including orders that may be made in those matters:

a matter with an international dimension or implication, including -

(i) the adoption of a child by a foreigner;

(ii) the cross-border abduction of a child; or

(iii) the repatriation of a refugee child or the parent;

an issue involving sexual abuse of a child by a parent or care-giver;

a dispute arising from the artificial procreation of a child;



a contested paternity issue;

(e) a dispute involving a parental responsibility or right in respect of a child or the restriction, suspension or termination of such responsibility or right;

(f) a dispute involving the determination of the capacity of a child -

(i) to contract; or

(ii) to consent to a marriage; and

(g) the safeguarding of a child's interest in property.

### **Referral of matters to child and family regional court**

**62.** (1) A child and family district court hearing a contested matter may stop its proceedings concerning that matter, or any specific issue in the matter, and refer the matter, or that issue, to the child and family regional court having jurisdiction in the area if it is of the opinion that the matter, or that issue, should be heard by the child and family regional court because of -

(a) the complexity of the matter or that issue;

(b) the implications of any order that may be made in the matter or that issue; or

(c) any uncertainty about its jurisdiction in the matter or that issue.

(2) Before it refers a matter, or any issue in the matter, in terms of subsection (1) to the child and family regional court, a child and family district court may -

(a) take any steps necessary to safeguard and protect a child from any impending harm; and

(b) make an appropriate interim order.

(3) If a matter, or any issue in the matter, is referred in terms of subsection (1), the record of the proceedings in the child and family district court concerning the matter or that issue -

(a) must be transferred to the child and family regional court; and

(b) may be used by the regional court in its hearing of the case.

### **Referral of matters to other courts**

**63.** (1) A child and family regional court hearing a matter may stop its proceedings concerning that matter, or any specific issue in the matter, and refer the matter, or that issue, to the High Court if is of the opinion that the matter, or that issue, should be heard by the High Court because of -

- (a) the complexity of the matter or that issue;
- (b) the implications of any order that may be made in the matter or that issue; or
- (c) any uncertainty about its jurisdiction in the matter or that issue.

(2) A child and family regional or district court hearing a matter may stop its proceedings concerning that matter, or any specific issue in the matter, and refer the matter, or that issue, to another child and family court or to a magistrate's court if is of the opinion that -

- (a) the matter, or that issue, should be heard by that other court because of any uncertainty about its jurisdiction in the matter or that issue; or
- (b) justice would be served by such referral and that it would be in the best interest of the child to do so.

(3) Before it refers a matter, or any issue in the matter, in terms of subsection (1) or (2), the child and family court may -

- (a) take any steps necessary to safeguard and protect a child from imminent harm; and
- (b) make an appropriate interim order.

(4) If a matter, or any issue in the matter, is referred in terms of subsection (1) or (2), the record of the proceedings in the child and family court concerning the matter or that issue -

- (a) must be transferred to the High Court or that other court; and
- (b) may be used by the High Court or that other court in its hearing of the case.

### **Referral of matters by other courts to child and family courts**

**64.** (1) A court, other than a child and family court, hearing a matter in which the interests of a child are directly affected, may stop or suspend its proceedings concerning that matter, or any specific issue in the matter, and order that the matter, or that issue, be referred to a child and family court for a decision if -

- (a) justice would be served by such referral; and

(b) it would be in the best interest of the child to do so.

(2) An issue in a matter before a criminal court may not be referred to a child and family court in terms of subsection (1) without the consent of the Director of Public Prosecutions.

### **General powers**

**65.** (1) A child and family court may -

(a) make any order it may make in terms of this Act;

(b) grant interdicts and auxiliary relief;

(c) extend, withdraw, suspend, vary or review any of its orders;

(d) impose or vary deadlines with respect to any of its orders;

(e) make appropriate orders as to costs in matters before the court;

(f) consult with a child or other party in chambers after recording the reasons for such consultation; or

(g) have a person removed from the court and provide written reasons for the removal.

(2) A child and family court may for the purposes of this Act estimate the age of a person who appears to be child.

### **Lay-forum hearings**

**66.** (1) A child and family court may, before it decides a matter or an issue in a matter, order a lay forum hearing for an attempt to settle the matter or issue out of court, which may include -

(a) mediation by a family advocate, a social worker or other professionally qualified person;

(b) a family group conference contemplated in section 97; or

(c) mediation by a traditional authority.

(2) Before ordering a lay forum hearing, the court must take into account all relevant factors, including -

- (a) the vulnerability of the child;
- (b) the ability of the child to participate in the proceedings;
- (c) the power relationship within the family; and
- (d) the nature of any allegations made by parties in the matter.

## **Inquiries and investigations**

**67.** (1) A child and family court may, before it decides a matter, order a person -

(a) to carry out an inquiry or further investigation that may assist the court in deciding the matter; and

(b) to report to the court.

(2) An inquiry or further investigation must be carried out -

(a) in accordance with any procedures prescribed by regulation; and

(b) subject to any directions and conditions determined in the court order.

(3) The court order may authorise a designated social worker or person authorised to conduct the inquiry or further investigation to alone or in the presence of a police officer enter any premises mentioned in the court order and on those premises -

(a) remove a child in terms of sections **168** and **169**;

(b) question any person;

(c) record any information by any method; and

(d) carry out any specific instruction of the court.

(4) The court may authorise a police officer accompanying the designated social worker or person authorised to conduct the inquiry or further investigation to, by force, if necessary -

(a) conduct any search;

(b) question any person;

(c) demand the name, address and identification number of any person on or residing or suspected to be residing on those premises;

(d) record any information by any method;

(e) seize any item in respect of which, on reasonable suspicion, an offence in terms of this Act has been or is being committed;

(f) arrest any person, and

(g) carry out any specific instruction of the court.

## **Appeals**

**68.** (1) Any party involved -

(a) in a matter before a child and family district court may appeal against a decision of the court to the child and family regional court having jurisdiction in the area or to the High Court; or

(b) in a matter before a child and family regional court may appeal against a decision of the court to the High Court.

(2) An appeal in terms of subsection (1) must be noted and prosecuted as if it were an appeal against a civil judgment of a magistrate's court, subject to section **58** (2) (c).

## ***Part 2: Composition***

### **Composition**

**69.** (1) A child and family court consists of -

(a) a child and family magistrate; or

(b) a panel composed of -

(i) a child and family magistrate; and

(ii) one or more assessors.

(2) A child and family court must sit as a panel if the child and family magistrate designated to hear a matter considers the engagement of an assessor or assessors with appropriate expertise for the case necessary or desirable -

(a) in the best interest of the child involved in the matter;

(b) given the circumstances of the matter or the nature of any issue in the matter or that is likely to arise; or

(c) to facilitate communication between the court and the child or any other party.

(3) In considering the engagement of an assessor or assessors, the child and family magistrate must take into account all relevant factors, including -

(a) the cultural, social and linguistic environment from which the child originates or in which the child grew up;

(b) the physical, mental and emotional development and the educational background of the child;

(c) the cultural, social and linguistic background of a party in the matter;

(d) the complexity of any issue in the matter or that is likely to arise; and

(e) the implications of any order that is sought or is likely to be made at the conclusion of the hearing.

(4) A child and family magistrate must record the reasons why an assessor or assessors have not been engaged in a specific matter.

(5) Section 34 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the rules issued in terms of this Act, apply to a person engaged as an assessor in terms of this Act.

### **Qualifications of child and family magistrates**

**70.** (1) Only the following persons may be child and family court magistrates:

(a) a person appointed in terms of section **72** (1) as a child and family court magistrate; or

(b) any existing magistrate assigned by the Minister of Justice to be a child and family

court magistrate.

(2) A person referred to in subsection (1) (a) must have -

(a) a qualification in law specified by regulation;

(b) a sound knowledge of -

(i) child and family law;

(ii) child and family court procedures; and

(iii) the resources available for the social development of children;

(c) a basic understanding of child development, psychology and family relationships; and

(d) the linguistic skills and ability to communicate effectively with dysfunctional families and traumatised children.

### **Qualifications of assessors**

**71.** (1) A person may be engaged as an assessor in a matter only if -

(a) that person is qualified in terms of section **70** to be a child and family magistrate; or

(b) the name of that person appears on the list compiled in terms of section **72** (3).

(2) A person referred to in subsection (1) (b) must have -

(a) the qualifications or experience in social work prescribed by regulation; or

(b) the linguistic skills and ability to communicate effectively with dysfunctional families and traumatised children.

### **Appointment of child and family magistrates and assessors**

**72.** (1) The Minister of Justice must appoint a sufficient number of persons complying with section **70** (2) as child and family magistrates.

(2) The Magistrates Act, 1993 (Act No. 90 of 1993), read with such changes as the context may require, applies with regard to the conditions of service, remuneration, vacation of office and discharge of a

person appointed in terms of subsection (1).

(3) The Minister of Justice acting with the concurrence of the Minister must compile a list of persons that may be engaged as assessors in matters before the child and family courts.

(4) A person engaged as an assessor in a matter before a child and family court is entitled to the remuneration and allowances prescribed by regulation, if that person is not employed in a full-time capacity in the service of the state.

### **Oath of office**

**73.** (1) A person may be engaged as a child and family magistrate or an assessor only after that person has taken an oath or made an affirmation in the form prescribed by regulation.

(2) Subsection (1) does not apply to a magistrate in terms of the Magistrates Courts' Act, 1944 (Act No. 32 of 1944).

### **Training of child and family magistrates and assessors**

**74.** The Minister of Justice, acting on the advice of the Minister, may establish training courses for child and family magistrates and assessors.

## ***Part 3: Court proceedings***

### **Procedural rules**

**75.** (1) The Minister of Justice may, subject to subsections (2) and (3), by notice in the *Government Gazette* -

(a) make rules to regulate the proceedings of child and family courts, including -

(i) the issuing and serving of summonses, subpoenas, notices and other process in connection with such proceedings; and

(ii) the execution of court orders;

(b) amend or repeal rules made in terms of paragraph (a).

(2) The provisions of the Magistrates' Courts Act, 1944, (Act No. 32 of 1944) and the rules made in terms of that Act, read with such changes as the context may require, apply, subject to the other provisions of this Act, to a child and family court in so far as those provisions relate to -



- (a) the issue and service of process;
- (b) the appearance in court of advocates and attorneys;
- (c) the appointment and powers of assessors;
- (d) the execution of court orders;
- (e) contempt of court; and
- (f) penalties for -
  - (i) non-compliance with court orders;
  - (ii) obstruction of the execution of judgements; and
  - (iii) contempt of court.
- (3) Rules made in terms of subsection (1) must be designed to avoid adversarial procedures and include rules concerning -
  - (a) appropriate questioning techniques for -
    - (i) children in general;
    - (ii) children with intellectual or psychiatric difficulties or with hearing or other physical disabilities which complicate communication;
    - (iii) traumatised children; and
    - (iv) very young children; and
  - (b) the use of specially qualified or trained interpreters.

### **Who may approach court**

**76.** Except where otherwise provided in this Act, any person, including a child, may bring a matter which falls within the jurisdiction of a child and family court, to a child and family court registrar for referral to a child and family court.

## **Legal representation**

**77.** (1) A person who is a party in a matter before a child and family court is entitled to appoint a legal representative of own choice and at own expense.

(2) If a person who is a party in a matter does not appoint a legal representative in terms of subsection (1) that person may apply to the appropriate authority to be represented by -

(a) a family advocate; or

(b) a child and family law practitioner whose name appears on the Family Law Roster and instructed by the Legal Aid Board in accordance with the Legal Aid Act, 1969 (Act No. 22 of 1969).

## **Legal representation of children**

**78.** (1) A child involved in a matter before a child and family court is entitled to legal representation, despite section 77.

(2) (a) A child may appoint a legal representative of own choice and at own expense to represent the child in such matter.

(b) If a legal representative appointed in terms of paragraph (a), does not serve the interests of the child in the matter or serves the interests of any other party in the matter, the court must terminate the appointment.

(3) If no legal representative is appointed in terms of subsection (2) (a), the court must inform the parent or care-giver of the child or a person who has parental responsibilities and rights in respect of the child, if present at the proceedings, and the child, if the child is capable of understanding, of the child's right to legal representation.

(4) If no legal representative is appointed in terms of subsection (2) (a) after the court has complied with subsection (3), or if the court has terminated the appointment of a legal representative in terms of subsection (2) (b), the court may, subject to subsection (5), order that legal representation be provided for the child at the expense of the state.

(5) The court must order that legal representation be provided for the child at the expense of the state if -

(a) it is requested by the child;

(b) it is recommended in a report by a social worker or an adoption social worker;

(c) it appears or is alleged that the child has been abused or deliberately neglected;

(d) any recommendations of a social worker who has investigated the circumstances of the child that the child be placed in alternative care, is contested by -

(i) the child;

(ii) a parent or care-giver of the child;

(iii) a person who has parental responsibilities and rights in respect of the child; or

(iv) a would-be adoptive parent, foster parent or kinship care-giver of the child;

(e) two or more adults are contesting in separate applications for the placement of the child with them;

(f) any other party besides the child is or is to be legally represented at the hearing;

(g) the court has terminated the appointment of a legal representative in terms of subsection (2) (b);

(h) in any other situation where it appears that the child will benefit substantially from representation either in regard to the proceedings themselves or in regard to achieving the best possible outcome for the child; or

(i) substantial injustice would otherwise result.

(6) The court must record its reasons if it declines to issue an order in terms of subsections (4) or (5).

(7) A child who must be represented at state expense must be represented by -

(a) a family advocate;

(b) a child and family law practitioner whose name appears on the Family Law Roster and instructed by the senior family advocate of the area; or

(c) the child and family court registrar, if it is an urgent matter which does not allow for the appointment of a person referred to in paragraph (a) or (b).

(8) If the court makes an order in terms of subsection (4), the clerk of the court must, subject to subsection (7) (c), request the senior family advocate of the area to instruct a family advocate or a legal

practitioner on the Family Law Roster, to represent the child.

### **Attendance at proceedings**

**79.** Proceedings of a child and family court are closed and may be attended only by -

(a) a person performing official duties in connection with the work of the court or whose presence is otherwise necessary for the purpose of the proceedings;

(b) the child involved in the matter before the court and any other party in the matter;

(c) the person in whose control the child is;

(d) a person who has been instructed in terms of section **80** by the child and family court registrar to attend those proceedings;

(e) the legal representative of a person who is entitled to legal representation;

(f) a witness in the matter, while that witness appears before the court;

(g) a family member of the child who obtained the court's permission to be present, other than a family member who is present in terms of paragraph (b), (c) or (d); and

(h) a person who obtained permission to be present from the registrar for purposes of training or research.

### **Compulsory attendance of persons involved in proceedings**

**80.** (1) The child and family court registrar may, by written notice, request a party in a matter before a child and family court, a family member of a child involved in the matter or a person who has another interest in the matter, to attend the proceedings of the child and family court.

(2) The person in whose control the child is must ensure that the child attends those proceedings except if the registrar or the court directs otherwise.

### **Rights of persons to adduce evidence, question witnesses and produce argument**

**81.** The following persons have the right to adduce evidence in a matter before a child and family court, and, with the permission of the child and family magistrate, to question or cross-examine a witness or to address the court in argument:

- (a) a child involved in the matter;
- (b) a parent of the child;
- (c) a person who has parental responsibilities and rights in respect of the child;
- (d) a care-giver of the child;
- (e) a person whose rights may be affected by an order that may be made by the court in those proceedings; and
- (f) a person who the court decides has a sufficient interest in the matter.

## **Witnesses**

**82.** (1) The clerk of a child and family court must summon a person to appear as a witness in a matter before the court to give evidence or to produce a book, document or other written instrument on request by -

- (a) the child and family magistrate presiding in the matter;
- (b) the child and family court registrar;
- (c) a person whose rights may be affected by an order that may be made by the court in those proceedings; or
- (d) the legal representative of a person mentioned in paragraph (c).

(2) A summons mentioned in subsection (1) must be served on the witness as if it were a summons to give evidence or to produce a book, document or other written instrument at a criminal trial in a magistrate's court.

(3) Sections 188 and 189 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), read with such changes as the context may require, apply to a person who has been summoned in terms of subsection (1) or required by a child and family magistrate presiding to give evidence.

(4) A person summoned in terms of subsection (1) (a) or (b) and who complied with the summons, is entitled to an allowance from state funds equal to that determined for witnesses summoned to appear in criminal trials in a magistrate's court.

(5) A person summoned in terms of subsection (1) (c) or (d) is not entitled to an allowance from state

funds except if the child and family magistrate presiding in the matter so orders.

## **Conduct of proceedings**

**83.** (1) The child and family magistrate presiding in a matter before a child and family court controls the conduct of the proceedings, and may -

(a) call or allow any person present at the proceedings to give evidence or to produce a book, document or other written instrument;

(b) question or cross-examine that person;

(c) allow an assessor or the child and family court registrar to question or cross-examine that person; or

(d) to the extent necessary to resolve any factual dispute which is directly relevant in the matter, allow that person to be questioned or cross-examined by -

(i) the child involved in the matter;

(ii) the parent of the child;

(iii) a person who has parental responsibilities and rights in respect of the child;

(iv) a care-giver of the child;

(v) a person whose rights may be affected by an order that may be made by the court in those proceedings; or

(vi) the legal representative of a person who is entitled to a legal representative in those proceedings.

(2) If a child is present at the proceedings, the court may order any person present in the room where the proceedings take place to leave the room if such order would be in the best interest of that child.

(3) Child and family court proceedings must be conducted in an informal manner and, as far as possible, in a relaxed and non-adversarial atmosphere which is conducive to attaining the co-operation of everyone involved in the proceedings.

## **Participation of children**

**84.** (1) The child and family magistrate presiding in a matter before a child and family court must -

(a) allow a child involved in the matter to express a view and preference in the matter if the court finds that the child, given the child's age, maturity and stage of development, is able to participate meaningfully in the proceedings and the child chooses to do so;

(b) record the reasons if the court finds that the child is unable to participate meaningfully in the proceedings or is unwilling to express a view or preference in the matter; and

(c) stop the questioning or cross-examination of a child if the court finds that it is not in the best interests of the child.

(2) A child who is a party or a witness in a matter before a child and family court may be questioned through an intermediary if the court finds that this would be in the best interests of that child.

(3) The court -

(a) may, at the outset or at any time during the proceedings, order that the matter, or any issue in the matter, be disposed of separately and in the absence of the child, if it is in the best interest of the child; and

(b) must record the reasons for any order in terms of paragraph (a).

### **Professional reports ordered by court**

**85.** (1) A child and family court may for the purposes of deciding a matter before it, or any issue in the matter, order, at state expense in necessary -

(a) that a child or other person involved in the matter must be examined by a medical practitioner or assessed by a psychologist or other professional person; or

(b) that an investigation must be carried out by a family advocate or a social worker to establish the circumstances of -

(i) the child;

(ii) the parents or a parent of the child;

(iii) a person who has parental responsibilities and rights in respect of the child;

(iv) a care-giver of the child;

(v) the person in whose control the child is; or

(vi) any other relevant person.

(2) A person who carried out an examination or investigation in terms of subsection (1) may be required by the court to present the findings of the examination or investigation to the court by -

(a) testifying before the court; or

(b) submitting a written report to the court subject to section 86 (2) and (3).

## **Evidence**

**86.** (1) A child and family court may, when appropriate and subject to this Act and the rules of the child and family court -

(a) allow hearsay evidence provided such evidence is relevant;

(b) allow evidence of previous similar conduct provided such evidence is relevant; and

(c) dispense with any rule of evidence as applicable to proceedings in a court of law.

(2) A written report purported to be compiled and signed by a medical practitioner, psychologist, family advocate, social worker or other professional person, who on the face of the report formed an authoritative opinion in respect of a child, or the circumstances of a child, involved in a matter before a child and family court, or in respect of another person involved in the matter, or the circumstances of such other person, is on its mere production to the child and family court hearing the matter admissible as evidence of the facts stated in the report.

(3) If a person's rights are prejudiced by a report referred to in subsection (2) the court must -

(a) disclose the contents of the report to that person if that person is present at the proceedings; and

(b) give that person the opportunity -

(i) to question or cross-examine the author of the report in regard to a matter arising from the report; or

(ii) to refute any statement contained in the report.



## Questions of law

**87.** If at any stage of proceedings before a child and family regional court it appears to the court that any question of law relevant to the matter before it ought to be decided by the High Court or the Constitutional Court, it may -

(a) either at the request of a party to the proceedings or on its own initiative, allow that party or request a family advocate to apply, within a period determined by the court, to the High Court or the Constitutional Court for leave to bring the question before the High Court or the Constitutional Court;

(b) make any interim order it finds necessary; and

(c) suspend the proceedings pending the decision of the High Court or the Constitutional Court.

## Decisions

**88.** (1) All questions of fact in a matter before a child and family court are decided -

(a) by the child and family magistrate presiding in the matter, if the child and family magistrate sits -

(i) without an assessor or assessors; or

(ii) with one assessor and there is a difference of opinion; or

(b) by the majority of the panel, if the child and family magistrate sits with two assessors.

(2) (a) All questions of law in a matter before a child and family court, and all questions as to whether a question before the court is a question of fact or a question of law, are decided by the child and family magistrate presiding in the matter.

(b) If the child and family magistrate sits with an assessor or assessors, the child and family magistrate may -

(i) adjourn the hearing in respect of a question referred to in paragraph (a); and

(ii) sit alone for the hearing and decision of that question.

(3) A child and family court must give and record reasons for its decisions and findings.

## **Adjournments**

**89.** (1) The proceedings of a child and family court may be adjourned only -

(a) on good cause shown, taking into account the best interest of the child;

(b) for a period of not more than 30 days at a time; and

(2) A child and family magistrate may excuse any person from appearing at adjournment proceedings.

## **Monitoring of court orders**

**90.** (1) A child and family court may monitor -

(a) compliance with an order made by it in a matter; or

(b) the circumstances of a child following an order made by it.

(2) To monitor compliance with an order made by a child and family court or the circumstances of a child following an order, the court -

(a) when making that order, may order -

(i) any person involved in the matter to appear before it at any future date; or

(ii) that reports by a specified social worker be submitted to the court within a specified period or from time to time;

(b) at any time after making an order or when a report of non-compliance mentioned in subsection (4) is referred to it, may call or recall any person involved in the matter to appear before it.

(3) When a person appears before the court in terms of subsection (2) the court may -

(a) inquire whether the order has been or is being complied with, and if not, why the order has not been complied with or is not being complied with;

(b) confirm, vary or withdraw the order; or

(c) enforce compliance of the order, if necessary through a criminal prosecution in a magistrate's court or in terms of section **58** (2).

(4) Any person may report any alleged non-compliance with an order of a child and family court, or any alleged worsening of the circumstances of a child following a court order, to the child and family court registrar, who must deal with the matter in accordance with section 94.

### **Protection of court case records**

**91.** No person has access to child and family court case records, except -

(a) for the purpose of performing official duties in terms of this Act;

(b) in terms of an order of court if the court finds that such access would not compromise the best interest of the child;

(c) for the purpose of a review or appeal; or

(d) for the purpose of *bona fide* research or the reporting of cases in law reports, provided the provisions of section 102 is complied with.

## ***Part 4: Child and family court registrars***

### **Appointment**

**92.** (1) The Minister must in accordance with legislation governing the public service appoint -

(a) a person as the child and family court registrar for -

(i) each region within which a child and family regional court was established; and

(ii) each district within which a child and family district court was established; and

(b) so many additional child and family court registrars and support staff as may be needed.

(2) Additional child and family court registrars perform their functions in terms of this Act subject to the directions of the child and family court registrar appointed for the area.

### **Qualifications**

**93.** A child and family court registrar must have -

- (a) the qualifications specified by regulation;
- (b) a thorough understanding of the needs of children;
- (c) mediation skills; and
- (d) a sufficient knowledge of legal measures, processes and resources available for the protection of children.

## **Screening of matters**

**94.** (1) A child and family court registrar must -

- (a) receive all matters brought to or referred to a child and family court;
- (b) determine in respect of each matter whether it -
  - (i) may be brought before a child and family court;
  - (ii) requires a pre-hearing conference or further investigation before it is brought before a child and family court;
  - (iii) should not first be referred to a lay forum for an attempt to settle the matter out of court, which may include -
    - (aa) mediation by a family advocate, a social worker or other professionally qualified person;
    - (bb) a family group conference as provided for in section **97**; or
    - (cc) mediation by a tribal authority; or
  - (iv) should not first be referred to a child and family court magistrate in chambers.

(2) If the registrar determines that a matter requires further investigation before it is brought before a child and family court, the registrar must -

- (a) designate a person to carry out the investigation; and
- (b) determine the issue to be investigated.

(3) Before determining that a matter should be referred to a lay forum, the registrar must take into account all relevant factors, including -

- (a) the vulnerability of the child;
  - (b) the ability of the child to participate in the lay forum proceedings;
  - (c) the power relationships within the family; and
  - (d) the nature of any allegations made by parties in the matter.
- (4) If the matter involves alleged child abuse, the alleged perpetrator may

not be present at, or participate in the proceedings of, the lay forum except if the alleged perpetrator has acknowledged, and has accepted responsibility for, that abuse.

### **Referral of matters to child and family courts**

**95.** (1) If a child and family court registrar determines that a matter may be brought before a child and family court, that registrar must in accordance with sections **60** or **61** refer the matter either to -

- (a) the child and family district court; or
- (b) the regional child and family court registrar for a decision whether the matter should be heard by the child and family regional court.

(2) If a regional child and family court registrar determines that a matter may be brought before a child and family court, that registrar must in accordance with sections **60** or **61**, refer the matter either to -

- (a) the child and family regional court; or
- (b) the child and family district court.

### **Pre-hearing conferences**

**96.** (1) If a matter brought to or referred to a child and family court is contested, the child and family court registrar may hold a pre-hearing conference with the parties involved in the matter in order to -

(a) mediate between the parties;

(b) settle disputes between the parties to the extent possible; and

(c) define the issues to be heard by the court.

(2) Pre-hearing conferences may not be held in the event of a matter involving the alleged abuse or sexual abuse of a child.

(3) The child involved in the matter must attend and may participate in the conference unless the registrar decides otherwise.

(4) The registrar -

(a) presides at the conference;

(b) must ensure that a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and

(c) must give a report on the conference to the court when the matter is heard.

### **Family group conferences**

**97.** (1) The child and family court registrar may cause a family group conference to be set up with the parties involved in a matter brought to or referred to a child and family court, including any other family members of the child, in order to find solutions for any problem involving the child.

(2) The registrar must -

(a) appoint a suitably qualified person to facilitate at the family group conference;

(b) must ensure that a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and

(c) must give a report on the conference to the court when the matter is heard.

### **Other lay-forums**

**98.** (1) The child and family court registrar may refer a matter brought or referred to a child and family

court to any appropriate lay forum, including a tribal authority, for an attempt to settle the matter by way of mediation out of court.

(2) Other lay forums may not be held in the event of a matter involving the alleged abuse or sexual abuse of a child.

(3) The registrar must -

(a) ensure that a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and

(b) give a report on the lay forum to the court when the matter is heard.

### **Compulsory attendance at pre-hearing conferences**

**99.** (1) The child and family court registrar may, by written notice, require a person who is a party in a matter brought to or referred to a child and family court or who is a family member of the child involved in such a matter, to attend a pre-trial conference to be held in terms of section **96**.

### **Settling of matters out of court**

**100.** (1) If a matter is settled out of court and the settlement is accepted by all parties involved in the matter, the child and family court registrar may submit the settlement, or must submit the settlement if a social worker in the service of a provincial department of social welfare so requests, to the child and family court for confirmation or rejection.

(2) The court must consider the settlement and, if it is in the best interest of the child, may -

(a) confirm the settlement and make it an order of court;

(b) before deciding the matter, refer the settlement back to the parties for reconsideration of any specific issues; or

(c) reject the settlement.

### **Other functions**

**101.** The child and family court registrar -

(a) must attend every child and family court hearing;

(b) may present evidence and information, including professional reports, to the court;

(c) with the permission of the court, may question or cross-examine a witness or party before the court;

(d) must, when necessary, arrange legal representation for a child before the court; and

(e) may assist an unrepresented party in the proceedings before the court with the presentation of that party's case.

## ***Part 5: Miscellaneous matters***

### **Publication of information relating to proceedings**

**102.** No person may, without the permission of a court, in any manner publish any information relating to the proceedings of a child and family court which reveals or may reveal the name or identity of a child who is a party or a witness in the proceedings.

### **Child and family matters heard by other courts**

**103.** (1) The establishment of child and family courts in terms of this Act does not affect the jurisdiction of any other court.

(2) When hearing a matter within the jurisdiction of a child and family court, a court of similar or higher status than a child and family court -

(a) is bound by the principles set out in Chapter 3; and

(b) must take into account the provisions of this Act.

### **Transitional matters**

**104.** Every children's court designated in terms of section 4 (2) of the Children's Act 1960 (Act No. 33 of 1960), or section 5 of the Child Care Act, continues to function until it is abolished in terms of section 360 (2).

### **Regulations**

**105.** (1) The Minister of Justice may, with the concurrence of the Minister, make regulations concerning -

(a) the carrying out and monitoring of further investigations in terms of section 94 (2),



procedures regulating such investigations and the gathering of evidence;

(b) the holding of pre-hearing conferences in terms of section **96**, procedures regulating such conferences and information that must be submitted to a child and family court;

(c) the holding and monitoring of family group conferences or other lay forums in terms of sections **97** and **98**, procedures regulating such conferences and information that must be submitted to a child and family court;

(d) the qualifications and experience of persons facilitating family group conferences, including special requirements that apply to persons facilitating in matters involving the alleged abuse of children;

(e) the compilation of a Family Law Roster, the qualifications, skills and experience of persons for inclusion in the Roster, the requirements with which those persons must comply, and the removal of persons from the Roster;

(f) a code of conduct for legal practitioners representing parties in the child and family courts;

(g) documents in connection with matters brought to a child and family court registrar and records of the proceedings of child and family courts, including regulations determining -

(i) the person by whom, the period for which and the manner in which those documents and records must be kept; and

(ii) access to those documents and records;

(h) the keeping of records with regard to matters brought to and dealt with by the child and family court;

(i) the submission of court statistics and progress reports on those matters to the Magistrates' Commission; and

(j) any other matter that may facilitate the application of this Chapter.

(2) Section **354** (2) and (3), read with such changes as the context may require, applies to the making of regulations in terms of subsection (1) of this section.

## CHAPTER 7

## **EARLY CHILDHOOD DEVELOPMENT**

### **Definitional provision**

**106.** (1) Early childhood development means the process of emotional, intellectual, physical and social development of children from birth to the age of nine years.

(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 primary caregiver, on a regular basis to children up to nine years old.

### **Strategies concerning early childhood development to be included in national policy framework**

**106A.** (1) The Minister, in consultation with the Minister for Education, must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at securing a properly resourced, coordinated and managed early childhood development system, which must include -

(a) mechanisms for the planning, development and implementation of designated early childhood development services and programmes;

(b) strategies for expanding the range of early childhood development services and programmes;

(c) criteria for the selection and designation of early childhood development services and programmes;

(d) minimum standards for early childhood development services and programmes;

(e) mechanisms to ensure impartiality in the provision of early childhood development services and programmes; and

(f) measures to ensure that budgetary requirements and procedures are complied with to secure adequate funds for the provision of early childhood development services and programmes.

### **Provision of early childhood development services**

**107.** (1) Early childhood development services complying with the minimum requirements prescribed by

regulation must be provided by -

(a) a partial care facility providing partial care services for children up to the age of nine years;

(b) a child and youth care centre which has in its care children up to the age of nine years;  
or

(c) a primary school as part of its regular education programmes.

(2) Any other person or organisation not disqualified in terms of section **108** may provide early childhood development services, provided that those services comply with the minimum requirements prescribed by regulation.

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

### **Persons unsuitable to work with children disqualified from providing early childhood development services**

**108.** A person unsuitable to work with children may not provide or assist in the provision of early childhood development services.

### **Notices of enforcement**

**109.** (1) A provincial head of social development, a municipality or the head of a provincial education department 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 or a primary school referred to in section **107** (1) which does not provide early childhood development services, to comply with that section within a period specified in the notice;

(b) the person operating or managing a partial care facility, a child and youth care centre or a primary school referred to in section **107** (1) which does provide early childhood development services but of a standard that does not comply with the minimum requirements prescribed by regulation, to comply with those minimum requirements within a period specified in the notice; or

(c) a person referred to in section **107** (2) who provides early childhood development services which do not comply with the minimum requirements prescribed by regulation -

(i) to stop the provision of those services; or

(ii) to comply with those minimum requirements within a period specified in the notice.

(2) The powers conferred in terms of subsection (1) may be exercised by -

(a) a provincial head of social development in relation to a child and youth care centre and a partial care facility;

(b) a municipality only in relation to a partial care facility or a person referred to in section **107** (2); or

(c) the head of a provincial education department only in relation to a primary school.

### **Assistance**

**110.** (1) A provincial head of social development may assist a partial care facility or a child and youth care centre which in terms of section **107** (1) must provide early childhood development services, to comply with the minimum requirements mentioned in that section.

(2) A municipality may assist a partial care facility which in terms of section **107** (1) must provide early childhood development services, to comply with the minimum requirements mentioned in that section.

(3) The head of a provincial education department may assist a primary school which in terms of section **107** (1) must provide early childhood development services, to comply with the minimum requirements mentioned in that section.

### **Inspection of early childhood development services**

**111.** (1) A provincial head of social development, a municipality or the head of a provincial education department may authorise a person to inspect the provision of early childhood development services, in order to determine whether the provision of the services complies with the minimum requirements mentioned in section **107** (1) and (2).

(2) Section **352** (2) and (3), read with such changes as the context may require, applies to any inspection in terms of subsection (1) of this section.

(3) The powers referred to in subsections (1) and (2) may be exercised by -

(a) a provincial head of social development only in relation to a child and youth care centre;

(b) a municipality only in relation to a partial care facility or a person referred to in section 107 (2); or

(c) the head of a provincial education department only in relation to a primary school.

## **Regulations**

**112.** The Minister may make regulations in terms of section 354 concerning -

(a) the minimum requirements with which early childhood development services must comply; and

(b) any other matter necessary to facilitate the implementation of this Chapter.

## **CHAPTER 8**

### **PROTECTION OF CHILDREN**

#### ***Part 1: Child protection system***

#### **Strategies concerning child protection to be included in national policy framework**

**113.** (1) The Minister must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at securing a properly resourced, coordinated and managed child protection system, which must include -

(a) an inter-sectoral mechanisms for the planning, development and implementation of designated child protection services focussed primarily on children who are at risk of immediate harm;

(b) strategies for expanding the range of child protection mechanisms;

(c) criteria for the selection and designation of child protection organisations to assist in the provision of designated child protection services;

(d) measures to implement quality control over designated child protection services provided by organs of state and designated child protection organisations;

(e) mechanisms to ensure impartiality in the provision of designated child protection services, including investigations and assessments and in making recommendations; and

(f) measures to ensure that budgetary requirements and procedures are complied with to secure adequate funds for the provision of designated child protection services.

### **Establishment of an inter-sectoral mechanism to co-ordinate child protection system**

113A. (1) The Minister, in consultation with Cabinet, may establish an inter-sectoral mechanism to co-ordinate and manage the child protection system.

(2) The mechanism must -

(a) commission appropriate research for purposes of a national needs analysis and for preparing preliminary child protection budget estimates for each sector;

(b) set up and coordinate inter-sectoral task teams to deal with issues such as training and selection of child protection personnel; minimum standards, workload norms and guidelines for protocol development; conditions of service for child protection workers; planning, administration and staff deployment; and contracting and purchase-of-service agreements between government and NGO=s for the delivery of child protection services;

(c) oversee the selection of an appropriate institution to serve as a clearing house for research and information regarding all aspects of child abuse and neglect, including programmes to address these problems;

(d) provide guidelines for, assist in and monitor provincial coordinating structures for child protection;

(e) negotiate with training institutions for curriculum development and the training of personnel in all the relevant sectors;

(f) develop a comprehensive plan for the financing of child protection services as a component of the National Plan of Action;

(g) and perform such other functions as the Minister may prescribe.

### **Provision of designated child protection services**

114. 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.

## **Nature of designated child protection services**

**115.** Designated child protection services include -

(a) social work services aimed at supporting -

- (i) the performance by child and family court registrars of their functions;
- (ii) the proceedings of child and family courts; and
- (iii) the implementation of court orders;

(b) social work services relating to -

- (i) early intervention services ordered by the court;
- (ii) the reunification of children in alternative care with their families;
- (iii) the integration of children into alternative care arrangements;
- (iv) the placement of children in alternative care; and
- (v) the adoption of children, including inter-country adoptions;

(c) the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children;

(d) intervention and removal of children in appropriate cases;

(e) the drawing up of permanency plans for children removed, or at risk of being removed, from the family; and

(f) any other social work service that may be prescribed by regulation.

## **Designation of child protection organisations**

**116.** (1) An MEC for social development may designate any appropriate organisation as a child protection organisation to perform in the province all or any specific designated child protection services. A designated child protection organisation may not perform inter-country adoption services unless

authorised by the Central Authority.

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

(a) must be in writing; and

(b) may be made on such conditions as the MEC may determine.

### **Existing child welfare organisations**

**117.** (1) Any organisation which, when section **116** took effect, was a prescribed welfare organisation within the meaning of the Child Care Act must be regarded as having been designated in terms of section **116** 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 **116** took effect except if its designation is withdrawn in terms of section **119** before the expiry of that period.

### **Delegation of powers and duties to designated child protection organisations**

**118.** (1) An MEC for social development may delegate to a designated child protection organisation such powers and duties in terms of this Act as may be necessary for the proper provision of designated child protection services by the organisation.

(2) Section **356**, read with such changes as the context may require, applies in respect of any delegation in terms of subsection (1).

### **Withdrawal of designations**

**119.** An MEC for social development may withdraw the designation of a child protection organisation to perform any, or any specific, designated child protection services -

(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.



## ***Part 2: National Child Protection Register***

### **Keeping of National Child Protection Register**

**120.** (1) The Director-General must keep and maintain a register to be called the National Child Protection Register.

(2) The National Child Protection Register consists of a Part A and a Part B.

(3) Both Parts A and B of the Register must be kept confidential and information in the Register may be accessed and disclosed only as provided for in this Act.

(4) The Director-General must take adequate steps -

(a) to protect the information in the Register; and

(b) if the Register is kept in electronic format, to secure the Register from\_unauthorised intrusion.

### ***Part A of Register***

#### **Purpose of Part A of Register**

**121.** The purpose of Part A of the National Child Protection Register is -

(a) to have a record of abuse or deliberate neglect inflicted on specific children;

(b) to use the information in the Register in order to protect these children from further abuse or deliberate neglect; and

(c) to use the information in the Register for planning and budgetary purposes to prevent and protect children on a national, provincial and municipal level.

#### **Contents of Part A of Register**

**122.** (1) Part A of the National Child Protection Register must be a record of -

(a) all reports of abuse or deliberate neglect of a child made to the Director-General in terms of section **167** (5) (c) (iii);

(b) all convictions of parents, care-givers and family members of children on charges involving the abuse or deliberate neglect of the child; and

(c) all determinations by a child and family court that a child is in need of care because of abuse or deliberate neglect of the child.

(2) Part A of the Register must reflect -

(a) in the case of reported incidents referred to in subsection (1) (a) -

(i) the name, physical address and identification number of the child;

(ii) the nature and a brief account of the incident, including the place and date of the incident;

(iii) the name, physical address and identification number of the parents or care-giver of the child; and

(iv) the name and physical address of the child and youth care centre, partial care centre or shelter or drop-in centre, if the incident occurred at such a place;

(b) in the case of a conviction referred to in subsection (1) (b) -

(i) the name, physical address and identification number of the child;

(ii) the name, physical address and identification number of the convicted person;

(iii) the nature and a brief account of the charge and conviction, including the place and date of the incident of which the person was charged;

(iv) details of the relationship between the convicted person and the child;

(c) in the case of a determination by a child and family court referred to in subsection (1)(c) -

(i) the name, physical address and identification number of the child;

(ii) a brief summary of the court's reasons for finding the child to be in need of care; and

(iii) the name, physical address and identification number of the parents or

care-giver of the child; and

(d) any other information as may be prescribed by regulation.

### **Access to Part A of Register**

**123.** Only the Director-General and officials of the Department designated by the Director-General have access to Part A of the National Child Protection Register, but the Director-General may, on such conditions as the Director-General may determine, allow access to -

(a) a child and family court registrar for the purpose of performing his or her functions in terms of this Act;

(b) a provincial head of social development, or an official of a provincial department of social development designated by the head of that department, for the purpose of performing his or her functions in terms of this Act;

(c) designated child protections organisations;

(d) any unit of the South African Police Service tasked with child protection; or

(e) any other person for the purpose of conducting research on child abuse or deliberate neglect or related issues.

### **Disclosure of information in Part A of Register**

**124.** (1) No person may disclose any information in Part A of the National Child Protection Register except -

(a) for the purpose of protecting the interests, safety or well-being of a specific child;

(b) within the scope of that person's powers and duties in terms of this Act or any other legislation;

(c) for the purpose of facilitating an investigation by the South African Police Service following a criminal charge involving abuse or deliberate neglect of a specific child;

(d) to a person referred to in subsection (2) on written request by such person;

(e) for the purpose of legal proceedings; or

(f) when ordered by a court to do so.

(2) (a) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part A of the Register, and if so, the reasons why his or her name was entered in the Register.

(b) Inquiries in terms of paragraph (a) whether a person's name appears in Part A of the Register must be directed to the Director-General on a confidential basis.

(c) The Director-General must respond to such inquiries and indicate whether the relevant person's name is in Part A of the Register within 21 days.

### *Part B of Register*

#### **Purpose of Part B of Register**

**125.** The purpose of Part B of the National Child Protection Register is to have a record of persons who are unsuitable to work with children and to use the information in the Register in order to protect children in general from these persons.

#### **Contents of Part B of Register**

**126.** Part B of the National Child Protection Register must be a record of persons found in terms of section **127** to be unsuitable to work with children, and must reflect the following:

(a) the name of the person;

(b) the last known physical address of the person;

(c) the identification number of the person;

(d) a brief summary of the reasons why the person was found to be unsuitable to work with children; and

(e) any other information as may be prescribed by regulation.

#### **Finding persons unsuitable to work with children**

**127.** (1) A finding that a person is unsuitable to work with children may be made by -

(a) a child and family court;

(b) any other court in any criminal or civil proceedings in which that person is involved either as a party or a witness; or

(c) any administrative forum in any disciplinary proceedings concerning the conduct of that person relating to a child.

(2) A finding in terms of subsection (1) may be made by a court or administrative forum on own volition or on application by -

(a) an organ of state involved in the implementation of this Act;

(b) a prosecutor, if the finding is sought in criminal proceedings; or

(c) a person having a sufficient interest.

(3) The question whether a person is unsuitable to work with children, may be heard by the court or administrative forum either in the course of or at the end of its proceedings.

(4) A person must be found unsuitable to work with children on conviction of murder, attempted murder, sexual abuse or assault with the intent to do grievous bodily harm with regard to a child.

### **Disputes concerning findings**

**128.** The person in respect of whom a finding in terms of section **127** has been made may -

(a) appeal against the finding to a higher court, if the finding was made by a court, or

(b) have the finding reviewed by a court, if the finding was made by an administrative forum.

### **All findings to be reported to Director-General**

**129.** (1) The registrar of the relevant court, or the relevant administrative forum, or, if the finding was made on application in terms of section **127** (2), the person who brought the application must notify the Director-General in writing -

(a) of any finding in terms of section **127** that a person is unsuitable to work with children; and

(b) of any appeal or review lodged by the affected person.

(2) The Director-General may not enter a person's name in Part B of the National Child Protection Register -

(a) until the time for noting of an appeal or review has expired; or

(b) if an appeal or review has been noted, until the appeal or review proceedings have been concluded.

### **Legal consequences of entry of name in Part B of Register**

**130.** (1) No person whose name appears in Part B of the National Child Protection Register may -

(a) manage or operate, or participate or assist in managing or operating, a child and youth care centre, a partial care facility, a shelter or drop-in centre, or a collective foster care scheme;

(b) work with children at a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school, or in implementing a collective foster care scheme, either as an employee, volunteer or in any other capacity;

(c) be permitted to become the foster parent, kinship care-giver or adoptive parent of a child; or

(d) work in any unit of the South African Police Service tasked with child protection.

(2) No person managing or operating a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school may allow a person whose name appears in Part B of the Register, to work with children at the centre, facility, shelter or school, either as an employee, volunteer or in any other capacity.

(3) No designated child protection organisation may allow a person whose name appears in Part B of the Register, to work with children on its behalf, either as an employee, volunteer or in any other capacity.

(4) The South African Police Service may not allow a person whose name appears in Part B of the Register to work in a unit of the Service tasked with child protection.

(5) If the name of a person is entered in Part B of the Register and that person -

(a) works with children at a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school either as an employee, volunteer or in any other capacity, that person must disclose that fact to the person who manages or operates the centre, facility, shelter or school;

(b) works with children on behalf of a designated child protection organisation either as an employee, volunteer or in any other capacity, that person must disclose that fact to the organisation; or

(c) works in a unit of the South African Police Service tasked with child protection, that person must disclose that fact to the South African Police Service.

### **Access to Part B of Register**

**131.** Only the Director-General and officials of the Department designated by the Director-General have access to the Register, but the Director-General may, on such conditions as the Director-General may determine, allow officials of a provincial education department designated by the head of that department access to Part B of the Register for the purpose of implementing section **130** in relation to schools under the jurisdiction of that department.

### **Disclosure of information in Part B of Register**

**132.** (1) Before a person is allowed to work -

(a) with children at a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school, the person managing or operating the centre, facility, shelter or school must establish whether or not that person's name appears in Part B of the National Child Protection Register;

(b) with children on behalf of a designated child protection organisation, the organisation must establish whether or not that person's name appears in Part B of the Register; or

(c) in a unit of the South African Police Service tasked with child protection, the Service must establish whether or not that person's name appears in Part B of the Register.

(2) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part B of the Register, and if so, the reasons why his or her name was entered in the Register.

(3) Inquiries in terms of subsection (1) or (2) whether a person's name appears in Part B of the Register must be directed to the Director-General on a confidential basis.

(4) The Director-General must respond to such inquiries and indicate whether the relevant person's name is in Part B of the Register within 21 days.

### **Disclosure of names in Part B of Register prohibited**

**133.** No person may disclose the fact that the name of a particular person appears in Part B of the National Child Protection Register except -

(a) within the scope of that person's powers and duties in terms of this Act or any other legislation;

(b) to a person or institution referred to in section **132** (1) or (2) on written request by such person or institution;

(c) for the purpose of legal proceedings; or

(d) when ordered by a court to do so.

(e) when the disclosure is made to a person whose name appears in Part B of the Register.

### *General*

#### **Removal of name from Register**

**134.** (1) A person whose name appears in either Part A or Part B of the National Child Protection Register may in terms of subsection (2) apply for the removal of his or her name and any information relating to that person from the Register.

(2) Application for the removal of a name and particulars from the Register may be made -

(a) to any court, including a child and family court;

(b) to the Director-General, if the entry was made in error; or

(c) to a child and family court, if the Director-General refuses an application in terms of paragraph (b).

(3) An application in terms of subsection (1) (a) to remove a person's name and particulars from Part B of the Register on the ground that the affected person has been rehabilitated, may only be made after at least five years have lapsed since the entry was made.

### *Part 3: Protective measures relating to health of children*

#### **Consent to medical treatment and surgical operations**

**135.** (1) A child may be submitted to medical treatment or surgical operation only if consent for such



treatment or operation has been given in terms of either subsection (2), (3), (4) or (5).

(2) (a) A child may consent, subject to paragraph (b), to medical treatment or a surgical operation, provided the child -

(i) is at least 12 years of age; and

(ii) is of sufficient maturity and has the mental capacity to understand the benefits, risks and social implications of the treatment or operation.

(b) A child may not consent to a surgical operation in terms of paragraph (a) without the assistance of -

(i) the parent of the child; or

(ii) the primary care-giver of the child.

(3) The parent or primary care-giver of a child may subject to section **43** consent to the medical treatment of or a surgical operation on the child if the child is -

(a) under the age of 12 years; or

(b) over that age but is of insufficient maturity or does not have the mental capacity to understand the benefits, risks and social implications of the treatment or operation.

(4) The superintendent of a hospital or the person in charge of the hospital in the absence of the superintendent, may consent to the medical treatment of or a surgical operation on a child if -

(a) the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and

(b) the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required.

(5) A child and family court may consent to the medical treatment of or a surgical operation on a child if -

(a) the child has been abandoned; or

(b) the parent or primary care-giver of the child -

(i) refuses to give consent or to assist the child in giving consent;

(ii) is physically or mentally incapable of giving consent or assisting the child in giving consent;

(iii) is deceased; or

(iv) cannot readily be traced.

(6) No parent or primary care-giver of a child may refuse to assist a child in terms of subsection (2) (b) or withhold consent in terms of subsection (3) by reason only of religious or other beliefs, unless that parent or primary care-giver can show that there is a medically accepted alternative choice.

## **HIV-testing**

**136.** (1) No child may be tested for HIV except when -

(a) this is in the best interest of the child and consent has been given in terms of subsection (2); or

(b) the test is necessary in order to establish whether -

(i) a health worker may have contracted HIV due to contact in the course of a medical procedure involving contact with any substance from the child's body that may transmit HIV; or

(ii) any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a court.

(2) Consent for a HIV-test on a child may be given by -

(a) the child, if the child is -

(i) 12 years of age or older; or

(ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a test;

(b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(c) a designated child protection organisation arranging the placement of the child, if the

child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(d) the head of a hospital, if -

(i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and

(ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

(e) a child and family court, if -

(i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld; or

(ii) the child or the parent or care-giver of the child is incapable of giving consent.

### **HIV-testing for adoption purposes**

**137.** If HIV-testing of a child under three years of age is done for foster or adoption purposes, the state must pay the cost of such test.

### **Counselling before and after HIV-testing**

**138.** (1) A child may be tested for HIV only after proper counselling of -

(a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; and

(b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

(2) If a test is positive, post-test counselling must be provided to -

(a) the child, if the child is of sufficient maturity to understand the implications of the result; and

(b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

### **Confidentiality of information on HIV/AIDS status of children**

**139.** (1) No person may disclose the fact that a child is HIV-positive without consent given in terms of

subsection (2 ), except -

(a) within the scope of that person's powers and duties in terms of this Act or any other legislation;

(b) when necessary for the purpose of carrying out the provisions of this Act;

(c) for the purpose of legal proceedings; or

(d) in terms of an order of a court.

(2) Consent to disclose the fact that a child is HIV-positive may be given by -

(a) the child, if the child is -

(i) 12 years of age or older; or

(ii) under the age of 12 years and of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(c) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(d) the head of a hospital, if -

(i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;\_ and

(ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

(e) a child and family court, if -

(i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best interest of the child; or

(ii) the child or the parent or care-giver of the child is incapable of giving consent.

## **Access to contraceptives**

**140.** (1) No person may refuse -

(a) to sell condoms to a child; or

(b) to provide a child with condoms where such condoms are provided or distributed free of charge.

(2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or care-giver of the child provided -

(a) the child is at least twelve years of age;

(b) proper medical advice is given to the child; and

(c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.

(3) A child who obtains contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 167.

## ***Part 4: Other protective measures***

### **Applications to terminate or suspend parental responsibilities and rights**

**141.** (1) The Director-General, a provincial head of social development or a designated child protection organisation may apply to a court for an order -

(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.

(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 -

(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.

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

(a) guided by the principles set out in Chapter 2 to the extent that those principles are applicable to the matter before it; and

(b) take into account all relevant factors, including -

(i) the need for the child to be permanently settled, preferably in a family environment, taking into consideration the age and stage of development of the child.

(ii) the success or otherwise of any attempts that have been made to reunify the child with the person whose parental responsibilities and rights are challenged;

(iii) the relationship between the child and that person;

(iv) the degree of commitment that that person has shown towards the child; and

(v) the probabilities of arranging for the child to be adopted or placed in another form of permanent family care.

(4) Section 41, read with such changes as the context may require, applies in respect of any proceedings in terms of this section.

## **Corporal punishment**

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

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

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

such punishment.

(4) No person may administer corporal punishment to a child at any school; 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 across the country; and

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

### **Child safety at places of entertainment**

**143.** (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 stairs, escalators, lifts or other mechanical means;

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

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

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

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

(b) station a sufficient number of adult attendants to prevent more people 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;

(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.

(3) 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 subsection (2) is complied with.

(4) (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 subsection (2) is complied with.

(b) Section 352 (2) and (3), read with such changes as the context may require, applies to any inspection in terms of paragraph (a) of this subsection.

## **Regulations**

**144.** The Minister may make regulations in terms of section 354 -

(a) prescribing criteria for determining organisations which may be designated as child protection organisations;

(b) prescribing codes of good practice to guide designated child protection organisations, organs of state and social workers involved in the provision of designated child protection services;

(c) prescribing a broad risk assessment framework to guide decision-making in the provision of designated child protection services;

(d) prescribing -

(i) criteria for determining persons who may conduct investigations into cases of alleged child abuse or neglect; and

(ii) the powers and responsibilities of those persons;

(e) prescribing the conditions for the examination or assessment of children who have been abused or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child;

(f) prohibiting or regulating cultural practices violating the physical integrity of children;

(g) prescribing any other matter necessary to facilitate the implementation of this Chapter.

## **CHAPTER 9**



## PARTIAL CARE

### Definitional provision

**145.** Partial care is provided when a person, whether for or without reward, takes care of a child on behalf of the parent or care-giver during specific hours of the day or night, or for a temporary period, in terms of a private arrangement between the parent or care-giver and the provider of the service, but excludes the taking care of a child -

- (a) in terms of an informal kinship care arrangement;
- (b) by a school as part of tuition, training and other activities provided by the school;
  - (c) as a boarder in a school hostel or other residential facility managed as part of a school;  
or
- (d) by a hospital or other medical facility as part of the treatment provided to the child.

### Partial care facilities to be registered

**146.** (1) Any person may establish or operate a partial care facility provided that the facility -

- (a) is registered with the municipality in which that place is situated;
  - (b) is managed and maintained in accordance with any conditions subject to which the facility is registered; and
- (c) complies with the minimum norms and standards mentioned in section **151**.

### Existing places of care

**147.** As from the date on which section **146** took effect an existing place of care registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of section **146** as a partial care facility.

### Notices of enforcement

**148.** (1) A municipality or the 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 **146** 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 section **146** continue operating the facility during that period and, if that person applies for registration, until that person's application has been processed.

### **Application for registration and renewal of registration**

**149.** (1) An application for registration of a partial care facility or for the renewal of a registration must -

(a) be lodged with the municipality in which 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) any documents that may be prescribed by regulation; and

(ii) a fee that may be prescribed by regulation.

(2) An applicant must provide such additional information relevant to the application as the municipality 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 municipality may allow a late application on good cause shown.

### **Consideration of applications**

**150.** (1) The municipality must -

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

reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; and

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

(2) When deciding an application, the municipality must take into account all relevant factors, including whether -

(a) the facility complies with the minimum norms and standards mentioned in section **151**;

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

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

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

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

(4) The municipality must consider a report of a social worker before deciding an application for registration or renewal of registration.

### **Minimum norms and standards**

**151.** Premises or a place used as a partial care facility must have -

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

(b) adequate space and ventilation;

(c) safe drinking water;

(d) hygienic and adequate toilet facilities;

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

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

## **Conditional registration**

**152.** The registration or renewal of the registration of a partial care facility may be granted on such conditions as the municipality may determine, including conditions -

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

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

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

## **Cancellation of registration**

**153.** (1) A municipality may cancel the registration of a partial care facility by written notice to the registration holder if -

(a) the facility is not maintained in accordance with -

(i) the minimum norms and standards mentioned in section **151**; or

(ii) this Act;

(b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;

(c) the registration holder or the management of the facility contravenes or fails to comply with 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.

(2) The municipality 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 municipality may assist a registration holder to comply with minimum norms and standards mentioned in section **151** or any structural, safety, health and other requirements of the municipality, or any provisions of this Act, where the cancellation was due to non-compliance with those norms and standards, requirements or provisions.

### **Appeals to child and family court**

**154.** An applicant aggrieved by a decision of a municipality in terms of section **150** or **152**, or a registration holder aggrieved by a decision of a municipality in terms of section **153**, may -

- (a) lodge an appeal against that decision with the MEC for social development; or
- (b) apply to a child and family court or other court to review that decision.

### **Role of municipalities**

**155.** (1) A municipality must -

- (a) maintain a record of all available partial care facilities in its area; and
  - (b) conduct regular inspections of partial care facilities in its area to enforce the provisions of this Act.
- (2) A municipality's integrated development plan 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 its area;
  - (b) prioritising those types of partial care facilities most urgently required; and
  - (c) facilitating the identification and provision of suitable premises.

### **Death of children**

**156.** (1) If a child dies on the premises of a partial care facility or following an occurrence at the facility, the person operating the partial care facility must within seven days report the death of the child to the Children's Protector.

(2) The Children's Protector must in terms of section **326** investigate the circumstances of the child's death if there are allegations or indications that the child died because of abuse or neglect.

## **Regulations**

**157.** The Minister may make regulations in terms of section **354** concerning -

(a) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;

(b) the different types of partial care that may be provided in terms of such registrations;

(c) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;

(d) the management of partial care facilities;

(e) any other matter that may be necessary to facilitate the implementation of this Chapter.

## **CHAPTER 10**

### **PREVENTION AND EARLY INTERVENTION SERVICES**

#### **Definitional provision**

**158.** (1) Early intervention services means social work services which are -

(a) designed to serve the purposes mentioned in section **159**; and

(b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care in order to avoid such intervention;

(2) Prevention services means social work services -

(a) designed to serve the purposes mentioned in section **159**; and

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

## **Purposes of prevention and early intervention services or programmes**

**159.** (1) A range of prevention and early intervention services or programmes must be provided for the purposes of -

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

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

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

## **Provision of prevention and early intervention services**

**160.** (1) The Minister may, from money appropriated by Parliament, provide or fund prevention and early intervention services to families, parents and care-givers and children.

(2) In implementing subsection (1) -

- (a) families who lack the means of providing proper shelter, food and other basic

necessities of life to their children must be a priority; and

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

### **National policy framework to include strategies for securing provision of prevention and early intervention services**

**161.** The Minister must include in the national policy framework referred to in section 5 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, including strategies -

(a) to ensure an integrated approach among all spheres of government in the planning of sound and stable family structures;

(b) to establish an equitable distribution of resources among all spheres of government to ensure the involvement of all spheres in the provision of prevention and early intervention services;

(c) to build the capacity of government in all spheres to cope with the need for prevention and early intervention services where such capacity is lacking; and

(d) to develop an efficient and adequate infra-structure for the provision of prevention and early intervention services.

### **Role of municipalities in prevention and early intervention services**

**162.** (1) A metropolitan and local municipality may perform such prevention and early intervention services as may be allocated to municipalities in terms of the national policy framework referred to in section 5.

(2) A metropolitan and local municipality must -

(a) determine and keep the statistics prescribed by regulation of the estimated total number of children in the age groups prescribed by regulation in its area;

(b) submit at intervals prescribed by regulation statistics in respect of children in its area to organs of state as may be specified by regulation;

(c) at least once every three years make a needs analysis of children in its area in a manner prescribed by regulation;



(d) apply those statistics and the needs analysis for purposes of budgeting and the provision of services, including -

(i) the provision of recreational facilities for children in its area;

(ii) access to basic nutrition, shelter, health care and social services;

(e) take all reasonable steps to secure the environmental safety of children in its area; and

(f) make provision for home visiting of new-born babies.

### **Role of traditional authorities in prevention and early intervention services**

**163.** In implementing section **162** a municipality may by agreement with a traditional authority in its area designate aspects of the functions referred to in that section to the traditional authority.

### **Court may order early intervention services**

**164.** (1) Before making an order concerning the temporary or permanent removal of a child from that child's' family environment, a child and family court may order -

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

(b) the child's family and the child to participate in a recognised 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 social worker's report setting out progress with early intervention services rendered to the child and the family or the parent or care-giver, 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 services 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.

## **Reports of social workers to include summary of prevention and early intervention services**

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

## **CHAPTER 11**

### **THE CHILD IN NEED OF CARE AND PROTECTION**

#### ***Part 1: Identification of a child in need of care and protection***

#### **Definitional provision**

**166.** A child is in need of care and protection if -

(a) the person having the parental responsibility to care for the child -

(i) fails to discharge that responsibility in a material respect;

(ii) commits an exploitative labour practice in relation to the child;

(iii) sexually abuses the child; or

(iv) has disappeared or cannot be traced;

(b) there is no person exercising the parental responsibility to care for the child; or

(c) the child -

(i) has been abandoned or is without any visible means of support;

(ii) displays behaviour which cannot be controlled by the parent or care-giver;

(iii) lives or works on the streets or begs for a living;

(iv) is addicted to a dependence producing substance and is without any support to obtain treatment for such dependency;

(v) lives in circumstances that exposes the child to commercial sexual exploitation or to being trafficked;

(vi) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;

(vii) is in a state of physical or mental neglect; or

(viii) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibility or a family member of the child, or by a person under whose control the child is.

### **Reporting of children in need of care and protection**

**167.** (1) Any teacher, medical practitioner, dentist, nurse, social worker, member of staff at a partial care facility, shelter, drop-in centre, or child and youth care centre, school or other person involved with a child in a professional capacity and who on personal observation concludes that the child has been injured as a result of abuse, sexual abuse or deliberate neglect, must report that conclusion to a designated child protection organisation, police officer or child and family court registrar.

(2) Any other person who believes that a child is in need of care and protection because of injury as a result of abuse, deliberate neglect or sexual abuse, may report that belief to a designated child protection organisation, police officer or child and family court registrar.

(3) A person referred to in subsection (1) or (2) must, if required to do so by a designated child protection organisation, a police officer or a child and family court registrar, substantiate that conclusion or belief with facts available to that person.

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

(5) A designated child protection organisation, a police officer or a child and family court registrar to whom a report has been made in terms of subsection (1) or (2), must -

(a) make an initial assessment of the report;

(b) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated; and

(c) if the report is substantiated by such investigation, without delay -

- (i) take steps to ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;
- (ii) initiate proceedings in terms of this Chapter for the protection of the child; and
- (iii) submit particulars concerning the matter as may be prescribed by regulation to -
  - (aa) the Director-General for inclusion in Part A of the National Child Protection Register, if there are reasonable grounds for believing that the child has been abused or deliberately neglected; and
  - (bb) the provincial head of social development.

(6) In respect of reports made in good faith in accordance with this section, the provisions of section 359 will apply.

### **Referral of children in need of care and protection by other courts to child and family court**

**168.** (1) If it appears to a court in the course of any criminal or civil proceedings that a child involved in or affected by those proceedings is in need of care and protection, the court may order that the question whether the child is in need of care and protection be referred to a child and family court for decision.

(2) If it appears to a court in the course of any proceedings in terms of the Divorce Act, 1979 (Act No. 70 of 1979), or the Domestic Violence Act, 1998 (Act No. 116 of 1998), that allegations of abuse or neglect made in respect of a child of any of the parties to the proceedings are well-founded, the court may suspend the proceedings pending the outcome of an inquiry by the child and family court into the question whether the child is in need of care and protection.

(3) A court issuing an order in terms of subsection (1) or (2) may also order that the child be put in temporary safe care if it appears to the court that this is necessary for the safety and well-being of the child.

### **Removal of children to temporary safe care by order of child and family magistrate**

**169.** (1) If, on evidence given by a designated social worker on oath or confirmation before a child and family magistrate, it appears to the magistrate that a child who resides or happens to be in the area of that magistrate is in need of care and protection, the magistrate may order that the question of whether the child is in need of care and protection be referred to a child and family court for decision.

(2) A magistrate issuing an order in terms of subsection (1) may also order that the child be put in temporary safe care if it appears to the court that it is necessary for the safety and well-being of the child.

- (3) A child and family court may, before it decides a matter, order a person -
- (a) to carry out an inquiry or further investigation that may assist the court in deciding the matter; and
  - (b) to report to the court.
- (4) An inquiry or further investigation must be carried out -
- (a) in accordance with any procedures prescribed by regulation; and
  - (b) subject to any directions and conditions determined in the court order.
- (5) The court order may authorise the person conducting the inquiry or further investigation to enter any premises mentioned in the court order and on those premises -
- (a) question any person;
  - (b) record any information by any method; and
  - (c) carry out any specific instruction of the court.
- (6) A person carrying out an inquiry or further investigation may be accompanied by a police who may be authorised by the court to -
- (a) conduct any search;
  - (b) question any person;
  - (c) demand the name, address and identification number of any person on or residing or suspected to be residing on those premises;
  - (d) record any information by any method;
  - (e) seize any item in respect of which, on reasonable suspicion, an offence in terms of this Act has been or is being committed; and
  - (f) carry out any specific instruction of the court.
- (7) A warrant issued in terms of subsection (2) must identify the child in sufficient detail to execute the

warrant, but need not state the name of the child.

(8) A police officer or designated social worker authorised by a warrant may -

(a) by force if necessary -

(i) enter any premises mentioned in the warrant; and

(ii) remove the child from the premises; and

(b) on those premises exercise any power mentioned in section 67 (3) (a) to (e) or carry out any specific instructions of the magistrate.

(9) The person who has removed a child in terms of the warrant must without delay -

(a) inform the primary care-giver of the child of the removal of the child, if that person can readily be traced; and

(b) bring the matter to the child and family court registrar for referral to a child and family court in terms of section 95.

### **Removal of children to temporary safe care without warrant**

**170.** (1) A police officer, a designated social worker or an authorised officer may remove a child and put the child in temporary safe care without a warrant if there are reasonable grounds for believing -

(a) that the child -

(i) is in need of care and protection; and

(ii) needs immediate emergency protection; and

(b) that the delay in obtaining a warrant for the removal of the child and placing the child in temporary safe care may jeopardise the child's safety and well-being.

(2) The person who has removed and put a child in temporary safe care without a warrant must without delay -

(a) inform the primary care-giver of the child of the removal of the child, if that person can readily be traced;

(b) inform the relevant child and family court registrar of the removal of the child; and

(c) bring the matter to the registrar for referral to a child and family court in terms of section **95**.

(3) Misuse of a power referred to in subsection (1) by a social worker in the service of a designated child protection organisation, is a ground for the withdrawal of that organisation's designation in terms of section **119**.

### **Voluntary temporary safe care**

**171.** (1) The parent or care-giver of a child, or a person who finds a lost child may put the child in temporary safe care for a maximum period of 72 hours if -

(a) that parent or person is temporarily unable to care for the child;

(b) the child is in need of care and protection and needs immediate emergency protection; and

(c) the person in whose care the child is to be put, agrees to receive the child.

(2) If the child placed in temporary safe care is not reunited with its parent or primary care-giver within the 72 hour period, the person in whose care the child is placed must immediately bring the child before the child and family court for a determination in terms of section **174**.

### **Other children in need of care and protection**

**172.** If there are reasonable grounds for believing that a child, other than a child put in temporary safe care in terms of section **168**, **169** or **170**, is in need of care and protection, any of the following persons may bring the matter to the child and family court registrar for referral to a child and family court in terms of section **95**:

(a) a police officer, social worker or authorised officer;

(b) a person who has parental responsibility in respect of the child or under whose control the child is; or

(c) the Director-General.

### **Preconditions for removal of children in need of care to temporary safe care**

**173.** The best interest of the child must be the determining factor in any decision whether a child in need of care and protection should be removed and put in temporary safe care, and all relevant facts must for this purpose be taken into account, including the safety and well-being of the child as the first priority.

## ***Part 2: Child and family court processes***

### **Decision of question whether child is in need of care and protection**

**174.** (1) A child and family court must decide the question of whether a child who was the subject of proceedings in terms of section **168**, **169**, **170** or **172** is in need of care and protection.

(2) The child concerned must be brought before the court hearing the matter except if the child and family court registrar or the court decides otherwise.

(3) The court hearing the matter may -

(a) adjourn the matter for a period not exceeding 14 days at a time; and

(b) order that the child, pending decision of the matter, must -

(i) remain in temporary safe care at the place where the child is kept;

(ii) be transferred to another place in temporary safe care;

(iii) remain with the person under whose control the child is;

(iv) be put under the control of a family member or other relative of the child; or

(v) be placed in temporary safe care.

(4) If the court finds that the child is in need of care and protection, the court may make an appropriate order in terms of section **175**, taking into account section **164**.

(5) If the court finds that the child is not in need of care and protection, the court must -

(a) make an order that the child, if the child is in temporary safe care, be returned to the person in whose control the child was before the child was put in temporary safe care; or

(b) decline to make an order, if the child is not in temporary safe care.

### **Orders when child is found to be in need of care and protection**



**175.** (1) If a child and family court finds that a child is in need of care and protection, the court may make any order which is in the best interest of the child, which may be or include an order -

(a) referred to in section **59**;

(b) confirming that the person under whose control the child is may retain control of the child, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;

(c) that the child be returned to the person under whose control the child was before the child was placed in temporary safe care, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;

(d) that the person under whose control the child was make arrangements for the child to be taken care of in a partial care facility, if the court finds that the child became in need of care and protection because the person under whose control the child was lacked the time to care for the child;

(e) that an emergency court grant be paid to the child to provide in the basic needs of the child until the person under whose control the child is becomes able to provide in those basic needs, if the court finds that the child became in need of care and protection because the person under whose control the child was and the person who is legally obliged to maintain the child lacked the means to care for the child;

(f) if the child has no parent or care-giver or has a parent or care-giver but that person is unable or unsuitable to care for the child, that the child be placed in -

(i) court-ordered kinship care, if the child has a relative who is able, suitable and willing to be entrusted with the care of the child;

(ii) foster care with a suitable foster parent;

(iii) foster care with a group of persons or an organisation operating a collective foster care scheme;

(iv) temporary safe care, pending an application for the adoption of the child;

(v) shared care where different care-givers or centres alternate in taking responsibility for the care of the child at different times or periods; or

(vi) a child and youth care centre designated in terms of section **177** which provides a

residential care programme suited to the child's needs;

(g) if the child lives in a child-headed household, that the child must remain in that household subject to section **234**;

(h) that the child be placed in a facility designated by the court which is managed by an organ of state, or registered, recognised or monitored in terms of legislation, for the care and education of children with disabilities or chronic illnesses, if the court finds that -

(i) the child has a physical or mental disability or chronic illness; and

(ii) it is in the best interest of the child to be cared for in such facility;

(i) that the child be sent to a child and youth care centre designated in terms of section **177** which provides a secure care programme suited to the needs of the child, if the court finds -

(i) that the parent or care-giver cannot control the child; or

(ii) that the child displays criminal behaviour;

(j) that the child receive appropriate treatment or attendance, if needs be at state expense, if the court finds that the child is in need of medical, psychological or other treatment or attendance;

(k) that the child be admitted as an inpatient or outpatient to an appropriate facility, if the court finds that the child is in need of treatment for addiction to a dependence producing substance; or

(l) interdicting a person from maltreating, abusing, neglecting or degrading the child, or from having any contact with the child, if the court finds that -

(i) the child has been or is being maltreated, abused, neglected or degraded by that person;

(ii) the relationship between the child and that person is detrimental to the well-being or safety of the child; or

(iii) the child is exposed to a substantial risk of imminent harm.

(2) The court which makes an order may order that the child concerned be kept in temporary safe care until such time as effect can be given to the court's order.

(3) An order made by the court in terms of subsection (1) -

(a) is subject to such conditions as the court may determine which, in the case of the placement of a child in terms of subsection (1) (f) (i), (ii) or (iii), may include a condition -

(i) rendering the placement of the child subject to supervision by a social worker or other person designated by the court; or

(ii) requiring the person in whose care the child has been placed, to co-operate with the supervising social worker or other person or to comply with any requirement laid down by the court, failing which the court may reconsider the placement; and

(b) may be reconsidered by a child and family court at any time, and be confirmed, withdrawn or amended as may be appropriate.

(4) If a court finds that a child is not in need of care and protection the court may nevertheless issue an order referred to in subsection (1) in respect of the child, excluding a placement order.

### **Court orders to be aimed at securing stability in the child's life**

**176.** (1) Before a child and family court gives an order in terms of section **175** for the removal of the child from the care of the child's parent or care-giver, the court must -

(a) obtain and consider a report by a social worker on the conditions of the child's life, which must include -

(i) an assessment of the developmental, therapeutic and other needs of the child;

(ii) details of family preservation services that have been considered or attempted; and

(iii) a documented permanency plan taking into account the child's age and developmental needs aimed at achieving stability in the child's life containing the particulars prescribed by regulation; and

(b) consider the best way of securing stability in the child's life, including whether such stability could be secured by -

(i) leaving the child in the care of the parent or care-giver under the supervision of a social worker, provided that the child's safety and well-being must receive first priority;

(ii) placing the child in alternative care for a short period to allow for the reunification of the child and the parent or care-giver with the assistance of a social worker;

(iii) placing the child in alternative care with or without terminating parental responsibilities and rights of the parent or care-giver;

(iv) making the child available for adoption; or

(v) issuing instructions as to the evaluation of progress made with the implementation of the permanency plan at specified intervals.

(2) A very young child who has been abandoned by the parent must be made available for adoption with the minimum possible delay except when this is not in the best interest of the child.

(3) When issuing an order involving the removal of the child from the care of the child's parent or care-giver, the court may include in the court order instructions as to the implementation of the permanency plan for the child.

### **Placement of children in child and youth care centres**

**177.** (1) A child and family court may issue an order placing a child in the care of a child and youth care centre only if another option is not appropriate.

(2) If a child and family court decides that a child should be placed in the care of a child and youth care centre, the court must -

(a) determine the residential care programme or programmes best suited for the child; and

(b) order that the child be placed in a child and youth care centre offering that particular residential care programme or programmes.

(3) The MEC for social development in the relevant province must place the child in a child and youth care centre offering the residential care programme or programmes which the court has determined for the child, taking into account -

(a) the developmental, therapeutic, educational and other needs of the child;

(b) the permanency plan for the child which was considered by the court, and any instructions issued by the court with regard to the implementation of the permanency plan;

- (c) any other instructions of the court;
- (d) the distance of the centre from the child's family or community;
- (e) the safety of the community and other children in the centre, in the case of a child in need of secure care; and
- (f) any other relevant factors.

(4) The MEC must, as a general rule, select a centre offering the programme ordered by the court as close as possible to the child's family or community.

### **Duration and extension of orders**

**178.** (1) An order made by a child and family court in terms of section **175** -

(a) lapses on expiry of -

(i) two years from the date the order was made; or

(ii) such shorter period for which the order was made; and

(b) may be extended -

(i) by a child and family court for a period of not more than two years at a time; or

(ii) in terms of section **179**, in the case of supervised or alternative care.

(2) No court order referred to in subsection (1) extends beyond the date on which the child in respect of whom it was made reaches the age of 18 years.

### **Extension of placement orders by MECs for social development**

**179.** (1) An order of a child and family court placing a child under supervised or alternative care may be extended by the MEC for social development in the relevant province following a process prescribed by regulation.

(2) Such a process must provide for -

(a) consultation with -

(i) the child;

(ii) the parent and any other person who has parental responsibilities and rights in respect of the child;

(iii) where appropriate, the management of the centre where the child is placed; and

(iv) any alternative care-giver of that child.

(b) written reasons to be given to the child, the parent, such other person, the management of the centre, and alternative care-giver for any decision by the MEC to extend or not to extend the order; and

(c) an appeal against such decision to a child and family court by -

(i) by the child, the parent, such other person, the management of the centre or alternative care-giver; or

(ii) any social worker who has an interest in the matter.

## **Regulations**

**180.** The Minister may make regulations in terms of section 354 prescribing -

(a) the particulars permanency plans must contain;

(b) the manner in and time-intervals at which permanency plans must be evaluated; and

(c) procedures for determining whether a child has been abandoned; and

(d) any other matter that may be necessary to facilitate the implementation of this Chapter.

## **CHAPTER 12**

### **CONTRIBUTION ORDERS**

#### **Issue of contribution orders**

**181.** (1) A child and family court may make an order instructing a respondent to pay a sum of money or a recurrent sum of money -

(a) as a contribution towards the maintenance, treatment or costs resulting from the other special needs of a child -

(i) placed in alternative care; or

(ii) temporarily removed by the court from the child's family for treatment, rehabilitation, counselling or another reason; or

(b) as a short-term emergency contribution towards the maintenance, treatment or costs resulting from the other special needs of a child in urgent need.

(2) A contribution order takes effect from the date on which it is made unless the court orders that it takes effect from an earlier or later date.

(3) A child and family court may vary, suspend or rescind a contribution order or revive the order after it has been rescinded.

(4) If a court other than the court which made a contribution order varies, suspends, rescinds or revives the order in terms of subsection (3), the registrar of the first-mentioned court must immediately inform the clerk of the last mentioned court of such variation, suspension, rescission or revival.

## **Jurisdiction**

**182.** (1) A contribution order may be made, varied, suspended, rescinded or revived by the child and family court of the area in which -

(a) the respondent is ordinarily resident, carries on business or is employed; or

(b) the child involved in the matter is ordinarily resident or happens to be.

(2) A provisional contribution order may be made by a child and family court having jurisdiction in terms of subsection (1) (b) against a respondent resident in any country which is a "proclaimed country" within the meaning of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), or a "designated country" within the meaning of the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989 (Act No. 6 of 1989).

## **Effect of contribution orders**

**183.** (1) A contribution order and a provisional contribution order have the effect of a maintenance order and a provisional maintenance order in terms of the Maintenance Act, 1998 (Act No. 99 of 1998), and the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), as may be appropriate.

(2) Sections 31 and 40 of the Maintenance Act, 1998, read with such changes as the context may require, apply to a person who refuses or fails to comply with a contribution order.

### **Payments to be made to person determined by court**

**184.** A contribution order must instruct the respondent to pay the sum stated therein to the clerk of the child and family court or other person as the court may determine.

### **Attachment of wages of respondents**

**185.** (1) A child and family court which has made a contribution order against a respondent may -

(a) order the employer of the respondent -

(i) to deduct the amount of the contribution which that respondent has been ordered to pay, from the respondent's wages, salary or remuneration; and

(ii) to pay that amount to the clerk of the court or other person specified in the order; or

(b) vary, suspend or rescind such an order or revive the order after it has been rescinded.

(2) The employer must promptly pay any amount deducted under an order in terms of subsection (1) to the clerk of the child and family court or other person specified in the order.

### **Change of residence or work by respondent**

**186.** (1) A respondent against whom a contribution order is in force must -

(a) give notice, in writing, to the clerk of the child and family court which made the order of any change in that person's residential address or place of work; and

(b) state in that notice the new residential address or the name and address of the new employer.

## **CHAPTER 13**

### **CHILDREN IN ALTERNATIVE CARE**

#### **Definitional provision**



**187.** A child is in alternative care if the child has been placed -

(a) in foster care;

(b) in court-ordered kinship care;

(c) 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

(d) in temporary safe care.

### **Free and subsidised state services**

**188.** A child in alternative care is entitled to -

(a) free basic education in state schools;

(b) subsidised school uniforms, shoes and stationary;

(c) free basic health care;

(d) subsidised public transport; and

(e) exemption from payment of any fees when applying for official documents from any organ of state.

### **Leave of absence**

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

(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 care the child has been placed, but if the child has been placed in the care of such a person under the supervision of a social worker, leave of absence may be granted by that person only with the approval of the social worker; and

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

(2) (a) The management, person referred to in subsection (1), social worker or the head of social development in the province -

(i) may at any time cancel leave of absence granted in terms of subsection (1); and

(ii) must cancel such leave if the MEC for social development in the province so directs.

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

(c) When a child's leave of absence has been cancelled, the management, person referred to in subsection (1), 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.

### **Children absconding from alternative care**

**190.** (1) Any police officer, social worker or authorised officer may without a warrant apprehend a child in alternative care who -

(a) has absconded from the child and youth care centre or person in whose 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 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) A child so apprehended -

(a) must without delay be brought before a child and family court magistrate; and

(b) may, until brought before a child and family court magistrate, be kept in temporary safe care.

(3) When the child is brought before a child and family court magistrate, the magistrate 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 magistrate 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;

(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

(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 MEC for social development in the relevant province in terms of subsection (5), if the magistrate is of opinion that there are good reasons why the child should not be returned to that centre or person; or

(iii) be placed in another form of alternative care.

(4) The child and family court magistrate must -

(a) report to the MEC for social development in the relevant province the result of an inquiry in terms of subsection (3); and

(b) notify the MEC of any order made in terms of subsection (3) (c).

(5) When an order has been made in terms of subsection (3) (c) (ii) the MEC may, after consideration of the report of the child and family court magistrate and such inquiry as the MEC may consider necessary -

(a) deal with the child in terms of section **191, 193** or **195**; or

(b) 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 children in alternative care**

**191.** (1) The MEC for social development in the relevant province may, subject to subsection (4), 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. The MEC may not transfer a child to a child and youth care centre in another province without the permission of the MEC for social development in that other province.

(2) An order issued by the MEC in terms of subsection (1) must be regarded as having varied the court order in terms of which the child was placed in alternative care.

(3) (a) If the MEC 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 social worker, the order must specify the requirements with

which the child and that parent, guardian or former care-giver must comply.

(b) If any requirement referred to in paragraph (a) is breached or not complied with, the social worker concerned may bring the child before a child and family court, which may, after an inquiry, vary the order issued by the MEC or make a new order in terms of section **175**.

(4) Before the MEC issues an order in terms of subsection (1), a social worker designated by the MEC 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 MEC transfers a child from a secure care child and youth care centre to a less restrictive child and youth care centre or to the care of a person, the MEC 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 child and family 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 programmes**

**192.** (1) The MEC for 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 MEC may transfer the child to another child and youth care centre or to a person in terms of section **191**.

(3) No determination in terms of subsection (1) may be carried out without ratification by a child and family 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 children who are already in alternative care**

**193.** (1) A child and family magistrate or the MEC for 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 child and family court magistrate issuing a notice of removal in terms of subsection (1) must submit a report to the MEC for social development in the relevant province on the reasons for the notice.

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

(a) deal with the child in terms of section **191** or **195**; or

(b) order that the child be returned to the child and youth care centre or person in whose care or temporary the child was immediately before the subsection (1) notice was issued.

### **Provisional transfer from alternative care**

**194.** (1) The MEC for 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 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 reunify the child with the child's family; and

(b) a report on such assessment and reunification have been submitted to and considered by the MEC.

(3) A notice of provisional transfer is subject to the condition that -

(a) the provisional transfer must be managed under the supervision of a social worker to establish and test the feasibility of -

(i) reunification of the child with the child's family;

(ii) integration into an alternative family; or

(iii) a transfer to another child and youth care centre or any other form of placement;

(b) the MEC may at any time revoke the provisional transfer; and

(c) the MEC must revoke the transfer if the child and the social worker so requests.

(4) The MEC may at the end or at any time during, the trial period transfer the child from alternative care in terms of section **195**.

(5) The notice of provincial transfer shall be considered proof of eligibility for any form of state support which would have been payable if the transfer had been permanent.

### **Permanent discharges from alternative care**

**195.** (1) The MEC for 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 reunify the child with the child's family; and

(b) a report on such assessment and reunification have been submitted to and considered by the MEC.

(3) A notice of discharge relieves the child and youth care centre or person in whose care or temporary safe care that child has been placed, from any further responsibilities in relation to the child.

### **Discharges from alternative care after reaching age of 18 years**

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

(2) A child and family court may on application by a person placed as a child in alternative care, allow that person to remain in that care until the end of the year in which that person reaches the age of 21 years if -

(a) the current alternative care-giver is willing and able to care for that person; and

(b) the continued stay in that care is necessary to enable that person to complete his or her education or training.

### **Death of children in alternative care**

**197.** (1) If a child in alternative care dies, the management of the child and youth care centre or person in whose care the child has been placed must within seven days report the death of the child to the Children's Protector.

(2) The Children's Protector must in terms of section **325** investigate the circumstances of the child's death if there are allegations or indications that the child died because of abuse or neglect.

## **CHAPTER 14**

### **FOSTER CARE AND CARE BY RELATIVES**

#### **Definitional provision**

**198.** (1) A child is in foster care if the child has in terms of an order of a child and family court or in terms of section **194** or **195** been placed in the care of a person who is not the parent or guardian of the child, but foster care excludes the placement of a child -

(a) in court-ordered kinship care;

(b) in temporary safe care; or

(c) in the care of a child and youth care centre.

(2) A child is in court-ordered kinship care if the child has in terms of an order of a child and family court been placed in the care of a relative who is not the parent or guardian of the child, but court-ordered kinship care excludes the placement of a child in the temporary safe care of a relative.

## ***Part 1: Foster care and court-ordered kinship care***

### **Initial proceedings**

**199.** Before a child and family court places a child in foster care or kinship care, the court must comply with Part 2 of Chapter **11** to the extent that the provisions of that Part are applicable to the particular case.

### **Prospective foster parents or kinship care-givers**

**200.** (1) A prospective foster parent or kinship care-giver must be -

(a) a fit and proper person to be entrusted with the foster care or kinship care of the child;

(b) willing and able to undertake, exercise and maintain the responsibilities of such care;  
and

(c) properly assessed by a social worker for compliance with paragraphs (a) and (b).

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

### **Determination of placement of children in foster care**

**201.** (1) Before a child and family court places a child in foster care in terms of section **175**, the court must consider a report by a social worker about -

(a) the cultural, religious and linguistic background of the child; and

(b) the availability of a suitable person with a similar background to that of the child who is willing and able to provide foster care or kinship care to the child.



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

(3) 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 -

(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 or kinship care to the child.

### **Number of children to be placed in foster or kinship care per household**

**202.** (1) Not more than six children may be placed in foster care or kinship care with a single person or two persons sharing a common household, except where -

(a) the children are siblings or related; or

(b) the court considers that for any other reason to be in the best interest of all the children.

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

### **Duration of kinship care orders and stable foster care placements**

**203.** (1) A child and family court may despite section **178(1)(a)** and after having considered the need for creating stability in the child's life, issue a kinship care order for more than two years, or extend such an order for more than two years at a time, if -

(a) the child has been abandoned by the biological parents;

(b) the child's biological parents are deceased;

(c) there is for any other reason no purpose in attempting reunification between the child and the child's biological parents; and

(d) it is in the best interest of the child.

(2) A child and family court may despite section **178(1)(a)** and after a child has been in foster care for more than two years 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.

### **Reunification of child with biological parents**

**204.** (1) If a child and family court placing a child in foster care or kinship 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 referred to in section **175 (3) (a)** which provide for a social worker to facilitate such reunification.

(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 social worker appointed to facilitate the reunification must submit a report to the child and family 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 child and family court considering the report may -

(a) order that the social worker must continue facilitating the reunification;

(b) order the termination of the reunification services if there are no prospects of reunification;

(c) terminate the services of the social worker with respect to the child;

(d) terminate some or all of the parental responsibilities and rights of the biological parents;  
or

(e) assign additional parental responsibilities and rights to the foster parent or kinship care-giver.

### **Responsibilities and rights of foster parents and kinship care-givers**

**205.** (1) The foster parent or kinship care-giver of a child has those parental responsibilities and rights in respect of the child as set out in -

(a) the order of the child and family court placing the child in the foster care or kinship care of that foster parent or kinship care-giver;

(b) an order of the child and family court amending the initial order;

(c) an order of court in terms of section **35**;

(d) a parenting plan between the parent or guardian of the child and the foster parent or kinship care-giver in terms of Part **3** of Chapter **5**; or

(e) any applicable provisions of this Act.

(2) An order of the child and family court may give parental rights and responsibilities to a foster parent or kinship care-giver in addition to those normally necessary for a foster parent or kinship care-giver 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 child and family court may in terms of section **90** monitor the suitability of the placement of a child in foster care or court-ordered kinship care.

### **Termination of foster care and court-ordered kinship care**

**206.** (1) Foster care and court-ordered kinship care may be terminated by a child and family court only if it is in the best interest of the child.

(2) Before terminating the foster care or court-ordered kinship 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 or kinship care-giver; and

(ii) the child and the family of the foster parent or kinship care-giver; 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 or in court-ordered kinship care with the kinship care-giver;

(iii) placing the child in any other alternative care; or

(iv) adoption of the child.

## ***Part 2: Informal kinship care arrangements***

### **Responsibilities and rights of relatives in terms of informal kinship care arrangements**

**207.** (1) A relative caring for a child in terms of an informal kinship care arrangement -

(a) has the parental responsibilities and rights in respect of the child -

(i) as provided for in section **44** and any other provisions of this Act; and

(ii) as a court may assign to that relative in terms of section **35**; and

(b) may on behalf of the child's parent or guardian -

(i) consent to such medical treatment or operation in terms of section **135** (3); or

(ii) assist the child in terms of section **135** (2) (b) to consent to such operation;

(c) may on behalf of the child, apply to any organ of state for any grant or other aid in respect of which the child may qualify, including a social security grant;

(d) may guide and discipline the child;

(e) may consent to the child going on journeys, including educational, cultural, sports and holiday excursions; and

(f) may perform such other acts as may be prescribed by regulation.

(2) A relative caring for a child in terms of an informal kinship care arrangement may exercise the responsibilities and rights referred to in subsection (1) only to the extent that care of the child is not provided by the parent, guardian or other person to whom parental rights and responsibilities in respect of the child has been assigned.

(3) Consent or assistance in terms of subsection (1) (b) may only be given or provided with the written authority of the parent or guardian except if -

(a) the child -

(i) has been abandoned by the parent or guardian; or

(ii) is an orphan; or

(b) the whereabouts of the parent or guardian are unknown.

### **Termination of informal kinship care arrangements**

**208.** An informal kinship care arrangement may at any time be terminated by -

(a) the parent or guardian of the child reclaiming his or her right to care for the child, except when a child and family court orders otherwise;

(b) the relative caring for the child in terms of the arrangement; or

(c) the child and family court on application by the child or any person with an interest in the care of the child.

### **Regulations**

**209.** The Minister may make regulations in terms of section **354** -

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

(b) prescribing minimum norms and standards to which collective foster care schemes, and any foster care programmes provided in terms of such schemes, must comply;

(c) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

## CHAPTER 15

### CHILD AND YOUTH CARE CENTRES

#### Definitional provision

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

(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 be or include a programme designed for -

- (a) the reception, care and bringing-up of children otherwise than in their family environment;
- (b) the reception, care and bringing-up 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 harm or neglect;
- (e) 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;

(f) the reception and voluntary temporary safe care of children in terms of section **171**;

(g) the reception and care of, and the provision of tuition or training to, children ordered by a court to receive tuition or training;

(h) the reception and secure care of children awaiting trial or sentence;

(i) the reception and secure care of children with behavioural and emotional difficulties, for the purpose of providing counselling, tuition and training to them;

(j) the reception, secure care and training of children in terms of an order under -

(i) the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or

(ii) section **175** (1) (i) or **191** of this Act; 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 programme or programmes, offer the following services:

(a) the provision of appropriate care, tuition and training to children with physical or mental disabilities or chronic illnesses, including HIV/AIDS;

(b) the treatment of children for addiction to dependence producing substances; or

(c) any other service that may be prescribed by regulation.

### **Strategies to ensure sufficient provision of child and youth care centres**

**211.** (1) The Minister must include in the national policy framework referred to in section **5** a comprehensive national strategy aimed at ensuring the establishment of an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions.

(2) The MEC or *municipality* must -

(a) maintain a record of all available child and youth care centres in its area; and

(b) plan strategies for the establishment of an appropriate spread of child and youth care centres in its area providing the required range of residential care programmes.

(3) The MEC or *municipality* must implement subsection (2) in accordance with, and subject to any limitations as may be determined in, the national policy framework referred to in section 5.

## ***Part 1: Establishment and registration of child and youth care centres***

### **Establishment of child and youth care centres by organs of state**

**212.** (1) The Minister, an MEC for social development, a *municipality* acting within its own statutory functions may establish and operate child and youth care centre, provided that the centre -

is managed and maintained in accordance with this Act; and

(b) complies with -

(i) the minimum norms and standards mentioned in section 227; and

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

(2) A child and youth care centre may be established by -

(a) the Minister only with the concurrence of the Minister of Finance; and

(b) an MEC for social development only with the concurrence of the member of the Executive Council who is responsible for finance in the province.

### **Existing government children's homes, places of safety, secure care facilities, schools of industries and reform schools**

**213.** (1) As from the date on which section 212 took 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 212 as a child and youth care centre providing a residential care programme mentioned in section 210 (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 **212** as a child and youth care centre providing residential care programmes mentioned in section **210** (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 **212** as a child and youth care centre providing a residential care programme mentioned in section **210** (2) (h);

(d) an existing school of industries established or deemed to have been established in terms of the Union Education Act, 1917, must be regarded as having been established in terms of section **212** as a child and youth care centre providing a residential care programme mentioned in section **210** (2) (g);

(e) an existing reform school established or deemed to have been established in terms of the Union Education Act, 1917, must be regarded as having been established in terms of section **212** as a child and youth care centre providing a residential care programme mentioned in section **210** (2) (j); and

(f) the facilities mentioned in paragraphs (a) to (e) of this subsection continue to be administered by the organ of state which administered them immediately before that date, but the President, at any future date, may by proclamation assign the administration of the facilities mentioned in paragraphs (d) and (e) to the Minister.

(2) Until the administration of the facilities mentioned in subsection (1) (d) and (e) are assigned to the Minister, the Cabinet member responsible for education must in relation to those facilities and the children in those facilities perform the functions vested in an MEC for social development in terms of this Act.

### **Establishment of child and youth care centres by other persons**

**214.** (1) Any person or 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; and

(c) complies with the minimum norms and standards mentioned in section **227**.

(2) Subsection (1) also applies to a child and youth care centre established in terms of section **212** if the operation and management of the centre have been contracted out to a private person.

## **Existing registered children's homes**

**215.** As from the date on which section **214** took 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 **214** as a child and youth care centre providing a residential care programme mentioned in section **210** (2) (a).

## **Notices of enforcement**

**216.** (1) A provincial head of social development or a *municipality* 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 **217** 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 section **214** 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.

## **Application for registration or renewal of registration**

**217.** (1) An application for registration of a child and youth care centre referred to in section **214**, or for the renewal of such a registration, must -

(a) be lodged with the MEC for 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;

(iii) any documents that may be prescribed by regulation; and

(iv) a fee that may be prescribed by regulation.

(2) An applicant must provide such additional information relevant to the application as the MEC for 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 MEC for social development may allow a late application on good cause shown.

### **Consideration of applications**

**218.** (1) The MEC for social development must -

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

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

(2) When deciding an application, the MEC for social development must take into account all relevant factors, including whether -

(a) the child and youth care centre complies with -

(i) the minimum norms and standards mentioned in section **227**; 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; and

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

(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 MEC for social development must consider a report of a social worker before deciding an application for registration or renewal of registration.

### **Conditional registration**

**219.** The registration or renewal of the registration of a child and youth care centre may be granted on such conditions as the MEC for 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**

**220.** The MEC for social development in the relevant province may on application by the holder of a registration of a child and youth care centre, amend the registration by written notice to that person.

### **Cancellation of registration**

**221.** (1) The MEC for 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 minimum norms and standards mentioned in section **227**;

(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 in terms of section **229**; or

(iv) any other requirements of this Act;

(b) any conditions 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 MEC for 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, a provincial head of social development or a *municipality* may assist a registration holder to comply with the minimum norms and standards mentioned in section **227**, or any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated, or any provisions of the organisational development plan established for the centre in terms of section **229**, where the cancellation was due to a failure to comply with those norms and standards, requirements or plan.

(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 MEC for 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 centres**

**222.** The holder of a registration of a child and youth care centre may close the centre by -

(a) giving written notice to the MEC for social development in the relevant province; and

(b) surrendering the certificate of registration to the MEC for social development for cancellation.

### **Children in child and youth care centres to be closed**

**223.** If a child and youth care centre is to be closed in terms of section **221** or **222** every child placed in that centre must be dealt with in terms of section **191**.

### **Appeals against and reviews of certain decisions**

**224.** An applicant aggrieved by a decision of an MEC for social development in terms of section **218** or **219**, or a registration holder aggrieved by a decision of an MEC for social development in terms of section **221**, may -

(a) lodge an appeal with the Minister against that decision; or

(b) apply to a child and family court or other court to review that decision.

## ***Part 2: Operation and management of child and youth care centres***

### **Management boards**

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

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

(a) the Minister, in the case of a child and youth care centre which is operated by the Minister;

(b) the MEC for social development in the relevant province, in the case of a child and youth care centre which is operated by the province;

*(c) the relevant municipality, in the case of a child and youth care centre which is operated by the municipality; and*

(d) the registration holder in accordance with a procedure prescribed by regulation, in the case of a privately operated child and youth care centre.

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

(4) 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.

### **Managers and staff of child and youth care centres**

**226.** (1) The person or organisation operating a child and youth care centre must appoint or designate -

(a) a person as the manager of the centre; and

(b) a sufficient number of staff or other appropriate persons to assist in operating the centre.

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

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

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

(a) prescribed by regulation; or

(b) required in the conditions of registration of the centre.

### **Minimum norms and standards**

**227.** (1) The management of a child and youth care centre must take all reasonable steps to ensure that the centre complies with the minimum norms and standards as prescribed.

### **Management system**

**228.** A child and youth care centre must be managed -

(a) in accordance with -

(i) a system of management that allows for a division of responsibilities between the management board and the manager of the centre, and an appropriate interaction in the exercise of those responsibilities, as may be prescribed by regulation;

(ii) the organisational development plan established for the centre in terms of its quality assurance process; and

(iii) any other requirements of this Act; and

(b) in a way that is conducive to implementing the residential care programme or programmes offered at the centre.

### **Quality assurance process**

**229.** (1) The provincial head for social development must ensure that a quality assurance process is carried out in accordance with the regulations every three years in respect of each child and youth care centre.

(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 -

(a) the MEC for social development in the province; and

(b) the Children's Protector.

## ***Part 3: Miscellaneous***

### **Regulations**

**230.** The Minister may in terms of section **354** make regulations prescribing -

(a) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of -

(i) applications for registration of child and youth care centres;



(ii) applications for renewal or amendment of such registrations; and

(iii) objections to such applications;

(b) the matters with which applicants must comply before, during or after the lodging of their applications;

(c) consultation processes that must be followed in connection with such applications;

(d) any additional factors that must be taken into account when deciding such applications;

(e) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;

(f) the format and contents of registration certificates;

(g) methods and procedures to enforce compliance with registration conditions;

(h) matters in connection with the physical attributes, operation and management of child and youth care centres, including the setting of minimum norms and standards in this regard;

(i) matters in connection with residential care programmes provided at child and youth care centres, including the setting of minimum norms and standards for -

(i) the core components of such programmes; and

(ii) the implementation of such programmes;

(j) the provision of programmes at child and youth care centres to meet the developmental, therapeutic and recreational needs of children;

(k) an assessment of and an individual developmental and permanency plan for each child;

(l) the powers and duties of the management boards of child and youth care centres;

(m) the composition of management boards, which may include representation for staff and residents;

(n) matters relating to members of management boards, including -

- (i) appointment procedures;
- (ii) qualifications for membership;
- (iii) term of office;
- (iv) filling of vacancies; and
- (v) suspension or termination of membership;

(o) matters relating to the functioning of management boards, including -

- (i) designation and functions of presiding members;
- (ii) the convening and conduct of meetings;
- (iii) quorums; and
- (iv) the appointment and functioning of committees of a board;
- (p) matters relating to training, minimum qualifications and experience for staff of child and youth care centres;
- (q) matters relating to the responsibilities of and interaction between, the management board and the staff and residents of a child and youth care centre;
- (r) the reporting responsibilities of management boards and staff towards the department, person or organisation operating the child and youth care centre;
- (s) the format of the constitution or founding document of a child and youth care centre and the matters to be regulated in such constitution or founding document;

(t) the rights of children in child and youth care centres;

(u) management, disciplinary and other practices in child and youth care centres;

(v) matters in connection with quality assurance processes and organisational development plans established in terms of such processes for child and youth care centres, including -

- (i) the composition of teams to conduct internal and independent assessments;

(ii) the qualifications of team members and the remuneration payable to members of independent teams;

(iii) the manner in which internal and independent assessments must be conducted;

(iv) the core components of organisational development plans;

(v) the implementation, revision and amendment of such plans;

(vi) the monitoring of implementation and reporting of violations of such plans; and

(vii) the qualifications, functions and remuneration of mentors appointed to oversee the implementation of such plans;

(viii) the role of the Children's Protector in monitoring child and youth care centres;

(w) any other matter that may facilitate the implementation of this Chapter.

## **CHAPTER 16**

### **CHILDREN IN ESPECIALLY DIFFICULT CIRCUMSTANCES**

#### **Definitional provision**

**231.** (1) Children in especially difficult circumstances are -

(a) children affected by malnutrition;

(b) children affected by HIV/AIDS;

(c) children with disabilities;

(d) children with chronic illnesses;

(e) children who are subject to exploitative labour practices;

(f) children living or working on the streets;

(g) children in child-headed households; and

(h) children who are subject to commercial sexual exploitation.

(2) This Chapter may not be read as limiting the application of Chapter 11 in respect of a child within any of the above categories who is in need of care and protection.

### **Strategies concerning children in especially difficult circumstances to be included in national policy framework**

**232.** (1) The Minister must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at identifying, assisting and promoting the best interest of children in especially difficult circumstances, which must -

(a) include strategies aimed at -

(i) combating malnutrition among children and providing malnourished children or children at risk of malnutrition access to sufficient and appropriate food, including emergency measures for children whose survival is at stake;

(ii) encouraging orphaned, abandoned or impoverished children or children affected by HIV/AIDS or other chronic illnesses to remain in their homes or communities or abandoning their education to live and work on the streets;

(iii) identifying child-headed households and supporting their functioning in the community;

(iv) assisting children with disabilities or chronic illnesses to have access to educational, rehabilitation and health care services and empowering them to develop their self-reliance and potential;

(v) empowering parents or care-givers of children with disabilities or chronic illnesses to care for their children in the home environment and educating parents or care-givers of such children on matters affecting their children;

(vi) combating exploitative labour practices and rehabilitating children subjected to such practices;

(vii) preventing children from leaving their home environment to live and work on the streets;

(viii) providing street children with access to basic nutrition, basic health care services and shelter, including drop-in centres and halfway homes;

(ix) providing outreach programmes for and counselling to street children, rehabilitating them and reunifying them with their families;

(x) integrating street children into the education system, or into a system that includes both education and other services to meet the needs of street children;

(xi) educating children not to become involved in prostitution and pornography or from being sexually abused;

(xii) providing children who are subject to commercial sexual exploitation with access to basic nutrition, basic health care services and shelter, including drop-in centres and halfway homes; and

(xiii) providing outreach programmes for and counselling to children who are subject to commercial sexual exploitation;

(xiv) providing impoverished children free access to primary and basic health care services, including at shelters and drop-in centres and through the use of mobile clinics;

(xv) providing incentives for private sector health care institutions to provide impoverished children access to their services; and

(xvi) providing impoverished children with free primary and secondary education;

(b) set out the responsibilities of and participating roles for municipalities and provincial organs of state in the development and implementation of programmes and projects giving effect to those strategies; and

(c) promote the engagement of non-governmental organisations in the development and implementation of programmes and projects giving effect to those strategies.

### **Preventative measures against malnutrition**

**233.** (1) An MEC for social development in a province must take appropriate steps to combat malnutrition amongst children in the province in order to increase the rate of child survival.

(2) To increase the rate of child survival and to combat malnutrition, both the Minister and the MECs for social development must initiate programmes providing for a package of services comprising supplementary nutrition, immunization, health and referral services for children below six years of age, as well as school feeding schemes and health check-up, immunization and supplementary nutrition for

pregnant and lactating women.

(3) The programmes referred to in subsection (2) may include assistance to non-governmental organisations providing food, shelter, clothes, skills development, child care and health promotion services.

### **Child-headed households**

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

(a) the parent or primary care-giver of the household is terminally ill or has died because of AIDS or another cause;

(b) no adult family member is available to provide care for the children in the household; and

(c) a child has assumed the role of primary care-giver in respect of a child or children in the household.

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

(a) a child and family court; or

(b) an organ of state or non-governmental organisation determined by the provincial head of social development.

(3) The adult person referred to in subsection (2) -

(a) may collect and administer for the child-headed household any social security grant or other grant or assistance to which the household is entitled; and

(b) is accountable to the provincial department of social development, or to another organ of state or a non-governmental organisation designated by the provincial head of social development, for the administration of any money received on behalf of the household.

(4) The adult person referred to in subsection (2) 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.

(5) The child heading the household may, subject to the supervision and advice of the adult person referred to in subsection (2), take all day to day decisions relating to the household and the children in the household as if that child was an adult primary care-giver.

(6) A child-headed household may not be excluded from any aid, relief or other programme for poor households provided by an organ of state in the national, provincial or local sphere of government solely by reason of the fact that the household is headed by a child.

### **Municipal monitoring and support of children in especially difficult circumstances**

**235.** Each metropolitan and local municipality must -

(a) determine and keep the statistics prescribed by regulation of the estimated total number of -

(i) child-headed households in its area;

(ii) lost and abandoned children in its area;

(iii) street children in its area;

(iv) children with disabilities and chronic illnesses in its area; and

(v) children subjected to commercial sexual exploitation in its area;

(b) regularly monitor the location and socio-economic conditions of those households and of each of those categories of children;

(c) at least once every three years make a needs analysis prescribed by regulation of those households and each of those categories of children;

(d) submit at intervals prescribed by regulation the statistics required by regulation in respect of those households and each of those categories of children to organs of state specified by regulation; and

(e) apply those statistics and the needs analysis for purposes of budgeting and the provision of services, including access to basic nutrition, shelter, health care and social services.

### **Schools to assist in identifying certain children in especially difficult circumstances**

**236.** The principal of a public or private school must on a confidential basis -

- (a) identify children who are frequently absent from school because of being in need of care and protection;
- (b) take all reasonable steps to assist them in returning to school or to discourage them from leaving school; and
- (c) submit the names and addresses of those children to the provincial head of social development.

### **Consent to medical treatment and operations**

**237.** (1) If a medical practitioner or nurse considers any medical treatment or operation necessary in the interest of the health of a street child or a child in a child-headed household, the superintendent of a hospital or other person designated by the superintendent may on behalf of the child's parent or guardian -

- (a) consent to such medical treatment or operation in terms of section **135** (3); or
- (b) assist the child in terms of section **135** (2) (b) to consent to such operation.

(2) Subsection (1) does not apply in respect of the medical treatment of a child who is at least 12 years of age and is of sufficient maturity and has the mental capacity to consent to such treatment in terms of section **135** (2) (a).

(3) A child's age may for the purpose of subsection (3) be estimated by the relevant superintendent or the other designated person.

### **Reunification of street children with their families**

**238.** A social worker facilitating the reunification of a street child with the child's family must -

- (a) investigate the causes why the child left the family home;
- (b) address those causes and take precautionary action to prevent a recurrence; and
- (b) provide counselling to both the child and the family before and after reunification.

### **Child pornography on the Internet**

**239.** An Internet service provider operating in the Republic must take all reasonable steps to block access



through its server to sites providing child pornography on the Internet.

### **Children subject to exploitative labour practices**

**240.** (1) No person may -

(a) employ a child who is under the age of 15 years;

(b) force a child to work for that or any other person, whether for reward or not; or

(c) encourage, induce or force a child, or allowing a child, to perform work that -

(i) is inappropriate for a person of that child's age; or

(ii) places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development;

(2) Subsection (1) (a) does not prevent the engagement of a child, whether for reward or not -

(a) subject to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), in an advertisement, in sport or in an artistic or cultural event, provided that such engagement does not place the child's well-being, education, physical or mental health or spiritual, moral or social development at risk; or