

Children's Act Media Guide

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Centre for Child Law
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Children's Act Media Guide: Contents

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1. Introduction

The new Children's Act has been a decade in the making. But reviewing the laws affecting children in the face of problems like HIV/Aids, widespread poverty, domestic violence, abuse and the emergence of child-headed households is a complex task. After years of apartheid degradation, many South Africans have seen the dissolution and destruction of traditional family structures. They have been robbed, not only of civil liberties but the services and opportunities a democratic state must provide its people, to ensure that families can care for and promote the growth and development of their children. For the greater portion of our population social services and opportunities to improve their circumstance were not forthcoming. This has seen an increase in unemployment, poverty, violence and crime, all of which have contributed to the increased neglect and abuse of our children.

While these problems have become more prevalent in South African society, the legislation affecting children remained unable to respond to the everyday struggles facing children and their families.

The new Children's Act (Act no 38 of 2005), and the corresponding Children's Amendment Bill [B19F- 2006], have been designed to help the South African judicial system cope with the realities of South Africa's society.

In a memorandum attached to the Children's Amendment Bill [B19-2006], it states that 'Over the past few years, it has become clear that existing legislation is not in keeping with the realities of current social problems and no longer protects children adequately.'¹

The memorandum goes on to say: 'In addition thereto, the Republic of South Africa has acceded to various international conventions, such as the United Nations Declaration on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, the principles of which have to be incorporated into South African Law.'² The Children's Act serves to cement the principles of these international conventions into our law.

South Africa's constitution, founded on principles enshrining human rights and dignity clearly outlines the rights of children in Section 28. The Act clarifies and builds on these rights, providing a comprehensive and broad legal framework governing the rights and protection of South Africa's smallest citizens.

The chief objectives of the act are:

- To promote the preservation and strengthening of families.
- To give effect to certain constitutional rights of children, including the right that any child's best interests be considered of paramount importance in all matters concerning that child

¹ Children's Amendment Bill, B19F- 2006, Memorandum on the objects of the Children's Amendment Bill, 2006

² Children's Amendment Bill, B19F- 2006, Memorandum on the objects of the Children's Amendment Bill, 2006

- To give effect to South Africa's obligations concerning the well being of children in terms of international instruments binding in the country
- To make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children
- To strengthen and develop community structures which can assist in providing care and protection for children
- To protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards
- To provide care and protection to children who are in need of care and protection
- To recognise the special needs that children with disabilities may have
- Generally to promote the protection, development and well being of children.

The steps taken to protect the rights of children in the Act are intended to cause a corresponding improvement in the circumstances of families and communities in which those children will grow up and mature³. It is no leap of the imagination to hope that children who realise their potential as a result of the services provided to them and their families will grow into well-adjusted, productive community members and citizens.

2. The Children's Act and the Children's Amendment Bill: An Overview

When the new children's statute was initially proposed, it was decided that it be split into two documents or what would become the Children's Act and the Children's Amendment Bill. A brief technical background to this process is given in section 3. The Act covers legislation at national levels of competency and the Amendment Bill deals with legislation at provincial and national levels of competency.

The Act was signed into law in 2006 and certain sections of the Act came into force in July 2007. Some sections of the Act remain inactive until the regulations required to implement them have been finalised by the Department of Social Development. The Amendment Bill was passed by parliament on 22 November 2007. It awaits the president's signature. Once it has been signed into law it will form part of the Children's Act. The legislation in its entirety will not come into effect until all the regulations are drawn up and finalised by government.

The Children's Act and the Children's Amendment Bill are consolidated for the purposes of this guide. Chapters that formed part of the Amendment Bill have been marked with two asterisks **

The Children's Act

³ Preamble to the Children's Act, No 38 of 2005, Government Gazette, vol 492, 19 June 2006, Cape Town, South Africa.

The Children's Act outlines the general principles that guide its interpretation and application in court. It deals with parental responsibilities and rights, including parental rights issues in cases of surrogate motherhood, artificial insemination and the parental rights of unmarried fathers. It governs all the functions of children's courts including their establishment and jurisdiction. It also provides for adequate child protection systems and enforcement, as well as creates the framework necessary to identify any children in need of care and protection. It legislates for all adoption and inter-country adoption processes. Child abduction and trafficking are also dealt with.

The Children's Amendment Bill

The Children's Amendment Bill expands on the objects of the principal Act. The Amendment Bill deals with the provision of a range of care services to ensure the wellbeing, protection and development of children, especially vulnerable children. Through strategy and provisioning clauses, it obliges the state to provide, plan and budget for these services⁴. This means the state must not only protect and provide for children in legislation but that these provisions must be realised and implemented on the ground.

Chapters included in the Bill cover partial care (chapter 5), early childhood development (chapter 6), prevention and early intervention (chapter 8), alternative care (chapter 11), foster care (chapter 12), child and youth care centre (chapter 13) and drop in centres (chapter 14). Amendments to chapter 7, governing the protection of children, are also included, in the form of parts 1 and 4, child protection systems and other protective measures respectively.

When strategising for or regulating the national norms and standards, for partial care, through to drop in centres, the Minister for Social Development must consult with a number of other ministers. They include the ministers of Education, Finance, Health, Provincial and Local Government and Transport. This consultative process is aimed at ensuring inter-sectoral participation across government departments.

Increased departmental co-operation will hopefully ensure that services for children are easier to access and have a better reach across the country's vulnerable communities. Each of the relevant sections focuses on children with disabilities and chronic diseases to ensure they are prioritised when services are planned and put in place. The Amendment Bill also lists additional offences for contravening the act.

3. Technical Background:

The initial bill put before parliament, to create the Children's Act was to be dealt with in terms of section 76 of the constitution, governing ordinary bills that affect provincial as well as national legislation⁵. But the consolidated Bill was found to be a 'mixed bill'

⁴Jamieson L and Proudlock P, Children's Bill Progress Update: Changes to the Children's Amendment Bill by the National Assembly, 5 November 2007, Children's Institute, University of Cape Town, Cape Town, South Africa.

⁵ Children's Amendment Bill, B19F-2006, Memorandum on the objects of the Children's Amendment Bill, 2006

which required that certain 'elements be dealt with in terms of section 75' of the constitution, governing ordinary bills that affect national legislation⁶. As a result the bill was split and the provisions applying to national government were passed in the form of the Children's Act. The provisions affecting the provincial and national government constitute the Children's Amendment Bill.

Certain sections of the Children's Act (Act no 38 of 2005) came into effect in July 2007. According to the department of social development the sections that became operational did not require regulations to be implemented.⁷ The rest of the act will only become fully operational when the regulations required to implement its inactive sections are finalised by the Minister of Social Development.

The Children's Amendment Bill began parliamentary processes in August 2006.⁸ It moved through the National Council of Provinces (NCOP), was deliberated on in public hearing in all nine provincial parliaments and in early 2007 it moved on to the National Assembly.⁹ In late 2007 however the NCOP rejected the amendments made by the National assembly, due to a high number of technical errors and a mediation committee had to be set up.¹⁰ The mediation committee proposed changes that were accepted by both the NCOP and the National Assembly.

The Children's Amendment Bill (B19F-2006) was passed in parliament on 22 November 2007, and has been forwarded to the president for signing. Once the president has ratified it, and the regulations required to make it operational are also finalised, it will form part of the Children's act.

Once all these processes have been complete the Children's Act will finally come into effect in its entirety.

4. The Children's Act: Chapter by chapter breakdown

Preamble and Long Title

The preamble outlines the main purposes of the act and legislative areas that it will cover. It gives effect to among other things, the constitutional rights of children and the principles relating to their care and protection; and extends provisions for children's

⁶ Children's Amendment Bill, B19F-2006, Memorandum on the objects of the Children's Amendment Bill, 2006

⁷Department of Social Development - Statement on the commencement of certain sections of the Children's Act, June 2007.

⁸Children's Institute, University of Cape Town, Children's Bill, Latest Developments - Latest Update 18 December 2007,

⁹ Children's Institute, University of Cape Town, Children's Bill, Latest Developments - Latest Update 18 December 2007,

¹⁰ Children's Institute, University of Cape Town, Children's Bill , Latest Developments - Latest Update 18 December, 2007

courts and creates new offences in relation to children. The preamble also recognises the international treaties that inform South African law, like the United Nations Declaration on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

Chapter 1:

1. *Interpretation, objects, application and implementation of the Act*

Section 1 defines the terms used in the act and how they should be understood in the interpretation of the law. The South African Law Commission began the process of reviewing legislation affecting children and forming a new children's stature. In its first discussion paper the Commission, argued for the inclusion of certain definitions to entrench a non-traditional understanding of concepts like 'family member'. This it argued would better reflect the realities of life for children. According to the Commission, South Africa incorporates a 'diversity of family forms' and the traditional view of a nuclear family, premised on the relationship between a husband and wife, 'does not reflect the reality of South African society'¹¹

The Act has given a broader definition to the term family member. It no longer pertains exclusively to a blood relative but it includes anyone with whom the child has developed a significant psychological or emotional attachment.

This is just one example of how the interpretation of terms in the act is broadened to incorporate a more inclusive view of South African society. There are others. Parental responsibilities and rights are also included in the terms and definitions. The use of the words 'responsibilities and rights' heralds an important shift from the notion of parental power over children. Now parents are seen as having responsibilities towards children¹².

The act also includes a definition for 'social services professionals'. This extends to development workers, auxiliary social workers, youth workers and child and youth care workers. Where possible the term social workers has been replaced with social service professionals, which means that many task performed exclusively by social workers can now be performed by other social service professionals, easing the burden on overextended social welfare and development services¹³. However the definition

¹¹ South African Law Commission, Discussion Paper 103, Project 110, Review of the Child Care Act, Executive Summary, 2001, xvii

¹² Harries, G, A Resource Kit for Journalists, chapter 1, Children's rights and South African Law, Media Monitoring Project and the Institute for the Advancement of Journalism, 2005, pg 10

¹³ Jamieson L and Proudlock P, Children's Bill Progress Update: Changes to the Children's Amendment Bill by the National Assembly, 5 November 2007, Children's Institute, University of Cape Town, Cape Town, South Africa, pg 7

excludes social workers and they are inadvertently barred from performing the functions assigned to social service professionals.¹⁴

In instances of conflicts with other legislation, the Act takes precedence over either provincial or municipal legislation if it meets certain criteria. In terms of provincial legislation these criteria are outlined in section 146 of the constitution, in terms of municipal laws the criteria are outline in section 156 of the constitution.

The Act recognises that a number of social and economic pressure compete for the attention of authorities. With this in mind the act obliges organs of state to act to the maximum extent of their available resources to implement the Act. This prioritises the needs of children to a certain extent and recognises their particular vulnerability and obliges authorities to give full consideration to children's needs in their budgetary and planning decisions¹⁵. It also cements the need for all spheres of government – at national, provincial and local level, to co-operate in the development of integrated services for children.

Chapter 2: General Principles

This chapter outlines the general principles intended to guide the implementation of laws affecting children. It also defines the 'best interests of child' standard and ensures that this standard is viewed as being of paramount importance in deciding all matters relating to children. It prioritises the needs of children with disabilities or chronic illnesses and provides children with the right to protection from cultural or religious practises that might harm them.

This chapter also promotes a child's right to access information on health care, the prevention and treatment of disease, sexuality and reproduction. It paves the way for the much publicised and often misinterpreted sections of the act in Chapter 7, that grant children access to contraception and HIV-testing without their parents consent. The age of majority is given as 18 years old, repealing the Age of Majority Act, 57 of 1972.

According to the general principles, all proceedings or actions that affect children must safeguard the child's rights and their best interests, treat the child fairly and protect them from any form of discrimination. If it is in the best interest of the child the child's family must have a say in matters affecting the child and a conciliatory, non-confrontational approach should be adopted in matters concerning children. It is important that delays in deciding children's matters should be avoided wherever possible and a court should avoid any decisions or actions that prolong legal and administrative proceedings regarding a child. A child, taking into account their age,

¹⁴ Jamieson L and Proudlock P, Children's Bill Progress Update: Changes to the Children's Amendment Bill by the National Assembly, 5 November 2007, Children's Institute, University of Cape Town, Cape Town, South Africa, pg 7

¹⁵ Harries, G (ed), A Resource Kit for Journalists, chapter 1, Children's rights and South African Law, Media Monitoring Project and the Institute for the Advancement of Journalism, 2005, pg 8

maturity and state of development, and their parent or guardian have the right to be informed of any major decisions affecting that child.

7. Best interests of child standard

The 'best interests of the child' standard lists all the elements that inform this principal. It incorporates a range of factors that must be considered when a court is determining what the best interests of a child might be. The act requires that in all instances the best interests of the child be the paramount consideration when deciding matters concerning a child.

The elements that inform the 'best interests of child' standard include the relationship the child has with his or her parent or caregiver, and the attitude of the parent, guardian or caregiver towards their responsibilities regarding the child.

A court must consider the ability of a parent, guardian or caregiver to provide for the child and meet their emotional and intellectual needs. The child's need to live with and maintain contact with their family and extended family must be considered, as well as the effect any change in a child's circumstances, will have on the relationship with his or her family. A court must also take into account the needs of a child including their age, gender, background, physical and emotional security and development, and any disability or chronic illness the child may have. It must also recognise a child's right to a stable family environment, and to protection from physical, psychological harm or family violence.

10. Child Participation

A child has the right to participate in any matters that affect him or her, given his or her age and level of maturity. Any views expressed by the child must be considered when deciding a matter that affects the child.

The act also makes special provision for children with chronic illnesses or disabilities, recognising the special needs of this particularly vulnerable group of individuals. It requires that a court, amongst other things give thought to enabling a disabled child participate in and be self-sufficient in their community, as well as protecting him or her from all forms of discrimination.

12. Social, cultural and religious practices

Any social, cultural and religious practises that could harm a child are prohibited by the act. This includes forced marriage, female circumcision or non-consensual virginity testing.

No child may be given away through a forced marriage or engagement. If they are older than 18 they may not be married or betrothed without their consent.

The cultural practise of female circumcision or genital mutilation is outlawed entirely. Male circumcision is carefully regulated to protect children against instances of

abuse. Boys under 16 may not be circumcised unless they give their consent and only after undergoing counselling. It also states that any boy may refuse circumcision.

Similarly the practise of virginity testing, while not outlawed is governed by certain stipulations in the act. No one under 16 may undergo virginity testing and it may only be performed on a child older than 16 if the child consents, after undergoing proper counselling. A child who has undergone virginity testing has the right to confidentiality and no markings revealing that they have undergone testing may be left on their body.

14. Access to court and enforcement

Every child may bring a matter to court or to have assistance in bringing a matter to court. And anyone who believes that a right or a provision in this act has been infringed can approach a court, including a child, a person acting the interests of a child, a person acting on behalf of a group or class of people or someone acting in the public interest.

15. Responsibilities of children

Taking its cue from article 31 of the African Charter on the Rights and Welfare of the child¹⁶, the act includes a clause on the responsibilities of children. It states that every child has a responsibility to his or her family, community and the state, with due consideration given to his or her age and ability.

Chapter 3: Parental Responsibilities and Rights

The Law Commission recommended that the concepts of parental power be replaced by the concept of parental responsibility.¹⁷ This is intended to strike a balance between the power parents have over their offspring and the corresponding responsibilities they have towards their children¹⁸. The commission also recommended that the terms access and custody be replaced with contact and care¹⁹. The new act has adopted these changes to make for a more inclusive vision of parental authority.

Parental responsibilities and rights are outlined in detail in this chapter. It is divided into four parts. Part one covers the acquisition and loss of parental rights and responsibilities. Part two concerns the co-exercise of parental responsibilities and rights.

¹⁶ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999, pg 14

¹⁷ South African Law Commission, Review of the Child Care Act Report, Project 110, Chapter 7, pg 60-61, December 2002

¹⁸ South African Law Commission, Review of the Child Care Act Report, Project 110, Chapter 7, pg 60-61, December 2002

¹⁹ South African Law Commission, Review of the Child Care Act Report, Project 110, Chapter 7,pg 60-61, December 2002

Parts three and four regulate parenting plans and miscellaneous matters respectively. Part four regulates the rights of children conceived through artificial insemination.

Parental rights and responsibilities include caring for, maintaining or contributing towards maintenance of a child and functioning as the guardian of a child. Where a child has more than one parent or guardian, they can act independently and without consulting once another in exercising their rights and responsibilities regarding the child.

The biological mother of a child is automatically accorded guardianship and parental responsibilities and rights over a child, unless she is an unmarried child, the child's father has these rights or she is a surrogate mother. The biological father of a child automatically gets awarded parental rights over the child if he is married to the child's mother, or was married to her between the conception and birth of the child.

21. Parental responsibilities and rights of unmarried fathers

Under the Act the rights of unmarried fathers are better provided for than they have been in the past. If a man lived with a child's mother at the time of a child's birth, he is deemed to have parental rights and responsibilities with regard to that child. A man is also recognised as parental rights and responsibilities if-

- He agrees to be identified as the child's father, launches successful paternity claim, or pays damages in terms of customary law for fathering a child.
- He contributes or has, in good faith, attempted to contribute the child's upbringing or maintenance for a reasonable length of time

In man claiming to be the biological father of a child can apply to a court for an order confirming his paternity. He can do this if the child's mother refuses to acknowledge him as the father, she is mentally ill, untraceable or dead.

The question of guardianship

Guardianship orders over a child remain the jurisdiction of the High Court. Guardianship rights govern the safeguarding of a child's property and the assistance of a child in legal matters, their marriage, adoption or their removal from the country. These can be assigned to either a parent or another person. This is considered by some as a possible problem as caregivers in rural areas who need to protect the property rights of orphans in their care cannot obtain guardianship without High court consent²⁰. Access to the High Court comes at a great deal of cost and difficulty for poor, rural caregivers.

25. Certain applications regarded as inter-country adoption

Related to guardianship orders granted through the high court, is the matter of inter-country adoption. Prior to the advent of the act it was possible for foreign couples to apply for the guardianship of a child through the high court. This then enabled them to

²⁰ Harries, G (ed), A Resource Kit for Journalists, chapter 1, Children's rights and south African law, Media Monitoring Project and the Institute for the Advancement of journalism, 2005, pg 10

remove the child from South Africa and apply for adoptive rights over the child in their home state. In addition to concerns that this loophole exposed children to the dangers of human trafficking, it was problematic as South Africa is a signatory to the Hague Convention on Inter-country adoption. The convention clearly outlines a set of processes countries must follow with regards to international adoptions. Section 25 has now closed this loophole, by stating that any foreign national applying for the guardianship of a child should be viewed as attempting inter-country adoption and must follow the procedures outlined in Chapter 16 of the act. This chapter provides for inter-country adoption and aligns our law with the terms of the convention.

Part 4 - 40 Rights of child conceived by artificial insemination

In instances where a couple or a single woman, uses the sperm or ovum of a donor, to conceive a child through artificial insemination, the child is considered to belong to that couple or woman. A child born through artificial insemination has no claim on the sperm or ovum donor.

Chapter 4: Children's courts

This chapter sets out the powers and jurisdiction of all children's courts. It is divided into four parts. Part one establishes and regulates the jurisdiction of children's court. Part two governs court proceedings. Part three regulates out of court settlements, pre-hearing conferences, family group conferences and other lay forums. Part four deals with miscellaneous matters.

Part 1 - 42. Children's Courts and presiding officers

A children's court has the same status as a district magistrate's court. Any magistrate's court can operate as children's court and every magistrate becomes the presiding officer of the children's court. A children's court can adjudicate and give orders on most matters concerning children. These may include the abuse or neglect of a child, a child's support, the temporary safe-care of a child, their placement in alternative care, the provision of prevention and early intervention programmes and inter-country and local adoption.

The act obliges other courts to refer a matter to a children's court for investigation, should it appear that a child involved in proceedings has been abused or neglected or is in need of care and protection.

50. Investigations

Under section 50 the act allows courts to order an investigation into a matter to enable it to better make its decision. The person conducting an investigation may enter any premises to investigate the circumstances of a child. They may take a police officer with them who, alongside the normal powers he or she has in the course of duty, has the power to enter the premises, conduct a search, question anyone as well as remove a person from a child's home if they reasonably suspect that the person is harming or could harm the child.

Part 2 – 55. Legal representation of children

A children's court may order legal representation for a child involved in a matter, if the court feels it necessary. Representation is to be provided by the Legal Aid Board.

61. Participation of children:

A children's court is obliged to let a child involved in matter express their views and participate in proceedings if it finds that the child is fit to do so. But if the court finds that it is in the best interests of a child, it may order that proceedings take place without the child's attendance.

Part 4 – 74. Publication of information relating to proceedings

Children's courts are closed to the public. A person not directly involved in the proceedings, may only attend a hearing if the presiding officer gives them specific permission to do so. This section outlaws the publication of any details regarding the proceedings of a children's court, if this in anyway reveals the identity of a child involved. .

****Chapter 5: Partial care**

Partial care is defined as caring for more than six children on behalf of their parents, for a specified, temporary period during the day or night. Crèches or day-care facilities are an example of partial care.

It excludes any services by school as part of tuition or training, residential facilities provided by a school, such as boarding houses, and any medical facility providing a child treatment.

77. Strategy concerning partial care.

Giving due consideration to children with disabilities and chronic illnesses, the Minister must create a national strategy that ensures an even spread of partial care across the country. At a provincial level, the MEC for social development must record all the registered partial care facilities in the province, create a provincial strategy for partial care as well as provide a provincial profile of partial care needs. This information can then be used to develop and review the national and provincial plans for partial care, on a regular basis.

The provincial strategy must include measures to establish and operate enough partial care facilities in the province. It must also prioritise the types of facilities most urgently needed and liaise with municipalities on the identification and provision of suitable premises.

78. Provision of partial care:

MECs for social development may provide and fund provincial partial care services. These services must comply with legislation and must adhere to the national norms and standards set out for partial care. Any facility must also comply with the health and safety laws of the municipality in which it is based.

To qualify for funding a partial care facility must comply with the national norms and standards and any other prescribed regulation for partial care. Funding must prioritise poor and vulnerable communities that lack the necessities to provide for their children. All partial care facilities need to be accessible to children with disabilities.

79. National norms and standards for partial care

National partial care norms and standards must regulated by the Minister for Social Development. The regulations must relate to or provide for the following:

- A safe environment for children, including sufficient space, ventilation, clean water and adequate toilet facilities, hygienic food preparation areas adequate emergency plans
- Proper care for sick children
- Safe storage for substances dangerous to children
- Adequate access to refuse removal
- Measures to separate children of varying ages
- Drawing up of health care policies and procedures

In addition the national norms and standards any partial care facility that cares for children with disabilities or chronic illnesses must be accessible to these children and meet their specific needs. It must employ staff trained to care for disabled children; or it must train its staff to address the children's health, safety and learning requirements. They must also be trained to provide basic therapeutic interventions to such children.

82. Consideration of application:

Partial care facilities must be registered, in accordance with the act and provincial departments have 6 months within which to process and application to run a partial care facility. They must also decide on the renewal of registrations and the conditional registrations of partial care facilities.

The provincial head of social development must ensure that all requirements are met before an application is granted. Requirements include ensuring that the facility complies with the national norms and standards and that the applicant and all his or her staff are qualified and deemed fit and proper to provide partial care. The applicant must have enough money and resources to run the facility. A report on the viability of the facility, compiled by a social service professional, must accompany each application.

The act does allow the provincial head of social development to aid a person in becoming compliant with the requirements of the legislation.

88. Assignment of functions to municipality:

The provincial head of social development can assign a range of powers and duties, to a municipal manager. These powers and duties cover the registration processes of partial care applications, their consideration, cancellation, enforcement and inspection. The assignment of powers can only take place on condition that the municipality has the resources and capacity to carry out these duties. The municipal manager can then in turn delegate these functions to suitable officials within the municipality.

89. Serious injury, abuse or death of child in partial care facility

Should a child be injured or abused at a partial care facility, it must be reported to the provincial head of social development immediately, and he or she must initiate an investigation into the matter.

If a child should die while at a partial care facility the death must immediately be reported to the child's parent, guardian or caregiver, the police and the provincial head of social development. A police official must carry out an investigation unless he or she is satisfied that the child died of natural causes.

****Chapter 6: Early childhood development**

The act defines early childhood development (ECD) as the 'emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school going age'. ECD services promote a child's development and are provided to a child on a regular basis, before they start school, by someone other than the child's parent or caregiver.

An ECD programme is structured within and included in an ECD service and provides learning and support relevant to a child's age and developmental level.

92. Strategy concerning early childhood development

The Minister is obliged to strategise and provide for a properly resourced, co-ordinated and managed ECD system for South Africa, and must consult with the relevant ministers in doing so. Forming part of this provision, the provincial MECs for social development must provide for a provincial strategy for ECD and must compile a provincial profile, enabling the review and development of strategies providing ECD systems.

93. Provision of early childhood development programmes

The MEC for social development may provide and fund ECD programmes and these must comply with the act and meet national norms and standards. Funding can only be granted if the provider of an ECD programme complies with these regulations and any other requirements that might be prescribed. Funding must also prioritise ECD

programmes in poor, disadvantaged communities as well as programmes catering to children with disabilities. Both partial care facilities and child and youth care centres, working with children up to school going age, must provide ECD programmes.

94. National norms and standards for early childhood development programmes

The minister must regulate ECD norms and standards and they must relate to the following:

- provision of appropriate developmental opportunities and programmes aimed at helping children realise their potential
- caring for children in a constructive manner, and providing support and security
- developing positive social behaviour
- respect for and nurture of the culture, spirit, dignity, individuality, language and development of each child
- meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children.

95. Early childhood development programmes to be registered

All ECD programmes, provided by the state or by private individuals or organisations must be registered with the provincial head of social development, and comply with the act and the national norms and standards.

97. Consideration of application

The provincial head of social development decides on applications for registration, renewals of registration and conditional registration of ECD programmes. Processing the application must be done within six months of receiving it.

When deciding on an application, the provincial head of social development must get a suitably qualified person to assess whether an ECD programme, its provision and contents meets the required national norms and standards. In deciding an application he or she must consider the report's findings.

The provincial head must consider whether the applicant is a fit and proper person to provide ECD programmes, whether the applicant has the necessary skills, training, funds and resources and whether the ECD programme will meet the needs of the children it caters to. Should an applicant not meet the norms and standards required to provide an ECD programme, the provincial head of social development may assist them in becoming compliant with the regulations.

102. Assignment of functions to municipality

As with partial care, certain functions regarding ECD programmes can be assigned to a municipality. They include the registration, consideration, cancellation and enforcement

of ECD programmes. Again, no assignment of functions can take place unless the municipality has the capacity and resources to perform these functions and the assignment is done in accordance with the act.

Chapter 7: Protection of Children

Portions of this chapter are divided between the principal act and the Children's Amendment Bill. It is divided into three parts. Parts two and three are included in the principal Act, while parts one and four are included in the Amendment Bill.

The state is obliged to strategise and provide for the regulation of child protection systems and organisations in Part one. National norms and standards governing child protection must also be provided for. Everyone who has good cause to believe that a child is being abused should report it to the relevant authorities. However this chapter lists people operating in their official or professional capacity who are obliged to report suspected abuse if they come across it.

Part two provides for the creation and maintenance of a national child protection register (NCPR). The Director – General of Social Development is obliged to keep the register and to protect the information that it contains. The NCPR is divided into two parts – A and B. Part A records specific incidents of abuse involving a child. Part B is a record of all individuals found to be unfit to work with children.

Part three governs the protective measures regarding children's health. Sensitive issues regarding children's rights to request information about and receive access to contraception as well as consent to HIV testing, without parental consent are covered here.

Processes governing the termination of parental rights and responsibilities, child headed households, the unlawful removal or detention of a child, or his or her removal from South Africa and child labour and exploitation are also included in Part four.

****Part 1: Child protection system**

105. Provision of designated child protection system

Within the national and provincial strategies for a comprehensive child protection system, the provincial MEC for social development must fund and provide child protection services in each province. These designated child protection services must be managed in accordance with the act and comply with national norms and standards, and only qualify for funding if they achieve compliance.

The national department of social development, a provincial department and a designated child protection organisation may provide designated child protection services. These services include services supporting the proceedings of children's courts and the implementation of court orders.

They also include services relating to:

- prevention and early intervention
- reunification of children with their families
- the placement and integration of children into alternative care
- and the adoption and inter-country adoption of children
- investigations and assessments into suspected child abuse or neglect;
- intervention and removal of children
- the drawing up of development and permanency plans for children removed or at risk of being removed from their families
- any other prescribed social work services.

106. National norms and standards for child protection

The Minister must establish norms and standards in consultation with the ministers of education, finance, health, justice and constitutional development, as well as the South African Police Service.

They must pertain to:

- prevention and early intervention services
- child assessments
- therapeutic programmes
- after care
- family reunification and reintegration
- foster care services
- integration into alternative care
- adoption services
- permanency plans
- education and information
- child-headed households

107. Designation of child protection organisation

The Director- General or provincial head of social development may designate an appropriate body as a child protection organisation to perform any or all provincial child

protection services. The criteria that determine which organisations can be designated as child protection organisations however, have yet to be set out in the regulations.

110. Reporting of abused or neglected child and child in need of care and protection

Any person, who on reasonable grounds, suspects a child is being abused or neglected can report their suspicion to the provincial department of social development, a child protection organisation or a police officer. They must substantiate their report but are not liable to any civil action, if the report is made in good faith.

A range of people, operating in their official or professional capacity are obliged to report suspected child abuse or neglect to the provincial department of social welfare, a child protection organisation or police officer. They include amongst others teachers, medical practitioners, physiotherapists, psychologists, religious or traditional leaders, dentists, immigration officers and staff or volunteers at partial and child-care facilities.

In instances where a report is made to a police officer, he or she must ensure the safety of the child if he or she is at risk. Within 24 hours the police official must notify the provincial department of social development or a designated child protection organisation.

If a report of abuse or neglect is made to a provincial department of social development or child protection organisation, it must ensure that the child is safe, then assess the report and investigate its truthfulness. If the report is substantiated, the department must initiate proceedings to protect the child and submit the relevant details to the DG for inclusion in part A of the NCPR.

After the investigation of a report the department or the child protection organisation must inform the police of the possible commission of an offence. The inclusion of this clause is a big departure from current practise, as social workers were previously not required to report their findings to the police²¹.

Once an investigation into the matter has been completed, the department or the child protection organisation can decide to leave the child in their home but provide a range of interventions but that address the matter. These interventions include through counselling, mediation, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another professional or organisation. If it is found to be in the child's best interests a police official may be asked to remove the alleged offender from the child's home. But if the case requires it the child can be removed from his or her home in accordance with procedures governing the removal of a children set out in Chapter 9.

Part 2 - National child protection register

²¹Jamieson L and Proudlock P, Children's Bill Progress Update: Changes to the Children's Amendment Bill by the National Assembly, 5 November 2007, Children's Institute, University of Cape Town, Cape Town, South Africa, pg 9

Part A of Register

This section of the register is a record of specific incidents of the abuse against children. It must contain the circumstances surrounding the neglect or abuse of a child, and is intended to protect children from further abuse or neglect. The creation of the register will enable authorities to share information in the interests of child protection as well as establish patterns and trends of abuse.

Part A records reports of child abuse, convictions of child abuse and the findings of any children's court that a child is in need of care and protection. It must record all the details of the child concerned, including their names, addresses, the details of their parents or care-giver and the details of an institution or alternative care facility like a child and youth care centre if the incident took place there. In the case of records concerning a conviction, Part A must also contain a short account of the charges and information on the relationship between the perpetrator and the child. Where a child is found to be in need of care and protection Part A must contain information on the child, the court's reasons for its decision, the parent or care-givers details and the assistance the court gave the child.

Access to Part A of the NCPR is limited to officials that include member of the SAPS tasked with child protection, designated child protection organisations and people conducting research on child abuse, provided they do not reveal any details regarding a child. The disclosure of any information held in the register is also forbidden unless in special circumstances such as the investigation of child abuse or under an order of court.

Anyone has the right to find out whether their particulars are contained within the register and if so why. To do this however they must provide proof of their identity.

Part B of Register

This section of the register serves as database of information on individuals found to be unsuitable to work with children. It must contain all the particulars of a person deemed unfit to work with children, including where possible their finger prints and a photograph and in the cases of a conviction of child abuse, details of their offence, their sentence and the case number.

120. Finding person unsuitable to work with children

A children's court, a court deciding a criminal or civil matter and any disciplinary forum legally established to deal with a person's conduct towards a child, may find a person unsuitable to work with children.

A person convicted of the murder, attempted murder, rape or assault of a child cannot work with children. This includes someone who is deemed mentally ill and incapable of understanding court proceedings and so cannot present a proper defence of their case. It also includes someone deemed to be mentally ill at the time of the act and as such is not criminally responsible for his or her actions. A finding that someone may not work

with children does not depend on the outcome of the criminal or civil proceedings involving them. A person may be found to be unsuitable to work with children, and have their particulars included in the register regardless of whether they are convicted or not. If a person wishes to have their name removed from the register, they can apply to have the finding reviewed.

123. Consequences of entry of name in Part B of Register

A person who has been listed in Part B, may under no circumstances work in a position that puts them in contact with children. This includes as a volunteer or employee at any centre, facility, shelter or school that provides services to children; or employee of the police, local government or child protection organisation where contact with children is likely. If such a person is employed or volunteers in a role that allows them contact with children they must inform the institution that their name is included in the NCPDR.

126. Establishment of information in Part B of Register

The act also obliges managers of child care and other related institutions and any government office hiring a person for a role that involves contact with children, to check that the candidate is not listed in the part B of NCPDR.

The information contained in part B is protected in terms of access and disclosure. Only the Director – General, a provincial head of social development and designated officials may have access to Part B of the register. And only people operating under the auspices of the act or with the permission of a court may disclose information held in Part B of the Register.

But a person on proof of identity can apply to establish if his or her details are recorded in part B of the register and if so, why.

Part 3 – Protective measures relating to health of children

This section allows children to access information regarding their health, including information and access to contraception. It also provides children with the right to consent to medical treatment or procedures, without a parent's permission on condition certain requirements are met.

There has been criticism voiced in the media, that this undermines the role of parents and promotes sexual promiscuity in children. The act however, in making these provisions, addresses the realities that many South African children face. Children living in a child-headed household without a parent or guardian need access to information and treatment that will safeguard their health. Preventing their access to assistance because they have no adult carer only leaves them more vulnerable.

In response to circumstances like these, the act allows a child as young as 12 to consent to medical treatment, including access to contraception and HIV-testing, provided they are deemed to have the capacity to understand the risks, benefits and implications of any such treatment.

This extends to a child who requests an abortion. This is, however, governed by provisions set out in the Choice on Termination of Pregnancy Act, 92 of 1996. A minor may request an abortion but the medical professional treating her must advise her to consult with her parents or guardian. The medical professional may not refuse to terminate the child's pregnancy, if she does not want to consult them²².

This section of the act also outlines the circumstances under which someone other than a child or their parent or guardian may consent to the medical treatment of a child. As always, all allowances made in the act require that the best interests of the child be the paramount consideration when deciding on a matter.

130. HIV-testing

No child may be tested for HIV except if it is in their best interests or if it is to determine whether a medical worker or another person, may have contracted HIV after coming into contact with a child's bodily fluids. In latter instance if the person is not a medical professional, a test can only be done with an order of court.

A child may consent to an HIV test, without parental consent if they are 12 years old. A child under 12 can consent to a test provided that they have the capacity to understand the implications of the test.

Where a child is under 12 and is not sufficiently mature to understand the implications of an HIV test, consent can be given by the child's parent or guardian, the provincial head of social development, the head of a hospital and a children's court.

Before and after an HIV test can be conducted however, the child must undergo counselling. If a child's parent or guardian gave consent for a test, they too must be given counselling.

No one may reveal a child's HIV/Aids status unless it is required to implement the act or is required in the course of legal proceedings.

134. Access to contraception

Children have the right to access condoms, and no one may prohibit a child access to condoms. Children may also access other forms of contraception, without parental consent, if they are over 12. In these instances they must be given medical advice and a medical examination. It is a child's right to have his or her request for contraception kept confidential.

***Part 4: Other protective measures*

135. Application to terminate or suspend parental responsibilities and rights

²² Choice on Termination of Pregnancy Act, no 92 of 1996, section 5.

The DG, provincial head of social development or a designated child protection organisation can apply to a high court, divorce court or a children's court to have a parent's rights and responsibilities over a child, terminated, suspended or curtailed.

Such an application can be brought without the parent or care-giver's consent if:

- the child is older than seven and has been in alternative care for 2 or more years;
- is older than three, younger than seven and has been in alternative care for more than a year;
- or is younger than three and has been in alternative care for more than 6 months.

136. Consideration of application to terminate or suspend parental responsibilities and rights.

When deciding whether or not to suspend a parent's rights over a child the court must be guided by the general principles outlined in chapter 2. This includes the best interests of the child and their right to participate in matters affecting them. The court must also consider: the child's need for a stable, permanent family environment; the success or failure of any prior attempts to reunify the child and their parent or care giver; and their relationship with one another. It must also consider what, if any, contact between the child and parent or caregiver has occurred in the year preceding the application. The likelihood of the child being adopted or placed in another form of alternative care must also be taken into account.

137. Child-headed households

The Act ensures that child headed households can access social assistance. No-one may exclude child-headed households from collecting any grant, subsidy, aid or other assistance based on the fact the household is headed by a child.

Rather than separate children living in the care of an older sibling and placing additional strain on the welfare system, child headed households are recognised and allowed to operate, under certain conditions.

They include the condition that the role of caregiver is assumed by a child 16 years or older and it must be the best interests of all the children in the household. An adult must be designated by a children's court, an organ of state or an NGO to supervise and guide the household. The adult must perform their prescribed duties and be deemed fit and proper to work with children. The child heading the household or its supervising adult may collect and administer any social security grant or any assistance that the children are entitled to.

The child heading the household can make all the day-to-day decisions for the household. An adult supervisor may not make any major decision affecting the household without consulting the child heading the household or the other children taking into account their age and maturity.

The children may report their supervising adult if they feel he or she is not fulfilling their duties.

141. Child labour and exploitation

No one may use, procure or offer a child for slavery or similar practices including debt bondage servitude, serfdom, forced or compulsory labour.

No one may use procure, offer or employ a child for commercial sexual exploitation, trafficking or child labour. A social worker or social services professional that becomes aware of any of the above must report it to the police and any occurrences of child labour must be reported to the labour department.

Chapter 8: Prevention and early intervention

Prevention programmes are intended to assist families in addressing problems that occur in a family environment, which if not dealt with can lead to statutory intervention.

Early intervention programmes are aimed at families with children who are vulnerable to or at risk of harm or removal to alternative care. Section 139, dealing with the discipline of children, banning corporal punishment has been deleted. The clause in section 144, 'promoting positive, non-violent forms of discipline' has been added in its stead²³.

Purposes of prevention and early intervention programmes:

Prevention and early intervention must focus on:

- Preserving a child's family
- Developing the skills and capacity of parent's and caregivers to protect the best interests of their children, promoting positive, non-violent forms of discipline, including parents of children with chronic illness or disabilities
- Promoting appropriate interpersonal familial relationships
- Providing psychological, rehabilitation and therapeutic programmes
- Preventing neglect, exploitation, abuse or inadequate supervision of children and prevent any other failures to meet children's needs
- Prevent the recurrence of family problems that may harm or hinder a child's development.
- Diverting children from alternative care systems and the criminal justice system
- Avoiding the removal of children from their families

²³ Jamieson L and Proudlock P, Children's Bill Progress Update: Changes to the Children's Amendment Bill by the National Assembly, 5 November 2007, Children's Institute, University of Cape Town, South Africa, pg 10

Such programmes must encourage the participation of parents and caregivers and give them the tools to identify and seek solutions to their problems. Programmes can include helping families obtain basic necessities, as well as empowering them to obtain necessities for themselves. They can also include helping families gain information on accessing services, assisting families with who have a terminally ill family member.

The state is obliged to strategise and provide for prevention and early intervention at both national and provincial level. This includes funding of such programmes and prioritising services in poor, disadvantaged communities.

147. National norms and standards for prevention and early intervention programmes

National norms and standards, still to be drawn up by the minister, must relate to:

- Outreach services
- Education, information and promotion
- Therapeutic programmes
- Family preservation
- Skills development programmes
- Diversion programmes
- Temporary safe care
- Programmes assessment

148. Court may order early intervention programmes

In line with concerns over the need to keep children in a stable, family environment, the act allows a children's court to order early intervention programmes, in a bid to avoid the removal of a child from their home. Intervention services may be provided by the department of social development, a designated child protection organisation or any other suitable person or organisation. The court can also order the child and his or her family to participate in a family preservation programme. This can only be done, however if the child's safety and well-being are not at risk.

The intervention programme cannot last for longer than 6 months. Once it is complete and the case resumes, the court must decide whether the child should be removed or whether the family should continue with the programme.

A designated social worker must file a report detailing all the prevention and early intervention programmes that the child and their family have participated in, which the court must consider when deciding the matter.

Chapter 9: Child in need of care and protection

This chapter is divided into two parts. Part one outlines the identification of a child 'in need of care and protection'. Part two covers children's court processes and the orders the court may make regarding a child in need of care and protection.

Part 1 - 150. Child in need of care and protection:

A child is in need of care and protection if the child

- has been orphaned, abandoned, exploited, abused or neglected
- exhibits uncontrollable behaviour
- lives or begs on the streets
- is addicted to drugs, alcohol or medication and without access to treatment or psychosocial support
- lives in or is exposed to circumstances that may harm their physical, mental or social well-being.
- is a victim of child labour
- is a child in a child headed household

151. Removal of child to temporary safe care by court order

If a court is concerned that a child may qualify for care and protection it is obliged to order an investigation by a designated social worker to determine whether the child must be removed to another form of care. That social worker can remove the child, with or without a court order.

Removals without a court order

In terms of the act a designated social worker is a social worker in the employ of the department of social development, a municipality or a government sanctioned child protection organisation.

To prevent abuses in the law the removal of a child without a court order is carefully regulated. Only a designated social worker or police officer may remove a child, without a court order, if he or she believes the child is in serious danger of harm and circumstances do not allow the social worker or police official time to obtain a court order. The relevant authorities and the child's parent or guardian must be informed of the removal by the social worker or police official. Any misuse of this power by a social worker or police officer constitutes unprofessional and improper. If such an abuse of power takes place in the name of a child protection organisation, then this is grounds for an investigation and can result in the withdrawal of the organisation's designation.

Part 2 – 156. Orders when child is found to be in need of care and protection

If a court finds that a child needs care and protection it may order a range of interventions that can aid the child. These include placing the child in temporary safe care, foster care or in a child and youth care centre. The court can also order that a

child be placed in a secure care programme designed for children who cannot be controlled by their parent or caregiver or if they exhibit criminal behaviour. The court can also order the child be placed in partial care, ostensibly crèche or day care, if it finds that a parent cannot care for the child during certain times of the day. If a child is chronically ill or disabled the court must place a child in a facility that can provide the child with the relevant care. Children addicted to drugs may also be placed in a drug rehabilitation programme by an order of court.

The Children's Amendment Bill includes an amendment for this section regarding children who are part of a child headed household. In this instance the court may order that a child remain within the child headed household provided that it is in the best interest of the child and that adult supervision is provided.

157. Court orders to be aimed at securing stability in a child's life

All children, to grow and develop properly need stable meaningful relationships with parents or other significant people in their lives.²⁴ With this premise in mind before a children's make a decision to the remove a child from their parent or guardian, it must consider alternatives that would secure stability in the child's life.

Before the court can order a child be removed from his or her carers, it must obtain and consider a report by a designated social worker. This report must assess the needs of the child, list any interventions that the family has previously undergone and contain a permanency plan for that child. A permanency plan documents measures to achieve stability in a child's life considering their age and developmental needs.

The court may consider amongst other things the temporary removal of a child to alternative care but with a view to eventual reunification of the child with his or her family, if it is in the child's best interests. It may also consider leaving a child in the care of his or her parents or caregiver under the supervision of a social worker or making a child available for adoption.

In all of these circumstances the court must consider what the best interests of the child are and what would achieve the greatest level of stability in their life, to ensure their well-being and emotional and intellectual development.

158. Placement of child in child and youth care centre

Placing a child into a welfare institution like a child and youth care centre should be a last resort for the court. If it is necessary however, the court must place the child in the centre that will best meet their needs. The permanency plan for the child must also be considered when placing a child in a child and youth care centre.

The orders given by a children's court may not exceed 2 years and do not apply once a child has exceeded 18 years old.

²⁴ South African Law Commission, Discussion Paper 103, Project 110, Review of the Child Care Act, Executive Summary, 2001, xxxii

Chapter 10: Contribution orders

One of the orders that a children's court is empowered to issue is a contribution order. A contribution order has the same effect as a maintenance order issued in terms of the Maintenance Act and the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act.

A person can be ordered to pay a lump sum or recurrent sum of money towards the maintenance and care of a child removed from their family and placed in alternative care.

****Chapter 11: Alternative care**

Alternative care means foster care, placement in a child and youth care centre or temporary safe care (or a place of safety). A child cannot remain in temporary safe care for longer than six months, without a court order placing them in alternative care. Places of safety established under the Child Care act, are deemed to be providers of temporary safe care under this act.

167. Leave of absence

A child must get permission for a leave of absence from alternative from the children and youth care centre where they have been placed, or the person into whose care they have been placed, a foster parent for example. A child in temporary safe care may only be granted a leave of absence by the provincial head of social development. If a designated social worker is supervising a child in alternative care only that social worker may grant the child time away. He or she may at any time cancel that child's leave of absence, and must request the child's immediate return their place of alternative care.

170. Child absconding from alternative care

A police official or designated social worker may apprehend a child who has run away from alternative care, or who has not returned from a leave of absence. If they have reason to believe a child is being hidden certain premises, they are allowed to enter and search the place without a warrant.

On apprehending a child, a police officer must ensure that they are safe and free of potential harm. They must then notify the department of social development that the child has been found and what has been done with regard to the child.

The child must immediately be brought before the presiding officer of a children's court, or be placed in temporary safe care until such time as the child can appear before a presiding officer. The presiding officer must inquire into why the child absconded from alternative care. If the presiding officer believes there is good cause for the child to have escaped alternative care, he or she may order that the child not be returned to their former carer pending action by a provincial head of social development.

171. Transfer of child in alternative care:

Provincial heads of social development may transfer a child from one youth care centre or from one person to another. This must however be done in writing. If the transfer is across provinces it must be done with the approval of the head of social development in the receiving province. Before a transfer order can be made, a designated social worker must consult with the child; their parent, guardian or caregiver; the centre or person with whom the child has been placed; and the centre or person to whom the child is being transferred.

If the provincial head of social development is transferring a child to a less secure form of alternative, he or she must be sure that the transfer will not compromise the safety of other children.

Any transfer order that moves a child from the care of a person to a child and youth care centre, or to a more secure or restrictive centre, may only be done with the approval of a children's court.

172. Change in residential care programme

A provincial head of social development may decide that a child in a child and youth care centre may be released from a residential programme; that another residential programme be applied to the child; or that an additional programme be applied to the child.

As with transfer orders, any such order must be ratified by a children's court if the residential programme includes secure care or an increase in the security level of the child current programme.

174. Provisional transfer from alternative care

If it is in the best interests of a child, a provincial head of social development may order that a child be transferred from one form of alternative care to another, for a 6-month trial period. A provisional transfer can only be ordered if the best interests of the child have been assessed and, if applicable, procedures to reunite the child with his or her family have been followed. A report by a designated social worker on the assessment and reunification procedures must be submitted and examined by the provincial head of social development.

Provisional transfer must be managed by a designated social worker to ascertain the feasibility of family reunification for the child; integration into another family or transfer into any other type of alternative care.

The provincial head of social development must revoke the transfer if the child requests it and the social worker on the case advises it. The placement can be confirmed, or the child's discharge from care be ordered, at any time during the trial period.

175. Discharge from alternative care

If it is in the child's best interest the provincial head of social development may discharge a child from alternative care. This must be done after a designated social

worker has assessed and compiled a report on the child's best interests and recorded any processes undertaken to reunite the child with his or her family.

176. Remaining in alternative care beyond age of 18 years

A child is entitled to remain in alternative care until the end of their eighteenth year. If an alternative care-giver is willing and able; or it is necessary for the person to remain in care to complete their education or training, the provincial head of social development can allow him or her to remain until they are 21.

178. Serious injury, abuse or death of child in alternative care

If a child is abused or injured while in alternative care, the management of the centre or organisation, or the person, with whom the child has been placed, must report the incident to the provincial head of social development. The provincial head must then institute an investigation into the matter.

If a child dies in alternative care the management of the centre or the person with whom the child has been placed must report the death to the child's parent or guardian, a police officer, the provincial head of social development and the social worker dealing with the case. The police officer must initiate an investigation unless they are certain the child to have died of natural causes.

****Chapter 12: Foster Care**

A child is in foster care, by being placed with a foster parent (i.e. not the child's parent or guardian) through an order of court or an alternative care transfer order. Temporary safe care and placement in a child and youth care centre are not viewed as foster care.

A children's court may place a child into foster care with a family member, a person who is not a family member, or a registered cluster foster care scheme.

181. Purposes of foster care

Foster care must provide children with a safe, healthy, supportive environment. It must promote permanency planning goals first towards family reunification, or if this is not possible, connect children to safe, nurturing and permanent family environments. It must respect the cultural, ethnic and community diversity of individuals and families.

182. Prospective foster parents

The steps needed to determine whether a child is in need of care and protection (chapter 9) must be followed before a child can be placed into foster care.

A prospective foster parent must:

- Be fit and proper to care for a child
- Willing and able to take responsibility of caring for the child

- Have the capacity to provide for the child's growth and development
- Be assessed by a designated social worker to ensure the above.

183. Cluster foster care

A cluster foster care scheme must be a non-profit organisation registered in terms of the Nonprofit Organisations Act, 71 of 1997. The organisation and the scheme it runs must comply with all requirements and have permission from the provincial head of social development to operate. The provincial head of social development must monitor the scheme's management.

184. Determination of placement of child in foster care

Before a child can be placed in foster care a designated social worker must submit a report to the children's court on the child's cultural, linguistic and religious background, and the availability of prospective foster parents with a similar background.

A child may be placed with a person who has a different societal background, but only if there is an existing bond between that person and the child; or if a person of a similar background cannot be found.

185. Number of children to be placed in foster care per household

A foster care household may not accommodate more than 6 children, unless the children are blood relations, the court believes it is in the best interests of all the children or the children are in a cluster foster care scheme.

186. Duration of foster care placement

A child can be placed in foster care for longer than two years, without social work supervision if the court regards the placement as a stable, suitable environment for the child.

It can also extend foster care placements beyond 2 years if the child has been orphaned, abandoned by his or her parents, family reunification is impossible and it is in the child's best interests. However a social service professional must visit the child at least once every two years to monitor the placement.

187. Reunification of child with biological parents

If it is possible and in a child's best interests, his or her foster care placement order must provide for family reunification services, facilitated by a designated social worker. If family reunification is not achieved the designated social worker must submit a report to the children's court, explaining why it has not happened and suggesting ways to stabilise the child's life. The court can then order reunification services to continue or to stop them if reunification is not possible.

188. Responsibilities and rights of foster parents

A foster parent's rights and responsibilities are subject to any order of a children's court, any applicable provisions of the act or a foster care plan drawn up between a child's parent or guardian and their foster parent.

A foster parent cannot make major decisions regarding the child, without considering the child's views and the views of his or her parent or guardian. If a child has been abandoned, orphaned or family reunification has failed, a children's court can assign all the parental responsibilities and rights to a foster parent.

189. Termination of foster care

Foster care can be terminated if it is in the best interests of the child concerned. When considering terminating a foster care placement the court must look at the relationship that exists between the child and his or her biological parent, as well as the relationship the child has with the foster parent and foster family. It must also consider the various options for achieving permanency in the child's life including: returning the child to the biological parent, leaving the child with the foster parent, the possibility of another foster placement and adoption.

****Chapter 13: Child and Youth Care Centres**

This chapter is divided into three parts. Part one concerns the establishment and registration of child and youth care centres. Part two governs their operation and management; while part three concerns miscellaneous matters.

Child and youth care centres must provide residential care to more than 6 children. They exclude partial care facilities; drop in centres; boarding school or any other school affiliated residential programme; prison or any other education related facility.

Child and youth care centres must offer therapeutic programmes for the residential care of a child outside the family home, which may include

- the reception, care and development of children outside of their family environment,
- the reception of children on a shared basis, between the centre and a child's parent
- the temporary care of a child awaiting placement
- early childhood development
- temporary care of children to protect them from abuse or neglect
- temporary safe care of trafficked, commercially sexually exploited and street children

- observing and assessing children in care, providing them with treatment and assistance a child in family and community reintegration
- the secure of children awaiting trial or sentencing or admitted under an order of court
- care for children with behavioural, psychological or emotional difficulties

In addition to residential care programmes a child and youth care centre can offer programmes like drug rehabilitation programmes and psychiatric treatment for children.

To offer these types of programmes a suitably qualified person must assess the programmes content, and the provincial head of social development must approve it.

192. Strategy to ensure sufficient provision of child and youth care centres

The Minister must provide for an inclusive national strategy, consulting with other departments, to ensure an appropriate spread of child and youth care centres across the country, and incorporating children with disabilities and chronic illness. Provincial MECs for social development must provide a provincial strategy and profile to ensure properly resourced and managed child and youth care centres. The provincial head of social development must keep a record of all centres in the province and what types of programmes they offer.

193. Provision of child and youth care centres

Child and youth care centres must be funded by the MEC for social development from relevant government funds and must be managed in accordance with the act and the national norms and standards. Any centre must also operate in accordance with the regulations required by the municipality. No centre may be funded if it does not comply with national norms and standards.

194. National Norms and Standards for child and youth care centres

National norms and standards must relate to:

- A residential care programme
- Therapeutic programmes
- Developmental programmes
- Permanency plans for children
- Individual development plans
- Temporary safe care
- Protection from abuse and neglect
- Children's assessment

- Family reunification and reintegration
- Aftercare
- Provision and access to health care
- Access to education and early childhood development
- Security measures for child and youth care centres
- Security measures and measures to separate children in secure care programmes from other children

Part 1: Establishment of child and youth care centres

195. Establishment of child and youth care centres by organ of state

MECs for each province must provides child and youth care centres for that province

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

All the above establishments are now viewed as operating under the auspices of the act. Industry schools and reformatories, under the control of the education department, become the responsibility of the provincial department of social within two years of this chapter's commencement. The education department must provide schooling at former government industry schools and reformatories. All existing government homes, places of safety, secure care facilities, schools of industry and reform schools must register as a child and youth care centre within 2 years of the commencement of the act.

197. Establishment of child and youth care centre

National and provincial state departments, responsible for social development, municipality or accredited organisation may operate a child and youth care centre. They must register it; ensure it is managed in compliance with the act and meets the legal requirements of the municipality where it is located.

198. Existing registered children's homes and registered shelter.

Existing children's homes and shelters, registered under the Child Care Act, are deemed as registered under the new legislation for a full five years after the commencement of this section of the act. An existing home or shelter must register as a child and youth care centre within those five years.

200. Consideration of application

All applications for the registration of a child and youth care centre must be made to the provincial head of social development who must make a decision regarding the application within 6 months. The provincial head of social development must consider whether the centre complies with all legal requirements, the applicant is a fit and proper

person and that they have the necessary skills funds and resources to run the centre. He or she must also consider that each person employed or assisting at the centre is a fit and proper person and those they have the necessary skills. A designated social worker must assess the centre and submit a report to the provincial head of social development to examine.

203. Cancellation of registration

The state has the power to cancel or suspend the registration of a centre if it fails to comply with any of the regulations or requirements set out in the act. But it can allow the management of a centre time to correct its faults as well as aid a registration holder become compliant with the law, in order to have the registration reinstated.

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

208. Management board

Each child and youth care centre must have a management board of between six and nine members.

In state a run centre the board must be appointed by the provincial MEC for social development, in the prescribed manner. In the case of a privately run centre the registration holder must appoint the board.

All relevant stakeholders, including members of the community that the centre is located in, must have equal representation on the board. All board members must be suitable to work with children. A children's forum made up by children resident in the centre must form part of the board to ensure the children's participation.

209. Manager and staff of child and youth care centre

A manager and sufficient number of staff must be appointed to operate the child and youth care centre. The person appointed to manage the centre must have the requisite skills and training and must be deemed fit and proper person for the role.

211. Quality assurance process:

The provincial head of social development must put quality assurance process must be in place monitor the operation of a child and youth care centre. The process must proceed as follows:

- A team connected to the centre must do an internal assessment of the centre
- An independent team must then conduct an external assessment
- Both teams must then decide upon an organisational development plan for the centre
- An external mentor must then be appointed by the independent team to see that the plan is put in place by the centre.

Once this process is complete, the board must submit a copy of the organisational development plan to the provincial MEC for social development.

****Chapter 14: Drop-in-Centres**

213. Drop-in centres

A drop-in centre is a place providing basic services to vulnerable children. Any drop in centre must provide food, school attendance support, personal hygiene assistance or laundry services. But it can also provide a range of services in addition to the above requirements including:

- Guidance counselling and psychological support
- Social and life skills
- Educational programmes
- Recreation
- Community services
- School holiday programmes
- Primary health care services along with local clinics
- Referral services to social workers or social service professionals
- Promote family reunification
- Computer literacy
- Outreach services
- Prevention and early intervention

214. Strategy concerning drop in centres

The minister must draw up a national strategy to provide for drop in centres across the country that gives due consideration to children with chronic illness and disabilities

The MEC for social development must ensure a similar provincial strategy exists and make a record of all drop in centres that operate in the province. He or she must ensure that a provincial profile exists to help develop and review both national and provincial strategy

215. Provision of drop in centres

The MEC for social development using relevant funds may provide drop in centres for his or her province.

Drop in centres must comply with the act and the required national norms and standards for drop in centres. They must also comply with any legal requirements of the municipality that they are located in. Drop in centres must comply with national norms and standards to qualify for government funding. They must prioritise poor and disadvantaged communities and cater to children with disabilities.

216. National norms and standards for drop in centres

National norms and standards, regulated by the Minister, must ensure the following:

- A safe environment for children
- Safe drinking water and a hygienic area for the preparation of food
- Hygienic toilet facilities and access to refuse removal

217. Drop in centres to be registered

A person or organisation operating a drop in centre must register it with the relevant provincial head of social development and ensure it complies with the act and the national norms and standards for drop in centres. Drop in centres registered in terms of the child care act, are deemed to be registered in terms of this act for a period of five years, within which it must reregister as a drop in centre.

219. Consideration of application

A person or organisation must apply to the provincial head of social development to register a drop in centre. The head of social development must, when considering an application, ensure that the drop centre complies with the prescribed national norms and standards and the requirements of the municipality where the drop in centre is located. The head of social development must also ensure that applicant and any people employed or assisting at the drop in centre has the right skill and training and is fit and proper to operate a drop in centre. A designated social worker must assess a drop in centre and submit a report to the head of social development who must examine it before deciding on the application.

221. Cancellation of registration

The state has the power to cancel or suspend the registration of a drop-in centre if it fails to comply with any of the regulations or requirements set out in the act. But it can allow the management of a centre time to correct its faults as well as aid a registration holder become compliant with the law, in order to have the registration reinstated.

224. Record and inspection of and provision for drop in centres

The provincial head of social development must keep a record of all drop in centres in the province and regularly inspect these centres to ensure that the provision of that act are met with.

The provincial strategy providing for drop in centres must include measures to establish sufficient drop in centres across the province, and the types of centres most needed, as well as suitable premises.

225. Assignment of functions to municipalities

The provincial head of social development may assign certain functions of this chapter to a municipality if it has the capacity to carry them out. These functions include registration procedures, enforcements and cancellations. A municipal manager may delegate these functions to a suitable municipal official.

226. Serious injury, abuse or death of child in drop in centre

If a child is injured or abused while at a drop in centre provincial head of social development must be informed. He or she must then order an investigation into the matter.

If a child dies at a drop in centre, the child's parent or guardian, a police official and the provincial head of social development must immediately be informed. The police officer must begin an investigation into the matter unless he or she is satisfied that the child died of natural causes.

Chapter 15: Adoption

Children's courts govern all adoption procedures, including inter-country adoption. The act creates a more inclusive notion of 'family', and as such it allows a range of people to jointly adopt a child, rather than limiting joint adoption to a traditional husband and wife partnership. A same sex couple, in a stable life partnership can adopt a child. In fact any people sharing a household and forming a family unit can adopt a child. Adoptions across racial, religious and cultural background are also permitted by the act, should this be in a child's best interests. A children's court must however take these factors into consideration when considering an adoption application. By broadening the scope of people who qualify to adopt, the act increases the opportunities for children to be placed in stable, loving homes.

230. Child who may be adopted

Adoption may only take place if it is in the best interests of the child, the child is an orphan with no guardian or caregiver or the whereabouts of the child's guardian cannot be established. A child is also adoptable if he or she has been abandoned, abused or neglected.

231. Persons who may adopt child

Any adult who meets the requirement of the act can adopt a child, including people in a permanent domestic life-partnership or any other people forming a permanent family unit.

Prospective parents must be fit and proper people, willing and able to care for the child, and assessed by a social worker to check that they comply with the requirements. When conducting this assessment the social worker may take the cultural and community diversity of both the child and the prospective parents into account.

The act explicitly states that a person's financial status is not an acceptable reason for disqualifying them from adopting a child. It carries this provision further by saying that anyone who adopts a child may apply for social assistance if needs be.

When a child becomes available for adoption, either a child's biological father or their foster parent may be considered as a prospective parent in the application.

232. Register on Adoptable Children And Prospective Adoptive Parents (RACAP)

The Racap must be created and maintained by the state and record the details of all children available for adoption. If prospective parents meet all the requirements qualifying them to adopt a child, and they are resident in South African, their details must be included in the RACAP.

233. Consent to adoption

Adoption can only take place if each parent and/ or guardians of the child has given written consent. A child's consent is required if the child is over ten, or younger, if they are deemed able to understand the implications of their consent. Before consent is granted the child and his or her parent or guardian must undergo counselling by the adoption social worker managing the case. Should a parent want a particular person to adopt his or her child, they must declare their preference along with their consent. A person who has consented to a child's adoption has 60 days to withdraw that consent.

The act does outline instances where consent to adoption is not required. For example if a parent is deemed incompetent due to mental illness, they have abused or neglected their child or have had their parental rights revoked by a court, their consent is not a prerequisite in adoption proceedings.

234. Post adoption agreements

Open adoptions are allowed for under the act, and are governed by the conditions set out in a post adoption agreement. An open adoption permits contact between a child and their former parents, guardian or family members. An agreement can also be drawn up to allow for the exchange of information such as medical information. A child's views must be considered when drawing up a post adoption agreement and it cannot be authorised without the consent of the child.

235. Notice of a proposed adoption

When a child becomes available for adoption, a notice of proposed adoption must be given to anyone whose consent is required for the adoption to take place. If the person does not respond to the notice within 30 days, the court may view this as consenting to the adoption.

242. Effect of an adoption order

An adoption order confers all parental rights and responsibilities onto the adoptive parent or parents and terminates any claim that the child's original parents or family members have on the child. An adoption order can however be rescinded by a High court, at the request of the child, the adoptive parent of the child or the child's previous parent or guardian. The application must come no later than two years after the adoption however.

248. Access to adoption register

The act provides for the creation of a national adoption register, that records the details of all adoptions that take place in the country, including any rescission orders granted regarding an adoption.

Information in the register may only be disclosed to an adopted, who child older than 18 or the parents of an adopted child, who is older than 18. A child's biological parents may be granted access to the register on condition that both the child and his or her adoptive parents, give their written consent. The child must also be 18.

In rare instances, information regarding a child or their biological parents may be disclosed if an inquiry relates to the health of the child.

249. No consideration in respect of adoption

The payment of cash or the offer of gifts or favours, for the adoption of a child, is outlawed. Furthermore no one may induce a person, through money or gifts to put a child up for adoption.

To further strengthen this section, the act also limits the type of person or organisation who may carry out adoptions. Only adoption social workers or child protection organisations that have undergone prescribed accreditation may carry out adoptions. Advertising any details concerning a particular child's adoption is also prohibited.

Chapter 16: Inter-country Adoption

South Africa is a party to the Hague Convention on Inter-country adoption. The convention aims to safeguard the rights and best interests of any child adopted across international borders. It establishes procedures that convention countries must follow to effect international adoptions. Adherence to these procedures is intended to prevent the abduction, sale or trafficking of children under the auspices of adoption.

For inter-country adoption proceedings to begin certain things must be established. These include whether or not a child is adoptable, whether all efforts to place them in their home country have been made and whether an inter-country adoption would be in the child's best interests.

All the legal requirements for gaining consent in a specific country must be met before an inter-country adoption can take place. Where applicable this includes gaining the

consent of the child. Furthermore, consent from the child, their parent or guardian or their family cannot be induced through the offer of payment or compensation in any form.

The convention also provides for the establishment of Central Authorities in signatory states. These central authorities are designed to oversee inter-country adoptions and to ensure that all the regulations for inter-country adoptions are adhered to.

The Act gives effect to the Hague Convention into South African law and regulates inter-country adoption in South Africa. This includes establishing who may carry out inter-country adoptions. Only child protection organisations accredited by the Central Authority, and under the conditions it deems necessary, may carry out placements.

257. Central Authority

The Director- General of Social Development functions as the Central Authority in South Africa. The DG however can delegate his or her powers to an official in the department. Certain tasks that the Central Authority needs to perform may be assigned to an organ of state or a child protection organisation accredited to carry out inter-country adoptions.

261. Adoption of a child from Republic by person in a convention country

If a foreign couple or national want to adopt a South African child they must apply to the central authority in their home state. It must establish whether the couple or individual is fit and proper to adopt the child.

The South African Central Authority must determine whether the child is available for adoption. Once this is done and the respective Central Authorities have exchanged the required information and documentation, they may then consent to the child's adoption. All documents and information regarding the case must then be referred to the relevant children's court.

For the court to make an adoption order it must determine whether adoption is in the best interests of the child. It must also establish whether the prospective parents are fit and proper to adopt the child and ensure that the child is allowed to leave the country. The court must ensure all processes under the Hague Convention have been adhered to. It must ensure that the child has been listed on the RACAP for longer than 60 days with no suitable adoptive parents having been found in South African. If it is in a child's best interest, the South African Central Authority can withdraw its consent for an inter-national adoption within 140 days. If this occurs, the child must be returned to South Africa immediately.

Similar procedures apply in cases where a person from a non-convention country seeks to adopt a South African child. In these instances however, the person must contact the relevant adoption authority in their country. It in turns must deal with the South African Central Authority. Once both powers have consented to the adoption, the application must move to the children's court for ratification.

No one may process or aid in an inter-country adoption that does not adhere to the terms outlined in this chapter. If they do they are guilty of an offence.

Chapter 17: Child Abduction

This chapter gives effect to the Hague Convention on the Civil Aspects of International Child Abduction in South African law. The convention is chiefly designed to protect against the parental child abduction. It aims to secure the return of any child removed to or detained in any convention state; and to ensure that the laws of child custody in one convention country are respected in other convention countries.

Central Authority

As in the case of inter-country adoptions, the establishment of a Central Authority in convention countries is required. In this case it is the Chief Family Advocate appointed in term of the Mediation in Certain Divorce Matters Act, who can delegate his or her powers to any family advocate.

Powers of court

Matters of parental abduction are dealt with through the High Courts. In instances of parental abduction the High Court may request that the Central Authority draw up a report on the child's circumstances prior to their abduction. It must however hear the views and the opinion of a child before it can rule on whether the child is to be returned home. The child must have been granted legal representation in the matter.

Chapter 18: Trafficking in Children

The UN Protocol to Prevent Trafficking in Persons aims to combat trafficking in people, particularly women and children. South Africa is party to the protocol, which requires its signatories to adopt or create legislation that criminalises human trafficking.

The protocol defines trafficking and exploitation as:

'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of forces or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery of practices similar to slavery, servitude or the removal of organs'²⁵.

²⁵ Children's Act, No 38 2005, Schedule Three, Text of the UN Protocol to Prevent Trafficking in Persons, Government Gazette, volume 492, 19 June 2006, Cape Town South Africa.

The protocol provides for the protection of victims of trafficking and its prevention. It also provides for co-operation measures, like training and information exchange, between states, aimed at deterring trafficking.

284. Trafficking in children prohibited

The act outlaws both trafficking and facilitating the trafficking of children. It extends this provision by stating that it is no defence in a matter to say that a child or the person controlling the child consented to the exploitation; or that the exploitation intended never actually occurred. If a court has reason to believe that that a child's parent or guardian is involved in trafficking that child, it may terminate their parental rights and responsibilities and place the child in temporary safe care.

Under the act, an employer, whose representative or employee engages in child trafficking, can be held liable for contravening the law and have their operating licence revoked. Similarly any legal entity based in South Africa involved in trafficking offences abroad is still liable to prosecution and conviction in South Africa.

285. Behaviour facilitating trafficking in children prohibited.

The act forbids any person or legal entity from knowingly letting property to someone harbouring trafficked children. It outlaws the advertising, publishing, printing or broadcasting of anything that alludes to trafficking. Internet service providers who come across any site on their server that refers to trafficking must report this to the police.

289. Child who is victim of trafficking found in Republic

A child victim of trafficking must be referred to a designated social worker for investigation and placed in safe care until the investigation is complete.

Any foreign, undocumented child found to be a victim of trafficking in South Africa may be assisted in applying for asylum in terms of the Refugees Act, 130 of 1998. If they are found to be in need of care and protection by an order of court, the child may stay in South Africa for as long the order is valid.

A child cannot be repatriated to their home country unless adequate care arrangements in the country of origin are available, the child's safety is assured and there is no possibility that the child will be trafficked again.

Chapter 19: Surrogate Motherhood

Surrogate motherhood is provided for by the act, on condition that a written agreement, between the commissioning parents and the surrogate mother, has been drawn up and confirmed by the High Court. The act protects the legal rights of both the surrogate mother, the commissioning parents, but above all it protects the status of a child conceived and born through a surrogate mother.

Surrogate motherhood is tightly controlled and a court can only confirm a surrogate motherhood agreement that has been drawn up in the prescribed format.

The court must be sure that the commissioning parents cannot have children naturally and that the reasons are medically sound and irreversible. It must ensure that the commissioning parents are fit and proper people to raise the child, and that they have documented in the agreement the desirable, stable home environment they can offer the child.

The court must consider the surrogate mother fit to enter into the agreement and ensure that she understands all the legal consequences of the surrogacy agreement. She must have entered the agreement for altruistic reason and not as a source of income. The court also needs to ensure that she has documented history of healthy pregnancy and at least one living child of her own.

The surrogate mother may also terminate the pregnancy if she wants, on condition that she informs the surrogate parents. She incurs no liability for terminating the pregnancy other than any medical expenses already paid for by the commissioning parents

293. Consent of husband, wife or partner

The consent of all the people whose lives may be affected by a surrogate motherhood agreement must give their consent for it to be ratified by a court. If a commissioning parent is married or in a long-term partnership, their husband, wife or partner must give their consent before the surrogacy agreement can go ahead. Similarly if a surrogate mother is married or in a partnership, her husband or partner must give their consent.

297. Effect of surrogate motherhood agreement on status of child

Once the agreement is confirmed it means that the child born of the surrogate mother belongs entirely to the commissioning parents. The surrogate mother must hand over the child. Neither she, her partner nor their families have any rights over the child.

If for any reason however, the surrogate motherhood agreement does not comply with the act, the child is deemed to belong to the woman who gave birth to the baby i.e. the surrogate mother.

298. Termination of surrogacy motherhood agreement

If a surrogate mother is also a genetic parent to the child, through the use of her ovum for instance to achieve fertilisation, she may terminate the surrogacy agreement. She must do it within 60 days of the birth of the child, and by filing written notice to the court. The court on receiving notice must terminate the agreement making sure that the mother understands the effects of the termination and that she accepts parenthood of the child.

The commissioning father however still remains a parent of the child, if the surrogate mother has no partner or husband when she terminates the agreement.

301. Payments in respect of surrogacy prohibited

Giving or receiving payment, or promising payment in cash or kind, for surrogate motherhood is prohibited by the act. Payment is only allowed to cover medical expenses for the artificial insemination of a surrogate mother, her pregnancy, the birth of the child and the legal costs of the surrogate agreement. The surrogate mother may also be compensated for her loss of earnings due to the pregnancy and be paid insurance cover against death or disability due to the pregnancy.

302. *Identity of parties*

No one may publish or reveal the identities of people party to a surrogate agreement without written consent. And no details of a child born of a surrogate motherhood agreement may be published at all.

Chapter 20: Enforcement of the act

Officials representing the DG, the provincial head of social development or a municipality are permitted to inspect any child and youth care centre, partial care facility, shelter or drop in centre. An official may also inspect any placed believed to be operating one of these facilities without registration.

In the course of an inspection they may question management, staff, children, request and copy documentation, confiscate items and record proceedings in any way including taking pictures or videos. Any inspections carried out must be reported to the DG, provincial head of Social Development or municipality.

305. *Offences*

If a person is convicted of contravening the act he or she is liable to a fine and or imprisonment of not more that 20 years. Offences include

- subjecting children to any cultural or religious practises that may harm them
- obstructing a police officer, social worker or designated official in performing their duties in terms of the act
- failing to comply with an order of court made in terms of the act
- trafficking children or aiding in the trafficking of children
- managing, owning or leasing premises where the sexual exploitation of children is taking place

Finally, anyone who is supposed to care for a child but fails to, either by abuse or neglect is guilty of an offence.

Chapter 21: Administration of Act

306. *Regulations*

The Minister must make regulations governing a range of sections in the act before it can take effect. These include regulating the determination of child protection organisations and other organisations providing shelter, care and services to children

Regulations must also be made establishing the national norms and standards for

- ECD programmes,
- child protection systems,
- child and youth care centre
- drop in centres
- partial care centres

The Minister, Director General, a provincial MEC for social development and a provincial head of social development may delegate his or her powers and duties in the manner set out by the act.

Chapter 22: Miscellaneous Matters

313. *Amendment of Laws*

The following laws are repealed by the Children's Act

Children's Act, 1960
General further Law Amendment Act, 1962, section 1
Childcare Act, 1983
Age of Majority Act, 1972
Children's Status Act, 1987
Prevention of Family Violence Act, 1993, section 4
Guardianship Act, 1993
Hague Convention on the Civil Aspects of International Child Abduction Act, 1996
Natural Fathers of Children born out of Wedlock Act, 1997

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