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**No. 30884**

## THE PRESIDENCY

No. 313

18 March 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 41 of 2007: Children's Amendment Act, 2007.**

## IHHOVISI LIKAMONGAMELI

Ino. 313

18 March 2008

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzo-shicilelwa umphakathi:—

**Ino. 41 Ka 2007: Umthethosichibiyelo weZingane, ka 2007.**

[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

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

(English text signed by the President.)  
(Assented to 13 March 2008.)

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

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### **Amendment of long title of Act 38 of 2005**

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

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

**AMAZWI ACHAZAYO AJWAYELEKILE:**

- [ ] Amagama abhalwe ngokugqamile aphakathi kwabakaki abayizikwele akhomba okukhishwayo emithethweni ekhona.
- \_\_\_\_\_ Amagama adwetshelwe ngomugqa ogqamile akhomba okufakiwe emithethweni ekhona.

(English text signed by the President.)  
(Assented to 13 March 2008.)

# UMTHETHO

Ukuchibiyela uMthetho Wezingane, ka 2005, ukuze kufakwe izincazelo ezithile; ukuhlinzekela ukunakekelwa kwezingane isikhashana esinqunyiwe; ukuhlinzekela ukukhuliswa kwezingane zisencane; ukwengeza eminye imibandela ephathelene nokuvikelwa kwezingane; ukuhlinzekela izinsizakalo ezivimbayo futhi zilekelele masinya; ukuhlinzekela izingane ezinakekelwe kwenye indawo; ukuhlinzekela ukunakekelwa kwezingane ngabantu abangebona abazali bazo; ukuhlinzekela izikhungo zokunakekelwa izingane nentsha nezindawo zokuquba; kanye nokudala ezinye iziwombe ezikleliswe njengamacala maqondana nezingane kanye nokuhlinzekela izindaba ezincike kulokho.

**U**ZAKUMISWA yiPhalamende yaseRiphabhuliki yaseNingizimu Afrika, njengokulandelayo:—

**Ukuchitshiyelwa kwesihloko eside soMthetho 38 ka 2005**

1. Isihloko eside esilandelayo singena esikhundleni sesihloko eside eMthethweni weZingane, ka 2005 (emuva kwalokhu obizwa ngokuthi uMthetho wokuQala): 5
 

“Ukuqalisa amalungelo athile ezingane njengoba equkethwe wuMthethosisekelo; ukuchaza imigomo ephathelene nokunakekelwa nokuvikelwa kwezingane; ukuchaza amalungelo nezibophezelo zabazali; ukwengeza eminye imibandela ephathelene nezinkantolo zezingane; ukuhlinzekela ukunakekelwa izingane isikhashana esinqunyiwe; ukuhlinzekela 10 ukukhuliswa kwezingane zisencane; ukuhlinzekela ukukhishwa kwezinqumo zesondlo; ukuhlinzekela izinsizakalo ezivimbayo futhi zilekelele masinya; ukuhlinzekela izingane ezinakekelwe kwenye indawo; ukuhlinzekela ukunakekelwa kwezingane ngabantu abangebona abazali bazo; ukuhlinzekela izikhungo zokunakekelwa izingane nentsha nezindawo 15 zokuquba; ukwenza ukuhlinzeka okusha kohlelo lwezingane ezitholwayo; ukuhlinzekela izingane ezitholwa kwamanye amazwe; ukusebenzisa isivumelwano saseHague sokuthola izingane kwamanye amazwe; ukunqanda ukuthunjwa kwezingane nokuqalisa isivumelwane saseHague esiqondene Nokuhlukunyezwa Kwezingane Emazweni Omhlaba; ukuhlinzekela isimo 20 sikamama ofukamela umntwana womunye umama esiswini sakhe; kanye nokudala ezinye iziwombe ezikleliswe njengamacala maqondana nezingane kanye nokuhlinzekela izindaba eziphathelene nalokho.”

**Amendment of Table of Contents of Act 38 of 2005**

2. The Table of Contents after the long title of the principal Act is hereby amended—

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

**“CHAPTER 5****PARTIAL CARE**

|                                                                      |    |
|----------------------------------------------------------------------|----|
| 76. Partial care                                                     | 5  |
| 77. Strategy concerning partial care                                 |    |
| 78. Provision of partial care                                        |    |
| 79. National norms and standards for partial care                    | 10 |
| 80. Partial care facility to be registered                           |    |
| 81. Application for registration and renewal of registration         |    |
| 82. Consideration of application                                     |    |
| 83. Conditional registration                                         |    |
| 84. Cancellation of registration                                     | 15 |
| 85. Notice of enforcement                                            |    |
| 86. Appeal against and review of certain decisions                   |    |
| 87. Record and inspection of and provision for partial care facility |    |
| 88. Assignment of functions to municipality                          |    |
| 89. Serious injury, abuse or death of child in partial care facility | 20 |
| 90. Regulations                                                      |    |

**CHAPTER 6****EARLY CHILDHOOD DEVELOPMENT**

|                                                                             |    |
|-----------------------------------------------------------------------------|----|
| 91. Early childhood development                                             | 25 |
| 92. Strategy concerning early childhood development                         |    |
| 93. Provision of early childhood development programmes                     |    |
| 94. National norms and standards for early childhood development programmes |    |
| 95. Early childhood development programme to be registered                  | 30 |
| 96. Application for registration and renewal of registration                |    |
| 97. Consideration of application                                            |    |
| 98. Conditional registration                                                |    |
| 99. Cancellation of registration                                            |    |
| 100. Notice of enforcement                                                  | 35 |
| 101. Appeal against and review of certain decisions                         |    |
| 102. Assignment of functions to municipality                                |    |
| 103. <u>Regulations</u> ”;                                                  |    |

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

**“Part 1*****Child protection system***

|                                                                                                |    |
|------------------------------------------------------------------------------------------------|----|
| 104. Strategy concerning child protection                                                      | 40 |
| 105. Provision of designated child protection services                                         |    |
| 106. National norms and standards for child protection                                         |    |
| 107. Designation of child protection organisation                                              | 45 |
| 108. Existing child welfare organisation                                                       |    |
| 109. Withdrawal of designation                                                                 |    |
| 110. Reporting of abused or neglected child and child in need of care and <u>protection</u> ”; |    |

**Ukuchitshiyelwa Kokuqokethwe eMthethweni 38 ka 2005**

2. Okuqokethwe emuva kwesihloko eside somthetho omkhulu kuyachitshiyelwa lapha—

(a) ngokufaka okulandelayo emuva kwamagama athi “75. Imigomo”:

**“ISAHLUKO 5**

5

**UKUNAKEKELA ISIKHASHANA ESINQUNYIWE**

76. Ukunakekela isikhashana esinqunyiwe
77. Isu eliphathelene nokunakekela isikhashana esinqunyiwe
78. Ukuhlinzeka ukunakekela isikhashana esinqunyiwe 10
79. Imikhuba namazinga kazwelonke okunakekela isikhashana esinqunyiwe
80. Isikhungo sokunakekela isikhashana esinqunyiwe kufanele sibhaliswe
81. Ukufaka isicelo sokubhalisa nokuvuselela ukubhalisa
82. Ukucutshungulwa kwesicelo
83. Ukubhalisa okunemibandela 15
84. Ukwesula ukubhalisa
85. Isaziso sokusebenzisa umthetho
86. Ukudlulisa isikhalo nokubukezwa kwezinqumo ezithize
87. Ukuqopha nokuhlola ukuhlinzekwa nokuhlinzekela isikhungo sokunakekela isikhashana esinqunyiwe 20
88. Ukunika umasipala imisebenzi
89. Ukulimala kabi, ukuhlukunyezwa noma ukushona kwengane esesikhungweni sokunakekela isikhashana esinqunyiwe
90. Imigomo

**ISAHLUKO 6**

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**UKUKHULISA INGANE NGESIKHATHI ISENCANE**

91. Ukukhulisa ingane ngesikhathi isencane
92. Isu eliphathelene nokukhulisa ingane ngesikhathi isencane
93. Ukuhlinzeka izinhlelo zokukhulisa ingane ngesikhathi isencane 30
94. Imikhuba namazinga kazwelonke okukhulisa ingane ngesikhathi isencane
95. Uhlelo lokukhulisa ingane ngesikhathi isencane kufanele lubhaliswe
96. Ukufaka isicelo sokubhalisa nokuvuselela ukubhalisa
97. Ukucutshungulwa kwesicelo 35
98. Ukubhalisa okunemibandela
99. Ukwesula ukubhalisa
100. Isaziso sokusebenzisa umthetho
101. Ukudlulisa isikhalo maqondana nezinqumo ezithize nokuzibukeza
102. Ukunikeza umasipala imisebenzi 40
103. Imigomo”;

(b) ngokufaka okulandelayo emuva kwamagama athi “**UKUVIKELA IZINGANE**”:

**“Ingxenye 1*****Uhlelo lokuvikela ingane***

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104. Isu eliphathelene nokuvikela ingane
105. Ukuhlinzeka ngezinsizakalo zokuvikela izingane eziqokiwe
106. Imikhuba namazinga kazwelonke aphathelene nokuvikela ingane
107. Ukuqokwa kwezinhlangano ezivikela ingane 50
108. Inhlangano yezenhlangakale yezingane evela ikhona
109. Ukuhoxiswa kokuqoka
110. Ukubika ingane ehlukenyeziwe noma enganakekelwe kanye nengane edinga ukunakekelwa nokuvikelwa”;

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

***"Part 4***

***Other protective measures***

- |                                                                                                |    |
|------------------------------------------------------------------------------------------------|----|
| 135. Application to terminate or suspend parental responsibilities and rights                  |    |
| 136. Consideration of application to terminate or suspend parental responsibilities and rights | 5  |
| 137. Child-headed household                                                                    |    |
| 138. Unlawful removal or detention of child                                                    |    |
| 139. Unlawful taking or sending of child out of Republic                                       |    |
| 140. Child safety at place of entertainment                                                    | 10 |
| 141. Child labour and exploitation of children";                                               |    |

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

***"CHAPTER 8***

***PREVENTION AND EARLY INTERVENTION***

- |                                                                                      |    |
|--------------------------------------------------------------------------------------|----|
| 143. Prevention and early intervention programmes                                    | 15 |
| 144. Purposes of prevention and early intervention programmes                        |    |
| 145. Strategy for securing prevention and early intervention programmes              |    |
| 146. Provision of prevention and early intervention programmes                       |    |
| 147. National norms and standards for prevention and early intervention programmes   | 20 |
| 148. Court may order early intervention programme                                    |    |
| 149. Report to include summary of prevention and early intervention programmes"; and |    |

(e) by the insertion after "166. Change of residence or work by respondent" of the following: 25

***"CHAPTER 11***

***ALTERNATIVE CARE***

- |                                                                  |    |
|------------------------------------------------------------------|----|
| 167. Alternative care                                            |    |
| 168. Leave of absence                                            | 30 |
| 169. Child in alternative care prohibited from leaving Republic  |    |
| 170. Child absconding from alternative care                      |    |
| 171. Transfer of child in alternative care                       |    |
| 172. Change in residential care programme                        |    |
| 173. Removal of child already in alternative care                | 35 |
| 174. Provisional transfer from alternative care                  |    |
| 175. Discharge from alternative care                             |    |
| 176. Remaining in alternative care beyond age of 18 years        |    |
| 177. Appeal against and review of certain decisions              |    |
| 178. Serious injury, abuse or death of child in alternative care | 40 |
| 179. Regulations                                                 |    |

***CHAPTER 12***

***FOSTER CARE***

- |                  |  |
|------------------|--|
| 180. Foster care |  |
|------------------|--|

- (c) ngokufaka okulandelayo emuva kuka “134. Ukufinyelela ezintweni zokuvimba inzalo”:

**“Ingxenye 4**

**Ezinye izinyathelo zokuvikela**

- |                                                                                                       |    |
|-------------------------------------------------------------------------------------------------------|----|
| 135. Isicelo sokuqeda noma sokumisa okwesikhashana izibophezelo namalungelo obuzali                   | 5  |
| 136. Ukucutshungulwa kwesicelo sokuqeda noma sokumisa okwesikhashana izibophezelo namalungelo obuzali |    |
| 137. Imizi aphethwe yizingane ezingabondli                                                            | 10 |
| 138. Ukususa noma ukugcina ingane okungekho emthethweni                                               |    |
| 139. Ukuthatha noma ukuthumela ingane ngaphandle kweRiphabhuliki okungekho emthethweni                |    |
| 140. Ukuphepha kwengane endaweni yokuzithokozisa                                                      |    |
| 141. Ukusetshenziswa nokuxhashazwa kwezingane”;;                                                      | 15 |

- (d) ngokufaka okulandelayo emuva kuka “142. Imigomo”:

**“ISAHLUKO 8**

**IZINSIZAKALO EZIVIMBAYO FUTHI ZILEKELELE MASINYA**

- |                                                                                                 |    |
|-------------------------------------------------------------------------------------------------|----|
| 143. Izinhlelo zokuvimbela futhi zilekelele masinya                                             | 20 |
| 144. Izinhloso zezinhlelo zokuvimbela futhi zilekelele masinya                                  |    |
| 145. Isu lokuthola izinhlelo zokuvimbela futhi zilekelele masinya                               |    |
| 146. Ukuhlinzeka izinsizakalo zokuvimbela futhi zilekelele masinya                              |    |
| 147. Imikhuba namazinga kazwelonke ezinhlelo zokuvimbela futhi zilekelele masinya               | 25 |
| 148. Inkantolo ingabiza uhlelo lokuvimbela futhi lulekelele masinya                             |    |
| 149. Umbiko kufanele ufake izinhlelo zokuvimbela futhi zilekelele masinya ngokufingqiwe”; kanye |    |

- (e) nangokufaka okulandelayo emuva kuka “166. Ukushintsha indawo yokuhlala noma umsebenzi ngummangalelwa: 30

**“ISAHLUKO 11**

**UKUNAKEKELWA KWENYE INDAWO**

- |                                                                                              |    |
|----------------------------------------------------------------------------------------------|----|
| 167. Ukunakekelwa kwenye indawo                                                              |    |
| 168. Ukuthatha ikhefu                                                                        | 35 |
| 169. Ingane enakekelwe kwenye indawo ayivunyelwe ukushiya iRiphabhuliki                      |    |
| 170. Ingane eyeqayo lapho inakekelwe kwenye indawo                                           |    |
| 171. Ukudluliswa kwengane enakekelwe kwenye indawo                                           |    |
| 172. Ushintsho ohlelweni lokunakekela ingane esikhungweni                                    | 40 |
| 173. Ukususwa kwengane esivele inakekelwa kwenye indawo                                      |    |
| 174. Ukususwa okwesikhashana ekunakekelweni kwenye indawo                                    |    |
| 175. Ukukhishwa ekunakekelweni kwenye indawo                                                 |    |
| 176. Ukuqhubeka nokuhlala ekunakekelweni kwenye indawo emuva kokufinyelela eminyakeni ewu 18 | 45 |
| 177. Ukudlulisa isikhalo nokubukezwa kwezinqumo ezithile                                     |    |
| 178. Ukulimala kabi, ukuhlukunyezwa noma ukushona kwengane enakekelwe kwenye indawo          |    |
| 179. Imigomo                                                                                 |    |

**ISAHLUKO 12**

**UKUKHULISA INGANE EKUNGEYONA EYAKHO**

- |                                          |    |
|------------------------------------------|----|
| 180. Ukukhulisa ingane ekungeyona eyakho | 50 |
|------------------------------------------|----|

|                                                                   |    |
|-------------------------------------------------------------------|----|
| 181. Purposes of foster care                                      |    |
| 182. Prospective foster parent                                    |    |
| 183. Cluster foster care                                          |    |
| 184. Determination of placement of child in foster care           |    |
| 185. Number of children to be placed in foster care per household | 5  |
| 186. Duration of foster care placement                            |    |
| 187. Reunification of child with biological parent                |    |
| 188. Responsibilities and rights of foster parent                 |    |
| 189. Termination of foster care                                   |    |
| 190. Regulations                                                  | 10 |

### CHAPTER 13

#### CHILD AND YOUTH CARE CENTRES

|                                                                              |    |
|------------------------------------------------------------------------------|----|
| 191. Child and youth care centre                                             |    |
| 192. Strategy to ensure sufficient provision of child and youth care centres | 15 |
| 193. Provision of child and youth care centres                               |    |
| 194. National norms and standards for child and youth care centres           |    |

#### *Part 1*

##### *Establishment and registration of child and youth care centre*

|                                                                                                                       |    |
|-----------------------------------------------------------------------------------------------------------------------|----|
| 195. Establishment of child and youth care centre by organ of state                                                   |    |
| 196. Existing government children's home, place of safety, secure care facility, school of industry and reform school | 20 |
| 197. Establishment of child and youth care centre                                                                     |    |
| 198. Existing registered children's home and registered shelter                                                       | 25 |
| 199. Application for registration or renewal of registration                                                          |    |
| 200. Consideration of application                                                                                     |    |
| 201. Conditional registration                                                                                         |    |
| 202. Amendment of registration                                                                                        |    |
| 203. Cancellation of registration                                                                                     | 30 |
| 204. Notice of enforcement                                                                                            |    |
| 205. Voluntary closure of child and youth care centre                                                                 |    |
| 206. Child in child and youth care centre to be closed                                                                |    |
| 207. Appeal against and review of certain decisions                                                                   |    |

#### *Part 2*

##### *Operation and management of child and youth care centre*

|                                                       |    |
|-------------------------------------------------------|----|
| 208. Management board                                 |    |
| 209. Manager and staff of child and youth care centre |    |
| 210. Management system                                |    |
| 211. Quality assurance process                        | 40 |

#### *Part 3*

##### *Miscellaneous*

|                  |  |
|------------------|--|
| 212. Regulations |  |
|------------------|--|



- |                                                                                                    |    |
|----------------------------------------------------------------------------------------------------|----|
| 181. Izinhlalo zokukhulisa ingane ekungeyona eyakho                                                |    |
| 182. Abantu abangase babe osingabazali                                                             |    |
| 183. Ukunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu                            |    |
| 184. Ukunquma ukubeka ingane kubantu abazokhulisa ingane ekungeyona eyabo                          | 5  |
| 185. Inani lezingane ezingabekwa emzini ngamunye ukuba zikhuliswe ngabantu abangebona abazali bazo |    |
| 186. Ubude besikhathi sokubeka ingane kubantu abazokhulisa ingane ekungeyona eyabo                 | 10 |
| 187. Ukuhlanganiswa kwengane nabazali bayo begazi                                                  |    |
| 188. Izibophezelo namalungelo osingabazali                                                         |    |
| 189. Ukuvalwa kokukhulisa ingane ekungeyona eyakho                                                 |    |
| 190. Imigomo                                                                                       |    |

### ISAHLUKO 13

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#### IZIKHUNGO ZOKUNAKEKELA IZINGANE NENTSHA

- |                                                                                            |    |
|--------------------------------------------------------------------------------------------|----|
| 191. Isikhungo sokunakekela izingane nentsha                                               |    |
| 192. Isu lokuqinisekisa ukuthi kuhlinzekwa izikhungo zokunakekela izingane nentsha ezanele | 20 |
| 193. Ukuhlinzeka izikhungo zokunakekela izingane nentsha                                   |    |
| 194. Imikhuba namazinga kazwelonke ezikhungo zokunakekela izingane nentsha                 |    |

#### *Ingxenye 1*

#### *Ukusungula nokubhalisa isikhungo sokunakekela izingane nentsha*

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- |                                                                                                                                                                                |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 195. Ukusungula isikhungo sokunakekela izingane nentsha wuhlaka lukahulumeni                                                                                                   |    |
| 196. Ikhaya lezingane, indawo yokuphepha, isikhungo sokunakekela esiphaphile, isikole sokufundela umsebenzi nesikole sokuqondisa izigwegwe okuphethwe ngumbuso okuvela kukhona | 30 |
| 197. Ukusungula isikhungo sokunakekela izingane nentsha                                                                                                                        |    |
| 198. Ikhaya lezingane elivele likhona elibhalisiwe kanye nendawo yokukhosela ebhalisiwe                                                                                        |    |
| 199. Isicelo sokubhalisa nokuvuselela ukubhalisa                                                                                                                               | 35 |
| 200. Ukucutshungulwa kwesicelo                                                                                                                                                 |    |
| 201. Ukubhalisa okunemibandela                                                                                                                                                 |    |
| 202. Ukuchibiyela ukubhalisa                                                                                                                                                   |    |
| 203. Ukwesula ukubhalisa                                                                                                                                                       |    |
| 204. Isaziso sokusebenzisa umthetho                                                                                                                                            | 40 |
| 205. Ukuvala ngokuthanda kwesikhungo sokunakekela izingane nentsha                                                                                                             |    |
| 206. Ingane esesikhungweni sokunakekela izingane nentsha esizovalwa                                                                                                            |    |
| 207. Ukudlulisa isikhalo nokubukezwa kwezinqumo ezithile                                                                                                                       |    |

#### *Ingxenye 2*

#### *Ukuqhuba nokuphatha isikhungo sokunakekela izingane nentsha*

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- |                                                                    |    |
|--------------------------------------------------------------------|----|
| 208. Ibhodi labaphathi                                             |    |
| 209. Imeninja nabasebenzi besikhungo sokunakekela izingane nentsha |    |
| 210. Uhlelo lokuphatha                                             |    |
| 211. Umgudu wokuqinisekisa ikhwalithi                              | 50 |

#### *Ingxenye 3*

#### *Ezingxubevange*

- |              |  |
|--------------|--|
| 212. Imigomo |  |
|--------------|--|

## CHAPTER 14

## DROP-IN CENTRES

|                                                                 |    |
|-----------------------------------------------------------------|----|
| 213. Drop-in centres                                            |    |
| 214. Strategy concerning drop-in centres                        | 5  |
| 215. Provision of drop-in centres                               |    |
| 216. National norms and standards for drop-in centres           |    |
| 217. Drop-in centres to be registered                           |    |
| 218. Application for registration and renewal of registration   |    |
| 219. Consideration of application                               | 10 |
| 220. Conditional registration                                   |    |
| 221. Cancellation of registration                               |    |
| 222. Notice of enforcement                                      |    |
| 223. Appeal against and review of certain decisions             |    |
| 224. Record and inspection of and provision for drop-in centres | 15 |
| 225. Assignment of functions to municipality                    |    |
| 226. Serious injury, abuse or death of child in drop-in centre  |    |
| 227. <u>Regulations</u> ".                                      |    |

## Amendment of section 1 of Act 38 of 2005

3. Section 1 of the principal Act is hereby amended— 20
- (a) by the insertion after the definition of "**adoptive parent**" of the following definitions:
- " **'after-care'** means the supportive service provided by a social worker or a social service professional to monitor progress with regard to the child's developmental adjustment as part of— 25
- (a) family preservation or reunification services;
- (b) adoption or placement in alternative care; or
- (c) discharge from alternative care;
- 'alternative care'** means care of a child in accordance with section 167; 30
- 'area'**, in relation to—
- (a) a metropolitan or local municipality, means the area for which the municipality has been established; and
- (b) a district municipality, means those parts of the area for which the municipality has been established which do not fall within the area of a local municipality;" 35
- (b) by the insertion after the definition of "**artificial fertilisation**" of the following definitions:
- " **'assessment of a child'** means a process of investigating the developmental needs of a child, including his or her family environment or any other circumstances that may have a bearing on the child's need for protection and therapeutic services; 40
- 'assessment of a programme'** means a process, conducted by a suitably qualified person, of determining whether the provision and the content of a programme complies with prescribed national norms and standards;"
- (c) by the insertion after the definition of "**child**" of the following definition: 45
- " **'child and youth care centre'** means a facility described in section 191(1);" 50
- (d) by the insertion after the definition of "**Child Care Act**" of the following definition:
- " **'child-headed household'** means a household recognised as such in terms of section 137;" 50
- (e) by the insertion after the definition of "**clerk of the court**" of the following definitions:
- " **'cluster foster care'** means the reception of children in foster care in accordance with a cluster foster care scheme registered by the provincial head of social development; 55

## ISIAHLUKO 14

## IZINDAWO ZOKUQUBA

|                                                                              |    |
|------------------------------------------------------------------------------|----|
| 213. Izindawo zokuquba                                                       |    |
| 214. Isu eliphathelene nezindawo zokuquba                                    | 5  |
| 215. Ukuhlinzekwa kwezindawo zokuquba                                        |    |
| 216. Imikhuba namazinga kazwelonke ezindawo zokuquba                         |    |
| 217. Izindawo zokuquba kufanele zibhaliswe                                   |    |
| 218. Isicelo sokubhalisa nokuvuselela ukubhalisa                             |    |
| 219. Ukucutshungulwa kwesicelo                                               | 10 |
| 220. Ukubhalisa okunemibandela                                               |    |
| 221. Ukwesula ukubhalisa                                                     |    |
| 222. Isaziso sokusebenzisa umthetho                                          |    |
| 223. Ukudlulisa isikhalo nokubukeza izinqumo ezithile                        |    |
| 224. Ukuqopha nokuhlola izindawo zokuquba nokuzihlinzekela                   | 15 |
| 225. Ukunika umasipala imisebenzi                                            |    |
| 226. Ukulimala kabi, ukuhlukunyezwa noma ukushona kwengane endaweni yokuquba |    |
| 227. Imigomo".                                                               |    |

### Ukuchitshiyelwa kwesigaba 1 soMthetho 38 ka 2005 20

#### 3. Isigaba 1 soMthetho omkhulu siyachitshiyelwa lapha ngalokhu:

- (a) ngokufaka izincazelo ezilandelayo emuva kwencazelo yalokhu **“umzali othole ingane”**:
- “**‘ukunakekela okuqhubekayo’** kusho insizakalo ehlinzekwa ngusonhlalakahle noma ungcweti wezenhlalakahle eqapha inqubekelaphambili maqondana nentuthuko yengane ekujwayeleni isimo esisha lokhu kube yingxeny—
- (a) yensizakalo yokulondolozwa komndeni noma yokuhlanganiswa kabusha komndeni;
- (b) ukutholwa noma ukubekwa kwenye indawo yokunakekela; noma
- (c) ukukhishwa kwenye indawo yokunakekela;
- ‘ukulondolozwa kwengane kwenye indawo’** kusho ukunakekela ingane ngokulandisa kwesigaba 167;
- ‘indawo’**, maqondana—
- (a) nedolobhakazi noma umasipala wendawo, kusho indawo umasipala akhelwe yona; bese kuthi
- (b) nomasipala wesifunda, kusho lezo zingxeny zendawo umasipala akhelwe zona kepha ezingangeni ngaphansi kukamasipala wendawo;”;
- (b) ngokufaka incazelo elandelayo emuva kwencazelo yalokhu **“ukukhuleliswa ngokungekhona okwemvelo”**:
- “**‘ukuhlolwa kwengane’** kusho umgudu wokuphenya ngezidingo zokukhula kwengane, kufaka nesimo somndeni wayo noma yiziphi ezinye izimo ezingahle zibe nomthelelela ekutheni ingane idinge insizakalo yokuvikelwa nokwelashwa;
- ‘ukuhlolwa kohlelo’** kusho umgudu, oqhutshwa ngumuntu oqeqeshwe ngokufaneleyo, wokuthola ukuthi ukuhlinzekwa kanye nokuqukethwe wuhlelo kuyayithobela yini imikhuba namazinga anqunyiwe kazwelonke;”;
- (c) ngokufaka incazelo elandelayo emuva kwencazelo yalokhu **“ingane”**:
- “**‘isikhungo sokunakekela izingane nentsha’** kusho indawo echazwe esigabeni 191(1);”;
- (d) ngokufaka incazelo elandelayo emuva kwencazelo yalokhu **“uMthetho wokuNakekelwa kweZingane”**:
- “**‘ikhaya eliphethwe yingane engumondli’** kusho ikhaya elithathwa kanjalo ngokwesigaba 137;”;
- (e) ngokufaka incazelo elandelayo emuva kwencazelo yalokhu **“umabhalane wenkantolo”**:
- “**‘ukunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu’** kusho ukwamukelwa kwezingane ekunakekelweni”

- 'cluster foster care scheme'** means a scheme providing for the reception of children in foster care, managed by a nonprofit organisation and registered by the provincial head of social development for this purpose;"
- (f) by the insertion after the definition of **"Department"** of the following definitions: 5
- "designated child protection organisation"** means an organisation designated in terms of section 107 to perform designated child protection services;
- 'designated child protection service'** means a child protection service referred to in section 105;" 10
- (g) by the insertion after the definition of **"divorce court"** of the following definitions:
- "drop-in centre"** means a facility referred to in section 213;
- 'early childhood development programme'** means a programme referred to in section 91(3); 15
- 'early childhood development services'** means services referred to in section 91(2);
- 'early intervention programme'** means a programme referred to in section 143(2);" 20
- (h) by the insertion after the definition of **"family member"** of the following definitions:
- "foster care"** means care of a child as described in section 180(1) and includes foster care in a registered cluster foster care scheme;
- 'foster parent'** means a person who has foster care of a child by order of the children's court, and includes an active member of an organisation operating a cluster foster care scheme and who has been assigned responsibility for the foster care of a child;" 25
- (i) by the insertion after the definition of **"mental illness"** of the following definition:
- "midwife"** means a person registered as a midwife under the Nursing Act, 1978 (Act No. 50 of 1978);" 30
- (j) by the insertion after the definition of **"Minister"** of the following definition:
- "municipality"** means a metropolitan, local or district municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), but to the extent that a municipality may or must implement a provision of this Act in or in relation to an area which falls within the area of both a local municipality and a district municipality, "municipality" in such a provision means the relevant local municipality;" 35
- (k) by the insertion after the definition of **"neglect"** of the following definition:
- "nurse"** means a person registered as a nurse under the Nursing Act, 1978 (Act No. 50 of 1978);" 40
- (l) by the insertion after the definition of **"parental responsibilities and rights"** of the following definition: 45
- "partial care"** means partial care referred to in section 76;"
- (m) by the insertion after the definition of **"party"** of the following definition:
- "permanency plan"** means a documented plan referred to in section 157(1);" 50

- ngokuhambisana nesikimu sokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu esibhaliswe yinhloko yesifundazwe yentuthuko yezehlalakahle;
- ‘isikimu sokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu’** kusho isikimu esihlinzekela ukwamukelwa kwezingane ekunakekelweni kwezingane ezitholiwe, okwenziwa yinhlangano engasebenzeli inzuzo futhi ebhaliswe yinhloko yesifundazwe yentuthuko yezehlalakahle ukuze ifeze le nhloso;”;
- (f) ngokufaka inzcazelo ezilandelayo emuva kwencazelo yalokhu **“Umnyango”**:  
**“‘inhlangano evikela izingane ekhethiwe’** kusho inhlangano ekhethwe ngokwesigaba 107 ukwenza imisebenzi yokuvikela izingane; **‘insizakalo evikela izingane’** kusho imisebenzi evikela izingane okukhulunywa ngayo esigabeni 105;”;
- (g) ngokufaka inzcazelo ezilandelayo emuva kwencazelo yalokhu **“inkantolo yokwehlukanisa”**:  
**“‘indawo yokuquba’** kusho isikhungo okukhulunywa ngaso esigabeni 213;  
**‘uhlelo lokukhulisa ingane ngesikhathi isencane’** kusho uhlelo okukhulunywa ngalo esigabeni 91(3);  
**‘izinsizakalo zokukhulisa ingane ngesikhathi isencane’** kusho izinsizakalo okukhulunywa ngazo esigabeni 91(2);  
**‘insizakalo elekelela masinya’** kusho insizakalo okukhulunywa ngayo esigabeni 143(2);”;
- (h) ngokufaka inzcazelo ezilandelayo emuva kwencazelo yalokhu **“ilunga lomndeni”**:  
**“‘ukunakekela ingane okungesiyona eyakho’** kusho ukunakekela ingane okuchazwe esigabeni 180(1) kanti kufaka ukunakekelwa kwezingane ezitholiwe kwisikimu sokunakekela izingane ezitholiwe zingamaqembu;  
**‘umzali onakekela ingane okungesiyona eyakhe’** kusho umuntu onakekela ingane okungesiyona eyakhe ngokomyalo okhishwe yinkantolo yezingane, kufake nelungu okuyilona elimatasatasa lenhlangano eqhuba isikimu sokunakekela izingane ezitholiwe ngamaqembu elinikwe isibophezelo sokunakekela ingane etholiwe;”;
- (i) ngokufaka inzcazelo elandelayo emuva kwencazelo yalokhu **“ukugula ngengqondo”**:  
**“‘umbelethisi’** kusho umuntu obhaliswe njengombelethisi ngaphansi koMthetho woBuhlelengikazi, ka 1978 (Umthetho ongunombolo 50 ka 1978);”;
- (j) ngokufaka inzcazelo elandelayo emuva kwencazelo yalokhu **“uNgqongqoshe”**:  
**“‘umasipala’** kusho idolobhakazi, isifunda noma umasipala wendawo osungulwe ngokwesigaba 12 soMthetho woHulumeni baseKhasa: iZakhiwo zoMasipala, ka 1998 (Umthetho ongunombolo 117 ka 1998), kepha ngobubanzi bokuthi umasipala angakwazi noma kufanele asebenzise imibandela yalo Mthetho endaweni noma maqondana nendawo engena ngaphansi kwakho kokubili umasipala wesifunda nomasipala wendawo, ‘umasipala’ kumbandela onjalo usho umasipala wendawo ofaneleyo;”;
- (k) ngokufaka inzcazelo elandelayo emva kwencazelo yalokhu **“ukunganaki”**:  
**“‘umhlengi/umhlangikazi’** kusho umuntu obhaliswe njengomhlengi noma umhlangikazi ngaphansi koMthetho woBuhlelengikazi, ka 1978 (Umthetho ongunombolo 50 ka 1978);”;
- (l) ngokufaka inzcazelo elandelayo emva kwencazelo yalokhu **“izibophezelo namalungelo obuzali”**:  
**“‘ukunakekela isikhashana esinqunyiwe’** kusho ukunakekela isikhashana esinqunyiwe okukhulunywa ngakho esigabeni 76;”;
- (m) ngokufaka inzcazelo elandelayo emuva kwencazelo yalokhu **“iqembu”**:  
**“‘uhlelo olumileyo’** kusho uhlelo oluqoshwe phansi okukhulunywa ngalo esigabeni 157(1);”;

- (n) by the insertion after the definition of “**presiding officer**” of the following definition:  
     “**‘prevention programme’** means a programme referred to in section 143(1);”;
- (o) by the insertion after the definition of “**Public Service Act**” of the following definition:  
     “**‘quality assurance process’** means the process referred to in section 211;”;
- (p) by the insertion after the definition of “**removal of body parts**” of the following definition:  
     “**‘residential care programme’** means a programme described in section 191(2) which is or must be offered at a child and youth care centre;”;
- (q) by the insertion after the definition of “**school**” of the following definition:  
     “**‘secure care’** means the physical containment in a safe and healthy environment—  
     (a) of children with behavioural and emotional difficulties; and  
     (b) of children in conflict with the law;”.

#### Insertion of chapters 5 and 6 in Act 38 of 2005

4. The following chapters are hereby inserted in the principal Act after Chapter 4: 20

#### “CHAPTER 5

#### PARTIAL CARE

##### Partial care

76. Partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents or care-givers and the provider of the service, but excludes the care of a child— 25

- (a) by a school as part of tuition, training and other activities provided by the school; 30
- (b) as a boarder in a school hostel or other residential facility managed as part of a school; or
- (c) by a hospital or other medical facility as part of medical treatment provided to the child.

##### Strategy concerning partial care 35

77. (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration as provided in section 11, to children with disabilities or chronic illnesses. 40

(2) The MEC for social development must—

- (a) maintain a record of all the registered partial care facilities in the province; and
- (b) within the national strategy contemplated in subsection (1), provide for a provincial strategy to ensure an appropriate spread of partial care facilities in the province. 45

- (n) ngokufaka incazelo elandelayo emuva kwencazelo yalokhu **“isisebenzi esengamele”**:  
“‘izinsizakalo zokuvimba’ kusho izinsizakalo okukhulunywa ngazo esigabeni 143(1);”;
- (o) ngokufaka incazelo elandelayo emuva kwencazelo yalokhu **“uMthetho waBasebenzi bakaHulumeni”**:  
“‘umgudu wokuqinisekisa ikhwalithi’ kusho umgudu ekukhulunywe ngawo esigabeni 211;”;
- (p) ngokufaka incazelo elandelayo emuva kwencazelo yalokhu **“ukukhishwa kwesitho somzimba”**:  
“‘uhlelo lokunakekela ekhaya’ kusho uhlelo oluchazwe esigabeni 191(2) oluhlinzekwa noma okufanele luhlinzekwe esikhungweni sokunakekela izingane nentsha;”; kanye
- (q) nokufaka incazelo elandelayo emuva kwencazelo yalokhu **“isikole”**:  
“‘ukunakekela okuvikelekile’ kusho ukugcinwa kwezingane endaweni ephephile futhi enempilo—  
(a) kwezingane ezinezinkinga zokuziphatha nezomoya; kanye  
(b) nezingane ezisenkingeni nomthetho;”.

#### Ukufakwa kwezahluke 5 no 6 eMthethweni 38 ka 2005

4. Lapha kufakwa izahluke ezilandelayo eMthethweni omkhulu emuva kweSahluko 4:

#### “ISAHLUKO 5

#### UKUNAKEKELA ISIKHASHANA ESINQUNYIWE

##### Ukunakekela isikhashana esinqunyiwe

76. Ukunakekela isikhashana esinqunyiwe kwenzeka lapho umuntu, ekhokhelwa noma engakhokhelwa, enakekela izingane ezevile kweziyisithupha ngokucelwa ngabazali bazo noma abazinakekelayo ngamahora athile osukwini noma ebusuku, noma okwesikhashana, ngokwesivumelwano phakathi kwabazali noma abanakekela izingane nomuntu ohlinzeka insizakalo, kepha akufaki ukunakekelwa kwengane—
- (a) yisikole okuyingxenye yokufundiswa, ukuqeqeshwa nokunye okuhlinzekwa yisikole;
- (b) eyibhoda ehlostela yasesikoleni noma kwenye indawo yokuhlala eyenganyelwe njengengxenye yesikole; noma
- (c) yisibhedlela noma esinye isikhungo sokwelapha njengengxenye yokwelashwa okuhlinzekwa ingane.

##### Isu eliphathelele nokunakekela isikhashana esinqunyiwe

77. (1) UNgqongqoshe, emva kokubonisana nabantu abanentshisekelo kanye noNgqongqoshe bezeMfundo, ezeziMali, ezeMpilo, ezoHulumeni Bezifundazwe nabaseKhaya nowezokuThutha, kufanele afake eswini loMnyango isu elibanzi likazwelonke eliqondiswe ekuqinisekiseni ukuthi izindawo zokunakekela isikhashana esinqunyiwe zisabalele ngokwanele kwiRiphabhuliki, akhumbule lokho okushiwo yisigaba 11 maqondana nezingane ezikhubazekile noma ezinezifo ezingamahlalakhona.
- (2) UNgqongqoshe wesifundazwe wentuthuko yezenhlalakahle kufanele—
- (a) agcine irekhodi lazo zonke izindawo zokunakekela isikhashana esinqunyiwe esifundazweni esithintekayo; futhi
- (b) ngaphakathi kwesu likazwelonke ekukhulunywe ngalo esigatshaneni (1), ahlinzekele isu lesifundazwe ukuze aqinisekise ukuthi ukuthi izindawo zokunakekela isikhashana esinqunyiwe zisabalele ngokwanele esifundazweni.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies contemplated in subsections (1) and (2).

#### **Provision of partial care**

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

(2) A partial care facility referred to in subsection (1)—

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

(3) The owner or manager of a partial care facility or provider of a partial care service only qualifies for funding contemplated in subsection (1) if such owner, manager or provider complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

(4) The funding of partial care facilities must be prioritised—

- (a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and
- (b) to make facilities accessible to children with disabilities.

#### **National norms and standards for partial care**

79. (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must determine national norms and standards for partial care by regulation.

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

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

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



(3) UNgqongqoshe wesifundazwe wentuthuko yezehlalakahle kufanele enze uhlu oluveza isithombe sokwenzekayo esifundazweni ukuze akwazi ukuhlinzeka ulwazi oludingekayo lapho kwakhiwa noma kubukezwa amasu ekukhulunywe ngawo kwizigatshana (1) no (2).

#### **Ukuhlinzeka ukunakekela isikhashana esinqunyiwe**

**78.** (1) UNgqongqoshe wesifundazwe wentuthuko yezehlalakahle, kungathi ngemali eyabiwe yisishayamthetho sesifundazwe esithintekayo, ahlinzeke bese ekhokhela izikhungo nezinsizakalo zokunakekela isikhashana esinqunyiwe kuleso sifundazwe, akhumbule okuqukethwe yisu likazwelonke nelesifundazwe ekukhulunywe ngawo esigabeni 77.

(2) Isikhungo sokunakekela isikhashana esinqunyiwe ekukhulunywe ngaso esigatshaneni (1)—

(a) kufanele senganyelwe futhi sigcinwe ngokuhambisana nalo Mthetho; futhi

(b) kufanele sithobe—

(i) imikhuba namazinga enqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 79 kanye nezinye izidingo ezingabe zinqunyiwe; kanye

(ii) nokuphepha kwesakhiwo, impilo kanye nezinye izidingo zikamasipala waleyo ndawo lapho isikhungo sokunakekela isikhashana esinqunyiwe ikhona.

(3) Umnikazi noma imeneja yesikhungo sokunakekela isikhashana esinqunyiwe noma umhlinzeki wensizakalo yokunakekela isikhashana esinqunyiwe ufaneleka ukuxhaswa ngezimali ezabiwe njengalokho bekucatshangwa esigatshaneni (1) uma isikhungo sithobela imikhuba namazinga kazwelonke anqunyiwe ekukhulunywe ngakho kwisigaba 79.

(4) Ukuhlinzekwa kwezikhungo zokunakekela eceleni ngemali kufanele kubekwe phambili—

(a) emiphakathini lapho imindeni yeswele izindlela zokuhlinzeka izingane zayo ngendawo yokuhlala, ngokudla nangezinye izidingongqangi zempilo; futhi

(b) kwenziwe ukuthi ingqalasizinda isondele ezinganeni ezikhubazekile.

#### **Imikhuba namazinga kazwelonke okunakekela isikhashana esinqunyiwe**

**79.** (1) UNgqongqoshe kufanele anqume imikhuba namazinga kazwelonke yokunakekela isikhashana esinqunyiwe ngokwenza imigomo emva kokubonisana nabantu abanentshisekelo noNgqongqoshe bezeMfundo, ezeziMali, ezeMpilo, ezoHulumeni Bezifundazwe nabaseKhaya nowezokuThutha.

(2) Imikhuba namazinga kazwelonke ekukhulunywe ngawo esigatshaneni (1) kufanele aphaathelane nokulandelayo:

(a) nendawo yezingane ephephile;

(b) nokunakekela okufanelekile kwezingane ezigulayo noma izingane eziqala ukugula;

(c) indawo nokungena nokuphuma komoya ohlanzekile okwanele;

(d) amanzi okuphuza aphephile;

(e) izindawo zangasese ezihlanzekile futhi ezanele;

(f) ukubekwa endaweni ephephile kwanoma yini engahle ibe yingozi ezinganeni;

(g) ukufinyelela kwizinsizakalo zokuchithwa kwemfucumfucu noma ezinye izindlela zokuchitha imfucumfucu ekhiqizwa yisikhungo;

(h) indawo yokulungisa ukudla kwezingane ehlanzekile;

(i) izindlela zokwehlukanisa izingane ngokweminyaka yazo eyehlukeneyo;

(j) ukwenziwa kwezinhlelo ezilandelwayo lapho kuvela isimo esiphuthumayo; kanye

(k) nokwenziwa kwemigomo nezinqubomgomo eziphathelele nokunakekelwa kwempilo esikhungweni.

(3) Isikhungo sokunakekela isikhashana esinqunyiwe sezingane ezikhubazekile noma ezinezifo ezingamahlalakhona kufanele, kuthi

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

#### **Partial care facility to be registered**

- 80.** (1) Any person or organisation may establish or operate a partial care facility provided that the facility—
- (a) is registered with the provincial government of the province where that facility is situated;
  - (b) is managed and maintained in accordance with any conditions subject to which the facility is registered; and
  - (c) complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.
- (2) The Minister may by regulation exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.
- (3) Partial care facilities operated or managed by a national or provincial state department or by a municipality must comply with subsection (1).
- (4) As from the date on which this section takes effect an existing place of care registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of this section as a partial care facility.
- (5) A facility referred to in subsection (4) is regarded as a registered partial care facility for a period of five years from the date on which that subsection takes effect, unless its registration is cancelled in terms of section 84 before the expiry of that period.

#### **Application for registration and renewal of registration**

- 81.** (1) An application for registration or conditional registration of a partial care facility or for the reinstatement or renewal of registration must—
- (a) be lodged with the provincial head of social development of the province where the facility is situated in accordance with a prescribed procedure;
  - (b) contain the prescribed particulars; and
  - (c) be accompanied by—
    - (i) a report by a social service professional on the viability of the application; and
    - (ii) any documents that may be prescribed.
- (2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.
- (3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

ngaphezu kwemikhuba namazinga kazwelonke ekukhulunywe ngawo esigatshaneni (1)—

- (a) zikwazi ukungena kusona lezo zingane;
  - (b) sihlizzeke izinto ezihlangabezana nezidingo zezingane ezinjalo; futhi
  - (c) siqashe abantu abaqeqeshiwe futhi sihlizzeke uqeqesho kubantu abaqashwe kuleso sikhungo kulokhu—
    - (i) izidingo, impilo kanye nokuphepha kwezingane ezinjalo;
    - (ii) izinto ezifundisayo namasu okuxhumana afanele izingane ezinjalo; kanye
    - (iii) nezinsizakalo eziyisisekelo ezelaphayo.
- (4) Isikhungo sokunakekela isikhashana esinqunyiwe singahlinzeka izinhlelo ezihambisana nezidingo zokukhula kwezingane ezikuleso sikhungo kuye nalokho okunqunyiwe.

#### **Isikhungo sokunakekela isikhashana esinqunyiwe kufanele sibhaliswe**

**80.** (1) Noma ngubani angasungula noma aqhube isikhungo sokunakekela isikhashana esinqunyiwe kuncike ekutheni isikhungo—

- (a) sibhalisiwe kuhulumeni wesifundazwe lapho leso sikhungo sikhona;
- (b) senganyelwe futhi sigcinwe ngokuhambisana nanoma yimiphi imibandela isikhungo esibhaliswe phezu kwayo; futhi
- (c) sithobela imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 79 kanye nezinye izidingo ezingahle zinqunyiwe.

(2) Ungqongqoshe angasebenzisa umgomo ukuxolela noma yimuphi umuntu noma inhlangano noma iyiphi inhlobo yomuntu ekuthobeleni isidingo sokubhalisa kuye nokuyonqunywa yileyo migomo.

(3) Izikhungo zokunakekela isikhashana esinqunyiwe eziqhutshwa noma ezenganyelwe wumnyango kahulumeni kazwelonke noma wesifundazwe kungewona umnyango kahulumeni kazwelonke noma wesifundazwe onesibopho sokuthuthukisa ezenhlalakahle kufanele uthobele isigatshana (1).

(4) Kusukela ngosuku lapho lesi sigaba siqala ukusebenza indawo yokunakekela evele ikhona ebhalisiwe noma ethathwa njengebhalisiwe ngokoMthetho Wokunakekela iZingane kufanele ithathwe ngokuthi ibhaliswe njengendawo yokunakekela isikhashana esinqunyiwe ngokwalesi sigaba.

(5) Isikhungo ekukhulunywe ngaso esigatshaneni (4) sithathwa njengesikhungo sokunakekela isikhashana esinqunyiwe esibhalisiwe isikhathi esiyiminyaka emihlanu kusukela ngosuku leso sigatshana esiqala ukusebenza ngalo, ngaphandle uma ukubhaliswa kwaso kuhoxiswa ngaphambi kokuphela kwaleso sikhathi ngokwesigaba 84.

#### **Ukufaka isicelo sokubhalisa nokuvuselela ukubhalisa**

**81.** (1) Isicelo sokubhalisa noma sokubhalisa okunemibandela kwesikhungo sokunakekela isikhashana esinqunyiwe noma sokubuyiselwa ekubhalisweni noma sokuvuselela ukubhalisa kufanele—

- (a) sifakwe kwinhloko yesifundazwe yentuthuko yezenhlahalakahle esifundazweni lapho isikhungo sakhiwe khona kuhambisane nenqubo enqunywe wumgomo;
- (b) siphathe izinto ezinqunywe wumgomo; futhi
- (c) sihambisane—

- (i) nombiko owenziwe nguchwepheshe wezenhlalakahle yomphakathi maqondana nokufaneleka kwesicelo; kanye
- (ii) nanoma yimiphi imibhalo engahle inqunywe wumgomo.

(2) Ofaka isicelo kufanele ahlinzeka lolu lwazi olwengezekile olufanele ukuhambisana nesicelo kuye nokungabe kunqunywe yinhloko yesifundazwe yentuthuko yezenhlahalakahle.

(3) Isicelo sokuvuselela ukubhalisa noma sokubhalisa okunemibandela kufanele senziwe okungenani kusasele izinsuku ezingu 90 ngaphambi kokuphela kwesikhathi sokubhaliswa kwesikhungo, kepha inhloko yesifundazwe yentuthuko yezenhlahalakahle ingasivumela isicelo esiza emuva kwesikhathi uma kuvezwa isizathu esizwakalayo.

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

### Consideration of application

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

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

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

- (a) the facility complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed;
- (b) the applicant is a fit and proper person to operate a partial care facility;
- (c) the applicant has the necessary funds and resources available to provide the partial care services of the type applied for;
- (d) each person employed at or engaged in the partial care facility is a fit and proper person to assist in operating a partial care facility; and
- (e) each person employed at or engaged in the partial care facility has the prescribed skills and training to assist in operating that partial care facility.

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

(4) The provincial head of social development must consider the report contemplated in section 81(1)(c)(i) of a social service professional before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding section 78(3) a provincial head of social development may assist the owner or manager of a partial care facility to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

### Conditional registration

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

- (a) specifying the type of partial care that may or must be provided in terms of the registration;
- (b) stating the period for which the conditional registration will remain valid; and
- (c) providing for any other matters that may be prescribed.

(4) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele ivuselele ukubhaliswa kwesikhungo sokunakekela isikhashana esinqunyiwe ngaphambi kokuphela kwesikhathi saso uma isicelo sokuvuselela ukubhalisa sifakwe ezinsukwini ezingamashumi ayisishiyagalolunye okungenani ngaphambi kokuthi ukubhaliswa kuphelelelwe yisikhathi njengalokho kushiwo esigatshaneni (3). 5

#### Ukucutshungulwa kwesicelo

**82.** (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele—

- (a) zingakapheli izinyanga eziyisithupha ithole isicelo icubungule isicelo sokubhalisa noma sokubhalisa okunemibandela noma sokuvuselela ukubhalisa bese iyasichitha isicelo noma, ngokubhekela isigatshana (2), ivume ukubhalisa noma ukuvuselela kube noma kungabi nemibandela; 10
- (b) inike ofake isicelo isitifiketi sokubhaliswa noma ukubhalisa okunemibandela noma ukuvuselela ukubhalisa ngendlela enqunywe wumgomo uma isicelo sivunyiwe; futhi 15
- (c) isho kwisitifiketi sokubhalisa isikhathi ukubhalisa okuzosebenza ngaso. 20

(2) Lapho ecubungula isicelo, inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele akhumbule wonke amaqiniso ahambisana nesimo, kufaka nokuthi ngabe— 20

- (a) isikhungo siyayithobela yini imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 79 kanye nezinye izidingo ezingahle zinqunywe; 25
- (b) ofake isicelo ungumuntu ofanele futhi ozokwazi yini ukuqhuba isikhungo sokunakekela isikhashana esinqunyiwe; 30
- (c) ofake isicelo unazo yini izimali kanye nengcebo edingekayo ukuze ahlinzeke insizakalo yokunakekela isikhashana esinqunyiwe ofake isicelo sokuyenza; 35
- (d) umuntu ngamunye oqashwe noma oxhumene nesikhungo sokunakekela isikhashana esinqunyiwe ngumuntu ofanele futhi ozokwazi yini ukusiza ekuqhubeni isikhungo sokunakekela isikhashana esinqunyiwe; nokuthi 40
- (e) umuntu ngamunye oqashwe noma oxhumene nesikhungo sokunakekela isikhashana esinqunyiwe unamakhono anqunyiwe ukuze akwazi ukusiza ekuqhubeni leso sikhungo sokunakekela isikhashana esinqunyiwe 45

(3) Umuntu ongafanele ukusebenza nezingane akafanele futhi akakwazi ukuqhuba noma ukusiza ekuqhutshweni kwesikhungo sokunakekela isikhashana esinqunyiwe. 50

(4) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele ibheke umbiko ekukhulunywe ngawo esigatshaneni 81(1)(c)(i) kachwepheshe wezenhlalakahle ngaphambi kokuthatha isinqumo ngesicelo sokubhalisa, sokubhalisa okunemibandela noma sokuvuselela ukubhalisa. 55

(5) Kungakhathaleki ukuthi imibandela yesigaba 78(3) ithini inhloko yesifundazwe yentuthuko yezenhlalakahle ingasiza umnini noma imeneja yesikhungo sokunakekela isikhashana esinqunyiwe ekutheni athobele imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 79 kanye nezinye izidingo ezingahle zinqunywe. 50

#### Ukubhalisa okunemibandela

**83.** Ukubhalisa noma ukuvuselela ukubhalisa isikhungo sokunakekela isikhashana esinqunyiwe kungavunywa kuye ngemibandela enganqunywa yinhloko yesifundazwe yentuthuko yezenhlalakahle, kufake imibandela—

- (a) ecacisa uhlobo lokunakekela isikhashana esinqunyiwe olungahlinzekwa noma okufanele luhlinzekwe ngokokubhalisa; 55
- (b) ebeka isikhathi ukubhalisa okuzohlala kusebenza ngaso; futhi
- (c) ehlinzekela noma yiziphi ezinye izindaba ezingahle zinqunywe wumgomo.

**Cancellation of registration**

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

- (a) the facility is not maintained in accordance with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed; 5
- (b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;
- (c) the registration holder or the management of the facility contravenes or fails to comply with a provision of this Act; 10
- (d) the registration holder becomes a person who is not a fit and proper person to operate a partial care facility; or
- (e) a person who is not a fit and proper person to assist in operating a partial care facility is employed at or engaged in operating the facility. 15

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

- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
- (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period. 20

(3) The provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 79, any requirements as may be prescribed or any provision of this Act where the cancellation was due to non-compliance with those national norms and standards, conditions, requirements or provision. 25

**Notice of enforcement**

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

- (a) a person or organisation operating an unregistered partial care facility—
  - (i) to stop operating that facility; or
  - (ii) to apply for registration in terms of section 81 within a period specified in the notice; or 35
- (b) a person or organisation operating a registered partial care facility otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions. 40

(2) A person or organisation operating an unregistered partial care facility and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period, may, despite the provisions of section 80, continue operating the facility during that period and, if that person or organisation applies for registration, until that application has been processed. 45

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

(4) The High Court may grant an order for costs against the owner or manager of the partial care facility referred to in subsection (3) if so requested by the Director-General or provincial head of social development. 50

**Ukwesula ukubhalisa**

**84.** (1) Inhloko yesifundazwe yentuthuko yezenzhlalakahle ingesula ukubhalisa noma ukubhalisa okunemibandela kwesikhungo sokunakekela isikhashana esinqunyiwe ngesaziso esilotshiwe esiya kumnini wokubhalisa uma—

- (a) isikhungo singagciniwe ngokuhambisana nemikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 79 kanye nezinye izidingo ezingahle zinqunyiwe;
- (b) kwephulwe noma kungathotshelwa noma yimuphi umbandela okwakuncike kuwona ukubhalisa noma ukuvuselela ukubhalisa;
- (c) umnini wokubhalisa noma abaphathi besikhungo bephula noma behluleka ukuthobela umbandela walo Mthetho;
- (d) umnini wokubhalisa eba ngumuntu ongafanele futhi ongakwazi ukuqhuba isikhungo sokunakekela isikhashana esinqunyiwe; noma
- (e) umuntu ongafanele futhi ongakwazi ukusiza ekuqhutshweni kwesikhungo sokunakekela isikhashana esinqunyiwe eqashwe noma esetshenziswa ekuqhubeni isikhungo.

(2) Inhloko yesifundazwe yentuthuko yezenzhlalakahle kungathi esimweni sokusula ukubhalisa ngokwesigatshana (1)(a), (b), (c) noma (e)—

- (a) amise okwesikhashana ukwesula ukuze anike umnini wokubhalisa ithuba lokulungisa isizathu esiholele ekusulweni kokubhalisa; futhi
- (b) abuyise ilungelo lokubhalisa uma umnini wokubhalisa elungisa isizathu ebeshiholele ekusulweni kokubhalisa kuleso sikhashana.

(3) Inhloko yesifundazwe yentuthuko yezenzhlalakahle ingasiza umnini wokubhalisa ekutheni athobele imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 79, noma yiziphi izidingo ezingahle zinqunyiwe noma omunye umbandela walo Mthetho lapho ukwesula bekungenxa yokungathobeli leyo mikhuba namazinga kazwelonke, imibandela noma izidingo.

**Isaziso sokusebenzisa umthetho**

**85.** (1) Inhloko yesifundazwe yentuthuko yezenzhlalakahle ingalayeza ngesaziso esilotshiwe—

- (a) umuntu oqhuba isikhungo sokunakekela isikhashana esinqunyiwe—
  - (i) ukuba ayeke ukuqhuba leso sikhungo; noma
  - (ii) ukuba afake isicelo sokubhalisa ngokwesigaba 81 singakapheli isikhathi esithile esibekwe esazisweni; noma
- (b) umuntu oqhuba isikhungo sokunakekela isikhashana esinqunyiwe esibhaliswe ngenye indlela kungekhona ngokwemibandela yalo Mthetho noma esibhaliswe ngokweminye imibandela ukubhaliswa okuthe kukhishwa kwancika ekuthobeleni leyo mibandela ukuba athobele leyo mibandela.

(2) Umuntu oqhuba isikhungo sokunakekela isikhashana esinqunyiwe esingabhalisiwe futhi olayezwe ngokwesigatshana (1)(a)(ii) ukuba afake isicelo sokubhalisa singakapheli isikhathi esithile esibekiwe, ngaphandle kokuvinjwa yimibandela yesigaba 80, angaqhubeka nokusebenza esikhungweni ngaleso sikhathi futhi, uma lowo muntu efaka isicelo sokubhalisa, kuze kube isicelo salowo muntu senziwe.

(3) UMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezenzhlalakahle angafaka isicelo eNkantolo ePhakeme somyalo wokutshela isikhungo sokunakekela isikhashana esinqunyiwe, esibhalisiwe noma esingabhaliswanga, ukuba siyeke ukuqhuba leso sikhungo.

(4) INkantolo ePhakeme inganikeza umyalo othi umnini noma imeneja yesikhungo sokunakekela isikhashana esinqunyiwe ekukhulunywe ngaso esigatshaneni (3) ukuba akhokhe izindleko uma uMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezenzhlalakahle ikucela lokho.

**Appeal against and review of certain decisions**

**86.** (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

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

**Record and inspection of and provision for partial care facility**

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

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

(2) A provincial strategy contemplated in section 77(2) must include a strategy for the provision of partial care facilities in the province, which must include measures—

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

**Assignment of functions to municipality**

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

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

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

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

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

(5) The municipal manager may—

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



**Ukudlulisa isikhalo ngesinqumo nokubukezwa kwezinqumo ezithize**

86. (1) Ofake isicelo noma umnini wokubhalisa onesikhalo ngesinqumo senhloko yesifundazwe yentuthuko yezenhlahalakahle ngokwalesi sigaba angadlulisela isikhalo ngaleso sinqumo ngendlela enqunyiwe zingakapheli izinsuku ezingu 90 kuNgqongqoshe wesifundazwe weNtuthuko yezeNhlalakahle, oyonquma maqondana nesikhalo zingakapheli izinsuku ezingu 90 esitholile isikhalo. 5

(2) Ofake isicelo noma umnini wokubhalisa onganiselisekile ngomphumela wokudlulisa isikhalo ekukhulunywe ngakho esigatshaneni (1) angafaka isicelo ophikweni olunamandla afanele lweNkantolo ePhakeme ukuba kubukezwe lesi sinqumo. 10

**Ukuqopha kanye nokuhlola kanye nokuhlinzekela isikhungo sokunakekela isikhashana esinqunyiwe**

87. (1) Inhloko yesifundazwe yentuthuko yezenhlahalakahle kufanele—  
(a) igcine amarekhodi azo zonke izikhungo zokunakekela isikhashana esinqunyiwe ezisesifundazweni, izinhlobo zezikhungo zokunakekela isikhashana esinqunyiwe kanye nesibalo sohlobo lwesikhungo ngalunye; 15

(b) yakhe uhlu oluchaza izingane kuleso sifundazwe ngendlela enqunyiwe; futhi 20  
(c) ihlale ihlola izikhungo zokunakekela isikhashana esinqunyiwe esifundazweni ukuze kusebenze imibandela yalo Mthetho.

(2) Amasu esifundazwe kufanele afake namasu okuhlinzeka izikhungo zokunakekela isikhashana esinqunyiwe esifundazweni ngasinye, kufakwe nezinyathelo— 25

(a) ezizosiza ekusunguleni nasekuqhubeni izikhungo zokunakekela isikhashana esinqunyiwe ezanele esifundazweni; 30  
(b) ezibeka phambili ngenxa yokubaluleka lezo zinhlobo zezikhungo zokunakekela isikhashana esinqunyiwe ezidingeka ngokushesha; futhi

(c) okuzothi ngokuxhumana nomasipala kusizwe ekukhombeni nasekuhlinzekeni izakhiwo ezifanele. 30

**Ukunika umasipala imisebenzi**

88. (1) Inhloko yesifundazwe yentuthuko yezenhlahalakahle, ngemva kwesivumelwano esibhalwe phansi nomasipala, inganika imeneja kamasipala ukuba yenze ingxenye noma yonke imisebenzi ebalulwe ezigabeni 80, 81, 82, 83, 84, 85 no 87 uma inhloko yesifundazwe yentuthuko yezenhlahalakahle yanelisekile ngokuthi umasipala uyazithobela izidingo ezinqunyiwe maqondana namandla alowo masipala okwenza imisebenzi ethintekayo. 35

(2) Isivumelwano kufanele sibe ngendlela enqunyiwe futhi siqukathe imininingwane enqunyiwe. 40

(3) Imeneja kamasipala ekukhulunywe ngayo esigatshaneni (1) ingadlulisa amandla noma umsebenzi onikwe yona ngokwalesi sigaba kunoma yimuphi usonhlalakahle oqokiwe oqashwe ngumasipala. 45

(4) Ukudlulisa amandla noma umsebenzi ngokwesigatshana (3)—

(a) kuncike kunoma yimiphi imikhawulo, imibandela kanye nemiyalo engabekwa yimeneja kamasipala; 50

(b) kufanele kulotshwe phansi; futhi

(c) akususi umthwalo oqondene nokusetshenziswa kwalawo mandla noma ukwenziwa kwalowo msebenzi emahlombe emeneja kamasipala. 50

(5) Imeneja kamasipala—

(a) ingaqinisa, yenze umehluko noma ichithe noma yisiphi isinqumo esithathwe ngenxa yokudluliswa kwamandla noma komsebenzi ngokwalesi sigaba, kuncike kunoma yimaphi amalungelo angabe eseqongelelwe yilowo muntu ngenxa yaleso sinqumo; futhi 55

(b) ingahoxisa ukudluliswa kwamandla noma komsebenzi noma nini.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.

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

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

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

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

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

#### **Serious injury, abuse or death of child in partial care facility**

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

(2) If a child dies while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility or a person employed at the partial care facility must immediately after the child's death report such death to—

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

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

#### **Regulations**

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

- (a) the national norms and standards that partial care facilities must comply with;
- (b) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter, for the renewal of such registration and for the suspension or cancellation of registration;

(6) Ofake isicelo noma umnini wokubhalisa onesikhalo ngesinqumo sesikhulu esiqashwe ngumasipala maqondana nesicelo sokubhalisa noma sokuvuselela ukubhalisa ngokwalesi sahluko angadlulisela isikhalo emkhandlwini kamasipala aphikise leso sinqumo ngendlela emisiwe zingakapheli izinsuku ezingu 90 ethole leso sinqumo.

(7) Ofake isicelo noma umnini wokubhalisa onganelisekile ngomphumela wokudlulisa isikhalo ebesifakwe njengalokho bekucatshangwe esigatshaneni (6) angafaka isicelo ophikweni olunamandla afanele lweNkantolo ePhakeme ukuba kubukezwe leso sinqumo.

(8) (a) Inhloko yesifundazwe yentuthuko yezehlalakahle kufanele iqaphe ukusebenza kwemisebenzi enikeziwe ngokwalesi sigaba.

(b) Inhloko yesifundazwe yentuthuko yezehlalakahle ingasebenzisa inothisi elotshiwe ukucela imeneja kamasipala noma omunye umuntu ophethe ulwazi oludingwa yinhloko yesifundazwe yentuthuko yezehlalakahle ukuze ikwazi ukuqapha ukusebenza kwemisebenzi enikezwe yilesi sigaba, ukuba ahlinzeke lolo lwazi kwinhloko yesifundazwe yentuthuko yezehlalakahle singakapheli isikhathi esibabalulwe kwinothisi.

(c) Uma, emva kokuba imisebenzi ebekukhulunywe ngayo esigatshaneni (1) ibinikwe umasipala, kubonakala sengathi umasipala othize akasenawo amandla okwenza eminye noma yonke imisebenzi ayinikiwe, inhloko yesifundazwe yentuthuko yezehlalakahle—

(i) ingachibiyela isivumelwano esilotshiwe ebekukhulunywe ngaso esigatshaneni (1); noma

(ii) ingahoxisa ukunikezwa kwemisebenzi kulowo masipala.

#### **Ukulimala kabi, ukuhlukunyezwa noma ukushona kwengane esesikhungweni sokunakekela isikhashana esinqunyiwe**

89. (1) Uma ingane ilimala kabi noma ihlukunyezwa ngesikhathi inakekelwe esikhungweni sokunakekela isikhashana esinqunyiwe noma emuva kwesigameko esenzeke esikhungweni sokunakekela isikhashana esinqunyiwe, umuntu oqhuba isikhungo sokunakekela isikhashana esinqunyiwe noma umuntu oqashwe esikhungweni sokunakekela isikhashana esinqunyiwe kufanele abike lokho kulimala kwinhloko yesifundazwe yentuthuko yezehlalakahle masinyane, yona ekufanele yenze ukuthi kuphenywe ngezimo eziphathelele nokulimala kabi noma ukuhlukunyezwa.

(2) Uma ingane ishona ngesikhathi inakekelwe esikhungweni sokunakekela isikhashana esinqunyiwe noma emuva kwesigameko esenzeke esikhungweni sokunakekela isikhashana esinqunyiwe, umuntu oqhuba isikhungo sokunakekela isikhashana esinqunyiwe noma umuntu oqashwe esikhungweni sokunakekela isikhashana esinqunyiwe kufanele emuva kokushona kwengane abike lokho kufa—

(a) kumzali, kumondli wengane noma kumuntu oyinakekelayo;

(b) ephoyiseni; kanye

(c) nakwinhloko yesifundazwe yentuthuko yezehlalakahle.

(3) Iphoyisa kufanele lenze ukuthi kube nophenyo oluzothola ngezimo ezihambisana nokushona kwengane lwenziwe uMbutho wamaPhoyisa aseNingizimu Afrika ngaphandle uma iphoyisa lanelisekile ukuthi ingane ishone ngezimo zemvelo.

#### **Imigomo**

90. UNgqongqoshe angenza imigomo ngokwesigaba 306 maqondana—

(a) nemikhuba namazinga kazwelonke ekufanele kuthotshelwe yizikhungo zokunakekela isikhashana esinqunyiwe;

(b) nenqubo ekufanele ilandelwe maqondana nokufaka nokucubungula izicelo zokubhaliswa ngokwalesi Sahluko, ngokuvuselela lokhu kubhalisa kanye nokumiswa okwesikhashana noma ukwesulwa kokubhalisa;

- (c) the different types of partial care that may be provided in terms of such registration;
- (d) the period for which registration is valid;
- (e) the requirements that the different types of partial care facilities have to comply with;
- (f) the management of partial care facilities;
- (g) the procedure to be followed with regard to the children in a partial care facility if the partial care facility is closed down;
- (h) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter; and
- (i) any other matter that may be necessary to facilitate the implementation of this Chapter.

## CHAPTER 6

### EARLY CHILDHOOD DEVELOPMENT

#### Early childhood development

**91.** (1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school-going age.

(2) Early childhood development services means services—

- (a) intended to promote early childhood development; and
- (b) provided by a person, other than a child's parent or caregiver, on a regular basis to children up to school-going age.

(3) An early childhood development programme means a programme structured within an early childhood development service to provide learning and support appropriate to the child's developmental age and stage.

#### Strategy concerning early childhood development

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

(2) The MEC for social development must—

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

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

#### Provision of early childhood development programmes

**93.** (1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund early childhood development programmes for that province.

- (c) nezinhlolo ezahlukeni zokunakekela isikhashana esinqunywe ezingahle zihlinzekwe ngokwalokhu kubhalisa;
- (d) isikhathi ukubhaliswa okuzosebenza ngaso;
- (e) izidingo ekufanele zithotshelwe yizinhlobo ezahlukeni zezikhungo zokunakekela isikhashana esinqunywe;
- (f) nokwenganyelwa kwezikhungo zokunakekela isikhashana esinqunywe;
- (g) nenqubo ekufanele ilandelwe mayelana nezingane ezisezikhungweni zokunakekela isikhashana uma lesi sikhungo sivalwa;
- (h) nenqubo ekufanele ilandelwe kanye nezimali ekufanele zikhokhwe maqondana nokufaka nokucubungula izikhalo ngokwalesi Sahluko; kanye
- (i) nanganoma yiluphi olunye udaba olungadingeka ukwenza lula ukusebenzisa lesi Sahluko.

## ISAKHUKO 6

### UKUKHULISA INGANE NGESIKHATHI ISENCANE

#### Ukukhulisa ingane ngesikhathi isencane

91. (1) Ukukhulisa ingane ngesikhathi isencane, ngokwezidingo zalo Mthetho, kusho umgudu wokuthuthukisa imizwa, umqondo, umoya, ukuziphatha, umzimba kanye nobudlelwano kwezenhlalo kwezingane kusukela zizelwe zize zifike ezingeni lokulungela ukuya esikoleni.

(2) Izinsizakalo zokukhulisa ingane ngesikhathi isencane kusho insizakalo—

- (a) ehlose ukugqogqezela ukuthuthuka komqondo wengane isencane; futhi
- (b) ehlinzekwa njalo ngumuntu ongeyena umzali noma umgadi wengane, ezinganeni ezize zifinyelele ezingeni lokulungela ukuya esikoleni.

(3) Uhlelo lokukhulisa ingane ngesikhathi isencane lusho uhlelo olwakhiwe ngaphakathi kwensizakalo yokukhulisa ingane ukuze kuhlinzekwe ingane ngemfundo nokusekelwa okufanele intuthuko yengane ngokweminyaka kanye nezinga lokukhula kwengane.

#### Isu eliphathelene nokukhulisa ingane ngesikhathi isencane

92. (1) UNgqongqoshe, emuva kokubonisana nabantu abanentshisekelo, kanye noNgqongqoshe bezeMfundo, ezeziMali nezeMpilo, kufanele afake eswini loMnyango isu likazwelonke elibanzi eliqondiswe ekutholeni izinhlelo zokukhulisa ingane ngesikhathi isencane ezinengcebo efaneleyo, ezihanjiswa ngemfanelo futhi ezenganyelwe kahle, kukhunjulwe okuhlinzekelwe yisigaba 11 maqondana nezingane ezikhubazekile nezinezifo ezingamahlalakhona.

(2) UNgqongqoshe wesifundazwe weNtuthuko yezeNhlalakahle kufanele—

- (a) agcine irekhodi lazo zonke izindawo zokukhulisa ingane ngesikhathi isencane ezibhalisiwe esifundazweni; futhi
- (b) ngaphakathi kwesu likazwelonke ekukhulunywe ngalo esigatshaneni (1), ahlinzekele isu lesifundazwe eliqondiswe ekutheni uhlelo lokukhulisa izingane ngesikhathi zisencane lunengcebo efaneleyo, luhanjiswa ngemfanelo futhi lwenganyelwe kahle;

(3) UNgqongqoshe wesifundazwe weNtuthuko yezeNhlalakahle kufanele enze uhlu oluveza isithombe sokwenzekayo esifundazweni izikhathi ngezikhathi ukuze akwazi ukuhlinzeka ulwazi oludingekayo lapho kwakhiwa noma kubukezwa amasu ekukhulunywe ngawo ezigatshaneni (1) no (2).

#### Ukuhlinzeka izinhlelo zokukhulisa ingane ngesikhathi isencane

93. (1) UNgqongqoshe wesifundazwe weNtuthuko yezeNhlalakahle, angathatha emalini eyabiwe yisishayamthetho esifanele, ukuze ahlinzeke

- (2) An early childhood development programme must—
- (a) be provided in accordance with this Act; and
  - (b) comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.
- (3) The provider of an early childhood development programme only qualifies for funding contemplated in subsection (1) if such provider complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.
- (4) The funding of early childhood development programmes must be prioritised—
- (a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and
  - (b) to make early childhood development programmes available to children with disabilities.
- (5) An early childhood development programme must be provided by—
- (a) a partial care facility providing partial care services for any children up to school-going age; and
  - (b) a child and youth care centre which has in its care any children up to school-going age.
- (6) Any other person or organisation not disqualified in terms of section 97(3) may provide early childhood development programmes, provided that those programmes comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

#### **National norms and standards for early childhood development programmes**

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

#### **Early childhood development programme to be registered**

- 95.** (1) A person or organisation providing an early childhood development programme must—

futhi axhase izinhlelo zokukhulisa ingane ngesikhathi isencane zaleso sifundazwe.

(2) Izinhlelo zokukhulisa ingane ngesikhathi isencane kufanele—

(a) zihlinzekwe ngokuhambisana nalo Mthetho; futhi  
(b) zithobele imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunywe. 5

(3) Umhlinzeki wohlelo lokukhulisa ingane ngesikhathi isencane ufaneleka ukuthola umxhaso wezimali ekukhulunywe ngawo esigatshaneni (1) kuphela uma lowo mhlinzeki wohlelo ethobela imikhuba namazinga anqunyiwe ekukhulunywe ngawo esigabeni 94. 10

(4) Ukuxhaswa ngezimali kwezinhlelo zokukhulisa ingane ngesikhathi isencane emiphakathini kufanelwe kubhekekelwe kuqala—

(a) ikakhulukazi kuleyo mindeni eswele izindlela zokuhlinzeka izingane zayo ngendawo yokuhlala, ukudla kanye nezinye izidingongqangi zempilo kufanelwe kubekwe phambili. 15

(b) ukuze kwenzelwe ukuthi izinhlelo zonke zokuthuthukisa izingane ziyanikezelwa nasezinganeni ezikhubazekile.

(5) Izinhlelo zokukhulisa ingane ngesikhathi isencane kufanele zihlinzekwe—

(a) yisikhungo sokunakekela isikhashana esihlinzeka izinsizakalo zokunakekela isikhashana esinqunyiwe ezinganeni ezize zifinyelele ezingeni lokulungela ukuya esikoleni; kanye 20

(b) nesikhungo sokunakekela izingane nentsha esinakekela izingane ezize zifinyelele ezingeni lokulungela ukuya esikoleni. 25

(6) Noma yimuphi omunye umuntu noma inhlango engaphucwanga ukufaneleka ngokwesigaba 97(3) ingahlinzeka izinsizakalo zokukhulisa ingane ngesikhathi isencane, kuncike ekutheni lezo zinsizakalo zithobela imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunywe.

#### **Imikhuba namazinga kazwelonke okukhulisa ingane ngesikhathi isencane** 30

**94.** (1) UNgqongqoshe kufanele anqume imikhuba namazinga kazwelonke ngokwenza imigomo emva kokubonisana nabantu abanentshisekelo kanye noNgqongqoshe beMinyango yezeMfundo, yezeZimali, yezeMpilo, yoHulumeni beZifundazwe nabaseKhaya kanye nowezokuThutha. 35

(2) Imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngakho esigatshaneni (1) kufanele kubhekane nalokhu okulandelayo:

(a) ukuhlinzekwa kwamathuba entuthuko afanele;  
(b) izinhlelo eziqondiswe ekusizeni izingane ukuthi zibe yinoma yini ezinamandla okuba yiyona; 40

(c) ukunakekela izingane ngendlela eyakhayo, zihlinzekwe ngokwesekelwa nokuvikeleka;

(d) ukuqinisekisa ukuthi kukhula indlela yokuziphatha emphakathini enhle; 45

(e) ukuhlonishwa nokukhuliswa kwesiko, umoya, isithunzi, ukwehluka, ulimi kanye nentuthuko yengane ngayinye; kanye

(f) nokwaneliswa kwezidingo zokuthuthuka kwezingane ngokwemizwa, imicabango, umoya, isimilo, umzimba kanye nokuziphatha emphakathini. 50

(3) Izinhlelo zokukhulisa ingane ngesikhathi isencane ezihlinzekwa ngokwalesi sigaba kufanele zifanele izidingo zezingane lezo zinhlelo ezihlinzekwa kuzona, kufaka nezingane ezikhubazekile, ezinezifo ezingamahlalakhona kanye nezinye izidingo eziyisipesheli.

#### **Uhlelo lokukhulisa ingane ngesikhathi isencane kufanele lubhaliswe** 55

**95.** (1) Umuntu oqhuba noma owengamele isikhungo sokunakekela isikhashana esinqunyiwe noma isikhungo sokunakekela izingane nentsha lapho kuhlinzekwa khona uhlelo lokukhulisa ingane ngesikhathi isencane kufanele—

- (a) register the programme with the provincial head of social development of the province where that programme is provided;
- (b) provide the programme in accordance with any conditions subject to which the programme is registered; and
- (c) comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

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

(3) An early childhood development programme provided by a national or provincial state department or a municipality must comply with subsection (1).

### **Application for registration and renewal of registration**

**96.** (1) An application for registration or conditional registration of an early childhood development programme or for the renewal of registration must—

- (a) be lodged with the provincial head of social development of the province where the early childhood development programme is provided in accordance with a prescribed procedure;
- (b) contain the prescribed particulars; and
- (c) be accompanied by any documents that may be prescribed.

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

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

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

### **Consideration of application**

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

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

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

- (a) the early childhood development programme complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed;
- (b) the applicant is a fit and proper person to provide an early childhood development programme;
- (c) the applicant has the prescribed skills, training, funds and resources available to provide the early childhood development programme as applied for; and



- (a) abhalise uhlelo kwinhloko yesifundazwe yentuthuko yezenhlalakahle yaleso sifundazwe lapho uhlelo luhlinzekwa khona;
- (b) ahlinzeke uhlelo ngokuhambisana nanoma yimiphi imibandela ukubhaliswa kohlelo okuncike kuyona; futhi
- (c) athobe imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunyiwe. 5
- (2) Ungqongqoshe kungathi ngemigomo axolele noma yimuphi umuntu noma inhlango noma umuntu noma inhlango yomkhakha othize ezidingweni zokubhalisa kuncike kwimibandela eyobe inqunyiwe.
- (3) Izinhlelo zokukhulisa ingane ngesikhathi isencane ezihlinzekwa wumnyango kahulumeni kazwelonke noma wesifundazwe kungewona umnyango kahulumeni kazwelonke noma wesifundazwe onesibopho kwezentuthuko yezenhlalakahle kufanele zithobe isigatshana (1). 10

#### Ukufaka isicelo sokubhalisa nokuvuselela ukubhalisa

- 96.** (1) Isicelo sokubhalisa noma sokubhalisa okunemibandela sohlelo lokukhulisa ingane ngesikhathi isencane noma sokuvuselela ukubhalisa kufanele— 15
- (a) sifakwe kwinhloko yesifundazwe yentuthuko yezenhlalakahle esifundazweni lapho isikhungo sokunakekela isikhashana esinqunyiwe noma isikhungo sokunakekela izingane nentsha sikhona ngokuhambisana nenqubo enqunyiwe wumgomo; 20
- (b) siphathe zonke izinto ezidingekayo ngokwesinqumo somgomo; futhi
- (c) sihambisane nanoma yimiphi imibhalo engahle inqunyiwe wumgomo.
- (2) Ofake isicelo kufanele alethe olunye ulwazi oluphathelele nesicelo kuye nalokho okuyobe kucelwe yinhloko yesifundazwe yentuthuko yezenhlalakahle. 25
- (3) Isicelo sokuvuselela ukubhalisa noma sokubhalisa okunemibandela kufanele senziwe okungenani kusasele izinsuku ezingu 90 ngaphambi kokuphela kwesikhathi sokubhalisa, kepha inhloko yesifundazwe yentuthuko yezenhlalakahle ingavumela isicelo esiza emuva kwesikhathi uma kuvezwa isizathu esizwakalayo. 30
- (4) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele ivuselele ukubhalisa kwesikhungo sokunakekela isikhashana esinqunyiwe ngaphambi kokuphela kosuku lokubhalisa uma isicelo sokuvuselela ukubhalisa safakwa kusasele okungenani izinsuku ezingu-90 ngaphambi kokuthi kufike usuku lokuphelelwa yisikhathi okukhulunywa ngakho esigatshaneni (3). 35

#### Ukucutshungulwa kwesicelo

- 97.** (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele—
- (a) icubungule isicelo sokubhalisa noma sokubhalisa okunemibandela noma sokuvuselela ukubhalisa, bese iyasichitha isicelo noma, ngokubhekela okushiwo yisigatshana (2), ivume ukubhalisa noma ukuvuselela kube noma kungabi namibandela; 40
- (b) inike ofake isicelo isitifiketi sokubhalisa noma sokubhalisa okunemibandela noma sokuvuselela ukubhalisa, ngendlela enqunyiwe wumgomo, uma ukubhalisa kuvunyiwe; futhi 45
- (c) kushiwo esitifiketini sokubhalisa isikhathi ukubhalisa okuzosebenza ngaso.
- (2) Lapho icubungula isicelo, inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele ikhumbule zonke izimo ezihambisana nalokhu, ezifaka nokuthi— 50
- (a) uhlelo lokukhulisa ingane ngesikhathi isencane luyayithobela yini imikhuba namazinga anqunyiwe kazwelonke ebekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunyiwe;
- (b) umuntu ofake isicelo ngumuntu okwaziyo futhi ofanelekile ukuba ahlinzeke insizakalo yokukhulisa ingane ngesikhathi isencane; 55
- (c) ofake isicelo unamakhono anqunyiwe, unayo imali nengcebo ukuze akwazi ukhlinzeka uhlelo lokukhulisa ingane ngesikhathi isencane

(d) the early childhood development programme meets the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of the children to whom the programme will be presented.

(3) A person unsuitable to work with children is not a fit and proper person to provide or assist in the provision of early childhood development programmes.

(4) The provincial head of social development must consider the assessment referred to in subsection (6) of a suitably qualified person before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding the provisions of section 93(3), a provincial head of social development may assist a person providing an early childhood development programme to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

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

(7) Section 304(2) and (3), read with such changes as the context may require, applies to any assessment in terms of subsection (6).

### Conditional registration

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

- (a) specifying the type of early childhood development programme that may or must be provided in terms of the registration;
- (b) stating the period for which the conditional registration will remain valid; and
- (c) providing for any other matters that may be prescribed.

### Cancellation of registration

**99.** (1) A provincial head of social development may cancel the registration or conditional registration of an early childhood development programme by written notice to the registration holder if—

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

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

- ngokuhambisana nalokho akushilo ngesikhathi efaka isicelo sokubhalisa; futhi
- (d) uhlelo lokukhulisa ingane ngesikhathi isencane luyahlangabezana nezidingo zemizwa, zokucabanga, zomoya, zomzimba nezenhlalo zezingane ezikuleso sikhungo sokunakekela isikhashana esinqunyiwe noma isikhungo sokunakekela izingane nentsha. 5
- (3) Umuntu ongafanele ukusebenza nezingane ungumuntu ongekwaazi futhi ongafanelekile ukuhlinzeka noma ukusiza ekuhlinzekweni kwensizakalo noma kwezinhlelo zokukhulisa ingane ngesikhathi isencane. 10
- (4) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele icubungule umbiko obhalwe nguchwepheshe wensizakalo yezenhlalakahle ngaphambi kokuthatha isinqumo ngesicelo sokubhalisa, sokubhalisa okunemibandela noma sokuvuselela ukubhalisa. 10
- (5) Kungakhathaleki ukuthi ithini imibandela yesigaba 93(3), inhloko yesifundazwe yentuthuko yezenhlalakahle ingasiza isikhungo sokunakekela isikhashana esinqunyiwe noma isikhungo sokunakekela izingane nentsha ezihlinzeka izinhlelo zokukhulisa ingane ngesikhathi isencane ekutheni zithobele imikhuba namazinga anqunyiwe kazwelonke okukhulunywa ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunyiwe. 20
- (6) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele inike amandla umuntu onobuchwepheshe obufanele ukuba avivinye ukuhlinzekwa kanye nokuqokethwe wuhlelo lokukhulisa ingane isencane ukuze athole ukuthi uhlelo luyayithobela yini imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunyiwe. 25
- (7) Isigaba 304(2) no (3), zifundwa kanyekanye nezinguquko ezingabe zenzeke ngokudingwa yisimo, sisebenza kunoma yikuphi ukuvivinya okwenziwa ngokwesigatshana (6),

#### Ukubhalisa okunemibandela

- 98.** Ukubhalisa noma ukuvuselela ukubhalisa kohlelo lokukhulisa ingane ngesikhathi isencane kunganikezwa kube nemibandela eyobe inqunyiwe yinhloko yesifundazwe yentuthuko yezenhlalakahle, kufaka nemibandela—
- (a) ebalula uhlobo lohlelo lokukhulisa ingane ngesikhathi isencane olungahlinzekwa noma okufanele luhlinzekwe ngokokubhalisa; 35
- (b) esho isikhathi ukubhalisa okuzosebenza ngaso; futhi
- (c) ehlinzekela noma yiziphi izindaba ezingahle zinqunyiwe wumgomo.

#### Ukwesula ukubhalisa

- 99.** (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle ingesula ukubhalisa noma ukubhalisa okunemibandela kohlelo lokukhulisa ingane ngesikhathi isencane ngokubhalela umnini wokubhalisa uma—
- (a) uhlelo lungaqhutshwa ngokulandela imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kuye nokungabe kunqunyiwe; 45
- (b) kwephulwa noma kungathotshelwa noma yimuphi umbandela ukubhalisa noma ukuvuselelwa kokubhalisa okwanikwa kuncike kuwona; 45
- (c) umnini wokubhalisa ephula noma ehluleka ukuthobela imibandela yalo Mthetho; 50
- (d) umnini wokubhalisa eba ngumuntu ongakwazi futhi ongafanele ukuhlinzeka uhlelo lokukhulisa ingane ngesikhathi isencane; noma
- (e) umuntu ongakwazi futhi ongafanele ukuhlinzeka noma ukusiza ekuhlinzekweni kohlelo lokukhulisa ingane ngesikhathi isencane ehlinzeka noma esiza ekuhlinzekweni kwezinhlelo ezinjalo. 55
- (2) Inhloko yesifundazwe yentuthuko yezenhlalakahle kungathi esimweni sokwesulwa kokubhalisa ngokwesigatshana (1)(a), (b), (c), noma (e)—

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

(3) A provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed or any provisions of this Act where the cancellation was due to non-compliance with those national norms and standards, requirements, conditions or provisions.

(4) The cancellation of the registration or conditional registration of an early childhood development programme in terms of subsection (1) does not affect the registration or conditional registration of a partial care facility or a child and youth care centre.

#### **Notice of enforcement**

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

- (a) a person operating or managing a partial care facility or a child and youth care centre which does not provide an early childhood development programme, to comply with section 93(5) within a period specified in the notice;
- (b) a person operating or managing a partial care facility or a child and youth care centre which does provide an early childhood development programme but of a standard that does not comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed, to comply with those national norms and standards and other requirements within a period specified in the notice; or
- (c) a person who provides an early childhood development programme which does not comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed—
  - (i) to stop the provision of that programme; or
  - (ii) to comply with those national norms and standards and other requirements within a period specified in the notice.

#### **Appeal against and review of certain decisions**

**101.** (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

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

#### **Assignment of functions to municipality**

**102.** (1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99 and 100 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

- (a) imise ukwesulwa isikhashana ukuze anike umnini wokubhalisa ithuba lokulungisa isizathu sokwesulwa kokubhalisa; futhi
- (b) ingabuyisela ukubhaliswa kumnini wokubhalisa uma elungise isizathu sokwesulwa ngaleso sikhathi.
- (3) Inhloko yesifundazwe yentuthuko yezehlalakahle ingasiza umnini wokubhalisa ekutheni athobele imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunyiwe noma eminye imibandela yalo Mthetho lapho ukucishwa bekungenxa yokungathobeli leyo mikhuba, amazinga, izidingo noma imibandela kazwelonke.
- (4) Ukwesulwa kokubhalisa noma kokubhalisa okunemibandela kohlelo lokukhulisa ingane ngesikhathi isencane ngokwesigatshana (1) akuthinti ukubhalisa noma ukubhalisa okunemibandela kwesikhungo sokunakekela isikhashana esinqunyiwe kwesikhungo sokunakekela izingane nentsha.

### Isaziso sokusebenzisa umthetho

**100.** Inhloko yesifundazwe yentuthuko yezehlalakahle ingayala ngesaziso esilotshiwe—

- (a) umuntu oqhuba noma owengamele isikhungo sokunakekela izingane isikhashana esinqunyiwe noma isikhungo sokunakekela izingane nentsha esingahlinzeki uhlelo lokukhulisa ingane ngesikhathi isencane ukuba athobele isigaba 93(5) ngesikhathi esiyobe sibekwe esazisweni;
- (b) umuntu oqhuba noma owengamele isikhungo sokunakekela izingane isikhashana esinqunyiwe noma isikhungo sokunakekela izingane nentsha esihlinzeka izinhlelo zokukhulisa ingane ngesikhathi isencane kepha zisezingeni elingathobeli imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunyiwe, ukuba athobele leyo mikhuba namazinga kazwelonke nezinye izidingo esikhathini esiyobe sibekwe esazisweni; noma
- (c) umuntu ohlinzeka uhlelo lokukhulisa ingane ngesikhathi isencane ongathobeli imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 94 kanye nezinye izidingo ezingahle zinqunyiwe—
- (i) ukuba aphelise ukuhlinzekwa kwalolo hlelo; noma
- (ii) ukuba athobele leyo mikhuba namazinga kazwelonke nezinye izidingo esikhathini esimiswe esazisweni.

### Ukudlulisa isikhalo maqondana nezinqumo ezithize nokuzibukeza

**101.** (1) Ofake isicelo noma umnini wokubhalisa onesikhalo ngesinqumo senhloko yesifundazwe yentuthuko yezehlalakahle ngokwalesi sigaba angadlulisela isikhalo ngaleso sinqumo ngendlela enqunyiwe zingakapheli izinsuku ezingu 90 kuNgqongqoshe wesifundazwe weNtuthuko yezeNhlalakahle, oyonquma maqondana nesikhalo zingakapheli izinsuku ezingu 90 esitholile isikhalo.

(2) Ofake isicelo noma umnini wokubhalisa onganelisekile ngomphumela wokudlulisa isikhalo ekukhulunywe ngakho esigatshaneni (1) angafaka isicelo ophikweni olunamandla afanele lweNkantolo ePhakeme ukuba kubukezwe leso sinqumo.

### Ukunika umasipala imisebenzi

**102.** (1) Inhloko yesifundazwe yentuthuko yezehlalakahle, ngokuvumelana nomasipala ngokulotshiwe, inganika eminye noma yonke imisebenzi ekukhulunywe ngayo ezigabeni 95, 96, 97, 98, 99 kanye no 100 ukuba yenziwe yimeneja kamasipala uma inhloko yesifundazwe yentuthuko yezehlalakahle yanelisekile ngokuthi umasipala uthobela izidingo ezinqunyiwe maqondana namandla alowo masipala okwenza imisebenzi ethintekayo.

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

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

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

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may—

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

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide on the appeal within 90 days of receipt thereof.

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

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

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

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

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

## Regulations

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

(a) the national norms and standards that early childhood development programmes must comply with;

(b) any other requirements with which early childhood development programmes must comply;

(c) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;

(d) the assessment and compulsory monitoring of early childhood development programmes; and

(e) any other matter necessary to facilitate the implementation of this Chapter.”

(2) Isivumelwano kufanele sibe ngendlela enqunyiwe futhi siqukathe imininingwane enqunyiwe.

(3) Imeneja kamasipala ekukhulunywe ngayo esigatshaneni (1) inganikeza noma yimaphi amandla noma yimuphi umsebenzi ethunywe ukuba iwenze kusehlalakahle okhethiwe oqashwe ngumasipala.

(4) Ukuthuma ngokwesigatshana (3)—

(a) kuncike kunoma yimiphi imikhawulo, imibandela kanye nemiyalo engabekwa yimeneja kamasipala;

(b) kufanele kulotshwe phansi;

(c) akususi umthwalo wokusetshenziswa kwamandla noma wokwenziwa komsebenzi emahlombe emeneja kamasipala.

(5) Imeneja kamasipala—

(a) ingaqinisa, ishintshe noma ihoxise noma yisiphi isinqumo esithathwe ngenxa yokudluliswa kwamandla noma komsebenzi okwenzeke ngokwalesi sigaba, kuncike emalungelweni angabe eqongelelekile kulowo muntu ngenxa yaleso sinqumo; futhi

(b) ingahoxisa ukudluliswa kwamandla noma komsebenzi noma nini.

(6) Ofake isicelo onesikhalo ngesinqumo sesikhulu esiqashwe ngumasipala maqondana nesicelo sokubhalisa noma sokuvuselela ukubhalisa ngokwesigaba 96, imibandela ukubhalisa okwanikwa phezu kwayo ngokwesigaba 97, ukubhalisa kwesikhashana ngokwesigaba 98 noma umnini wokubhalisa onesikhalo ngesinqumo sokwesulwa kokubhaliswa kwesikhungo sokunakekela izingane okwesikhashana esinqunyiwe ngokwesigaba 99 angadlulisela isikhalo emkhandlwini kamasipala aphikise leso sinqumo.

(7) Umuntu ofake isicelo onganiselike ngomphumela wokudlulisela isikhalo ekukhulunywe ngako esigatshaneni (6) angafaka isicelo esigabeni esinamandla afanele seNkantolo ePhakeme ukuba ibukeze leso sinqumo.

(8) (a) Inhloko yesifundazwe yentuthuko yezehlalakahle kufanele iqaphe ukwenziwa kwemisebenzi ethunyelwe kumasipala ngokwalesi sigaba.

(b) Inhloko yesifundazwe yentuthuko yezehlalakahle ingacela ngesaziso esilotshiwe ukuba imeneja kamasipala noma omunye umuntu ophethe ulwazi oludingwa yinhloko yesifundazwe yentuthuko yezehlalakahle ukuze iqaphe ukwenziwa kwemisebenzi ethunywe umasipala ngokwalesi sigaba, ukuba ahlinzeke inhloko yesifundazwe yentuthuko yezehlalakahle ngalolo lwazi singakapheli isikhathi esishiwo kwisaziso.

(c) Uma, emva kokuba imisebenzi ekukhulunywe ngayo esigatshaneni (1) isithunyelwe kumasipala, kubonakala sengathi umasipala akasenawo amandla okwenza eminye noma yonke imisebenzi athunywe ukuba ayenze, inhloko yesifundazwe yentuthuko yezehlalakahle—

(i) ingachibiyela isivumelwano esilotshiwe ekukhulunywe ngaso esigatshaneni (1); noma

(ii) ihoxise ukudluliswa kwemisebenzi.

### Imigomo

**103.** UNgqongqoshe angenza imigomo ngokwesigaba maqondana—

(a) nemikhuba namazinga ekufanele kuthotshelwe yizinhlelo zokukhulisa ingane ngesikhathi isencane;

(b) nanoma yiziphi ezinye izidingo ekufanele izinhlelo zokukhulisa ingane ngesikhathi isencane zizithobele;

(c) nenqubo ekufanele ilandelwe maqondana nokufakwa nokucutshungulwa kwezicelo zokubhaliswa ngokwalesi Sahluko nangokuvuselelwa kokubhalisa okunjalo;

(d) nokuvivinya nokuqapha izinhlelo zokukhulisa ingane ngesikhathi isencane okuphoqelekile okwenziwa ezikhungweni zokunakekela ngesikhashana esinqunyiwe nasezikhungweni zokunakekela izingane nentsha; kanye

(e) nanoma yiluphi olunye udaba olungadingeka ukuze kube lula ukusebenzisa lesi Sahluko.

**Amendment of chapter 7 of Act 38 of 2005**

5. Chapter 7 of the principal Act is hereby amended—

(a) by the insertion before Part 2 of the following Part:

***“Part 1******Child protection system***

5

**Strategy concerning child protection**

**104.** (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development and the South African Police Service, must develop a comprehensive inter-sectoral strategy aimed at securing a properly resourced, co-ordinated and managed national child protection system. 10

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

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2). 15

**Provision of designated child protection services**

**105.** (1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund designated child protection services for that province. 20

(2) Designated child protection services—

(a) must be managed and maintained in accordance with this Act; and  
(b) must comply with the prescribed national norms and standards contemplated in section 106 and such other requirements as may be prescribed. 25

(3) Designated child protection services provided by an organ of state or a designated child protection organisation only qualify for funding from money appropriated by a provincial legislature if it complies with the prescribed national norms and standards contemplated in section 106 and such other requirements as may be prescribed. 30

(4) Designated child protection services may be provided by—

(a) the Department;  
(b) a provincial department of social development; and  
(c) a designated child protection organisation. 35

(5) Designated child protection services include—

(a) services aimed at supporting—  
(i) the proceedings of children's courts; and  
(ii) the implementation of court orders; 40

(b) services relating to—

(i) prevention services;  
(ii) early intervention services;  
(iii) the reunification of children in alternative care with their families;  
(iv) the integration of children into alternative care arrangements;  
(v) the placement of children in alternative care; and  
(vi) the adoption of children, including inter-country adoptions; 45



**Ukuchibiyela isahluko 7 soMthetho 38 ka 2005****5. Isahluko 7 soMthetho omkhulu siyachitshiyelwa lapha ngalokhu—****(a) ngokufaka iNgxenywe elandelayo ngaphambi kweNgxenywe 2:*****“Ingxenywe 1******Uhlelo lokuvikela izingane*****5****Isu eliphathelene nokuvikela izingane**

**104.** (1) UNgqongqoshe kufanele emva kokubonisana nabantu abanentshisekelo kanye noNgqongqoshe bezeMfundo, ezeziMali, ezeMpilo, ezoBulungiswa nokuThuthukiswa koMthethosisekelo kanye Nombutho wamaPhoyisa aseNingizimu Afrika akhe isu elibanzi elimbandakanya imikhakha ehlukahlukene eliqonde ekutholeni uhlelo lokuvikela izingane olunengcebo efaneleyo, oluhanjiswa ngemfanelo futhi olunganyelwe kahle. 10

(2) UNgqongqoshe wesifundazwe wentuthuko yezehlalakahle kufanele ngaphakathi kwesu likazwelonke ekukhulunywe ngalo esigatshaneni (1), ahlinzekele isu lesifundazwe eliqondiswe ohlelweni lokuvikela izingane olunengcebo efaneleyo, oluhanjiswa ngemfanelo futhi olunganyelwe kahle. 15

(3) UNgqongqoshe wesifundazwe kufanele enze uhlaka oluveza isithombe sokwenzeka esifundazweni izikhathi ngezikhathi ukuze akwazi ukuhlinzeka ulwazi oludingekayo ekutheni kwenziwe noma kuhlolwe amasu ekukhulunywe ngawo ezigatshaneni (1) no (2). 20

**Ukuhlinzeka ngezinsizakalo zokuvikela izingane eziqokiwe**

**105.** (1) UNgqongqoshe wesifundazwe wentuthuko yezehlalakahle kufanele, emalini eyabiwe yisishayamthetho esifanele, ahlinzeke futhi axhase ngezimali izinsizakalo zokuvikela izingane kuleso sifundazwe. 25

(2) Izinsizakalo zokuvikela izingane—

- (a) kufanele zenganyelwe futhi zigcinwe ngokuhambisana nalo Mthetho; futhi
- (b) kufanele zithobele imikhuba namazinga anqunyiwe kazwelonke ekukhulunywe ngawo esigabeni 106 kanye nezinye izidingo ezingahle zinqunyiwe. 30

(3) Izinsizakalo zokuvikela izingane ezihlinzekwa wuphiko lukahulumeni eziqokiwe noma inhlangano yokuvikela izingane eqokiwe zifaneleka ukuxhaswa ngezimali ezabiwe yisishayamthetho kuphela uma zithobela imikhuba namazinga anqunyiwe ekukhulunywe ngawo esigabeni 106. 35

(4) Izinsizakalo zokuvikela izingane eziqokiwe zingahlinzekwa—

- (a) wuMnyango;
- (b) wuMnyango wesifundazwe obhekene nentuthuko yezehlalakahle; kanye
- (c) nenhlangano yokuvikela izingane eqokiwe. 40

(5) Izinsizakalo zokuvikela izingane eziqokiwe zifaka—

- (a) izinsizakalo eziqondiswe ekusekeleni—
- (i) okwenzakala ezinkantolo zezingane; kanye
- (ii) nokusetshenziswa kwemiyalo yenkantolo; 45
- (b) izinsizakalo eziphathelene—
- (i) nezinsizakalo zokuvimba okuthize;
- (ii) izinsizakalo zokusiza masinyane;
- (iii) ukuhlanganiswa kwezingane ezisekunakekelweni kwezinye izindawo nemindeni yazo; 50
- (iv) ukujwayeziswa kwezingane ukuhlala ekunakekelweni kwezinye izindawo;
- (v) ukubekwa kwezingane kwezinye izindawo zokunakekela;
- (vi) ukutholwa kwezingane, kufaka nokutholwa kwezingane emazweni ehlukene; 55

- (c) the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children;
- (d) intervention and removal of children in appropriate cases;
- (e) the drawing up of individual development plans and permanency plans for children removed, or at risk of being removed, from their family; and
- (f) any other social work service as may be prescribed.

#### **National norms and standards for child protection**

**106.** (1) The Minister must determine national norms and standards for child protection by regulation after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development and the South African Police Service.

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

- (a) Prevention and early intervention programmes;
- (b) assessment of a child;
- (c) therapeutic programmes;
- (d) after-care;
- (e) family reunification and reintegration;
- (f) foster care services;
- (g) integration into alternative care;
- (h) adoption services;
- (i) permanency plans;
- (j) education and information; and
- (k) child-headed households.

#### **Designation of child protection organisation**

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

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

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

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

(4) Sections 310 and 311 read with such changes as the context may require, apply to any assignment in terms of subsection (1).

#### **Existing child welfare organisation**

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

- (c) ukwenziwa kophenyo kanye nokwenziwa kwezivivinyo, ezimweni lapho kusolwa khona ukuhlukunyezwa, ukunganakwa nokushiywa kwezingane zingenamuntu ozinakekele;
- (d) ukungenelela nokususa izingane ezimweni ezifanele;
- (e) ukwenziwa kwamasu entuthuko omuntu ngamunye kanye namasu okutholela izingane ezisuswe emindenini yazo noma ezisengcupheni yokususa emindenini yazo indawo ezizohlala kuyona isikhathi eside; kanye
- (f) nanoma iyiphi enye insizakalo yezehlalakahle engahle inqunywe wumgomo.

#### **Imikhuba namazinga kazwelonke aphathelene nokuvikelwa kwengane**

**106.** (1) UNgqongqoshe kufanele anqume imikhuba namazinga kazwelonke okuvikelwa kwezingane ngokwenza umgomo emva kokubonisana nabantu abanentshisekelo noNgqongqoshe bezeMfundo, ezeziMali, ezeMpilo nezoBulungiswa nokuThuthukiswa koMthethosisekelo kanye Nombutho wamaPhoyisa aseNingizimu Afrika.

(2) Imikhuba namazinga kazwelonke ekukhulunywe ngawo kwisigatshana (1) kufanele aphathelane nalokhu okulandelayo:

- (a) izinhlelo ezivimbayo futhi zilekelele masinya;
- (b) ukuhlolwa kwengane;
- (c) izinhlelo ezelaphayo;
- (d) ukunakekela okuqhubekayo;
- (e) ukuhlanganiswa nokungena kahle emndenini;
- (f) ukubheka ukunakekelwa kwengane ekungeyona eyomuntu
- (g) ukungeniswa kahle ekunakekelweni kwenye indawo;
- (h) izinsizakalo zokutholwa;
- (i) izinhlelo zokulungiselela isikhathi eside;
- (j) imfundo nolwazi; kanye
- (k) nemindenini ephethwe yizingane ezingabondli.

#### **Ukuqokwa kwezinhlangano ezivikela izingane**

**107.** (1) UMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezehlalakahle lapho ithola isicelo esilotshiwe, ingaqoka noma iyiphi inhlangano efanele ethobela izimo ezimisiwe ukuthi ibe yinhlangano evikela izingane ezokwenza zonke noma ezinye izinsizakalo eziqonde ngqo zokuvikela izingane esifundazweni esifanele.

(2) Ukuqoka ngokwesigatshana (1)—

- (a) kufanele kulotshwe phansi;
- (b) kungenziwa ngaphansi kwemibandela engabe inqunywe nguMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezehlalakahle; futhi
- (c) kufanele kwenzelwe izikhathi ezingabe zinqunyiwe.

(3) UMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezehlalakahle anganika inhlangano evikela izingane eqokiwe lawo mandla nemisebenzi ekungadingeka ngokwalo Mthetho ukuze inhlangano ihlinzeke kahle izinsizakalo zokuvikela ingane.

(4) Izigaba 310 no 311, zifundwa kanyekanye nezinguquko ezingabe zidingwe yisimo, zisebenza kunoma yikuphi ukudluliswa kwamandla nemisebenzi ngokwesigatshana (1).

#### **Inhlangano yenzhlalakahle yezingane evela ikhona**

**108.** (1) Noma iyiphi inhlangano, okuthi lapho isigaba 107 siqala ukusebenza, ibe iqokwe njengenhlangano yezehlalakahle ngaphansi kwencazelo yoMthetho wokuNakekela iZingane kufanele ithathwe ngokuthi iqokwe ngokwesigaba 107 njengenhlangano evikela izingane ezokwenza imisebenzi yokuvikela izingane ekhethiwe ebeyiyenza masinyane ngaphambi kokuqala ukusebenza kwesigaba.

(2) Inhlangano okukhulunywa ngayo esigatshaneni (1) ithathwa njengenhlangano yokuvikela ingane eqokiwe isikhathi esiyiminyaka

(2) An organisation referred to in subsection (1) is regarded as a designated child protection organisation for a period of five years from the date on which section 107 takes effect, unless its designation is withdrawn in terms of section 109 before the expiry of that period.

### **Withdrawal of designation**

**109.** (1) The Director-General or provincial head of social development may withdraw the designation of a child protection organisation to perform any, or any specific, designated child protection service—

(a) if the organisation—

(i) breaches or fails to comply with any conditions subject to which the designation was made; or

(ii) contravenes or fails to comply with a provision of this Act; or

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

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

### **Reporting of abused or neglected child and child in need of care and protection**

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

(2) Any person who on reasonable grounds believes that a child is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.

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

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

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

(4) A police official to whom a report has been made in terms of subsection (1) or (2) or who becomes aware of a child in need of care and protection must—

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

(b) within 24 hours notify the provincial department of social development or a designated child protection organisation of the report and any steps that have been taken with regard to the child.

emihlanu kusukela ngosuku lokuqala ukusebenza kwesigaba 107, ngaphandle uma ukuqokwa kuhoxiswa ngokwesigaba 109 ngaphambi kokuphela kwaleso sikhathi.

#### Ukuhoxiswa kokuqoka

**109.** (1) UMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezenhlalakahle angahoxisa ukuqokwa kwenhlangano yokuvikela izingane ekwenzeni noma iyiphi insizakalo yokuvikela izingane, noma insizakalo eqonde ngqo—

(a) uma inhlangano—

(i) yephula noma yehluleka ukuthobela noma yimiphi imibandela ukuqokwa kwayo okwenziwa ngaphansi kwayo; noma

(ii) yephula noma yehluleka ukuthobela lo Mthetho; noma

(b) uma kuzoba kuhle enganeni ukwenza lokho.

(2) Ngaphambi kokuthi kuhoxiswe ukuqokwa kwenhlangano evikela ingane njengalokho bekucatshangwa esigatshaneni (1), uMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezenhlalakahle, kuye nesimo, kufanele ahlole ikhwalithi enhlanganweni evikela ingane efanele ngendlela enqunyiwe.

#### Ukubika ingane ehlukunyeziwe noma enganakekelwe kanye nengane edinga ukunakekelwa nokuvikelwa

**110.** (1) Noma yimuphi umsebenzi wasejele, udokotela wamazinyo, umelaphi ngamakhambi ehlukahlukene, osebenzela uMnyango Wezasekhaya ophikweni lwabangena kuleli, umhloli wezemisebenzi, ummeli, udokotela, umbelethisi, umfundisi, umhlengikazi, uchwepheshe ngezifo ezivela emsebenzini, iphoyisa, umeluli wamathambo, uchwepheshe wezengqondo nemicabango, umholi wezenkolo, uchwepheshe wezinsizakalo zenhlo, usonhlalakahle, uchwepheshe olungisa inkulamo, uthisha, umelaphi wendabuko, umholi wendabuko noma ilungu labasebenzi noma ivolontiya esikhungweni sokunakekela ngesikhashana esinqunyiwe, esikhungweni sokukhosela, esikhungweni sokuquba noma esikhungweni sokunakekela izingane nentsha, obona isimo esimenza anqume ukuthi ingane ihlukunyezwe ngendlela elimaza umzimba, ihlukunyezwe ngokocansi noma ayinakekelwe ngamabomu, uma lokho kulungele ingane ethintekayo, kufanele abike leso sinqumo sakhe ngendlela enqunyiwe enhlanganweni evikela izingane eqokiwe, emnyangweni wesifundazwe wentuthuko yezenhlalakahle noma ephoyiseni.

(2) Noma ngubani ngezizathu ezizwakalayo okholwa wukuthi ingane idinga ukunakekelwa nokuvikelwa angabika leyo nkolelo anayo emnyangweni wesifundazwe wentuthuko yezenhlalakahle, enhlanganweni yokuvikela izingane eqokiwe noma ephoyiseni.

(3) Umuntu okukhulunywa ngaye esigatshaneni (1) noma (2)—

(a) kufanele aveze ubufakazi obenze afinyelele kuleso sinqumo noma kuleyo nkolelo emnyangweni wesifundazwe wentuthuko yezenhlalakahle, enhlanganweni yokuvikela izingane eqokiwe noma ephoyiseni; futhi

(b) owenza umbiko ngobuhle akanakubhekana necala ngenxa yalowo mbiko.

(4) Iphoyisa ekwenziwe kulona umbiko ngokwesigatshana (1) noma (2) noma elibona ukuthi ungane idinga ukunakekelwa nokuvikelwa kufanele—

(a) liqinisekise ukuthi ingane ethintekayo iphephile futhi ihlezi kahle uma ukuphepha nenhlalakahle yengane kusengcupheni; futhi

(b) engakapheli amahora angu-24 lazise umnyango wesifundazwe wentuthuko yezenhlalakahle noma inhlangano evikela ingane eqokiwe ngombiko nanganoma yiziphi izinyathelo ezithathiwe maqondana nengane.

- (5) The provincial department of social development or designated child protection organisation to whom a report has been made in terms of subsection (1), (2) or (4), must—
- (a) ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk; 5
  - (b) make an initial assessment of the report;
  - (c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated;
  - (d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of this Act for the protection of the child; 10  
and
  - (e) submit such particulars as may be prescribed to the Director-General for inclusion in Part A of the National Child Protection Register.
- (6) (a) A designated child protection organisation to whom a report has been made in terms of subsection (1), (2) or (4) must report the matter to the relevant provincial department of social development. 15
- (b) The provincial head of social development must monitor the progress of all matters reported to it in terms of paragraph (a).
- (7) The provincial department of social development or designated child protection organisation which has conducted an investigation as contemplated in subsection (5) may— 20
- (a) take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation; 25
  - (b) if he or she is satisfied that it is in the best interest of the child not to be removed from his or her home or place where he or she resides, but that the removal of the alleged offender from such home or place would secure the safety and well-being of the child, request a police official in the prescribed manner to take the steps referred to in section 153; or 30
  - (c) deal with the child in the manner contemplated in sections 151, 152 or 155.
- (8) The provincial department of social development or designated child protection organisation which has conducted an investigation as contemplated in subsection (5) must report the possible commission of an offence to a police official.”; 35
- (b) by the substitution for subsection (3) of section 134 of the following subsection:
- “(3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section [105] 110.”; and 40
- (c) by the insertion after section 134 of the following Part:

#### ***“Part 4***

##### ***Other protective measures***

##### **Application to terminate or suspend parental responsibilities and rights**

**135.** (1) The Director-General, a provincial head of social development or a designated child protection organisation may apply to a High Court, a divorce court in divorce matters or a children's court for an order— 50

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

- (5) UMnyango wesifundazwe wentuthuko yezenhlahalakahle noma inhlango yokuvela izingane eqokiwe ekubikwe kubona ngokwesigatshana (1), (2) noma (4), kufanele—
- (a) baqinisekise ukuthi ukuthi ingane ethintekayo iphephile futhi ihlezi kahle uma ukuphepha nenhlalakahle yengane kusengcupheni; 5
- (b) benze ukuhlolwa kombiko kokuqala;
- (c) ngaphandle uma umbiko ungenasisindo noma ukhombisa ngokusobala ukuthi awunasizinda, baphenye ngobuqiniso bombiko noma baqinisekise ukuthi uphenyo luyenziwa; 10
- (d) uma umbiko ufakazelwa wuphenyo olunjalo, ngaphandle kokulibala bafake inqubo ngokwalo Mthetho ukuze kuvikeleke ingane; futhi
- (e) bathumele imininingwane engabe inqunywe nguMqondisi-Jikelele ukuba ifakwe eNgxenyeni A yeRejista likaZwelonke Lokuvela iZingane. 15
- (6) (a) Inhlango yokuvela izingane eqokiwe owenze uphenyo njengalokho bekushiwo esigatshaneni (1), (2) noma (4) kufanele ibike udaba emnyangweni wentuthuko yezenhlahalakahle ofanele. 20
- (b) Inhloko yesifundazwe yentuthuko yezenhlahalakahle kufanele iqaphe inqubekelaphambili yazo zonke izindaba ezibikwe kuyona ngokwendima (a). 25
- (7) UMnyango wesifundazwe wentuthuko yezenhlahalakahle noma inhlango yokuvela izingane eqokiwe eyenze uphenyo njengalokho bekucatshangwa esigabeni (5)—
- (a) ingathatha izinyathelo zokusiza ingane ezifaka ukuyalwa, ukuxazululwa kwenkinga, ukuvikela nokusiza masinya, ukubunjwa kabusha nokuvuselelwa komongo womndeni, ukuguqula ukuziphatha, ukuxazulula izinkinga kanye nokudluliselwa komunye umuntu noma inhlango yochwepheshe; 30
- (b) uma anelisekile ngokuthi kuzoyilungela ingane ukungasuswa ekhaya layo noma endaweni lapho ihlala khona, kepha ukususwa komuntu osolwayo ngecala kulelo khaya noma indawo kungaqinisekisa ukuphepha nenhlalakahle yengane, angacela iphoyisa ngendlela enqunyiwe ukuba lithathe izinyathelo okukhulunywa ngazo esigabeni 153; noma 35
- (c) abhekane nengane ngendlela ebicatshangwa ezigabeni 151, 152 noma 155.
- (8) uMnyango wesifundazwe wentuthuko yezenhlahalakahle noma inhlango yezenhlahalakahle eqokiwe eyenze uphenyo njengalokho bekucatshangwa esigatshaneni (5) kufanele ibike ephoyiseni ukuthi kungahle kwenzeke ukuthi kwenziwe icala.”; 40
- (b) ngokufaka isigatshana esilandelayo esikhundleni sesigatshana (3) sesigaba 134:
- “(3) Ingane ethola amakhondomu, izinto zokuvimba inzalo noma iziyalo maqondana nezinto zokuvimba inzalo ngokwalo Mthetho inelungelo lokuthi lezo zinto zigcinwe ziyimfihlo, kuncike esigabeni [105] 110.”; kanye 45
- (c) nangokufaka iNgxenyeni elandelayo emva kwesigaba 134:

**“Ingxenyeni 4**

***Ezinye izinyathelo zokuvikela***

**Isicelo sokuqeda noma sokumisa okwesikhashana izibophezelo namalungelo obuzali** 50

**135.** (1) UMqondisi-Jikelele, inhloko yesifundazwe yentuthuko yezenhlahalakahle noma inhlango yokuvela izingane eqokiwe bangafaka isicelo eNkantolo ePhakeme, enkantolo yokwehlukanisa uma udaba lumayelana nokwehlukanisa noma enkantolo yezingane ukuze kutholwe umyalo— 55

(a) omisa okwesikhashana, oqeda noma odlulisa ezinye noma zonke izibophezelo namalungelo obuzali umuntu othile anakho maqondana nengane; noma

(b) restricting or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.

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

(a) is older than seven years, and has been in alternative care for more than two years;

(b) is older than three years but not older than seven years, and has been in alternative care for more than one year; or

(c) is three years or younger, and has been in alternative care for more than six months.

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

### **Consideration of application to terminate or suspend parental responsibilities and rights**

**136.** When considering an application referred to in section 135 the court must—

(a) be guided by the principles set out in Chapters 2 and 3 to the extent that those principles are applicable to the matter before it; and

(b) take into account all relevant factors, including—

(i) the need for the child to be permanently settled, preferably in a family environment, taking into consideration the age and stage of development of the child;

(ii) the success or otherwise of any attempts that have been made to reunite the child with the person whose parental responsibilities and rights are challenged;

(iii) the relationship between the child and that person;

(iv) the degree of commitment that that person has shown towards the child;

(v) whether there had been any contact between the parent and the child over the year preceding the application; and

(vi) the probability of arranging for the child to be adopted or placed in another form of alternative care.

### **Child-headed household**

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

(a) the parent, guardian or care-giver of the household is terminally ill, has died or has abandoned the children in the household;

(b) no adult family member is available to provide care for the children in the household;

(c) a child over the age of 16 years has assumed the role of care-giver in respect of the children in the household; and

(d) it is in the best interest of the children in the household.

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

(a) a children's court; or

(b) an organ of state or a non-governmental organisation determined by the provincial head of social development.

(3) The supervising adult must—

(a) perform the duties as prescribed in relation to the household; and

(b) be a fit and proper person to supervise a child-headed household.

(4) A person unsuitable to work with children is not a fit and proper person to supervise a child-headed household.

(5) (a) The child heading the household or the adult contemplated in subsection (2) may collect and administer for the child-headed household any social security grant or other grant in terms of the Social Assistance Act, 2004 (Act No. 13 of 2004) or other assistance to which the household is entitled.



(b) okhawula noma onciphisa ezinye noma zonke izibophezelo namalungelo lowo muntu anakho maqondana nengane.

(2) Isicelo esenziwe ngokwesigatshana (1) singathunyelwa ngaphandle kwemvume yomzali noma onakekela ingane uma ingane, ngesikhathi sokufakwa kwesicelo—

(a) ineminyaka engaphezu kweyisikhombisa futhi ibisihlala kwenye indawo yokunakekelwa iminyaka eyevile kwemibili;

(b) ineminyaka engaphezu kwemithathu, kepha ingakevi kweyisikhombisa, futhi kade ihlala kwenye indawo yokunakekelwa ngaphezu konyaka owodwa; noma

(c) ineminyaka emithathu noma ngaphansi futhi ibikade ikwenye indawo yokunakekelwa izingane isikhathi esingaphezu kwezinyanga eziyisithupha.

(3) Isigaba 29, sifundwa nezinguquko ezingahle zifunwe yisimo, sisebenza maqondana nanoma iyiphi inqubo eyenziwa ngokwalesi sigaba.

### **Ukucutshungulwa kwesicelo sokuqeda noma sokumisa okwesikhashana izibophezelo namalungelo obuzali**

**136.** Lapho kucutshungulwa isicelo ekukhulunywe ngaso esigabeni 135 inkantolo kufanele—

(a) iholwe yimigomo emiswe kwiZahluko 2 no 3 kuphelele lapho le migomo isebenza khona kulolu daba oluphambi kwenkantolo; futhi

(b) ikhumbule zonke izinto ezihambisana nodaba, ezifana—

(i) nesidingo sokuthi ingane izinziswe, okungcono kube yisesimweni somndeni, kukhunjulwe iminyaka nesikhathi ekukhuleni kwengane;

(ii) ukuphumelela noma imizamo eyenziwe ukuze ingane ixhunyaniswe nomuntu izibophezelo namalungelo akhe aphikiswayo;

(iii) ubudlelwane phakathi kwengane nalowo muntu;

(iv) izinga lokuzinikela lowo muntu alibonisile enganeni;

(v) ukuthi kuke kwaba khona yini ukuxhumana phakathi komzali nengane onyakeni owandulela ukufakwa kwesicelo; kanye

(vi) nethuba lokulungisela ingane ukuba itholwe noma ibekwe kolunye uhlobo lwendawo yokunakekelwa;

### **Imizi ephethwe yizingane ezingabondli**

**137.** (1) Inhloko yesifundazwe yentuthuko yezenhlahalakahle ingathatha umuzi njengomuzi ophethwe yingane engumondli uma—

(a) umzali noma umnakekeli womuzi egulela ukufa, eseshonile noma eshiye izingane endlini engekho umuntu ozinakekele;

(b) kungenamuntu womndeni omdala okhona ukuba anakekele izingane kulowo muzi;

(c) ingane eneminyaka engaphezu kuka-16 isibambe iqhaza lokuba wumnakekeli wezingane kulowo muzi; futhi

(d) kuzoba kuhle ezinganeni zakulowo muzi.

(2) Umuzi ophethwe yingane ewumondli kufanele usebenze ngaphansi kwehlo lomuntu omdala oqokwe—

(a) yinkantolo yezingane; noma

(b) uhlaka lukahulumeni noma inhlango engekho ngaphansi kukahulumeni ngesinqumo senhloko yesifundazwe yentuthuko yezenhlahalakahle.

(3) Umuntu omdala obheke izingane kufanele—

(a) enze imisebenzi njengalokho kunqunywe maqondana nomuzi;

(b) abe ngumuntu ofanelekile futhi okulungele ukuthi abheke ikhaya eliphethwe yingane engumondli.

(4) Umuntu ongafanele ukusebenza nezingane akakufanele futhi akakulungele ukuthi abheke umuzi ophethwe yingane engumondli.

(5) (a) ingane okuyiyona eyinhloko yomuzi noma umuntu omdala obekukhulunywe ngaye esigatshaneni (2) angalanda bese abela lowo muzi awengamele noma iyiphi igranti yezenhlahalakahle nanoma yiluphi uhlobo

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

(6) The adult referred to in subsection (2) may not take any decisions concerning such household and the children in the household without consulting—

(a) the child heading the household; and

(b) given the age, maturity and stage of development of the other children, also those other children.

(7) The child heading the household may take all day-to-day decisions relating to the household and the children in the household.

(8) The child heading the household or, given the age, maturity and stage of development of the other children, such other children, may report the supervising adult to the organ of state or non-governmental organisation referred to in subsection (2)(b) if the child or children are not satisfied with the manner in which the supervising adult is performing his or her duties.

(9) A child-headed household may not be excluded from any grant, subsidy, aid, relief or other assistance or programmes provided by an organ of state in the national, provincial or local sphere of government solely by reason of the fact that the household is headed by a child.

#### **Unlawful removal or detention of child**

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

(a) remove a child from the care of a person who lawfully cares for the child; or

(b) detain a child with the result that the child is kept out of the care of a person entitled to lawfully care for the child.

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

(a) causes the child to be detained; or

(b) induces the child to remain with him or her or any other person.

#### **Unlawful taking or sending of child out of Republic**

**139.** (1) No person may take or send a child out of the Republic—

(a) in contravention of an order of a court prohibiting the removal of the child from the Republic; or

(b) without consent—

(i) obtained in terms of section 18(5) from persons holding relevant parental responsibilities and rights in respect of that child;

(ii) obtained in terms of section 169 with regard to a child in alternative care; or

(iii) of a court.

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

(a) taking a child out of the Republic if that person—

(i) causes the child to be taken, or in any way assists in taking the child, out of the Republic; or

(ii) causes or induces the child to accompany or to join him or her or any other person when departing from the Republic; or

lomxhaso olutholakala ngokuhambisana noMthetho Wokusiza kwezeNhlalakahle, ka 2004 (uMthetho ongunombolo 13 ka 2004) noma olunye usizo olungolomuzi.

(b) Umuntu omdala olanda bese aba imali yomuzi ophethwe yingane njengalokho kushiwo endimeni (a) unesibopho sokubika ngendlela enqunyiwe ohlakeni lukahulumeni noma enhlanganweni engekho ngaphansi kukahulumeni eyamqoka ukuthi abe yihlo kulowo muzi.

(6) Umuntu omdala okukhulunywa ngaye esigatshaneni (2) akanakuthatha zinqumo maqondana nomuzi onjalo ngaphandle kokubonisa—

(a) nengane ekuyiyona ephethe umuzi; kanye

(b) nalezi ezinye izingane, kubhekwe iminyaka, ukuvuthwa kwengqondo kanye nezinga lokukhula kwazo.

(7) Ingane ephethe umuzi ingathatha zinqumo ngakho konke okwenzeka kulowo muzi nsukuzonke nangeziningane kulowo muzi.

(8) Ingane ephethe umuzi noma, uma kubhekwa iminyaka, ukuvuthwa komqondo kanye nezinga lokukhula lalezi ezinye izingane, lezi ezinye izingane zingabika ngomuntu omdala ozibhekile ohlakeni lukahulumeni noma enhlanganweni engekho ngaphansi kukahulumeni ekukhulunywe ngayo esigatshaneni (2)(b) uma ingane noma izingane zinganelisekile ngendlela umuntu omdala ozigadile enza ngayo umsebenzi wakhe.

(9) Umuzi ophethwe yingane ewumondli akufanele ushiywe ngaphandle kunoma iyiphi igranti, umxhaso, usizo noma kwezinye izinhlelo ezenzelwe imizi empofu nezingane ezisengcupheni wuphiko lombuso ezingeni likazwelonke, lesifundazwe noma lasekhaya ngesizathu sokuthi lowo muzi uphethwe yingane kuphela.

#### **Ukususa noma ukugcina ingane okungekho emthethweni**

**138.** (1) Akukho muntu okuyothi ngaphandle kokugunyazwa ngokomthetho noma ngezizathu ezizwakalayo—

(a) asuse ingane kumuntu oyinakekele ngokomthetho; noma

(b) agcine ingane kube nomphumela wokuthi leyo ngane ayisakwazi ukunakekelwa ngumuntu ogunyazwe ukuyinakekela.

(2) Ukuze kusebenze isigatshana (1) umuntu kufanele athathwe njengomuntu ogcine ingane uma lowo muntu—

(a) ebangela ukuthi ingane igcinwe; noma

(b) eheha ingane ukuthi ihlale naye noma nomunye umuntu.

#### **Ukuthatha noma ukuthumela ingane ngaphandle kweRiphabhuliki okungekho emthethweni**

**139.** (1) Akukho muntu oyothatha noma athumele ingane ngaphandle kweRiphabhuliki—

(a) aphule noma yimuphi umyalelo wenkantolo ovimba ukususwa kwengane kwiRiphabhuliki; noma

(b) ngaphandle kwemvume—

(i) etholwe ngokwesigaba 18(5) kubantu abaphethe izibophezelo namalungelo obuzali baleyo ngane;

(ii) etholwe ngokwesigaba 169 maqondana nengane enakekelwe kwenye indawo; noma

(iii) yenkantolo.

(2) Ukuze kusebenze isigatshana (1) umuntu kufanele athathwe njengomuntu—

(a) othathe ingane ngaphandle kweRiphabhuliki uma lowo muntu—

(i) ebangela ukuthi ingane ithathwe, noma esiza noma ingayiphi indlela ekuthathweni kwengane, ngaphandle kweRiphabhuliki; noma

(ii) ebangela noma eheha ingane ukuba imphelekezele noma ihambisane naye noma nomunye umuntu lapho beshiya iRiphabhuliki; noma

- (b) sending a child out of the Republic if that person causes the child to be sent, or in any way assists in sending the child, out of the Republic.

### Child safety at place of entertainment

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

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

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

- (a) determine the number of people, including children, who can safely be accommodated on the premises or enclosure and each part of the premises or enclosure;
- (b) station a sufficient number of adult attendants to prevent more people, including children, from being admitted to the premises or enclosure, or any part of the premises or enclosure, than the number of people determined in terms of paragraph (a) for the premises or enclosure or that part of the premises or enclosure;
- (c) control the movement of people admitted to the premises or enclosure, or any part of the premises or enclosure, while entering or leaving the premises or enclosure or that part of the premises or enclosure; and
- (d) take all reasonable precautions for the safety of the children and other people attending the entertainment.

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

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

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

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

### Child labour and exploitation of children

**141.** (1) No person may—

- (a) use, procure or offer a child for slavery or practices similar to slavery, including but not limited to debt bondage, servitude and serfdom, or forced or compulsory labour or provision of services;
- (b) use, procure, offer or employ a child for purposes of commercial sexual exploitation;
- (c) use, procure, offer or employ a child for trafficking;
- (d) use, procure or offer a child or attempt to do so for the commission of any offence listed in Schedule 1 or Schedule 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or

- (b) othumele ingane ngaphandle kweRiphabhuliki uma lowo muntu ebangela ukuthi ingane ithunyelwe, noma esiza noma ingayiphi indlela ekuthunyelweni kwengane, ngaphandle kweRiphabhuliki.

#### Ukuphepha kwengane endaweni yokuzithokozisa

**140.** (1) Umuntu ohlinzeka izinto zokuthokozisa izingane kunoma yimaphi amagceke noma indawo ebiyelwe kufanele athobele isigatshana (2) uma—

- (a) izintuba zokufinyelela emagcekeni noma endaweni ebiyiwe lapho kunezinto zokuzithokozisa khona zidinga ukuthi kusetshenziswe iminyango, izitebhisi, amakheshi noma enye indlela esebenza ngemishini;

- (b) iningi labantu abeza kule ndawo kuyizingane; futhi

- (c) inani labantu abeza kule ndawo, kufaka nezingane, levile ku 50.

(2) Umuntu ohlinzeka izinto zokuzithokozisa ezinganeni ezimweni ezibalulwe esigatshaneni (1) kufanele—

- (a) anqume inani labantu, kufaka nezingane, elingangena ngokuphepha emagcekeni noma endaweni ebiyiwe nasengxenyeni ngayinye yalawo magceke noma indawo ebiyiwe;

- (b) abeke inani elanele labantu abadala abaqaphile ukuze bavimbe ukungena kwabantu abevile esibalweni esimiswe ngokwendima (a), kufaka nezingane, kuleyo ndawo noma indawo ebiyiwe, noma kuleyo ngxenye yalawo magceke noma yendawo ebiyiwe;

- (c) anqande ukunyakaza kwabantu abangeniswe emagcekeni noma endaweni ebiyiwe, noma kwenye ingxenye yamagceke noma yendawo ebiyiwe, ngesikhathi bengena noma bephuma emagcekeni noma endaweni ebiyiwe, noma kuleyo ngxenye yamagceke noma yendawo ebiyiwe; futhi

- (d) athathe zonke izinyathelo ezibonakalayo ukuze kuphephe izingane nabanye abantu abeze ekuzithokoziseni.

(3) Akukho phuzo oludakayo noma imikhiqizo kagwayi engathengiswa, iphakwe noma itholakale ezindaweni zokuzithokozisa.

(4) Uma umuntu ohlinzeka intokozo kungeyena umnikazi wamagceke noma wendawo ebiyiwe lapho kwenzeka khona ukuzithokozisa, umnikazi noma omele umnikazi kufanele athathe zonke izinyathelo ezibonakalayo ukuqinisekisa ukuthi izigatshana (2) no (3) ziyathotshelwa.

(5) (a) Umuntu ogunyazwe ngumasipala wendawo lapho amagceke noma indawo ehlinzeka noma ezohlinzeka ukuzithokozisa njengalokho kuchazwe esigatshaneni (1) ikhona, noma lapho esola ukuthi kungahle kube nokuzithokozisa okunjalo, angangena endaweni enjalo ukuze ahlole ukuthi izigatshana (2) no (3) ziyathotshelwa yini.

(b) Isigaba 304(2) no (3), sifundwa kanyekanye nezinguquko ezidingwa yisimo, sisebenza kunoma yikuphi ukuhlola okwenziwa ngokwendima (a).

#### Ukusetshenziswa nokuxhashazwa kwengane

**141.** (1) Akukho muntu—

- (a) ongasebenzisa, athenge noma anikele ngengane ebugqileni noma emikhubeni efana nobugqila, kufaka kepha kungapheleli ekucindezelweni yisikweletu, ukuphoqwa ukusebenzela abantu kungenankululeko kanye nokusebenza umhlaba njengesigqila noma ekusebenzeni noma ekuhlinzekeleni insizakalo ngenkani noma ngokuphoqwa;

- (b) ongasebenzisa, athenge, anikele noma aqashe ingane ngenhloso yokuyixhaphaza ngokocansi oluthengisayo;

- (c) ongasebenzisa, athenge, anikele noma aqashe ingane ngoba efuna ukuyithengisa;

- (d) ongasebenzisa, athenge noma anikele ingane noma azame ukwenza lokho ukuze ingane yenze isenzo esiyicala ngokweSheduli 1 noma iSheduli 2 yoMthetho weNqubo Yamacala oBugebengu, ka 1977 (uMthetho ongunombolo 51 ka 1977) noma

**Act No. 41, 2007****CHILDREN'S AMENDMENT ACT, 2007**

- (e) use, procure, offer or employ a child for child labour.
- (2) A social worker or social service professional who becomes aware of—
- (a) any instance of a contravention of subsection (1)(a), (b), (c) or (d) must report it to a police official; and
  - (b) any instance of child labour or a contravention of the provisions of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) must report it to the Department of Labour.”.

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**Amendment of section 142 of Act 38 of 2005**

**6.** Section 142 of the principal Act is hereby amended by the insertion in subsection (1) before paragraph (g) of the following paragraphs:

- “(a) prescribing criteria for determining organisations which may be designated as child protection organisations;
- (b) prescribing national norms and standards and codes of good practice to guide designated child protection organisations, organs of state and social workers involved in the provision of designated child protection services;
- (c) prescribing a broad risk assessment framework to guide decision-making in the provision of designated child protection services;
- (d) prescribing criteria for determining suitable persons who may conduct investigations into cases of child abuse or neglect;
- (e) prescribing the powers and responsibilities of persons contemplated in paragraph (d);
- (f) prescribing the conditions for the examination or assessment of children who have been abused or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child.”.

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**Insertion of chapter 8 in Act 38 of 2005**

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

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

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**143.** (1) Prevention programmes means programmes—

- (a) designed to serve the purposes mentioned in section 144; and
- (b) provided to families with children in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment which, if not attended to, may lead to statutory intervention.

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(2) Early intervention programmes means programmes—

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

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**Purposes of prevention and early intervention programmes**

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

- (a) preserving a child's family structure;
- (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline;

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- (e) ongasebenzisa, athenge, anikele noma aqashe ingane ngenhloso yokuthi ayiqashe;
- (2) Usonhlalakahle noma uchwepheshe osebenza kwinsizakalo yezenhlahlakahle othola ulwazi—
- (a) nganoma yisiphi isigameko sokwephulwa kwesigatshana (1)(a), (b), (c) noma (d) kufanele abike ephoyiseni; futhi
- (b) nganoma yisiphi isigameko sokusetshenziswa kwengane noma ukwephulwa kwemibandela yoMthetho Wezimo eziyiSisekelo Kwezokuqashwa, ka 1977 (uMthetho ongunombolo 75 ka 1997) kufanele abike lokho eMnyangweni Wezokuqasha.”.

#### Ukuchibiyela isigaba 142 soMthetho 38 ka 2005

6. Isigaba 142 soMthetho omkhulu siyachitshiyelwa lapha ngokufaka esigatshaneni (1) ngaphambi kwendima (g) izindima ezilandelayo:
- (a) enquma uhlaka lokwenza izinqumo ngezinhlangano ezingakhethwa njengezinhlangano zokuvikela izingane;
- (b) enquma imikhuba namazinga kazwelonke nemithetho yokuziphatha okuhle ezohola izinhlangano zokuvikela izingane eziqokiwe, izinhlangano zikahulumeni kanye nosonhlalakahle abasebenza ngokuhlinzekwa kwezinsizakalo eziqokiwe zokuvikela izingane;
- (c) enquma uhlaka olubanzi lokuhlola ingozi oluzohola abathatha izinqumo ngokuhlinzekwa kwezinsizakalo eziqokiwe zokuvikela izingane;
- (d) enquma uhlaka lokuthatha izinqumo ngabantu abafanelekile abangenza uphenyo ngamacala okuhlukunyezwa noma okunganakekelwa kwengane;
- (e) enquma amandla nezibophezelo zabantu okukhulunywa ngabo kwindima (d);
- (f) enquma izimo zokuvivinya noma zokuhlola izingane ezihlukunyeziwe noma ezishiywe zinganakekelwe, kufaka nemvume enikwa yingane maqondana nokuvivinywa noma ukuhlolwa okunjalo, kuye neminyaka kanye nokukhula ngokomqondo kwengane.”.

#### Ukufaka isahluko 8 eMthethweni 38 ka 2005

7. Isahluko esilandelayo siyafakwa ngalokhu eMthethweni omkhulu emuva kweSahluko 7:

#### “ISAPHLUKO 8

##### IZINSIZAKALO EZIVIMBAYO FUTHI ZILEKELELE MASINYA

##### Izinhlelo zokuvimbela futhi zilekelele masinya

143. (1) Izinhlelo zokuvimbela kusho izinhlelo—
- (a) ezakhelwe ukubhekana nenhloso ebalulwe esigabeni 144; futhi
- (b) ezihlinzekwa emindenini enezingane ukuze kuqiniseke futhi kwakhiwe amandla ayo nokuzimela ekubhekane nezinkinga ezingahle noma ezizovela emndenini, okungathi uma zinganakwa, ziholele ekugxambukeleni komthetho.
- (2) Izinhlelo ezilekelele masinya kusho izinhlelo—
- (a) ezakhelwe ukubhekana nenhloso ebalulwe esigabeni 144; futhi
- (b) ezihlinzekwa emindenini lapho izingane eziqagulwe ngokuthi zisengcupheni yokulimala noma kufanele ziyiswe kwenye indawo yokunakekelwa.

##### Izinhloso zezinhlelo zokuvimbela futhi zilekelele masinya

144. (1) Izinhlelo zokuvimbela futhi zilekelele masinya kufanele zigxile—
- (a) ekulondolozeni isimo somndenini;
- (b) ekwakheni amakhono afanele okuba wumzali kanye namandla abazali nabanakekeli bezingane ekuvikelweni inhlahlakahle kanye nezintshisekelo zezingane zabo, kufaka nezindlela zokuqondisa izigwegwe ezakhayo futhi ezingasebenzisi indluzula;

- (c) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of children with disabilities and chronic illnesses;
- (d) promoting appropriate interpersonal relationships within the family;
- (e) providing psychological, rehabilitation and therapeutic programmes for children; 5
- (f) preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;
- (g) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development; 10
- (h) diverting children away from the child and youth care system and the criminal justice system; and
- (i) avoiding the removal of a child from the family environment.
- (2) Prevention and early intervention programmes may include— 15
  - (a) assisting families to obtain the basic necessities of life;
  - (b) empowering families to obtain such necessities for themselves;
  - (c) providing families with information to enable them to access services;
  - (d) supporting and assisting families with a chronically ill or terminally ill family member; 20
  - (e) early childhood development; and
  - (f) promoting the well-being of children and the realisation of their full potential.
- (3) Prevention and early intervention programmes must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems. 25

#### **Strategy for securing prevention and early intervention programmes**

**145.** (1) The Minister, after consultation with interested persons, and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at securing the provision of prevention and early intervention programmes to families, parents, care-givers and children across the Republic. 30

(2) The MEC for social development must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at the provision of properly resourced, co-ordinated and managed prevention and early intervention programmes. 35

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2). 40

#### **Provision of prevention and early intervention programmes**

**146.** (1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund prevention and early intervention programmes for that province. 45

(2) Prevention and early intervention programmes must— 50
 

- (a) be provided in accordance with this Act; and
- (b) comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.



- (c) ekwakheni amakhono afanele okuba wumzali kanye namandla abazali nabanakekeli bezingane ekuvikeleni inhlahakahle kanye nezintshisekelo zezingane ezikhubazekile noma ezinezifo ezingamahlalakhona;
- (d) ekusunguleni ubudlelwane obufanele phakathi kwamalungu omndeni; 5
- (e) ekuhlizekeni izinhlelo zengqondo nemicabango, zokuvuselela kabusha nezelaphayo ezakhelwe izingane;
- (f) ekuvimbeni ukushiywa kwezingane zinganakekelwe, ekuxhashazweni, ekuhlukunyezweni noma ekutheni zingaqaphwa ngokwanele nokuvimba okunye ukwehluleka esimweni somndeni ukuze kufezwe izidingo zezingane; 10
- (g) ekuvimbeni ukuphinda kwezinkinga ezingahle zilimaze izingane noma zibulale ukuthuthuka kwazo emndenini;
- (h) ekugwemeni ukuthumela izingane ohlelweni lokunakekelwa kwezingane nentsha kanye nasohlelweni lobulungiswa emacaleni obugebengu; kanye 15
- (i) nasekugwemeni ukususwa kwengane emndenini.
- (2) Izinhlelo ezivimbayo futhi zilekelele masinya zingafaka—
- (a) ukusiza imindeni ekutholeni izidingongqangi empilweni;
- (b) ukunika imindeni amandla okuthi izitholele izidingongqangi zempilo ngokwayo; 20
- (c) ukunika imindeni ulwazi oluzoyisiza ukuthi ikwazi ukuthola izinsizakalo;
- (d) ukusekela nokusiza imindeni enelungu elinesifo esingumahlalekhona noma elinesifo esingalapheki; 25
- (e) ukukhulisa ingane isencane; kanye
- (f) nokugququzela inhlahakahle yezingane kanye nokuvunyelwa kwazo ukuthi zibe noma yini ezifisa ukuba yiyona;
- (3) Izinhlelo ezivimbayo futhi zilekelele masinya kufanele zibandakanye futhi zigququzele ukuhlanganyela kwemindeni, abazali, abanakekeli kanye nezingane ekuqaguleni nasekutholeni izixazululo zezinkinga zabo. 30

#### Isu lokuthola izinhlelo zokuvimbela futhi zilekelele masinya

145. (1) UNgqongqoshe, emva kokubonisana nabantu abanentshisekelo, kufaka noNgqongqoshe bezeMfundo, ezeziMali ezeMpilo, ezoHulumeni Bezifundazwe naseKhaya kanye nowezokuThutha, kufanele afake eswini lomnyango isu likazwelonke elibanzi eliqondiswe ekutholeni izinhlelo ezivimbayo futhi zilekelele masinya emindenini, kubazali, kubanakekeli nasezinganeni ezweni jikelele. 35

(2) UNgqongqoshe wesifundazwe wentuthuko yezenhlahakahle kufanele ngaphakathi kwesu likazwelonke ekukhulunywe ngalo esigatshaneni (1), ahlinzekele isu lesifundazwe eliqondiswe ohlelweni oluvimbayo futhi lulekelele masinya olunengebo efaneleyo, oluhanjiswa ngemfanelo futhi olwenganyelwe kahle. 40

(3) UNgqongqoshe wesifundazwe kufanele enze uhlu oluveza isithombe sokwenzekayo esifundazweni izikhathi ngezikhathi ukuze akwazi ukuhlinzeka ulwazi oludingekayo lapho kwakhiwa noma kubukezwa amasu ekukhulunywe ngawo ezigatshaneni (1) no (2). 45

#### Ukuhlinzeka izinsizakalo zokuvimbela futhi zilekelele masinya

146. (1) UNgqongqoshe wesifundazwe wentuthuko yezenhlahakahle kungathi, emalini eyabiwe yisishayamthetho esifanele, ahlinzeke futhi axhase ngezimali izinhlelo ezivimbayo futhi zilekelele masinya kuleso sifundazwe. 50

(2) Izinhlelo ezivimbayo futhi zilekelele masinya kufanele—

- (a) zihlinzekwe ngokuhambisana nalo Mthetho; futhi
- (b) zithobele imikhuba namazinga kazwelonke anqunywe nguNgqongqoshe ebekukhulunywe ngawo esigabeni 147 kanye nezinye izidingo ezingahle zinqunywe. 55

(3) The provider of prevention and early intervention programmes only qualifies for funding contemplated in subsection (1) if the programmes comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.

(4) The funding of prevention and early intervention programmes must be prioritised—

- (a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and
- (b) to make prevention and early intervention programmes available to children with disabilities.

#### **National norms and standards for prevention and early intervention programmes**

**147.** (1) The Minister must determine national norms and standards for prevention and early intervention programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.

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

- (a) Outreach services;
- (b) education, information and promotion;
- (c) therapeutic programmes;
- (d) family preservation;
- (e) skills development programmes;
- (f) diversion programmes;
- (g) temporary safe care; and
- (h) assessment of programmes.

#### **Court may order early intervention programme**

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

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

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

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

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

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

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

(3) Umhlinzeki wezinhlalo ezivimbayo futhi zilekelele masinya ufaneleka ukuthola izimali ezabiwe ngokwesigatshana (1) kuphela uma izinhlelo zithobela imikhuba namazinga anquniwe kazwelonke ebekukhulunywe ngawo esigabeni 147 kanye nezinye izidingo ezingahle zinqunywe.

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(4) Ukuxhaswa kwezinhlalo ezivimbayo futhi zilekelele masinya kufanele kubekwe phambili—

(a) emiphakathini lapho imindeni intula izindlela zokuhlinzeka izingane zayo ngendawo yokukhosela, ukudla kanye nezinye izidingongqangi zempilo; kanye

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(b) nokwenza ukuthi izinhlelo ezivimbayo futhi zilekelele masinya zitholakale ezinganeni ezikhubazekile.

#### **Imikhuba namazinga kazwelonke ezinhlelo ezivimbayo futhi zilekelele masinya**

147. (1) UNgqongqoshe kufanele anqume imikhuba namazinga kazwelonke yezinhlelo ezivimbayo futhi zilekelele masinya ngokwenza imigomo emva kokubonisana nabantu abanentshisekelo, kufaka neMinyango yezeMfundo, eyezeMpilo, eyoHulumeni Bezifundazwe naseKhaya kanye neyezokuThutha.

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(2) Imikhuba namazinga kazwelonke ekukhulunywe ngakho esigatshaneni (1) kufanele kubhekane nalokhu okulandelayo:

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(a) Ukusiza

(b) imfundo, ulwazi nokugqugquzela;

(c) izinhlelo ezelaphayo;

(d) ukugcina umndeni;

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(e) izinhlelo zokuthuthukisa amakhono;

(f) izinhlelo zokuchitha isizungu;

(g) ukunakekelwa okwesikhashana okuphephile; kanye

(h) nokuvivinya izinhlelo.

#### **Inkantolo ingabiza ukulekelela masinya**

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148. (1) Ngaphambi kokwenza umyalo maqondana nokususwa okwesikhashana noma unomphele kwengane emndenini waleyo ngane, inkantolo yezingane ingayala—

(a) umnyango wesifundazwe wentuthuko yezehlalakahle, inhlango yokuvela izingane eqokiwe, noma yiluphi olunye uhlobo lukahulumeni noma omunye umuntu noma inhlango ukuba bahlinzeke izinhlelo ezivimbayo futhi zilekelele masinya maqondana nengane kanye nomndeni noma umzali noma umnakekeli wengane uma inkantolo ibona ukuhlinzekwa kwezinhlalo ezinjalo kufanele isimo; noma

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(b) umndeni wengane kanye nengane ukuba bahlanganyele ohlelweni olunquniwe lokugcina isimo somndeni.

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(2) Umyalo owenziwe ngokwesigatshana (1) kufanele kube owesikhathi esibekwe sacaca singevi ezinyangeni eziyisithupha.

(3) Lapho icala liqala futhi emuva kokuphela kwesikhathi esibekiwe, umbiko kasonhlalakahle oqokiwe okhuluma ngenqubekelaphambili yohlelo oluvimbayo futhi lulekelele masinya olunikwe ingane nomndeni noma umzali noma umnakekeli wengane kufanele uthunyelwe enkantolo.

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(4) Emuva kokucubungula umbiko, inkantolo—

(a) inganquma ngodaba lokuthi ingane kufanele isuswe noma cha; noma

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(b) iyale ukuba kuqhutshekwe nohlelo oluvimbayo futhi lulekelele masinya esinye isikhathi futhi esingevile ezinyangeni eziyisithupha.

(5) Isigatshana (1) asisebenzi lapho ukuphepha noma inhlalakahle yengane kusengozini enzima futhi engenakugwemeka.

**Report to include summary of prevention and early intervention programmes**

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

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**Amendment of section 153 of Act 38 of 2005**

8. Section 153 of the principal Act is hereby amended by the substitution in subsection (1) of the words preceding paragraph (a) of the following words:

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“(1) A police official to whom a report contemplated in section [105] 110(1) or (2) or a request contemplated in [105] 110(7) has been made, may, if he, or she is satisfied that it will be in the best interests of the child if the alleged offender is removed from the home or place where the child resides, issue a written notice which—”

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**Amendment of section 156 of Act 38 of 2005**

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

“(f) if the child lives in a child-headed household, that the child must remain in that household subject to section 137;”

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

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

**“CHAPTER 11**

**ALTERNATIVE CARE**

**Alternative care**

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

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

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(2) A child may not be in temporary safe care or be kept or retained at any place or facility, including a registered child and youth care centre, for longer than six months without a court order placing the child in alternative care.

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

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

(4) As from the date on which this section takes effect an existing place of safety approved in terms of the Child Care Act must be regarded as having been approved as temporary safe care in terms of this section.

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**Umbiko kufanele ufake izinhlelo zokuvimbela futhi zikelele masinya ngokufingqiwe**

149. Lapho umbiko kasonhlalakahle oqokiwe usukhishwa ngaphambi kwenkantolo ukuze usize inkantolo ekunqumeni ngodaba oluthinta ingane, umbiko kufanele uqukathe noma yiziphi izinhlelo zokuvimbela futhi zikelelele masinya ngokufingqiwe ezisetsheziwe maqondana naleyo ingane nomndeni, nomzali noma nomnakekeli wengane.”.

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**Ukuchitshiyelwa kwesigaba 153 soMthetho 38 ka 2005**

8. Isigaba 153 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokufaka amagama alandelayo esigatshaneni (1) esikhundleni samagama andulela indima (a):

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“(1) iphoyisa ekubikwe kulona maqondana nombiko ekukhulunywe ngayo esigabeni 110(1) noma (2) noma isicelo ekukhulunywe ngaso esigabeni 110(7), kungathi uma laniselisekile ngokuthi kuzobhekela izintshisekelo zengane uma umuntu owenze icala esuswa ekhaya noma endaweni lapho ingane ihlala khona, likhiphe isaziso esibhaliwe esizokwenza ukuthi—”.

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**Ukuchitshiyelwa kwesigaba 156 soMthetho 38 ka 2005**

9. Isigaba 156 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokufaka indima elandelayo esigatshaneni (1) emva kwendima (e):

“(f) uma ingane ihlala emndenini ophethwe yingane engumondli, ukuthi ingane kufanele ihlale kulelo khaya kuncike esigabeni 137;”.

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**Ukufakwa kwezahluko 11, 12, 13 no 14 eMthethweni 38 ka 2005**

10. Izahluko ezilandelayo ngalokhu zifakwa eMthethweni omkhulu emuva kweSahluko 10:

**“ISAHLUKO 11**

**UKUNAKEKELWA KWENYE INDAWO**

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**Ukunakekelwa kwenye indawo**

167. (1) Ingane isuke inakekelwa kwenye indawo uma—

(a) inakekelwa ngabantu abayitholile;  
(b) inakekelwa esikhungweni esinakekela izingane nentsha emuva komyalo wenkantolo ngokwalo Mthetho noma ngokoMthetho Wenqubo Kumacala oBugebengu ka 1977 (uMthetho ongunombolo 51 ka 1977); noma

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(c) inakekelwa endaweni yesikhashana ephephile.

(2) Ingane ayinakunakekelwa endaweni yesikhashana ephephile noma igcinwe noma ihlaliswe kwesinye isikhungo noma indawo kufaka nesikhungo sokunakekela izingane nentsha esibhalisiwe isikhathi esingaphezu kwezinyanga eziyisithupha ngaphandle komyalo wenkantolo obeka ingane ekunakekelweni kwenye indawo.

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(3) (a) Inhloko yesifundazwe yentuthuko yezenhlahlakahle kufanele igunyaze umuntu, isikhungo, indawo noma amagece okunakekela okwesikhashana okuphephile ngendlela enqunyiwe.

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(b) Umuntu, isikhungo, indawo noma amagece okunakekela okuphephile okwesikhashana kufanele athobele okunqunyiwe.

(4) Kusukela ngosuku lapho lesi sigaba siqala ukusebenza indawo yokuphephela evunyiwe ngokoMthetho Wokunakekela iZingane kufanele ithathwe ngokuthi ivunyiwe njengendawo yokunakekela okuphephile okwesikhashana ngokwalesi sigaba.

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**Leave of absence**

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

- (a) by the management of a child and youth care centre in whose care the child has been placed; 5
- (b) by the person in whose alternative care the child has been placed; and
- (c) by the provincial head of social development in the relevant province, in the case of a child in temporary safe care.

(2) If a child has been placed in alternative care under the supervision of a designated social worker, leave of absence may only be granted with the approval of that social worker. 10

(3) The management or person referred to in subsection (1), designated social worker or the provincial head of social development in the province may at any time cancel any leave of absence granted in terms of subsection (1). 15

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

(5) When a child's leave of absence has been cancelled, the management or person referred to in subsection (1), designated social worker or the provincial head of social development must request that the child be returned to the child and youth care centre or person, or to the place where the child is in temporary safe care. 20

**Child in alternative care prohibited from leaving Republic**

**169.** (1) A child in alternative care may not leave the Republic without the written approval of the provincial head of social development first being obtained. 25

(2) In granting approval in terms of subsection (1), the provincial head of social development may determine terms and conditions to protect the best interest of the child in alternative care. 30

**Child absconding from alternative care**

**170.** (1) Any police official or designated social worker may apprehend a child in alternative care who—

- (a) has absconded from the child and youth care centre or person in whose care or temporary safe care that child has been placed; or 35
- (b) has been granted leave of absence by the child and youth care centre or person in whose care or temporary safe care that child has been placed and who on cancellation or expiration of such leave of absence fails to return to that centre or person. 40

(2) If a police official or designated social worker contemplated in subsection (1) has reasonable grounds to believe that a child is in or on certain premises, the police official or designated social worker may, without a warrant, enter and search the premises for the purpose of apprehending the child. 45

(3) A police official referred to in subsection (1) may use such force as may be reasonably necessary to overcome any resistance against the entry or search of the premises as contemplated in subsection (1), including the breaking of any door or window of such premises: Provided that the police official shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises. 50

(4) On apprehending a child in alternative care who has absconded or failed to return in terms of subsection (1), the police official must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk, and notify the provincial department of social development or a designated child protection organisation of the fact that the child has been apprehended and of any steps that have been taken with regard to the child. 55

**Ukuthatha ikhefu**

**168.** (1) Ingane enakekelwa kwenye indawo inganikwa isikhathi sokuthatha ikhefu, kuncike esigatshaneni (2) kanye naleyo mikhawulo nemibandela engahle inqunywe wumgomo—

(a) ngabaphathi besikhungo sokunakekela izingane nentsha ingane enakekelwa yibona; 5

(b) ngumuntu onakekela ingane kwenye indawo; kanye

(c) nenhloko yentuthuko yezenhlahakahle esifundazweni esifanele, esimweni sengane enakekelwa endaweni ephephile okwesikhashana. 10

(2) Uma ingane ibekwe ekunakekelweni kwenye indawo ngaphansi kwehlo likasonhlalakahle oqokiwe, ukuthatha ikhefu kunganikwa ngemvume yalowo sonhlalakahle kuphela.

(3) Abaphathi noma umuntu okukhulunywe ngaye esigatshaneni (1), usonhlalakahle oqokiwe noma inhloko yentuthuko yezenhlahakahle esifundazweni bangahoxisa noma nini isikhathi sokuthatha ikhefu esinikwe ngokwesigatshana (1). 15

(4) Uma ingane inakekelwa ngabantu abayitholile, usonhlalakahle oqokiwe oqaphile angahoxisa noma nini isikhathi sokuthatha ikhefu ebesinikwe ngokwesigatshana (1).

(5) Lapho isikhathi sengane sokuthatha ikhefu sesihoxisiwe, abaphathi noma umuntu ebekukhulunywe ngaye esigatshaneni (1), usonhlalakahle oqokiwe noma inhloko yentuthuko yezenhlahakahle kufanele bacele ingane ukuba ibuyele esikhungweni sokunakekela izingane nentsha noma kumuntu, noma endaweni lapho ingane inakekelwe ngokuphephile khona. 20

**Ingane enakekelwe kwenye indawo ayivunyelwe ukushiya iRiphabhuliki** 25

**169.** (1) Ingane enakekelwa kwenye indawo ayinakuyishiya iRiphabhuliki ngaphandle kokuthi kutholwe imvume yenhloko yesifundazwe yentuthuko yezenhlahakahle elotshiwe kuqala.

(2) Lapho kunikwa imvume ngokwesigatshana (1), inhloko yesifundazwe yentuthuko yezenhlahakahle inganquma noma yimiphi imibandela nezimo zokuvikela intshisekelo yenhlahakahle yengane enakekelwe kwenye indawo. 30

**Ingane eyeqayo lapho inakekelwa kwenye indawo**

**170.** (1) Noma yiliphi iphoyisa noma usonhlalakahle oqokiwe bangabamba ingane enakekelwe kwenye indawo— 35

(a) eyeqile esikhungweni sokunakekela izingane nentsha noma kumuntu ebekwe kuyena ukuba ayinakekele kungeyona eyakhe noma endaweni yokunakekela isikhashana ephephile; noma

(b) enikwe ithuba lokuthatha ikhefu yisikhungo sokunakekela izingane nentsha noma umuntu ebekwe kuyena ukuba ayinakekele kungeyona eyakhe noma indawo yokunakekela isikhashana ephephile bese kuthi lapho kuhoxiswa noma kuphela isikhathi sokuthatha ikhefu lelo ingabuyi kuleso sikhungo noma kulowo muntu. 40

(2) Uma iphoyisa noma usonhlalakahle oqokiwe okukhulunywa ngabo esigatshaneni (1) benezizathu ezizwakalayo zokukholwa wukuthi isemagcekeni athile, iphoyisa noma usonhlalakahle oqokiwe, bangangena baseshe lawo magceke ukuze bathole ingane, ngaphandle kwewaranti. 45

(3) Iphoyisa okukhulunywa ngalo esigatshaneni (1) lingasebenzisa impoqo kuye nokudingwa yisimo ukuze linqobe ukuvinjelwa ekungeneni noma ekusesheni amagceke okukhulunywa ngakho esigatshaneni (2), kufaka nokuphula umnyango noma ifasitela lalawo magceke: Kuncike ekutheni iphoyisa liyoqala ngokumemeza ukuthi lifuna ukungena emagcekeni anjalo futhi lisho nenhloso eyenza lifune ukungena emagcekeni anjalo. 50

(4) Ekutholeni ingane enakekelwe kwenye indawo eyeqile noma ehlulekile ukubuyela emuva ngokwesigatshana (1), iphoyisa kufanele liqinisekise ukuphepha nenhlalakahle kwengane ethintekayo, uma 55

(5) A child so apprehended or a child who returns, of his or her own accord, to the centre or person in whose alternative care he or she was before absconding—

(a) must without delay be brought before a presiding officer of a children's court; and

(b) may, until brought before a presiding officer of a children's court, be kept in temporary safe care in terms of section 152.

(6) When the child is brought before a presiding officer of a children's court, the presiding officer must—

(a) order that the child be put in the temporary safe care of a child and youth care centre or appropriate facility or person determined by the presiding officer and kept there until the proceedings in terms of this section are completed and any order made or action taken in terms of this section is given effect to;

(b) inquire into the reasons why the child absconded from, or failed to return to the relevant child and youth care centre or person, and may for this purpose question the child; and

(c) order that the child—

(i) be returned to that centre or person;

(ii) may not be returned to that centre or person pending any action by the provincial head of social development in the relevant province in terms of subsection (8), if the presiding officer is of the opinion that there are good reasons why the child should not be returned to that centre or person; or

(iii) be placed in another form of alternative care.

(7) The presiding officer of the children's court must order the clerk of the children's court to—

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

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

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

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

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

(c) discharge the child from alternative care in terms of section 175; or

(d) order that the child be returned to the child and youth care centre or person in whose care or temporary safe care that child has been placed.

#### Transfer of child in alternative care

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

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



ukuphepha nenhlalakahle kwayo kusengcupheni, bese lazisa umnyango wesifundazwe wentuthuko yezenhlalakahle noma inhlango enakekela izingane eqokiwe ngodaba lokuthi ingane itholiwe nangezinyathelo ezithathiwe maqondana nengane.

(5) Ingane etholwe kanje noma ebuye ngokuzithandela kwayo esikhungweni sokunakekela izingane nentsha noma kumuntu obeyinakekele kwenye indawo ngaphambi kokuthi yeqe— 5

(a) kufanele ngaphandle kokulibala ilethwe ngaphambi kwesisebenzi esengamele inkantolo yezingane; futhi

(b) kuze kube ilethwa ngaphambi kwesisebenzi esengamele inkantolo yezingane, ingagcinwa endaweni yokunakekela okwesikhashana ephephile ngokwesigaba 152. 10

(6) Lapho ingane isilethwe ngaphambili kwesisebenzi esengamele inkantolo yezingane, isisebenzi esengamele kufanele—

(a) siyale ukuthi leyo ngane igcinwe endaweni yokunakekela isikhashana ephephile esikhungweni sokunakekela izingane nentsha noma esikhungweni esifanelekile noma kumuntu onqunywe yisisebenzi esengamele bese igcinwa lapho kuze kuphothulwe inqubo ngokwalesi sigaba, kwasetshenziwa umyalo owenziwe noma kwalandelwa izinyathelo ezithathwe ngokwalesi sigaba; 15 20

(b) ahlole izizathu ezenze ukuthi ingane yeqe, noma yehluleke ukubuyela, esikhungweni esinakekela izingane nentsha esifanele noma kumuntu, futhi angabuza ingane ngqo ukuze afeze lokhu; futhi

(c) ayale ukuthi ingane—

(i) ibuyiselwe kuleso sikhungo noma umuntu; 25

(ii) akufanele ibuyiselwe kuleso sikhungo noma umuntu kulindelwe noma ziphi izinyathelo ezingathathwa yinhloko yesifundazwe yentuthuko yezenhlalakahle esifundazweni esifanele ngokwesigatshana (8), uma isisebenzi esengamele sibona ukuthi kunezizathu ezizwakalayo zokuthi ingane ingabuyiselwa kuleso sikhungo noma umuntu; noma 30

(iii) ibekwe kolunye uhlobo lwendawo yokunakekela.

(7) Isisebenzi esengamele senkantolo yezingane kufanele ayale umabhalane wenkantolo yezingane ukuba—

(a) abike kwinhloko yesifundazwe yentuthuko yezenhlalakahle esifundazweni esifanele umphumela wophenyo olwenziwe ngokwesigatshana (6); futhi 35

(b) azise inhloko yesifundazwe nganoma yimuphi umyalo owenziwe ngokwesigatshana (6)(c).

(8) Lapho umyalo sewenziwe ngokwesigatshana (6)(c)(ii) inhloko yesifundazwe yentuthuko yezenhlalakahle, kungathi emuva kokucubungula umbiko wenkantolo yezingane nophenyo inhloko yesifundazwe yentuthuko yezenhlalakahle engalubona ludingekile— 40

(a) idlulisele ingane kwenye indawo ngokwesigaba 171;

(b) isuse ingane ekunakekelweni kwenye indawo ngokwesigaba 173; 45

(c) ikhulule ingane ekunakekelweni kwenye indawo ngokwesigaba 175; noma

(d) iyale ukuba ingane ibuyele esikhungweni sokunakekela izingane nentsha noma kumuntu obeyinakekele noma ekunakekelweni kwesikhashana okuphephile lapho ingane ibekwe khona. 50

#### Ukudluliswa kwengane enakekelwe kwenye indawo

**171.** (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle esifundazweni esifanele, kuncike esigatshanani (5), ngomyalo obhaliwe ingadlulisa ingane enakekelwa kwenye indawo isuke esikhungweni esinakekela izingane nentsha noma kumuntu ebibekwe kuyena noma obeyinakekela okwesikhashana iye kwesinye isikhungo sokunakekela izingane nentsha noma umuntu. 55

(2) Inhloko yesifundazwe yentuthuko yezenhlalakahle ayinakudlulisela ingane esikhungweni esinakekela izingane nentsha esikwesinye isifundazwe ngaphandle kwemvume yenhloko yesifundazwe yentuthuko yezenhlalakahle yakulesi esinye isifundazwe nangaphandle 60

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

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

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

(a) the child, taking into consideration the child's age, maturity and stage of development;

(b) the parent, guardian or care-giver of the child, if available;

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(c) the child and youth care centre or person in whose care or temporary safe care that child has been placed; and

(d) the child and youth care centre or person to whom the child is to be transferred.

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

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

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(a) from the care of a person to a child and youth care centre; or

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

#### **Change in residential care programme**

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**172.** (1) The provincial head of social development in the relevant province may, subject to subsection (3), determine that—

(a) a child in a child and youth care centre be released from a residential care programme;

(b) another residential care programme be applied to such a child; or

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(c) an additional residential care programme be applied to such a child.

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

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

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(a) includes the secure care of a child; or

(b) is more restrictive than the child's current residential care programme.

#### **Removal of child already in alternative care**

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**173.** (1) The provincial head of social development in the relevant province may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child, pending any action in terms of subsection (2)—

kwamalungiselelo emali maqondana nalokhu kuthunyelwa kwengane kwenye indawo.

(3) (a) Uma inhloko yesifundazwe yentuthuko yezehlalakahle idlulisela ingane ukuba iyonakekelwa ngabazali bayo, ngumondli wayo noma umuntu obeyinakekela ngaphambilini ngaphansi kwehlo likasonhlalakahle oqokiwe, ngokwesigatshana (1), umyalo kufanele ucacise izidingo ekufanele ingane kanye nomzali, nomondli noma umuntu obeyinakekela ngaphambilini bazithobe.

(b) Uma noma yisiphi isidingo esibalulwe endimeni (a) sephulwa noma singathotshelwa, usonhlalakahle oqokiwe ofanele angayisa ingane enkantolo yezingane, ekungathi emuva kophenyo, iguqule umyalo obukhishwe yinhloko yesifundazwe yentuthuko yezehlalakahle noma yenze umyalo omusha ngokwesigaba 156.

(4) Ngaphambi kokuba inhloko yesifundazwe yentuthuko yezehlalakahle ikhiphe umyalo ngokwesigatshana (1), usonhlalakahle oqokiwe kufanele abonisane—

(a) nengane, acabangele iminyaka yengane, ukuvuthwa komqondo nezinga lokukhula kwengane;

(b) nomzali, umondli noma umuntu onakekela ingane, uma ekhona;

(c) nesikhungo esinakekela izingane nentsha noma umuntu lapho ingane inakekelwa khona noma lapho ingane ibekwe khona okwesikhashana; kanye

(d) nengane kanye nesikhungo esinakekela izingane nentsha noma umuntu lapho ingane izodluliselwa khona.

(5) Uma inhloko yesifundazwe yentuthuko yezehlalakahle idlulisela ingane esikhungweni esinakekela izingane nentsha noma kumuntu lapho imikhawulo imincane kunasesikhungweni esinakekela izingane nentsha lapho ingane isuka khona, inhloko yesifundazwe yentuthuko yezehlalakahle kufanele izanelise ngokuthi ukudluliswa kwengane ngeke kuzibandlulule ezinye izingane.

(6) Akukho myalo ngokwesigatshana (1) ongenziwa ngaphandle kokuqiniswa yinkantolo yezingane uma ingane idluliswe—

(a) isuka ekunakekelweni ngumuntu iya esikhungweni esinakekela izingane nentsha; noma

(b) isuka esikhungweni esinakekela izingane nentsha iya ekunakekelweni okuphephile okungaphezulu noma esikhungweni esinakekela izingane nentsha esinemikhawulo eminingi.

#### Ushintsho ohlelweni lokunakekela ingane esikhungweni

172. (1) Inhloko yesifundazwe yentuthuko yezehlalakahle esifundazweni esifanele, kuncike esigatshaneni (3), inganquma ukuthi—

(a) ingane esesikhungweni esinakekela izingane nentsha idedelwe ohlelweni lokunakekelwa esikhungweni;

(b) kusetshenziswe olunye uhlelo lokunakekela ingane esikhungweni maqondana naleyo ngane; noma

(c) kwengezwe olunye uhlelo lokunakekela ingane esikhungweni maqondana naleyo ngane.

(2) Ukuze kusebenze isigatshana (1), inhloko yesifundazwe yentuthuko yezehlalakahle ingadlulisela ingane kwesinye isikhungo sokunakekela izingane nentsha noma kumuntu ngokwesigaba 171.

(3) Akukho sinqumo ngokwesigatshana (1) esiyolandelwa ngaphandle kokuqiniswa yinkantolo yezingane uma leso sinqumo sidinga ukuba kusetshenziswe uhlelo lokunakekela ingane esikhungweni enganeni, lolu hlelo lube—

(a) lufaka ukunakekelwa kwengane okuphephile; noma

(b) lunemikhawulo engaphezu kweyohlelo ingane ekulona ngaleso sikhathi.

#### Ukususwa kwengane esivele inakekelwa kwenye indawo

173. (1) Inhloko yesifundazwe yentuthuko yezehlalakahle esifundazweni esifanele, ngokubhekela izintshisekelo zengane, kungathi

- (a) be removed from the child and youth care centre or person in whose care or temporary safe care the child is; and
  - (b) be put in temporary safe care at a place specified in the notice.
- (2) The provincial head of social development must, within six months from the date on which a child has been moved and placed in temporary safe care in terms of subsection (1) and after such inquiry as the provincial head of social development may consider necessary—
- (a) transfer the child in terms of section 171;
  - (b) discharge the child from alternative care in terms of section 175; or
  - (c) issue a notice directing that the child be returned to the child and youth care centre or person in whose care or temporary safe care the child was immediately before the subsection (1) notice was issued.

#### **Provisional transfer from alternative care**

- 174.** (1) A provincial head of social development may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child be provisionally transferred from alternative care into another form of care that is not more restrictive, as from a date specified in the notice, for a trial period of not more than six months.
- (2) A notice of provisional transfer in terms of subsection (1) may be issued only after—
- (a) procedures prescribed by regulation have been followed—
    - (i) to assess the best interest of the child; and
    - (ii) to reunite the child with the child's immediate family or other family members, if applicable; and
  - (b) a report on such assessment and reunification has been submitted to and considered by the provincial head of social development.
- (3) Provisional transfer must be managed by a designated social worker to establish the feasibility of—
- (a) reunification of the child with the child's immediate family or other family members;
  - (b) integration into another family; or
  - (c) a transfer to another child and youth care centre of any other form of placement.
- (4) The provincial head of social development—
- (a) must revoke the transfer if the child so requests and the social worker so recommends; and
  - (b) may at the end of or at any time during the trial period confirm the child's placement or discharge the child from alternative care in terms of section 175.
- (5) The notice of provisional transfer shall be considered proof of eligibility for any form of state support which would have been payable if the transfer had been permanent.

#### **Discharge from alternative care**

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

noma nini ngesikhathi ingane inakekelwe kwenye indawo, ikhiphe isaziso esithi kusamelwe isinyathelo ngokwesigatshana (3), ingane—

- (a) mayisuswe esikhungweni esinakekela izingane nentsha noma kumuntu oyinakekelayo noma oyinakekela okwesikhashana; futhi
- (b) ibekwe ekunakekelweni kwesikhashana endaweni eyobe ishiwo yisaziso.

(2) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele, ezinyangeni eziyisithupha kusukela osukwini ingane esuswe ngalo yafakwa ekunakekelweni kwesikhashana okuphephile ngokwesigatshana (1) futhi emuva kokwenza uphenyo inhloko yesifundazwe yentuthuko yezenhlalakahle eyobe ilubone ludingekile—

- (a) idlulise ingane ngokwesigaba 171;
- (b) idedele ingane ekunakekelweni kwenye indawo ngokwesigaba 175; noma
- (c) ikhiphe isaziso esithi ingane ayibuyiselwe esikhungweni esinakekela izingane nentsha noma kumuntu obeyinakekela noma obeyinakekela okwesikhashana masinyane ngaphambi kokukhishwa kwesaziso ngokwesigatshana (1).

#### Ukususwa okwesikhashana ekunakekelweni kwenye indawo

174. (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle, ngokubhekela izintshisekelo zengane, kungathi noma nini ngesikhathi ingane isanakekelwe kwenye indawo, akhiphe isaziso esithi ingane ayidluliswe okwesikhashana isuswe ekunakekelweni kwenye indawo iye kolunye uhlobo lokunakekelwa olungenayo imikhawulo engaphezulu kwalapho ibikhona, kusukela ngosuku oluyoshiwo kwisaziso, kulingwe isikhathi esingekile seve ezinyangeni eziyisithupha.

(2) Isaziso sokususwa okwesikhashana ngokwesigatshana (1) singakhishwa kuphela—

- (a) emuva kokulandela izinqubo ezinqunywe ngumgomo—
  - (i) zokuhlola intshisekelo yengane; kanye
  - (ii) nokuhlanganisa ingane nabakubo noma amanye amalungu omndeni, uma kungenzeka; futhi

(b) emuva kokuba umbiko wokuhlola nokuhlanganisa ingane nabakubo onjalo usuthunyelwe wacutshungulwa yinhloko yesifundazwe yentuthuko yezenhlalakahle.

(3) Ukususwa okwesikhashana kufanele kwenganyelwe ngusonhlalakahle oqokiwe ukuze abheke ukuthi kungenzeka yini—

- (a) ukuthi ingane ihlanganiswe futhi nomndeni wayo oseduze noma namanye amalungu omndeni;
- (b) ukungeniswa kwengane komunye umndeni; noma
- (c) ukuthi kudluliswe ingane iyiswe kwesinye isikhungo esinakekela izingane nentsha noma olunye uhlobo lokubekwa.

(4) Inhloko yesifundazwe yentuthuko yezenhlalakahle—

- (a) kufanele ihoxise ukudluliswa kwengane uma icela lokho futhi nosonhlalakahle ecebisa ukuthi kwenziwe kanjalo; futhi
- (b) kungathi ekupheleni kwecala noma kube ingasiphi isikhathi iqinisekise ukubekwa kwengane noma ukukhishwa kwengane unomphela esikhungweni sokunakekela izingane nentsha ngokuhambisana nesigaba 175.

(5) Isaziso sokudluliswa okwesikhashana siyothathwa njengobufakazi bokufaneleka ukuthola noma iyiphi inhlobo yomxhaso wombuso obekufanele ukhokhwe uma ukudluliswa kwengane bekube unomphela.

#### Ukukhishwa ekunakekelweni kwenye indawo

175. (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle esifundazweni esifanele, ngokubhekela intshisekelo yengane, kungathi noma nini ngesikhathi ingane inakekelwa kwenye indawo, ikhiphe isaziso esithi ingane ayikhishwe ekunakekelweni kwenye indawo kusukela ngosuku oluyobe lushiwo yisaziso.

- (2) A notice of discharge in terms of subsection (1) may be issued only after—
- (a) procedures prescribed by regulation have been carried out—
    - (i) to assess the best interest of the child; and
    - (ii) to reunite the child with the child's immediate family or other family members, if applicable; and
  - (b) a report on such assessment and reunification by a designated social worker has been submitted to and considered by the provincial head of social development.
- (3) A notice of discharge relieves the alternative care-giver from any further responsibilities in relation to the child.

#### **Remaining in alternative care beyond age of 18 years**

- 176.** (1) A person placed in alternative care as a child is entitled, after having reached the age of 18 years, to remain in that care until the end of the year in which that person reaches the age of 18 years.
- (2) A provincial head of social development may on application by a person placed in alternative care as a child, allow that person to remain in that care until the end of the year in which that person reaches the age of 21 years if—
- (a) the current alternative care-giver is willing and able to care for that person; and
  - (b) the continued stay in that care is necessary to enable that person to complete his or her education or training.

#### **Appeal against and review of certain decisions**

- 177.** (1) A child or person aggrieved by a decision or action in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide on the appeal within 90 days of receipt thereof.
- (2) A child or person who is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1) may apply to the competent division of the High Court to review that decision.

#### **Serious injury, abuse or death of child in alternative care**

- 178.** (1) If a child in alternative care is seriously injured or abused, the management of the child and youth care centre, person or organisation in whose care or temporary safe care the child has been placed must immediately report the matter to the provincial head of social development, who must cause an investigation to be conducted into the circumstances of the serious injury or abuse.
- (2) If a child in alternative care dies, the management of the child and youth care centre or person in whose care or temporary safe care the child has been placed must immediately after the child's death report such death to—
- (a) the parent or guardian of the child, if he or she can be traced;
  - (b) a police official;
  - (c) the provincial head of social development; and
  - (d) the social worker dealing with the matter.
- (3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

(2) Isaziso sokukhishwa ngokwesigatshana (1) singakhishwa kuphela—

(a) emuva kokulandela izinqubo ezinqunywe ngumgomo—

(i) zokuhlola intshisekelo yengane; kanye

(ii) nokuhlanganisa ingane nabakubo noma amanye amalungu omndeni, uma kungenzeka; futhi

(b) emuva kokuba umbiko wokuhlanganisa ingane nabakubo onjalo owenziwe ngusohlalakahle oqokiwe usuthunyelwe futhi wacutshungulwa yinhloko yesifundazwe yentuthuko yezehlalakahle.

(3) Isaziso sokukhishwa sikhapha umuntu obenakekela ingane kwenye indawo kwezinye izibophezelo maqondana nengane.

### **Ukuqhubeka nokuhlala ekunakekelweni kwenye indawo emuva kokufinyelela eminyakeni ewu 18**

**176.** (1) Umuntu onakekelwa kwenye indawo njengengane unegunya lokuthi emuva kokufinyelela eminyakeni ewu 18, aqhubeke nokuhlala kuleyo ndawo yokunakekelwa kuze kuphele unyaka lowo muntu aba neminyaka ewu 18 ngawo.

(2) Inhloko yesifundazwe yentuthuko yezehlalakahle kungathi lapho umuntu obekwe endaweni yokunakekelwa eseyingane efaka isicelo, amvumele ukuba ahlale kuleyo ndawo yokunakekelwa kuze kuphele unyaka lapho lowo muntu eba neminyaka engu 21 uma—

(a) umuntu onakekela lowo muntu kuleyo ndawo ezimisele futhi ekwazi ukunakekela lowo muntu; futhi

(b) ukuqhubeka nokuhlala kuleyo ndawo kudingeka ukuze lowo muntu akwazi ukuqeda izifundo noma ukuqeqeshwa kwakhe.

### **Ukudlulisa isikhalo nokubukezwa kwezinqumo ezithile**

**177.** (1) Ingane noma umuntu onesikhalo ngesinqumo esenziwe ngokwalesi sigaba angadlulisa isikhalo maqondana naleso sinqumo ngendlela enqunyiwe zingakapheli izinsuku ezingu 90 siye kuNgqongqoshe wesifundazwe yentuthuko yezehlalakahle, okufanele athathe isinqumo ngalokho kudluliswa kwesikhalo zingakapheli izinsuku ezingu 90 esitholile.

(2) Ingane noma umuntu ofake isicelo onganelisekile ngomphumela wokudluliswa kwesikhalo njengalokho bekucatshangwa esigatshaneni (1) angafaka isicelo ophikweni olumandla afanele lweNkantolo ePhakeme ukuba ibukeze leso sinqumo.

### **Ukulimala kabi, ukuhlukunyezwa noma ukushona kwengane enakekelwa kwenye indawo**

**178.** (1) Uma ingane enakekelwa kwenye indawo ilimala kabi noma ihlukunyeziwe, abaphathi besikhungo esinakekela izingane nentsha, umuntu noma inhlangano enakekela leyo ngane noma ekubekwe ukunakekelwa kwaleyo ngane okwesikhashana kuyona kufanele ibike ngokushesha lolo daba kwinhloko yesifundazwe yentuthuko yezehlalakahle, ekufanele yona yenze ukuthi kube nophenyo ngezimo eziholelele kulimaleni kabi noma ekuhlukunyezweni kwengane.

(2) Uma ingane enakekelwa kwenye indawo ishona, abaphathi besikhungo esinakekela izingane nentsha noma umuntu obenakekela leyo ngane noma obenakekela leyo ngane okwesikhashana kufanele ngokushesha emuva kokushona kwengane abike lokho kushona—

(a) kumzali noma kumondli wengane, uma engatholakala;

(b) ephoyiseni;

(c) kwinhloko yesifundazwe yentuthuko yezehlalakahle; kanye

(d) nakusohlalakahle obhekene nalolu daba.

(3) Iphoyisa kufanele lenze ukuthi kube nophenyo ngezimo zokushona kwengane lolo phenyo lwenziwe uMbutho wamaPhoyisa aseNingizimu Afrika ngaphandle-ke uma iphoyisa lanelisekile ngokuthi ingane ishone ngokwezimo zemvelo.

**Regulations**

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

- (a) the manner in which a person, facility, place or premises for temporary safe care must be approved; 5
- (b) the criteria that a person, facility, place or premises for temporary safe care must comply with;
- (c) limitations or conditions for leave of absence from alternative care;
- (d) the manner in which children in alternative care must be transferred or provisionally transferred, their residential care programmes changed, be removed or permanently discharged from alternative care; 10
- (e) fees payable to a child and youth care centre on transfer or provisional transfer of a child in alternative care to that centre;
- (f) the manner in which applications for remaining in alternative care beyond 18 years of age are to be made; and 15
- (g) any other matter that may be necessary to facilitate the implementation of this Chapter.

**CHAPTER 12****FOSTER CARE** 20**Foster care**

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

- (a) an order of a children's court; or
- (b) a transfer in terms of section 171. 25

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

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

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

- (a) with a person who is not a family member of the child; 30
- (b) with a family member who is not the parent or guardian of the child; or
- (c) in a registered cluster foster care scheme.

**Purposes of foster care**

**181.** The purposes of foster care are to— 35

- (a) protect and nurture children by providing a safe, healthy environment with positive support;
- (b) promote the goals of permanency planning, first towards family reunification, or by connecting children to other safe and nurturing family relationships intended to last a lifetime; and 40
- (c) respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity.



**Imigomo**

- 179.** UNgqongqoshe, emuva kokubonisana noNgqongqoshe Wezobulungiswa Nokuthuthukiswa koMthethosisekelo lapho imiyalo yenkantolo ihanjiswa ngokomthetho, angenza imigomo ngokwesigaba 306 enquma—
- (a) indlela ekufanele umuntu, isikhungo, indawo noma amagceke okunakekela kwesikhashana okuphephile bavunywe ngayo; 5
  - (b) okufanele umuntu, isikhungo, indawo noma amagceke okunakekela kwesikhashana okuphephile bakuthobele;
  - (c) imikhawulo noma imibandela yokuthatha ikhefu ekunakekelweni kwenye indawo; 10
  - (d) indlela izingane ezinakekelwa kwenye indawo ekufanele zidluliswe noma zidluliswe okwesikhashana, izinhlelo zokunakekelwa kwazo zishintshiwe, zisuswe noma zikhishwe unomphele ngayo ekunakekelweni kwenye indawo; 15
  - (e) izimali ekufanele zikhokhelwe isikhungo sokunakekela izingane nentsha lapho kudluliselwa noma kudluliselwa okwesikhashana ingane ebinakekelwa kwenye indawo kuleso sikhungo;
  - (f) indlela ekufanele zenziwe ngayo izicelo zokwandisa isikhathi sokunakekelwa kwenye indawo emuva kweminyaka engu 18; kanye 20
  - (g) nanoma yiluphi olunye udaba olungadingeka ukuze kwenziwe lula ukusebenza kwalesi Sahluko.

**ISAPHLUKO 12****UKUKHULISA INGANE EKUNGEYONA EYAKHO****Ukukhulisa ingane ekungeyona eyakho**

- 180.** (1) Ingane isuke ikhuliswa lapho kungekhona kubo uma ingane ibekwe ukuthi inakekelwe ngumuntu ongeyena umzali noma umondli wengane ngenxa—
- (a) yomyalelo wenkantolo yezingane; 25
  - (b) ukudlulisa ngokwesigaba 171. 30
- (2) Ukukhulisa ingane okungeyona eyakho akufaki ukubekwa kwengane—
- (a) ekunakekelweni okwesikhashana endaweni ephephile; noma
  - (b) ekunakekelweni esikhungweni esinakekela izingane nentsha. 35
- (3) Inkantolo yezingane ingabeka ingane ukuba ikhuliswe ngumuntu ongeyena umzali wayo—
- (a) kumuntu ongelona ilungu lomndeni wengane;
  - (b) kanye nelungu lomndeni elingeyena umzali noma umondli wengane; noma
  - (c) kwisikimu sokukhulisa izingane ngabantu abangebona abazali bazo ziyiqembu. 40

**Izinhloso zokukhulisa ingane ekungeyona eyakho**

- 181.** Izinhloso zokukhulisa ingane ekungeyona eyakho yilezi—
- (a) ukuvikela nokukhulisa izingane ngokuzihlinzeka ngendawo ephephile futhi enempilo lapho zizothola khona ukukhuthazwa; 45
  - (b) ukugqugquzela izinjongo zokuhlelela isikhathi eside, okokuqala kube wukhulanganisa imindeni, noma ukuxhumanisa izingane nabanye abantu bomndeni lapho kunobudlelwane obuphephile futhi obukhuthazayo obuzohlala impilo yabo yonke; kanye
  - (c) nokuhlonipha umuntu ngamunye nomndeni ngokukhombisa ukuhlonipha ukwehlukana ngokwamasiko, ngokobuzwe nangokwemiphakathi. 50

**Prospective foster parent**

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

(2) A prospective foster parent must—

- (a) be a fit and proper person to be entrusted with the foster care of the child;
- (b) be willing and able to undertake, exercise and maintain the responsibilities of such care;
- (c) have the capacity to provide an environment that is conducive to the child's growth and development; and
- (d) be properly assessed by a designated social worker for compliance with paragraphs (a), (b) and (c).

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

(4) Subsections (2) and (3), read with such changes as the context may require, apply to any person employed at or involved in a nonprofit organisation managing a cluster foster care scheme.

**Cluster foster care**

**183.** (1) A cluster foster care scheme must be managed in the following manner:

- (a) The organisation operating or managing the cluster foster care scheme must be a nonprofit organisation registered in terms of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997);
- (b) the organisation referred to in paragraph (a) must—
  - (i) comply with the prescribed requirements; and
  - (ii) have been approved for providing cluster foster care by the provincial head of social development; and
- (c) the scheme in terms of which cluster foster care is provided must—
  - (i) comply with the prescribed requirements; and
  - (ii) have been registered with the provincial head of social development in the prescribed manner.

(2) The management of a cluster foster care scheme must be monitored by the provincial head of social development.

**Determination of placement of child in foster care**

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

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

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

**Abantu abangahle babe osingabazali**

**182.** (1) Ngaphambi kokuthi inkantolo yezingane ibeke ingane lapho izokhuliswa khona ngabantu abangebona abazali bayo, inkantolo kufanele ilandele izinqubo zenkantolo yezingane ezimiswe eNgxenyeni 2 yeSahluko 9 ngobubanzi bokufaneleka kwemibandela yaleyo Ngxenyeni esimweni ngasinye. 5

(2) Umuntu ongahle abe ngusingamzali kufanele abe—  
 (a) ngumuntu okwaziyo futhi ofanelekile ukwethweswa umthwalo wokukhulisa ingane ekungeyona eyakhe;  
 (b) ngozimisele futhi okwaziyo ukwamukela, ukwenza nokuqhubeka nezibophezelo zokunakekela okunje;  
 (c) abe namandla okuhlinzeka indawo ezovumela ukuthi ingane ikhule futhi ithuthuke; futhi  
 (d) ahlolwe ngokuphelele ngusonhlalakahle oqokiwe ukubona ukuthi uyazithobela yini izindima (a), (b) no (c). 10 15

(3) Umuntu ongafanele ukusebenza nezingane akakwazi futhi akafanelekile ukunikwa umthwalo wokunakekela ingane ekungeyona eyakhe.

(4) Izigatshana (2) no (3), zifundwa kanyekanye nalezo zinguquko ezingahle zidingwe yindikimba, zisebenza kunoma yimuphi umuntu oqashwe noma ohlanganyele enhlanganweni engasebenzeli inzuzo ongamele isikimu sokukhulisa izingane ngabantu abangebona abazali bazo ziyiqembu. 20

**Ukunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu** 25

**183.** (1) Isikimu sokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu kufanele senganyelwe ngale ndlela elandelayo:  
 (a) Inhlango ehuba noma eyengamele isikimu sokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu kufanele kube yinhlangano engasebenzeli inzuzo ngokuhambisana noMthetho weZinhlangano eziNgasebenzeli iNzuzo, ka 1997 (uMthetho ongunombolo 71 ka 1997); 30

(b) inhlangano ekukhulunywe ngayo endimeni (a) kufanele—  
 (i) ithobe izidingo ezinqunyiwe; futhi  
 (ii) ibe ivunyelwe ukuhlinzeka insizakalo yokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu yinhloko yesifundazwe yentuthuko yezenhlalakahle; futhi 35  
 (c) isikimu ekuhlinzekwa ngaso ukunakekelwa kwezingane ngabantu abangebona abazali bazo kufanele—  
 (i) sithobe izidingo ezinqunyiwe; futhi  
 (ii) sibe sibhaliswe ngendlela enqunyiwe kwinhloko yesifundazwe yentuthuko yezenhlalakahle. 40

(2) Abaphathi besikimu sokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu kufanele baqaphwe yinhloko yesifundazwe yentuthuko yezenhlalakahle. 45

**Ukunquma ukubeka ingane kubantu abazokhulisa ingane ekungeyona eyabo**

**184.** (1) Ngaphambi kokuthi inkantolo yezingane ibeke ingane kubantu abazokhulisa ingane ekungeyona eyabo ngokomyalo owenziwe ngokwesigaba 156, inkantolo kufanele icubungule umbiko owenziwe ngusonhlalakahle oqokiwe maqondana— 50

(a) nemuva lengane ngokwamasiko, okwenkolo nokolimi; kanye  
 (b) nokuba khona komuntu ofanelekile onemumva elifanayo nelengane ozimisele futhi okwaziyo ukukhulisa leyo ngane ekungeyona eyakhe. 55

(2) Ingane ingahle ibekwe ukuba ikhuliswe ngumuntu ongeyena umzali wayo onemumva elingafani nelengane ngokwamasiko, ngokwenkolo nangokolimi, kepha kuphela uma—

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

#### **Number of children to be placed in foster care per household**

**185.** (1) Not more than six children may be placed in foster care with a single person or two persons sharing a common household, except where—

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

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

#### **Duration of foster care placement**

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

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

(2) A children's court may, despite the provisions of section 159(1)(a) regarding the duration of a court order and after having considered the need for creating stability in the child's life, place a child in foster care with a family member for more than two years, extend such an order for more than two years at a time or order that the foster care placement subsists until the child turns 18 years, if—

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

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

#### **Reunification of child with biological parent**

**187.** (1) If a children's court placing a child in foster care is of the view that reunification between the child and the child's biological parents is possible and in the best interest of the child, the court must issue the placement order subject to conditions providing for a designated social worker to facilitate such reunification as contemplated in section 156(3)(a).

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

- (a) explaining why the child was not reunited with the biological parents; and

- (a) sekuvele kunobudlelwane phakathi kwalowo muntu naleyo ngane; noma
- (b) umuntu ofanele nozimisele onemumva elifanayo nelengane engatholakali ukuze akhulise ingane ekungeyona eyakhe.

**Inani lezingane ezingabekwa emzini ngamunye ukuba zikhuliswe ngabantu abangebona abazali bazo** 5

**185.** (1) Akunakubekwa izingane ezeve kweziyisithupha ukuba zinakekelwe ngumuntu oyedwa ongeyena umzali wazo noma abantu ababili abahlala ndawonye kulowo muzi, ngaphandle kwalapho—

- (a) izingane kungezandawonye noma ziyizihlobo zegazi; noma 10
- (b) inkantolo ibona lokhu kungcono ngenxa yanoma yisiphi esinye isizathu esibhekele izintshisekelo zazo zonke izingane.

(2) Izingane ezevile kweziyisithupha zingabekwa ukuba zikhuliswe ngumuntu ongeyena umzali wazo ndawonye ngaphansi kwesikimu esinqunyiwe. 15

**Ubude besikhathi sokubeka ingane kubantu abazokhulisa ingane ekungeyona eyabo**

**186.** (1) Inkantolo yezingane, ngale kwemibandela yesigaba 159(1)(a) maqondana nesikhathi somyalelo wenkantolo, emuva kokuba ingane isibe kumuntu ozoyikhulisa kungeyona eyakhe engeyena umuntu womndeni iminyaka eyevile kwemibili futhi emuva kokucubungula isidingo sokuzinzisa impilo yengane, ingayala ukuthi— 20

- (a) akusadingeki kuqapha kukasonhlalakahle kuleso simo;
- (b) akusadingeki mibiko kasonhlalakahle maqondana naleso simo; futhi
- (c) ukubekwa kwengane lapho kuzosebenza ingane ize ifinyelele eminyakeni engu 18, ngaphandle uma kunqunywa okunye. 25

(2) Inkantolo yezingane, ngale kwemibandela yesigaba 159(1)(a) maqondana nesikhathi somyalelo wenkantolo, emuva kokucubungula isidingo sokuzinzisa impilo yengane, ingabeka ingane kumuntu ozoyikhulisa kungeyona eyakhe oyilungu lomndeni iminyaka eyevile kwemibili, inwebe lowo myalo iminyaka eyevile kwemibili ngasikhathi sinye noma iyale ukuthi ukubekwa kwengane kubantu abazoyikhulisa bengebona abazali bayo kuqhubeka ingane ize ibe neminyaka engu-18, uma— 30

- (a) ingane ishiywe ngabazali bayo begazi; noma 35
- (b) abazali bengane begazi sebeshonile; noma
- (c) kungenasidingo ngokwanoma yisiphi isizathu sokuhlanganisa ingane nabazali bayo begazi; futhi
- (d) kubhekene nentshisekelo yengane.

(3) Ngale kokushiwo yimibandela yezigatshana (1) no (2), uchwepheshe wensizakalo yezenhlahlahle kufanele avakashele ingane ekhuliswa ngabantu abangebona abazali bayo begazi okungenani kanye eminyakeni emibili ukuhlola isimo. 40

**Ukuhlanganiswa kwengane nabazali bayo begazi**

**187.** (1) Uma inkantolo yezingane ebeka ingane ukuba ikhuliswe ngumuntu ongeyena umzali wayo ibona kungenzeka ukuthi ingane ihlanganiswe nabazali bayo begazi futhi lokho kubhekela izintshisekelo zengane, inkantolo kufanele ikhiphe umyalo wokubekwa kwengane oncike kumbandela othi usonhlalakahle oqokiwe angasiza ngokuhlanganisa ingane nabazali bayo njengalokho kubalulwe esigabeni 156(3)(a). 50

(2) Uma ingane ingahlanganiswanga nabazali bayo begazi ezinyangeni ezimbili ngaphambi kokuphelelwa yisikhathi komyalelo wenkantolo wokuqala noma omunye umyalelo owandiselwe isikhathi, usonhlalakahle oqokiwe ukuba asize ngokuhlanganisa kufanele athumele umbiko enkantolo yezingane— 55

- (a) achaze ukuthi kungani ingane ingakahlanganiswa nabazali bayo begazi; futhi

- (b) recommending any steps that may be taken to stabilise the child's life.
- (3) The children's court considering the report may—
- (a) order that the designated social worker must continue facilitating the reunification; or
- (b) order the termination of the reunification services if there are no prospects of reunification. 5

#### **Responsibilities and rights of foster parent**

- 188.** (1) The foster parent of a child has those parental responsibilities and rights in respect of the child as set out in—
- (a) the order of the children's court placing the child in the foster care of that foster parent; 10
  - (b) the responsibilities and rights of foster parents as may be prescribed;
  - (c) an order of the children's court amending the initial order;
  - (d) an order of court assigning parental responsibilities and rights in terms of section 23; 15
  - (e) a foster care plan between the parent or guardian of the child and the foster parent; and
  - (f) any applicable provisions of this Act.
- (2) A foster parent may not take any decisions contemplated in section 31(1)(b) involving a child without giving due consideration to— 20
- (a) any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development; and
  - (b) any views and wishes expressed by the parent or guardian of the child.
- (3) Notwithstanding subsection (2), an order of the children's court may give parental rights and responsibilities to a foster parent in addition to those normally necessary for a foster parent if— 25
- (a) the child has been abandoned;
  - (b) the child is an orphan; or
  - (c) family reunification is not in the best interest of the child.
- (4) A children's court may in terms of section 65 monitor the suitability of the placement of a child in foster care. 30

#### **Termination of foster care**

- 189.** (1) Foster care may be terminated by a children's court if it is in the best interest of the child.
- (2) Before terminating the foster care of a child, the court must take into account all relevant factors, including— 35
- (a) the bond that exists between the child and the child's biological parent, if the biological parent reclaims care of the child;
  - (b) the bond that developed between— 40
    - (i) the child and the foster parent; and
    - (ii) the child and the family of the foster parent; and
  - (c) the prospects of achieving permanency in the child's life by— 45
    - (i) returning the child to the biological parent;
    - (ii) allowing the child to remain permanently in foster care with the foster parent;
    - (iii) placing the child in any other alternative care; or
    - (iv) adoption of the child.

(b) ayale ngezinyathelo ezingathathwa ukuze kuzinziswe impilo yengane.

(3) Inkantolo yezingane ecubungula umbiko—

(a) ingayala ukuthi usonhlalakahle oqokiwe aqhubeke nokusiza ekuhlanganiseni ingane nabazali bayo begazi; noma

(b) ingayala ukuba kuvalwe udaba lokuhlanganisa ingane nabazali bayo begazi uma kubonakala kungenathemba lokuthi kwenzeke lokhu.

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### Izibophezelo namalungelo osingabazali

**188.** (1) Usingamzali wengane unezibophezelo namalungelo obuzali maqondana nengane njengalokho kubekiwe—

(a) kumyalelo wenkantolo yezingane obubeka ingane ngaphansi kweso lalowo mzali ukuba ayikhulise njengosingamzali wayo;

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(b) kwimithwalo namalungelo abazalo abakhulisa izingane ekungezona ezabo kuye nokuyobe kunquniwe;

(c) kumyalelo wenkantolo yezingane ochibiyela umyalelo wokuqala;

(d) kumyalelo wenkantolo onikeza izibophezelo namalungelo obuzali ngokwesigaba 23;

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(e) ohlelweni lobuzali phakathi komzali noma umondli wengane kanye nosingamzali; kanye

(f) nakunoma yimuphi umbandela walo Mthetho.

(2) Usingamzali akanakuthatha izinqumo ebekukhulunywe ngazo esigabeni 31(1)(b) eziqondene nengane ngaphandle kokucabanga ngalokhu—

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(a) noma yimiphi imibono noma izifiso zengane, acabangele iminyaka yengane, ukuvuthwa komqondo wayo kanye nesigaba sokukhula kwengane; kanye

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(b) nanoma yimiphi imibono noma izifiso zomzali noma zomondli wengane.

(3) Ngaphandle kokukhohlwa okushiwo yisigatshana (2), umyalelo wenkantolo yezingane unganika izibophezelo namalungelo obuzali kusingamzali ngaphezu kwalokho okuvame ukudingeka kusingamzali uma—

30

(a) ingane ilahliwe;

(b) ingane iyintandane; noma

(c) ukuhlanganisa ingane nomndeni wayo kungezobhekela izintshisekelo zengane.

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(4) Inkantolo yezingane kungathi ngokwesigaba 65 iqaphe ukufaneleka kokubekwa kwengane kubantu abazokhulisa ingane ekungeyona eyabo.

### Ukuvalwa kokunakekelwa ingane ekungeyona eyakho

**189.** (1) Ukunakekelwa kwengane ngabantu abangebona abazali bayo kungavalwa yinkantolo yezingane uma lokho kubhekela izintshisekelo zengane.

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(2) Ngaphambi kokuvala ukunakekelwa kwengane ngabantu abangebona abazali bayo, inkantolo kufanele ikhumbule konke okuhambisana naleso simo, okufaka—

(a) ifindo lobudlelwane elikhona phakathi kwengane nabazali bengane begazi, uma abazali begazi sebefuna ukunakekela ingane;

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(b) ifindo lobudlelwane elakhekile phakathi—

(i) kwengane nosingabazali bayo; naphakathi

(ii) kwengane nomndeni wosingabazali; kanye

(c) nethuba lokuthi impilo yengane ibe nokuzinza kwesikhathi eside ngokuthi—

50

(i) ingane ibuyiselwe kubazali bayo begazi;

(ii) ingane ivunyelwe ukuthi iqhubeke nokuhlala lapho ikhuliswa khona ngosingabazali bayo;

(iii) ingane ibekwe kwenye indawo yokunakekela; noma

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(iv) ukuba ingane itholwe.

**Regulations**

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

- (a) prescribing the responsibilities and rights of foster parents; 5
- (b) regulating the establishment, functioning and management of cluster foster care schemes;
- (c) prescribing the requirements that a nonprofit organisation must comply with to be approved for the establishment and management of a cluster foster care scheme; 10
- (d) prescribing the requirements with which a cluster foster care scheme must comply; and
- (e) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

**CHAPTER 13****CHILD AND YOUTH CARE CENTRES****Child and youth care centre**

**191.** (1) A child and youth care centre is a facility for the provision of residential care to more than six children outside the child's family environment in accordance with a residential care programme suited for the children in the facility, but excludes— 20

- (a) a partial care facility;
- (b) a drop-in centre;
- (c) a boarding school;
- (d) a school hostel or other residential facility attached to a school; 25
- (e) a prison; or
- (f) any other establishment which is maintained mainly for the tuition or training of children other than an establishment which is maintained for children ordered by a court to receive tuition or training.

(2) A child and youth care centre must offer a therapeutic programme designed for the residential care of children outside the family environment, which may include a programme designed for— 30

- (a) the reception, care and development of children other than in their family environment;
- (b) the reception, care and development of children on a shared basis with the parent or other person having parental responsibilities; 35
- (c) the reception and temporary safe care of children pending their placement;
- (d) early childhood development;
- (e) the reception and temporary safe care of children to protect them from abuse or neglect; 40
- (f) the reception and temporary safe care of trafficked or commercially sexually exploited children;
- (g) the reception and temporary safe care of children for the purpose of— 45
  - (i) observing and assessing those children;
  - (ii) providing counselling and other treatment to them; or
  - (iii) assisting them to reintegrate with their families and the community;
- (h) the reception, development and secure care of children awaiting trial or sentence; 50



**Imigomo**

- 190.** UNgqongqoshe, emuva kokubonisana noNgqongqoshe Wezobulungiswa Nokuthuthukiswa koMthethosisekelo lapho kuhanjiswa ngomthetho imiyalelo yenkantolo, angenza imigomo ngokwesigaba 306—
- (a) enquma imithwalo namalungelo osingabazali; 5
  - (b) ehambisa ngomthetho ukusungula, ukusebenza nokwengamela izikimu zokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu;
  - (c) enquma izidingo inhlangano engasebenzeli inzuzo ekufanele izithobe ukuze ivunyelwe ukuthi isungule futhi yengamele isikimu sokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu; 10
  - (d) enquma izidingo ekufanele izikimu zokunakekelwa kwezingane ngabantu abangebona abazali bazo ziyiqembu ziyithobe; futhi
  - (e) enquma nanoma yiluphi olunye udaba olungadingeka ukwenza lula ukusebenza kwalesi Sahluko. 15

**ISAPHLUKO 13****IZIKHUNGO ZOKUNAKEKELA IZINGANE NENTSHA****Isikhungo sokunakekela izingane nentsha**

- 191.** (1) Isikhungo sokunakekela izingane nentsha yindawo ehlinzeka ukunakekela kwasekhaya ezinganeni ezevile kweziyisithupha ngaphandle kwasemakhaya azo kuhambisane nohlelo lokunakekela ekhaya olufanele izingane ezikuleyo ndawo, kepha akufaki—
- (a) indawo yokunakekela isikhashana esinqunyiwe; 20
  - (b) indawo yokuquba; 25
  - (c) isikole samabhoda;
  - (d) ihostela lesikole noma enye indawo yokuhlala ehlangene nesikole;
  - (e) ijele; noma
  - (f) esinye isikhungo esenganyelwe ikakhulukazi ukuthi kube nemfundo noma ukuqeqeshwa kwezingane kungesona isikhungo esenganyelwe ukuthi kufunde noma kuqeqeshwe izingane ngokomyalo okhishwe yinkantolo. 30
- (2) Isikhungo sokunakekela izingane nentsha kufanele sibe nohlelo olwelaphayo olwakhelwe ukunakekela izingane ekhaya elingaphandle kwamakhaya azo, okungafaka uhlelo olwakhelwe— 35
- (a) ukwamukela, ukunakekela kanye nokuthuthukisa izingane ngenye indlela kungabi semakhaya azo;
  - (b) ukwamukela, ukunakekela kanye nokuthuthukisa izingane zabelane ngomzali noma omunye umuntu onezibophezelo namalungelo obuzali; 40
  - (c) ukwamukela nokunakekela okwesikhashana endaweni ephephile izingane ezisamele ukubekwa endaweni ethile;
  - (d) ukukhulisa ingane isencane;
  - (e) ukwamukela nokunakekela okwesikhashana endaweni ephephile izingane ukuze zivikelwe ekuhlukunyezweni noma ekushiyweni zinganakekelwe; 45
  - (f) ukwamukela nokunakekela okwesikhashana endaweni ephephile izingane ekuhwetshwe ngazo noma ezihlukunyezwe ngokocansi;
  - (g) ukwamukela nokunakekela okwesikhashana endaweni ephephile ngenhloso— 50
    - (i) yokubheka nokuhlola lezo zingane;
    - (ii) yokuhlinzeka usizo lwezeluleko nokunye ukwelapha kuzona; noma
    - (iii) ukuzisiza ekutheni ziphinde zihlangane kahle nemindeni yazo kanye nemiphakathi yakubo; 55
  - (h) ukwamukela, ukuthuthukisa nokuqapha izingane ezimele ukuya ecaleni noma ukugwetshwa;

- (i) the reception, development and secure care of children with behavioural, psychological and emotional difficulties;
  - (j) the reception, development and secure care of children in terms of an order—
    - (i) under the Criminal Procedure Act, 1977 (Act No. 51 of 1977); 5
    - (ii) in terms of section 156(1)(i) placing the child in a child and youth care centre which provides a secure care programme; or
    - (iii) in terms of section 171 transferring a child in alternative care;
  - (k) the reception and care of street children; or
  - (l) the reception and care of children for any other purpose that may be prescribed by regulation. 10
- (3) A child and youth care centre may in addition to its residential care programmes, offer—
- (a) the provision of appropriate care and development of children with disabilities or chronic illnesses; 15
  - (b) therapeutic and developmental programmes;
  - (c) the treatment of children for addiction to dependence-producing substances;
  - (d) a programme for the treatment of children with a psychiatric condition; 20
  - (e) a programme to assist a person with the transition when leaving a child and youth care centre after reaching the age of 18; or
  - (f) any other service that may be prescribed.
- (4) The provincial head of social development must—
- (a) approve any programme offered in terms of subsections (2) and (3) by a child and youth care centre; and 25
  - (b) before approving a programme, authorise a suitably qualified person to assess the content of the programme.

#### **Strategy to ensure sufficient provision of child and youth care centres**

- 192.** (1) The Minister, after consultation with interested persons and the Ministers of Education, Health, Home Affairs and Justice and Constitutional Development, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions, giving due consideration as provided in section 11, to children with disability or chronic illness. 30 35
- (2) The MEC for social development must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at the establishment of an appropriate spread in the province of properly resourced, co-ordinated and managed child and youth care centres providing the required range of residential care programmes. 40
- (3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2). 45
- (4) The provincial head of social development must maintain a record of all available child and youth care centres in the province concerned and of the programmes contemplated in section 191 offered by each centre.

- (i) ukwamukela, ukuthuthukisa nokuqapha izingane ezinezinkinga zokuziphatha, zokusebenza kwengqondo nemicabango nezomoya;
- (j) ukwamukela, ukuthuthukisa nokuqapha izingane ngokomyalelo—
- (i) ophume ngaphansi koMthetho weNqubo yamaCala obuGebengu, ka 1977 (Umthetho ongunombolo 51 ka 1977); 5
  - (ii) ophume ngaphansi kwesigaba 156(1)(i) obeka ingane esikhungweni sokunakekela izingane nentsha esihlinzeka uhlelo lokunakekela okuphephile; noma
  - (iii) ophume ngaphansi kwesigaba 171 odlulisela ingane ekunakekelweni kwenye indawo; noma 10
  - (k) ukwamukela nokunakekela izingane ezihlala emigaqweni; noma
  - (l) ukwamukela nokunakekela izingane ngenxa yanoma iyiphi enye inhloso enganqunywa wumgomo.
- (3) Isikhungo sokunakekela izingane nentsha, kungathi ngaphezu kwezinhlelo zaso zokunakekela ekhaya, sihlinzeke— 15
- (a) ukunakekela nokuthuthukisa kahle izingane ezikhubazeke ngokomzimba noma ngokwengqondo noma ezinezifo ezingamahlalakhona; 20
  - (b) izinhlelo ezelaphayo nezithuthukisayo;
  - (c) ukwelapha ezinganeni esezibambebele ekusebenziseni izidakamizwa ezingalungile;
  - (d) uhlelo lokwelapha izingane ezinezimo ezithize zengqondo;
  - (e) uhlelo lokusiza umuntu ekutheni ajwayele ushintsho ngesikhathi esuka esikhungweni sokunakekela izingane nentsha emva kokufinyelela eminyakeni ewu 18; noma 25
  - (f) iyiphi enye insizakalo engahle inqunywe.
- (4) Inhloko yesifundazwe yentuthuko yezenhlahalakahle kufanele—
- (a) ivume noma yiluphi uhlelo oluhlinzekwa ngokwesigatshana (2) no (3) yisikhungo sokunakekela izingane nentsha; futhi 30
  - (b) ngaphambi kokuthi avume uhlelo, agunyaze umuntu oqeqeshwe ngokufaneleyo ukuthi avivinye okuqukethwe wuhlelo.

**Isu lokuqinisekisa ukuthi kuhlinzekwe izikhungo zokunakekela izingane nentsha ezanele**

- 192.** (1) UNgqongqoshe, emuva kokubonisana noNgqongqoshe wezeMfundo, wezeMpilo, Wezindaba zaseKhaya Nowobulungiswa Nokuthuthukiswa koMthethosisekelo, kufanele afake eswini loMnyango isu likazwelonke elibanzi eliqonde ukuqinisekisa ukuthi izikhungo zokunakekela izingane nentsha zisabalele ngokwanele kwiRiphabhuliki yonkana futhi zihlinzeka izinhlelo zokunakekela ekhaya ezidingekayo ezifundeni ezahlukeni, kukhunjulwe okuhlinzekwe yisigaba 11 maqondana nezingane ezikhubazekile noma ezinezifo ezingamahlalakhona. 35
- (2) UNgqongqoshe wesifundazwe kufanele kuthi phakathi kwesu likazwelonke ekukhulunywe ngalo esigatshaneni (1) ahlinzekele isu lesifundazwe eliqondiswe ekusungulweni kwezikhungo zokunakekela izingane nentsha ezizosabalala ngokufanele esifundazweni sonke zibe nengecebo eyanele, zihlelwe futhi zenganyelwe kahle zihlinzeke izinhlelo zokunakekela ekhaya ezidingekayo. 40
- (3) UNgqongqoshe wesifundazwe kufanele ahlanganise uhlu oluzoveza isithombe sokwenzekayo esifundazweni izikhathi ngezikhathi ukuze ulwazi lutholakale lapho ludingeka ekuthuthukisweni nasekubukezweni kwamasu ekukhulunywe ngawo ezigatshaneni (1) no (2). 50
- (4) Inhloko yesifundazwe yentuthuko yezenhlahalakahle kufanele igcine irekhodi lazo zonke izikhungo zokunakekela izingane nentsha ezikhona ezifundazweni esithintekayo kanye nezinhlalo ekukhulunywe ngazo esigabeni 191 ezihlinzekwa yisikhungo ngasinye. 55

**Provision of child and youth care centres**

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

(2) Such child and youth care centres—

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with—

(i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed; and

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

(3) An accredited organisation operating a child and youth care centre only qualifies for funding from money appropriated by a provincial legislature if it complies with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.

**National norms and standards for child and youth care centres**

**194.** (1) The Minister must determine national norms and standards for child and youth care centres by regulation after consultation with interested persons and the Ministers of Education, Health, Home Affairs and Justice and Constitutional Development.

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

(a) A residential care programme;

(b) therapeutic programmes;

(c) developmental programmes;

(d) permanency plans for children;

(e) individual development plans;

(f) temporary safe care;

(g) protection from abuse and neglect;

(h) assessment of children;

(i) family reunification and reintegration;

(j) after-care;

(k) access to and provision of adequate health care;

(l) access to schooling, education and early childhood development;

(m) security measures for child and youth care centres; and

(n) measures for the separation of children in secure care programmes from children in other programmes.

**Part 1*****Establishment and registration of child and youth care centre*****Establishment of child and youth care centre by organ of state**

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

**Ukuhlinzeka izikhungo zokunakekela izingane nentsha.**

**193.** (1) UNgqongqoshe wesifundazwe wentuthuko yezenhlalakahle kufanele, ngemali eyabiwe yisishayamthetho sesifundazwe esithintekayo, ahlinzeke bese ekhokhela izikhungo ezinakekela izingane nentsha kuleso sifundazwe.

(2) Izikhungo zokunakekela izingane nentsha ezinjalo—

(a) kufanele zenganyelwe futhi zigcinwe ngokuhambisana nalo Mthetho; futhi

(b) kufanele zithobele—

(i) imikhuba namazinga kazwelonke anqunyiwe ekukhulunywe ngawo esigabeni 194 kanye nezinye izidingo ezingabe zinqunyiwe; kanye

(ii) nokuphepha kwesakhiwo, impilo kanye nezinye izidingo zikamasipala waleyo ndawo lapho isikhungo esinakekela izingane nentsha sikhona.

(3) Inhlango evunyiwe eqhuba isikhungo sokunakekela izingane nentsha sifaneleka ukuxhaswa ngezimali ezabiwe yisishayamthetho sesifundazwe kuphela uma sithobela imikhuba namazinga kazwelonke ekukhulunywe ngawo esigabeni 194 kanye nezinye izidingo ezinjalo kuye nalokho okuyobe kunqunyiwe.

**Imikhuba namazinga kazwelonke ezikhungo zokunakekela izingane nentsha**

**194.** (1) UNgqongqoshe kufanele anqume imikhuba namazinga kazwelonke ezikhungo zokunakekela izingane nentsha ngomgomo emva kokubonisana nabantu abanentshisekelo kanye noNgqongqoshe bezeMfundo, ezeMpilo, ezeZindaba zasemaKhaya Nezobulungiswa Nokuthuthukiswa koMthethosisekelo.

(2) Imikhuba namazinga kazwelonke ekukhulunywe ngawo esigatshaneni (1) kufanele aphilanelane nalokhu okulandelayo:

(a) uhlelo lokunakekela ekhaya;

(b) izinhlelo ezelaphayo;

(c) izinhlelo ezithuthukisayo;

(d) izinhlelo zokulungiselela izingane indawo yokuhlala isikhathi eside;

(e) izinhlelo zokuthuthukisa umuntu ngamunye;

(f) ukunakekela isikhashana okuphephile;

(g) ukuvikelwa ekukhukunyezweni nasekunganakekelweni;

(h) ukuvivinywa kwezingane;

(i) ukuhlango kwemindeni nokuxhumana kabusha;

(j) ukunakekela okuqhubekayo;

(k) ukufinyelela nokuhlinzekwa ngokunakekelwa kwezempilo okwanele;

(l) ukufinyelela ezikoleni nasemfundweni nasekukhulisweni kwengane isencane;

(m) izinyathelo zokuvikela izikhungo zokunakekela izingane nentsha; kanye

(n) nezindlela zokwehlukanisa izingane ezisezinhlelweni zokunakekela eziphephile kwezinye izingane.

**Ingxenye 1****Ukusungula nokubhalisa isikhungo sokunakekela izingane nentsha****Ukusungula isikhungo sokunakekela izingane nentsha wuhlaka lukahulumeni**

**195.** UNgqongqoshe wesifundazwe wentuthuko yezenhlalakahle kufanele, ngemali eyabiwe yisishayamthetho esifanele, asungule bese eqhuba izikhungo zokunakekela izingane nentsha kuleso sifundazwe.

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

- 196.** (1) As from the date on which section 195 takes effect—
- (a) an existing state operated children's home established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(a); 5
  - (b) an existing state operated place of safety established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing residential care programmes referred to in section 191(2)(c) and (e); 10
  - (c) an existing state operated secure care facility established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(h); 15
  - (d) a government industrial school established in terms of section 33 of the Children's Protection Act, 1913 (Act No. 25 of 1913) and maintained as a school of industries in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(i); and 20
  - (e) a reformatory established in terms of section 52 of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911) and maintained as a reform school in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(j). 25 30
- (2) The provincial department of education must provide education to the children in the facilities mentioned in paragraphs (d) and (e).
- (3) A school of industries referred to in paragraph (d) and a reform school referred to in paragraph (e) which are the responsibility of a provincial department of education on the date when this section comes into operation becomes the responsibility of a provincial department of social development within two years of the commencement of this chapter. 35
- (4) All existing government children's homes, places of safety, secure care facilities, schools of industries and reform schools must be registered as child and youth care centres within two years of the commencement of this chapter. 40

**Establishment of child and youth care centre**

- 197.** Any national or provincial state department responsible for social development, municipality and accredited organisation may establish and operate a child and youth care centre provided that the centre— 45
- (a) is registered with the relevant provincial department of social development;
  - (b) is managed and maintained in accordance with this Act and any conditions subject to which the centre is registered;
  - (c) complies with the prescribed national norms and standards as contemplated in section 194 and such other requirements as may be prescribed; and 50

**Ikhaya lezingane, indawo yokuphepha, isikhungo sokunakekela esiphephile, isikole sokufundela umsebenzi nesikole sokuqondisa izigwegwe okuphethwe wumbuso okuvele kukhona**

- 196.** (1) Kusakela ngosuku lapho isigaba 195 siqala ukusebenza—
- (a) ikhaya lezingane elenganyelwe ngumbuso elivele likhona elasungulwa noma ekuthathwa ngokuthi lasungulwa ngokoMthetho Wokunakekela iZingane kufanele lithathwe ngokuthi lisungulwe ngokwesigaba 195 njengesikhungo sokunakekela izingane nentsha esihlinzeka uhlelo lokunakekela ekhaya okukhulunywe ngaso esigabeni 191(2)(a); 5
  - (b) indawo yokuphepha eyenganyelwe ngumbuso ebivele ikhona eyasungulwa noma ekuthathwa ngokuthi yasungulwa ngokoMthetho Wokunakekela iZingane kufanele ithathwe ngokuthi isungulwe ngokwesigaba 195 njengesikhungo sokunakekela izingane nentsha esihlinzeka uhlelo lokunakekela ekhaya okukhulunywa ngalo esigabeni 191(2)(c) no (e); 10
  - (c) isikhungo sokunakekela esiphephile esenganyelwe ngumbuso esivele sikhona esasungulwa noma ekuthathwa ngokuthi sasungulwa ngokoMthetho Wokunakekela iZingane kufanele sithathwe ngokuthi sisungulwe ngokwesigaba 195 njengesikhungo sokunakekela izingane nentsha esihlinzeka uhlelo lokunakekela ekhaya okukhulunywe ngalo esigabeni 191(2)(h); 20
  - (d) isikole sikahulumeni esifundisa ngomsebenzi esisungulwe ngokwesigaba 33 soMthetho Wokuvikela iZingane, ka 1913 (uMthetho ongunombolo 25 ka 1913) kufanele sithathwe ngokuthi sisungulwe ngokwesigaba 195 njengesikhungo sokunakekela izingane nentsha esihlinzeka uhlelo lokunakekela ekhaya okukhulunywa ngalo esigabeni 191(2)(i); 25
  - (e) isikole sokuqondisa izigwegwe esisungulwe ngokwesigaba 52 soMthetho wamaJele Nezikole Zokuqondisa iZigwegwe, ka 1911 (uMthetho ongunombolo 13 ka 1911) kufanele sithathwe ngokuthi sisungulwe ngokwesigaba 195 njengesikhungo sokunakekela izingane nentsha esihlinzeka uhlelo lokunakekela ekhaya okukhulunywa ngalo esigabeni 191(2)(j). 30
- (2) UMnyango wesifundazwe wezemfundo kufanele uhlinzeke imfundo ezinganeni ezisezikhungweni ezibalulwe ezindimeni (d) no (e). 35
- (3) Isikole esifundisa ngomsebenzi ekukhulunywe ngaso endimeni (d) kanye nesikole sokuqondisa izigwegwe ekukhulunywe ngaso endimeni (e) eziwumthwalo womnyango wezemfundo esifundazweni kuyothi ngosuku lapho lesi sigaba siqala ukusebenza zibe wumthwalo womnyango wentuthuko yezehlalakahle esifundazweni kungakapheli iminyaka emibili siqalile ukusebenza lesi sahluko. 40
- (4) Wonke amakhaya ezingane, izindawo zokuphepha, izindawo zokunakekela okuqashiwe, izikole ezifundisa ngomsebenzi kanye nezikole zokuqondisa izigwegwe eziqhutshwa nguhulumeni ezivele zikhona kufanele zibhaliswe njengezikhungo zokunakekela izingane nentsha ingakapheli iminyaka emibili siqalile ukusebenza lesi sahluko. 45

**Ukusungula isikhungo sokunakekela izingane nentsha**

- 197.** Noma yimuphi uMnyango kahulumeni kazwelonke noma wesifundazwe obhekene nentuthuko yezehlalakahle, umasipala noma inhlangano evumelekile ingasungula noma iqhube isikhungo sokunakekela izingane nentsha kuncike ekutheni isikhungo— 50
- (a) sibhalisiwe eMnyangweni wesifundazwe wentuthuko yezehlalakahle ofanele; 55
  - (b) siphethwe futhi sigcinwe ngokuhambisana nalo Mthetho nanoma yimiphi imibandela isikhungo esisungulwe ngaphansi kwayo;
  - (c) sithobela imikhuba namazinga kazwelonke anqunyiwe ezikhungo zokunakekela izingane nentsha okukhulunywa ngakho esigabeni 194; futhi

- (d) complies with the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is or is to be situated.

#### **Existing registered children's home and registered shelter**

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

(2) A children's home referred to in subsection (1) is regarded to be a registered child and youth care centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 203 before the expiry of that period.

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

#### **Application for registration or renewal of registration**

**199.** (1) An application for registration or conditional registration of a child and youth care centre established as referred to in section 197 or for the renewal of such a registration must—

(a) be lodged with the provincial head of social development in the relevant province in accordance with a prescribed procedure;

(b) contain the prescribed particulars; and

(c) be accompanied by—

(i) a certified copy of the constitution or founding document of the child and youth care centre;

(ii) a certificate issued by the municipality in which the child and youth care centre is or is to be situated certifying that the premises in which the centre is or is to be accommodated complies with all structural, safety, health and other requirements of the municipality and any applicable legislation; and

(iii) any documents that may be prescribed.

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

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

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

#### **Consideration of application**

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

- (a) within six months of receiving the application consider an application for registration or for the renewal of registration and either refuse the application or grant the registration or renewal with or without conditions, having regard to subsection (2);



- (d) sithobela izidingo zesakhiwo, zokuphepha, zempilo kanye nezinye izidingo zikamasipala waleyo ndawo lapho isikhungo esinakekela izingane nentsha esizoba khona.

**Ikhaya lezingane elivele likhona elibhalisiwe kanye nendawo yokukhosela ebhalisiwe**

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**198.** (1) Kusukela ngosuku isigaba 197 siqala ukusebenza ikhaya lezingane eliqhutshwa ngabantu abazimele elibhalisiwe noma ekuthathwa ngokuthi libhalisiwe ngokoMthetho Wokunakekela iZingane kufanele lithathwe ngokuthi libhalisiwe ngokwesigaba 197 njengesikhungo sokunakekela izingane nentsha esihlinzeka uhlelo lokunakekela ekhaya olubalulwe esigabeni 191(2)(a).

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(2) Ikhaya lezingane ekukhulunywe ngalo esigatshaneni (1) lithathwa ngokuthi yisikhungo sokunakekela izingane nentsha esibhalisiwe isikhathi esiyiminyaka emihlanu kusukela ngosuku leso sigatshana esiqale ukusebenza ngalo, ngaphandle uma ukubhaliswa kwaso kuhoxiswa ngokwesigaba 203 ngaphambi kokufika kwalolo suku.

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(3) Indawo yokukhosela ebhalisiwe ngokoMthetho Wokunakekela iZingane kufanele ibhalise njengesikhungo sokunakekela izingane nentsha singakapheli isikhathi esiyiminyaka emihlanu kusukela ngosuku lesi sigaba esiqale ukusebenza ngalo.

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**Isicelo sokubhalisa nokuvuselela ukubhalisa**

**199.** (1) Isicelo sokubhalisa isikhungo sokunakekela izingane nentsha esisungulwe yinhlangano evunyelwe njengalokho kushiwo esigabeni 197 noma sokuvuselela ukubhalisa okunjalo kufanele—

(a) sifakwe kwinhloko yesifundazwe yentuthuko yezenhlalakahle esifundazweni esifanele ngokuhambisana nenqubo enqunye wumgomo;

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(b) siqkathe imininingwane enqunye; futhi

(c) sihambisane—

(i) nekhophi efungetwe yomthethosisekelo noma umqulu wokusungula isikhungo sokunakekela izingane nentsha;

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(ii) nesitifiketi esikhishwe ngumasipala lapho isikhungo sokunakekela izingane nentsha sikhona noma sizoba khona esiqinisa ukuthi isakhiwo lapho isikhungo sikhona noma sizoba khona sithobela zonke izidingo zikamasipala zesakhiwo, zokuphepha, zempilo nokunye kanye nanoma yimiphi eminye imithetho; kanye

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(iii) nanoma yimiphi imibhalo engahle inqunye;

(2) Ofake isicelo kufanele alethe eminye imininingwane efanele ehambisana nesicelo kuye nokuyonqunye yinhloko yesifundazwe yentuthuko yezenhlalakahle.

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(3) Isicelo sokuvuselela ukubhalisa kufanele senziwe kusasele okungenani izinsuku ezingu 90 ngaphambi kokuphela kwesikhathi sokubhalisa, kepha inhloko yesifundazwe yentuthuko yezenhlalakahle ingasivuma isicelo esilethwa emuva kwesikhathi uma kubekwa izizathu ezizwakalayo.

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(4) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele ivuselele ukubhaliswa kwesikhungo esinakekela isikhashana esinqunye ngaphambi kokuphelelwa yisikhathi uma isicelo sokuvuselela sibe sifakwe okungenani ezinsukwini eziwu-90 ngaphambi kokuphelelwa yisikhathi kokubhalisa njengalokho bekushiwo esigatshaneni (3).

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**Ukucutshungulwa kwesicelo**

**200.** (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele—

(a) icubungule isicelo sokubhalisa noma sokuvuselela ukubhalisa bese iyasenqaba isicelo noma ivuselele ukubhalisa kube noma kungabi nemibandela emuva kokubhekela isigatshana (2);

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- (b) issue to the applicant a certificate of registration or renewal of registration in the prescribed form if the application is granted; and
- (c) state in the certificate of registration the period for which the registration will remain valid.
- (2) When deciding an application the provincial head of social development must take into account all relevant factors, including whether—
- (a) the child and youth care centre complies with—
- (i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed; and
  - (ii) the structural, safety, health and other requirements of the municipality in which the child and youth care centre is or is to be situated;
- (b) the applicant is a fit and proper person to operate a child and youth care centre;
- (c) the applicant has the necessary skills, funds and resources available to operate the child and youth care centre;
- (d) each person employed at or engaged in the child and youth care centre is a fit and proper person to assist in operating a child and youth care centre; and
- (e) each person employed at or engaged in the child and youth care centre has the prescribed skills to assist in operating a child and youth care centre.
- (3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.
- (4) The provincial head of social development must consider a report of a designated social worker before deciding an application for registration or renewal of registration.
- (5) Notwithstanding the provisions of section 193(3) a provincial head of social development may assist the person or organisation operating a child and youth care centre to comply with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.

### Conditional registration

**201.** The registration or renewal of registration of a child and youth care centre may be granted on such conditions as the provincial head of social development may determine, including conditions—

- (a) specifying the type of residential care programme that may or must be provided in terms of the registration;
- (b) stating the period for which the conditional registration will remain valid, which may not be longer than one year; and
- (c) providing for any other matters that may be prescribed.

### Amendment of registration

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

### Cancellation of registration

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

- (b) inike ofake isicelo isitifiketi sokubhalisa noma sokuvuselela ukubhalisa ngendlela enqunywe ngumgomo uma isicelo sivunyiwe; futhi
- (c) ibeke isikhathi ukubhalisa okuzohlala kusebenza ngaso esitifiketini sokubhalisa. 5
- (2) Lapho ithatha isinqumo ngesicelo inhloko yesifundazwe yentuthuko yezehlalakahle kufanele ikhumbule zonke izimo ezithintekayo, okufaka nokuthi—
- (a) isikhungo sokunakekela izingane nentsha siyayithobela yini—
- (i) imikhuba namazinga anqunyiwe ezikhungo zokunakekela izingane nentsha okukhulunywa ngazo esigabeni 194; kanye 10
- (ii) nezidingo zesakhiwo, zokuphepha, zempilo nokunye okufunwa ngumasipala lapho isikhungo sokunakekela izingane nentsha sikhona noma sizoba khona;
- (b) umuntu ofake isicelo ungumuntu okwaziyo nofanele yini ukuqhuba isikhungo sokunakekela izingane nentsha; 15
- (c) ofake isicelo unamakhono afunekayo, unemali nengcebo yokuqhuba isikhungo sokunakekela izingane nentsha;
- (d) umuntu ngamunye oqashwe noma oxhumene nesikhungo sokunakekela izingane nentsha ngumuntu okwaziyo futhi ofanele ukusiza ekuqhutshweni kwesikhungo sokunakekela izingane nentsha; kanye nokuthi 20
- (e) umuntu ngamunye oqashwe noma oxhumene nesikhungo sokunakekela izingane nentsha unamakhono anqunyiwe maqondana nokusiza ekuqhutshweni kwesikhungo sokunakekela izingane nentsha. 25
- (3) Umuntu ongafanelekile ukusebenza nezingane akakwazi futhi akafanele ukuqhuba noma ukusiza ekuqhutshweni kwesikhungo sokunakekela izingane nentsha.
- (4) Inhloko yesifundazwe yentuthuko yezehlalakahle kufanele icubungule umbiko kasonhlalakahle oqokiwe ngaphambi kokwenza isinqumo ngesicelo sokubhalisa noma sokuvuselela ukubhalisa. 30
- (5) Kungakhathaleki ukuthi imibandela yesigaba 193(3) ithini inhloko yesifundazwe yentuthuko yezehlalakahle ingasiza umuntu noma inhlangothi ekuqhuba isikhungo sokunakekela izingane nentsha ekutheni bathobele imikhuba namazinga anqunyiwe ekukhulunywe ngawo esigabeni 194 kanye nezinye izidingo ezingahle zinqunywe. 35

#### Ukubhalisa okunemibandela

- 201.** Ukubhalisa noma ukuvuselela ukubhalisa kwesikhungo sokunakekela izingane nentsha kungakhishwa ngaphansi kwemibandela enganqunywa yinhloko yesifundazwe yentuthuko yezehlalakahle, kufaka nemibandela— 40
- (a) ecacisa uhlobo lohlelo noma izinhlelo zokunakekela ekhaya ezingahlinzekwa noma ekufanele zihlinzekwe maqondana nokubhaliswa; 45
- (b) esho isikhathi ukubhalisa okuzosebenza ngaso; futhi
- (c) ehlinzekela noma yiziphi izindaba ezingahle zinqunywe.

#### Ukuchibiyela ukubhalisa

- 202.** Inhloko yesifundazwe yentuthuko yezehlalakahle esifundazweni esifanele, lapho umuntu obhalisiwe maqondana nesikhungo sokunakekela izingane nentsha efaka isicelo ngaphansi kwezimo ezinqunyiwe, ingachibiyela ukubhalisa ngesaziso esilotshiwe isinike lowo muntu. 50

#### Ukwesula ukubhalisa

- 203.** (1) Inhloko yesifundazwe yentuthuko yezehlalakahle esifundazweni esithintekayo ingesula ukubhalisa noma ukubhalisa okunemibandela kwesikhungo sokunakekela izingane nentsha ngesaziso esilotshiwe isinike umnikazi wokubhalisa uma— 55

- (a) the centre is not maintained in accordance with—
- (i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed;
  - (ii) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated;
  - (iii) any organisational development plan established for the centre as part of the quality assurance process in terms of section 211; or
  - (iv) any other requirements of this Act;
- (b) any condition subject to which the registration or renewal of registration was issued is breached;
- (c) the registration holder or the management of the centre contravenes or fails to comply with a provision of this Act;
- (d) the registration holder becomes a person who is not a fit and proper person to operate a child and youth care centre; or
- (e) a person who is not a fit and proper person to assist in operating a child and youth care centre is employed at or involved in activities at the centre.
- (2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.
- (3) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)—
- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
  - (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.
- (4) The Director-General or a provincial head of social development may assist a registration holder to comply with—
- (a) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed;
  - (b) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated; or
  - (c) any provisions of the organisational development plan established for the centre in terms of the quality assurance process contemplated in section 211, where the cancellation was due to a failure to comply with those national norms and standards, requirements or process.
- (5) The cancellation of a registration which has not been suspended takes effect from a date specified in the notice referred to in subsection (1), which may not be earlier than 90 days from the date on which that notice was given, except if—
- (a) the provincial head of social development and the holder of the registration agree on an earlier date; or
  - (b) the safety or protection of the children in the centre requires an earlier date.
- (6) The provincial head of social development, pending an appeal contemplated in section 207, may suspend the operation of a child and youth care centre, whether registered or not.

#### Notice of enforcement

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

- (a) isikhungo singaciniwe ngokuhambisana—
- (i) nemikhuba namazinga kazwelonke anqunyiwe okukhulunywa ngawo esigabeni 194 maqondana nezikhungo zokunakekela izingane nentsha kanye nezinye izidingo ezingahle zinqunywe; 5
  - (ii) nezidingo zesakhiwo, zokuphepha, zempilo nokunye okufunwa ngumasipala lapho isikhungo sokunakekela izingane nentsha sikhona; 5
  - (iii) nanoma yiluphi uhlelo lokuthuthukisa inhlango olusungulelwe isikhungo njengengxenywe yomgudu wokuqinisekisa ikhwalithi owenziwe ngokwesigaba 211; noma 10
  - (iv) ezinye izidingo zalo Mthetho;
- (b) noma yimiphi imibandela ukubhalisa noma ukuvuselelwa kokubhalisa okukhishwe ngaphansi kwayo yephuliwe; 15
- (c) umnikazi wokubhalisa noma abaphathi besikhungo bephula noma behluleka ukuthobela imibandela yalo Mthetho;
- (d) umnikazi wokubhalisa ebe ngumuntu ongakwazi futhi ongafanele ukuqhuba isikhungo sokunakekela izingane nentsha; noma
- (e) umuntu ongakwazi nongafanele ukusiza ekuqhutshweni kwesikhungo sokunakekela izingane nentsha eqashwe noma ehlangene nemisebenzi yesikhungo. 20
- (2) Umuntu ongafanele ukusebenza nezingane akakwazi futhi akufanele aqhube noma asize ekuqhutshweni kwesikhungo sokunakekela izingane nentsha. 25
- (3) Inhloko yesifundazwe yentuthuko yezehlalakahle kungathi esimweni lapho kwesulwa ukubhalisa ngokwesigatshana (1)(a), (b), (c) noma (e)—
- (a) imise ukwesulwa ukubhalisa isikhashana esizonikeza umnikazi wokubhalisa ithuba lokulungisa isizathu esiholele ekusulweni kokubhalisa; futhi 30
  - (b) ibuyisele ukubhalisa uma umnikazi wokubhalisa elungisa isizathu esiholele ekusulweni kokubhalisa ngaleso sikhathi asinikiwe.
- (4) UMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezehlalakahle bangasiza umnikazi wokubhalisa ekutheni athobele— 35
- (a) imikhuba namazinga kazwelonke anqunyiwe ezikhungo zokunakekela izingane nentsha okukhulunywa ngawo esigabeni 194 kanye nezinye izidingo ezingahle zinqunywe; 35
  - (b) noma yiziphi izidingo zesakhiwo, zokuphepha, zempilo nokunye okufunwa wumasipala lapho isikhungo sokunakekela izingane nentsha sikhona; noma 40
  - (c) nanoma yimiphi imibandela yohlelo lokuthuthukisa inhlango olusungulelwe isikhungo maqondana nomgudu wokuqinisekisa ikhwalithi okukhulunywa ngakho esigabeni 211, lapho ukwesula bekungenxa yokuhluleka ukuthobela leyo mikhuba namazinga, izidingo noma imigudu. 45
- (5) Ukwesula ukubhalisa obekungamiswanga okwesikhashana kuqala ukusebenza ngosuku olushiwo esazisweni okukhulunywa ngaso esigatshaneni (1), ekungafanele kube ngaphambi kwezinsuku ezingu 90 kusukela osukwini esakhishwa ngalo, ngaphandle uma— 50
- (a) inhloko yesifundazwe yentuthuko yezehlalakahle nomnikazi wokubhalisa bevumelana ngosuku olungaphambili; noma
  - (b) ukuphepha noma ukuvikela izingane esikhungweni kudinga usuku olungaphambili.
- (6) Inhloko yesifundazwe yentuthuko yezehlalakahle, kusamelwe ukudluliswa kwesinqumo okukhulunywa ngakho esigabeni 207, ingamisa okwesikhashana ukusebenza kwesikhungo sokunakekela izingane nentsha, noma ngabe sibhalisiwe noma singabhaliswanga. 55

#### Isaziso sokusebenzisa umthetho

204. (1) Inhloko yesifundazwe yentuthuko yezehlalakahle kungathi ngesaziso esilotshiwe iyalele— 60

- (a) a person or organisation operating an unregistered child and youth care centre—
- (i) to stop operating that centre; or
  - (ii) to apply for registration in terms of section 199 within a period specified in the notice; or
- (b) a person or organisation operating a registered child and youth care centre otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.
- (2) A person or organisation operating an unregistered child and youth care centre and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 197 regarding the establishment of child and youth care centres, be given permission by the provincial head of social development to continue operating the centre during that period and, if that person or organisation applies for registration, until that application has been finalised.
- (3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a person or organisation operating a child and youth care centre, whether registered or not, to stop operating that centre.
- (4) The High Court may grant an order for costs against the person or organisation referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

#### **Voluntary closure of child and youth care centre**

- 205.** The holder of a registration of a child and youth care centre who voluntarily closes a child and youth care centre must—
- (a) give written notice to the provincial head of social development in the relevant province; and
  - (b) surrender the certificate of registration to the provincial head of social development for cancellation.

#### **Child in child and youth care centre to be closed**

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

#### **Appeal against and review of certain decisions**

- 207.** (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.
- (2) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1), may apply to the competent division of the High Court to review that decision.

- (a) umuntu noma inhlangothi eqhuba isikhungo sokunakekela izingane nentsha esingabhalisiwe—
- (i) ukuba bayeke ukuqhuba leso sikhungo; noma
  - (ii) ukuba bafake isicelo sokubhaliswa ngokwesigaba 199 singakapheli isikhathi esibalulwe esazisweni; noma
- (b) umuntu noma inhlangothi eqhuba isikhungo sokunakekela izingane nentsha esibhalisiwe ngenye indlela kungekhona ngokwalo Mthetho noma ngokwanoma yimiphi imibandela ekukhishwe ukubhalisa ngaphansi kwayo ukuthi athobele leyo mibandela noma izimo.
- (2) Umuntu noma inhlangothi eqhuba isikhungo sokunakekela izingane nentsha esingabhalisiwe futhi oyalwe ngokwesigatshana (1)(a)(ii) ukuba afake isicelo sokubhaliswa singakapheli isikhathi esibaluliwe, ngale kokubheka imibandela yesigaba 197 maqondana nokusungulwa kwezikhungo sokunakekela izingane nentsha, anganikwa imvume yinhloko yesifundazwe yentuthuko yezenhloko ukuba aqhubeke nokuqhuba isikhungo ngaleso sikhathi futhi, uma lowo muntu efaka isicelo sokubhaliswa, kuze kube isicelo salowo muntu siyaphothulwa.
- (3) UMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezenhloko ingafaka isicelo eNkantolo Ephakeme ukuba ikhiphe umyalo othi umuntu noma inhlangothi eqhuba isikhungo sokunakekela izingane nentsha, noma ngabe sibhalisiwe noma cha, mabayeke ukuqhuba leso sikhungo.
- (4) Inkantolo ePhakeme ingavuma isicelo sokuthi izindleko zikhokhwe wumuntu noma yinhloko ekukhulunywe ngayo esigatshaneni (3) uma lokho kudingwa nguMqondisi-Jikelele noma yinhloko yesifundazwe yentuthuko yezenhloko.

#### Ukuvala ngokuthanda kwesikhungo sokunakekela izingane nentsha

- 205.** Umnikazi wokubhalisa kwesikhungo sokunakekela izingane nentsha ovala isikhungo sokunakekela izingane nentsha ngokuthanda kufanele—
- (a) anike inhloko yesifundazwe yentuthuko yezenhloko isaziso esilotshiwe; futhi
  - (b) abuyisele emuva kwinhloko yesifundazwe yentuthuko yezenhloko isitifiketi sokubhalisa ukuze zisulwe.

#### Ingane esesikhungweni sokunakekela izingane nentsha esizovalwa

- 206.** Uma isikhungo sokunakekela izingane nentsha sizovalwa ngenxa yokwesulwa kokubhaliswa kwaso ngokuhambisana nesigaba 203 noma ukuvala ngokuthanda kwesikhungo ngokwesigaba 205 zonke izingane ezibekwe kuleso sikhungo kufanele zidluliselwe kwenye indawo ngokwesigaba 171.

#### Ukudlulisa isikhalo nokubukezwa kwezinqumo ezithile

- 207.** (1) Ofake isicelo noma ongumnikazi wokubhalisa onesikhalo ngesinqumo esithathwe yinhloko yesifundazwe yentuthuko yezenhloko ngokwalesi sahluko angafaka isikhalo maqondana naleso sinqumo ngendlela enqunyiwe zingakapheli izinsuku ezingu 90 asiyise kuNgqongqoshe wesifundazwe yentuthuko yezenhloko, yena ekufanele athathe isinqumo ngalokho kwedluliswa kwesikhalo zingakapheli izinsuku ezingu 90 ethole isikhalo.
- (2) Ofake isicelo noma umnikazi wokubhalisa onganiselikile ngomphumela wokudluliswa kwesikhalo esifakwe njengokucabanga kwesigatshana (1), angafaka isicelo ophikweni olunamandla afanele lweNkantolo ePhakeme ukuba babukeze leso sinqumo.

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

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

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

(a) the MEC for social development in the relevant province in accordance with a prescribed procedure, in the case of a child and youth care centre which is operated by the province; and

(b) the registration holder in accordance with a prescribed procedure, in the case of a privately operated child and youth care centre.

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

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

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

(6) The management board must create a children's forum as part of the management board to ensure the participation of resident children in the operation of the centre, taking into consideration the age, maturity and stage of development of the children.

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**Manager and staff of child and youth care centre**

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

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(a) a person as the manager of the centre; and

(b) a sufficient number of staff or other appropriate persons to assist in operating the centre.

(2) A person may be appointed or designated in terms of subsection (1) only—

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(a) after following an interview process as prescribed;

(b) if that person has the skills and training as prescribed; and

(c) if that person is a fit and proper to assist in operating a child and youth care centre.

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

**Management system**

**210.** A child and youth care centre must be managed—

(a) in accordance with—

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(i) a system of management that allows for a division of responsibilities between the management board and the manager of the centre and an appropriate interaction in the exercise of those responsibilities, as may be prescribed;

(ii) the organisational development plan established for the centre in terms of its quality assurance process; and

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(iii) any other requirements of this Act; and

(b) in a manner that is conducive to implementing the residential care programme and other programmes offered at the centre.



**Ingxenywe 2*****Ukuqhuba nokuphatha isikhungo sokunakekela izingane nentsha*****Ibhodi labaphathi**

**208.** (1) Isikhungo sokunakekela izingane nentsha ngasinye kufanele sibe nebhodi labaphathi elizoba namalungu angekho ngaphansi kwesithupha kepha angevi kwisishiyagalolunye. 5

(2) Amalungu ebhodi labaphathi aqokwa—

(a) nguNgqongqoshe wesifundazwe wentuthuko yezenhlalakahle esifundazweni esifanele ngokuhambisana nenqubo enqunywe wumgomo, uma isikhungo sokunakekela izingane nentsha siqhutshwa yisifundazwe; bese kuba 10

(b) ngumnikazi wokubhalisa ngokuhambisana nenqubo enqunywe wumgomo, uma isikhungo sokunakekela izingane nentsha siqhutshwa ngabantu abazimele.

(3) Ekuqokeni amalungu ebhodi labaphathi, kufanele kuqinisekiswa ukuthi amalungu amele bonke ababambe iqhaza, kufaka nomphakathi walapho isikhungo sokunakekela izingane nentsha sikhona. 15

(4) Akukho muntu ongafanele ukusebenza nezingane oyoqokwa noma oyoqhubeka nokusebenza njengelungu lebhodi labaphathi.

(5) Ibhodi labaphathi lisebenza ngokwemigomo, futhi lingasebenzisa amandla futhi kufanele lenze imisebenzi eliyethweswe ngokwalo Mthetho. 20

(6) Ibhodi labaphathi kufanele lakhe iforamu yezingane ibe yingxenywe yebhodi labaphathi ukuqinisekisa ukuthi izingane ezihlala esikhungweni ziyabandakanywa ekuqhutshweni kwesikhungo.

**Imenenja nabasebenzi besikhungo sokunakekela izingane nentsha 25**

**209.** (1) Umuntu noma inhlangothi eqhuba isikhungo sokunakekela izingane nentsha kufanele baqashe noma bakhethe—

(a) umuntu ozoba yimenenja yesikhungo; kanye

(b) nenani labasebenzi abanele noma abanye abantu abazosiza ekuqhutshweni kwaleso sikhungo. 30

(2) Umuntu angaqashwa noma akhethwe ngokwesigatshana (1) kuphela—

(a) emuva kokulandela umgudu womhlangano wemibuzo onqunywe wumgomo;

(b) uma lowo muntu enamakhono nokuqeqeshwa njengalokho kunqunywe; futhi 35

(c) uma lowo muntu engumuntu ofanele futhi okulungele ukusiza ekuqhutshweni kwesikhungo sokunakekela izingane nentsha.

(3) Umuntu ongafanele ukusebenza nezingane ungumuntu ongafanele futhi ongakulungele ukusiza ekuqhutshweni noma ekusebenzeni esikhungweni sokunakekela izingane nentsha. 40

**Uhlelo lokuphatha**

**210.** Isikhungo sokunakekela izingane nentsha kufanele siphathwe—

(a) ngokuhambisana—

(i) nohlelo lokuphatha oluvumela ukwabiwa kwezibophezelo phakathi kwebhodi labaphathi kanye nomphathi wesikhungo kanye nokuxhumana okufanele ekufezweni kwalezo zibophezelo, kuye nokunqunywe wumgomo. 45

(ii) uhlelo lokuthuthukisa inhlangothi olusungulelwe yisikhungo ngokuhambisana nomgudu wokuqinisekisa ikhwalithi; kanye 50

(iii) nanoma yiziphi ezinye izidingo zalo Mthetho; futhi

(b) ngendlela ezosiza ekutheni kungeniswe uhlelo lokunakekela ekhaya kanye nezinye izinhlelo ezihlinzekwa esikhungweni.

**Quality assurance process**

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

(2) The quality assurance process must be done in the following manner: 5

- (a) A team connected to the child and youth care centre must conduct an internal assessment of the centre;
- (b) a team not connected to the centre must conduct an independent assessment of the centre;
- (c) an organisational development plan for the centre containing the prescribed particulars must be established between the teams by agreement; and 10
- (d) the team not connected to the centre must appoint a mentor to oversee implementation of the plan by the management of the centre. 15

(3) The management board of a child and youth care centre must without delay, after completion of the quality assurance process, submit a copy of the organisational development plan established for the centre in terms of the quality assurance process to the MEC for social development in the province. 20

(4) A provincial head of social development may assist a child and youth care centre in conducting the quality assurance process as contemplated in subsection (1).

**Part 3****Miscellaneous****Regulations** 25

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

- (a) the procedure to be followed in connection with the lodging and consideration of— 30
  - (i) applications for registration of child and youth care centres;
  - (ii) applications for renewal or amendment of such registrations; and
  - (iii) objections to applications made in terms of sub-paragraphs (i) and (ii); 35
- (b) the national norms and standards that child and youth care centres must comply with;
- (c) the conditions with which applicants must comply before, during or after the lodging of their applications;
- (d) consultation processes that must be followed in connection with such applications; 40
- (e) any additional factors that must be taken into account when deciding such applications;
- (f) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter; 45
- (g) the format and contents of registration certificates;
- (h) methods and procedures to enforce compliance with registration conditions;
- (i) matters in connection with the physical attributes, operation and management of child and youth care centres, including the number of staff appointed at or designated to a child and youth care centre; 50

**Umgudu wokuqinisekisa ikhwalithi**

**211.** (1) Inhloko yesifundazwe yentuthuko yezehlalakahle kufanele iqinisekise ukuthi umgudu wokuqinisekisa ikhwalithi uyalandelwa maqondana nesikhungo sokunakekela izingane nentsha ngasinye ngendlela futhi ngezikhawu ezinqunyiwe.

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(2) Umgudu wokuqinisekisa ikhwalithi kufanele wenziwe ngendlela elandelayo:

(a) Iqembu elixhumene nesikhungo sokukhulisa izingane nentsha kufanele livivinye okwenzeka ngaphakathi kwesikhungo;

(b) iqembu elingaxhumene nesikhungo kufanele livivinye isikhungo ngokuzimele;

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(c) kufanele kwenziwe isu lokuthuthukisa inhlango eliqukethe imininingwane enqunyiwe phakathi kwamaqembu ngokuvumelana; futhi

(d) iqembu elingaxhumene nesikhungo kufanele liqoke umuntu ozoba ngumqaphi olulekayo lapho selusetshenziswa ngabaphathi besikhungo.

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(3) Ibhodi labaphathi lesikhungo sokunakekela izingane nentsha kufanele ngaphandle kokulibala, emuva kokuphuthula umgudu wokuqinisekisa ikhwalithi, lithumele kuNgqongqoshe wesifundazwe wentuthuko yezehlalakahle esifundazweni ikhophi yohlelo lokuthuthukisa inhlango olusungulelwe isikhungo ngokuhambisana nomgudu wokuqinisekisa ikhwalithi.

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(4) Inhloko yesifundazwe yentuthuko yezehlalakahle inganikeza isikhungo sokunakekela izingane nentsha iziyalo ngokulandela umgudu wokuqinisekisa ikhwalithi njengalokho kushiwo esigatshaneni (1).

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**Ingxenywe 3****Ezingxubevange****Imigomo**

**212.** Ungqongqoshe, lapho kufanele khona emuva kokubonisana noNgqongqoshe wezeMfundo, wezeMpilo Nowobulungiswa Nokuthuthukiswa koMthethosisekelo, ngokuhambisana nesigaba 306 angenza imigomo enquma—

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(a) inqubo ekufanele ilandelwe maqondana nokufaka nokucutshungulwa—

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(i) kwezicelo zokubhalisa izikhungo zokunakekela izingane nentsha;

(ii) kwezicelo zokuvuselela noma zokuchitshiyelwa kokubhalisa okunjalo; kanye

(iii) nokuphikiswa kwezicelo ezenziwe ngokwendinyana (i) no (ii);

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(b) imikhuba namazinga kazwelonke anqunyiwe ekufanele athotshelwe yizikhungo zokunakekela izingane nentsha;

(c) imibandela ekufanele abafaka izicelo bayithobele ngaphambi, ngesikhathi nasemuva kokufaka izicelo zabo;

(d) imigudu yokubonisana ekufanele ilandelwe maqondana nezicelo ezinjalo;

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(e) noma yiziphi ezinye izinto ekufanele zibhekwe uma kwenziwa izinqumo ngezicelo ezinjalo;

(f) inqubo ekufanele ilandelwe kanye nezimali ekufanele zikhokhwe maqondana nokufaka nokucutshungulwa kwezikhawu ngokwalesi Sahluko;

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(g) isimo kanye nokuqokethwe yisitifiketi sokubhalisa;

(h) izindlela nezinqubo zokwenza ukuthi kuthotshelwe imibandela yokubhalisa;

(i) izindaba ezihambisana nesakhiwo, ukuqhutshwa nokuphathwa kwezikhungo zokunakekela izingane nentsha, kufaka inani labasebenzi abaqashiwe noma abaqokiwe esikhungweni sokunakekela izingane nentsha;

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- |     |                                                                                                                                                                                 |    |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (j) | matters in connection with residential care programmes provided at child and youth care centres, including the setting of criteria for—                                         |    |
|     | (i) the core components of such programmes; and                                                                                                                                 |    |
|     | (ii) the implementation of such programmes;                                                                                                                                     |    |
| (k) | the provision of programmes at child and youth care centres to meet the developmental, therapeutic and recreational needs of children;                                          | 5  |
| (l) | an assessment of and the formulation of an individual developmental and permanency plan for each child;                                                                         |    |
| (m) | the powers and duties of the management boards of child and youth care centres;                                                                                                 | 10 |
| (n) | the composition of management boards, which may include representation for staff and residents;                                                                                 |    |
| (o) | matters relating to members of management boards, including—                                                                                                                    |    |
|     | (i) appointment procedures;                                                                                                                                                     |    |
|     | (ii) qualifications for membership;                                                                                                                                             | 15 |
|     | (iii) term of office;                                                                                                                                                           |    |
|     | (iv) filling of vacancies; and                                                                                                                                                  |    |
|     | (v) suspension or termination of membership;                                                                                                                                    |    |
| (p) | matters relating to the functioning of management boards, including—                                                                                                            |    |
|     | (i) designation and functions of presiding members;                                                                                                                             | 20 |
|     | (ii) the convening and conduct of meetings;                                                                                                                                     |    |
|     | (iii) quorums; and                                                                                                                                                              |    |
|     | (iv) the appointment and functioning of committees of a board;                                                                                                                  |    |
| (q) | matters relating to training, qualifications and experience of staff of child and youth care centres;                                                                           | 25 |
| (r) | matters relating to the responsibilities of and interaction between the management board and the staff and residents of a child and youth care centre;                          |    |
| (s) | the reporting responsibilities of management boards and staff to the department, person or organisation operating the child and youth care centre;                              | 30 |
| (t) | the format of the constitution or founding document of a child and youth care centre and the matters to be regulated in such constitution or founding document;                 |    |
| (u) | the rights of children in child and youth care centres;                                                                                                                         | 35 |
| (v) | management, disciplinary and other practices in child and youth care centres;                                                                                                   |    |
| (w) | matters in connection with quality assurance processes and organisational development plans established in terms of such processes for child and youth care centres, including— | 40 |
|     | (i) the composition of teams to conduct internal and independent assessments;                                                                                                   |    |
|     | (ii) the qualifications of team members and the remuneration payable to members of independent teams;                                                                           |    |
|     | (iii) the manner in which internal and independent assessments must be conducted;                                                                                               | 45 |
|     | (iv) the core components of organisational development plans;                                                                                                                   |    |
|     | (v) the implementation, revision and amendment of such plans;                                                                                                                   |    |
|     | (vi) the monitoring of implementation and reporting of violations of such plans; and                                                                                            | 50 |
|     | (vii) the qualifications, functions and remuneration of mentors appointed to oversee the implementation of such plans; and                                                      |    |

- (j) izindaba ezihambisana nezinhlelo zokunakekela ekhaya ezihlinzekwa ezikhungweni zokunakekela izingane nentsha, kufaka nokumiswa kwemikhakha—
- (i) yezingxenywe ezisemqoka zalezi zinhlelo; kanye
- (ii) nokusetshenziswa kwalezi zinhlelo; 5
- (k) ukuhlinzekwa kwezinhlelo ezizobhekana nezidingo zezingane zentuthuko, zokwelashwa nezokuchitha isizungu ezikhungweni zokunakekela izingane nentsha;
- (l) ukuhlolwa nokwenziwa kohlelo lokuthuthukisa nokuhlelela ukuzinza kwengane ngayinye; 10
- (m) amandla nezibopho zebhodi labaphathi bezikhungo zokunakekela izingane nentsha;
- (n) ubulungu bamabhodi okuphatha, obungafaka namalungu abasebenzi nezakhamuzi;
- (o) izindaba ezihambisana namalungu amabhodi abaphathi, ezifaka— 15
- (i) inqubo yokuqashwa;
- (ii) ukufaneleka ukuba yilungu;
- (iii) isikhathi sokuba sesikhundleni;
- (iv) ukugcwaliswa kwezikhala; kanye
- (v) nokumiswa okwesikhashana noma ukwesulwa kobulungu; 20
- (p) izindaba ezihambisana nokusebenza kwamabhodi abaphathi, ezifaka—
- (i) ukuqokwa nemisebenzi yamalungu engamele;
- (ii) ukubiza nokuqhutshwa kwemihlangano;
- (iii) amakhoramu; kanye 25
- (iv) nokuqoka nokusebenza kwamakomidi ebhodi;
- (q) izindaba ezihambisana nokuqeqeshwa, imininingwane yemfundo edingakalayo kanye nolwazi olunzulu (*isipiliyoni*) kubasebenzi basezindaweni zokunakekela izingane nentsha;
- (r) izindaba eziphathelene nezibophezelo nokuxhumana phakathi kwebhodi labaphathi nabasebenzi kanye nezingane ezihlala esikhungweni sokunakekela izingane nentsha; 30
- (s) imithwalo yamabhodi abaphathi neyabasebenzi yokubika emnyangweni, kumuntu noma enhlanganweni eqhuba isikhungo sokukhulisa izingane nentsha; 35
- (t) isimo somthethosisekelo noma umbhalo wokumiswa kwesikhungo sokunakekela izingane nentsha kanye nezindaba ekufanele zihanjiswe ngomthetho kumthethosisekelo noma embhalweni wokumiswa onjalo;
- (u) amalungelo ezingane ezisezikhungweni zokunakekela izingane nentsha; 40
- (v) ukuphatha, ukuqondisa izigwegwe neminye imikhuba ezikhungweni zokunakekela izingane nentsha;
- (w) izindaba ezihambisana nemigudu yokuqinisekisa ikhwalithi kanye nezinhlelo zokuthuthukisa inhlangano okusungulwe ngokwemigudu yezikhungo zokunakekela izingane nentsha, efaka— 45
- (i) ubulungu bamaqembu azokwenza ukuhlola kwangaphakathi nokuzimele;
- (ii) ukufaneleka ukwenza umsebenzi kwamalungu amaqembu kanye namaholo angakhokhelwa amalungu amaqembu azimele; 50
- (iii) indlela okufanele ukuhlola kwangaphakathi kanye nokuzimele kwenziwe ngayo;
- (iv) izingxenywe ezisemqoka zezinhlelo zokuthuthukisa inhlangano; 55
- (v) ukuqala ukusetshenziswa, ukubukezwa nokuchitshiyelwa kwezinhlelo ezinjalo;
- (vi) ukuqapha ukusetshenziswa kanye nokubika ukwephulwa kwezinhlelo ezinjalo; kanye
- (vii) nokufaneleka ukwenza umsebenzi, imisebenzi kanye namaholo abantu abangabaholi abaqokwe ukuba bengamele ukuqala kokusetshenziswa kwezinhlelo ezinjalo; kanye 60

- (x) any other matter that may facilitate the implementation of this Chapter.

## CHAPTER 14

### DROP-IN CENTRES

#### Drop-in centres

**213.** (1) A drop-in centre is a facility providing basic services aimed at meeting the emotional, physical and social development needs of vulnerable children.

(2) A drop-in centre must offer any of the following basic services:

- (a) Provision of food;
- (b) school attendance support;
- (c) assistance with personal hygiene; or
- (d) laundry services.

(3) A drop-in centre may offer any of the following programmes appropriate to the developmental needs of the children attending that centre:

- (a) Guidance, counselling and psychosocial support;
- (b) social skills and life skills;
- (c) educational programmes;
- (d) recreation;
- (e) community services;
- (f) school holiday programmes;
- (g) primary health care in collaboration with the local health clinic;
- (h) reporting and referral of children to social workers or social service professionals;
- (i) promotion of family preservation and reunification;
- (j) computer literacy;
- (k) outreach services; and
- (l) prevention and early intervention.

#### Strategy concerning drop-in centres

**214.** (1) The Minister, after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government and Transport must include in the departmental strategy a strategy aimed at ensuring an appropriate spread of drop-in centres throughout the Republic, giving due consideration as provided in section 11, to children with disability or chronic illnesses.

(2) The MEC for social development must—

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

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

#### Provision of drop-in centres

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

(2) Such drop-in centres—

- (x) nanoma yiluphi olunye udaba olungasiza ekuqaleni ukusebenzisa lesi Sahluko.

## ISAHLUKO 14

### IZINDAWO ZOKUQUBA

#### Izindawo zokuquba

**213.** (1) Indawo yokuquba yisikhungo esihlinzeka izinsizakalongqangi eziqondiswe ekuhlangabezeni izidingo zezingane ezisengcupheni ngokomoya, ngokomzimba nangokwenhlalo.

(2) Indawo yokuquba kufanele ihlinzeke noma yiziphi izinsizakalo kwezilandelayo:

- (a) ukudla;
- (b) ukwesekela ukuya esikoleni;
- (c) ukusizwa ngokuhlanzeka komuntu; noma
- (d) insizakalo yokuhlanzwa kwezingubo.

(3) Indawo yokuquba ingahlinzeka noma yiluphi uhlelo kwezilandelayo olufanele izidingo zokuthuthuka kwengane eza kuleyo ndawo yokuquba:

- (a) ukusekelwa ngokuqoqwa, ngokwelulekwa nangokomqondo;
- (b) amakhono ezenhlalo namakhono empilo;
- (c) uhlelo lwenfundo;
- (d) ukuzijabulisa;
- (e) izinsizakalo zomphakathi;
- (f) izinhlelo zezikhathi zamaholidi;
- (g) ukunakekelwa kwempilo okuyisisekelo ngokusebenzisana nomtholampilo wasendaweni;
- (h) ukubikwa nokudluliselwa kwezingane kosonhlalakahle noma kochwepheshe bezenhlalakahle;
- (i) ukugqugquzela ukugcinwa kwesimo somndeni noma ukuhlanganani swa komndeni;
- (j) ulwazi lwekhompyutha;
- (k) izinsizakalo zokusiza abantulo; kanye
- (l) ukuvimba nokulekelela masinya.

#### Isu maqondana nezindawo zokuquba

**214.** (1) UNgqongqoshe, emva kokubonisana nabantu abanentshisekelo kanye noNgqongqoshe wezeziMali, wezeMpilo, woHulumeni baseKhaya Nowezokuthutha kufanele afake eswini lomnyango isu elibanzi likazwelonke eliqondiswe ekuqinisekiseni ukuthi izindawo zokuquba zisabalele ngokwanele kwiRiphabhuliki, akhumbule lokho okushiwo yisigaba 11 maqondana nezingane ezikhubazekile noma ezinezifo ezingamahlalakhona.

(2) UNgqongqoshe wesifundazwe kufanele—

- (a) agcine irekhodi lazo zonke izindawo zokuquba esifundazweni esithintekayo; futhi
- (b) ngaphakathi kwesu ekukhulunywe ngalo esigatshaneni (1), ahlinzekele isu lesifundazwe ukuze aqinisekise ukuthi izindawo zokuquba zisabalele ngokwanele esifundazweni.

(3) UNgqongqoshe wesifundazwe kufanele enze uhlu oluveza isithombe sokwenzekayo esifundazweni ukuze akwazi ukuhlinzeka ulwazi oludingekayo lapho kwakhiwa noma kubukezwa amasu ekukhulunywe ngawo kwizigatshana (1) no (2).

#### Ukuhlinzeka izindawo zokuquba

**215.** (1) UNgqongqoshe wesifundazwe wentuthuko yezenhlahalakahle kuleso sifundazwe, kungathi ngemali eyabiwe yisishayamthetho sesifundazwe esithintekayo, ahlinzeke bese ekhokhela izindawo zokuquba kuleso sifundazwe.

(2) Izindawo zokuquba ezinjalo—

- (a) must be managed and maintained in accordance with this Act; and
- (b) must comply with—
  - (i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and
  - (ii) the structural safety, health and other requirements of the municipality of the area where the drop-in centre is situated.
- (3) The owner or manager of a drop-in centre only qualifies for funding appropriated as contemplated in subsection (1) if the centre complies with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.
- (4) The funding of drop-in centres must be prioritised—
  - (a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and
  - (b) to make drop-in centres accessible to children with disabilities.

#### National norms and standards for drop-in centres

- 216.** (1) The Minister must determine national norms and standards for drop-in centres by regulation after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government and Transport.
- (2) The national norms and standards contemplated in subsection (1) must relate to the following:
- (a) A safe environment for the children;
  - (b) safe drinking water;
  - (c) hygienic and adequate toilet facilities;
  - (d) access to refuse disposal services or other adequate means of disposal of refuse; and
  - (e) a hygienic area for the preparation of food for the children.

#### Drop-in centres to be registered

- 217.** (1) Any person or organisation may establish or operate a drop-in centre provided that the drop-in centre—
- (a) is registered with the provincial head of social development of the province where that drop-in centre is situated;
  - (b) is managed and maintained in accordance with any conditions subject to which the drop-in centre is registered; and
  - (c) complies with—
    - (i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and
    - (ii) the structural, safety, health and other requirements of the municipality.
- (2) As from the date on which this section takes effect an existing drop-in centre registered in terms of the Child Care Act must be regarded as having been registered as a drop-in centre in terms of this section.
- (3) A drop-in centre referred to in subsection (2) is regarded to be a registered drop-in centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 221 before the expiry of that period.



- (a) kufanele zenganyelwe futhi zigcinwe ngokuhambisana nalo Mthetho; futhi
- (b) kufanele zithobele —
  - (i) imikhuba namazinga kazwelonke anqunyiwe ekukhulunywe ngawo esigabeni 216 kanye nezinye izidingo ezingabe zinqunyiwe; 5
  - (ii) ukuphepha kwesakhiwo, impilo kanye nezinye izidingo zikamasipala waleyo ndawo lapho indawo yokukhosela ikhona.
- (3) Umnini noma imeneja yendawo yokuquba ifaneleka ukuthola umxhaso wezimali ekukhulunywe ngawo esigatshaneni (1) uma isikhungo sithobela imikhuba namazinga anqunyiwe ekukhulunywe ngawo esigabeni 216 kanye nezinye izidingo ezingahle zinqunyiwe. 10
- (4) Ukuhlinzekwa kwendawo yokuquba ngemali kufanele kubekwe phambili— 15
- (a) emiphakathini lapho imindeni yeswele izindlela zokuhlinzeka indawo yokuhlala, ukudla kanye nezinye izidingongqangi zempilo ezinganeni zayo; futhi
- (b) ukwenza izindawo zokuquba zitholakale kalula ezinganeni ezikhubazekile. 20

#### **Imikhuba namazinga kazwelonke ezindawo zokuquba**

- 216.** (1) UNgqongqoshe kufanele anqume imikhuba namazinga kazwelonke ezindawo zokuquba ngomgomo emva kokubonisana nabantu abanentshisekelo, kufaka noNgqongqoshe bezeziMali, ezeMpilo, ezoHulumeni Bezifundazwe naseKhaya kanye nowezokuThutha. 25
- (2) Imikhuba namazinga kazwelonke ekukhulunywe ngawo esigatshaneni (1) kufanele aphaathelane nalokhu okulandelayo:
- (a) indawo ephephile yezingane;
  - (b) amanzi afanele ukuphuzwa;
  - (c) izindawo zangasese ezihlanzekile futhi ezanele; 30
  - (d) ukufinyelela kwizinsizakalo zokuthuthelwa imfucumfucu noma ezinye izindlela ezanele zokuchithwa kwemfucumfucu ekhiqizwa endaweni yokuquba; kanye
  - (e) nendawo ehlanzekile yokulungisa ukudla kwezingane;

#### **Izindawo zokuquba kufanele zibhaliswe**

- 217.** (1) Noma yimuphi umuntu noma inhlango ingasungula noma iqhuba indawo yokuquba kuncike ekutheni indawo yokuquba: 35
- (a) ibhalisiwe kwinhloko yesifundazwe yentuthuko yezenhlahalakahle esifundazweni lapho indawo yokuquba ikhona;
  - (b) iphethwe futhi igcinwe ngokuhambisana nanoma yimiphi imibandela indawo yokuquba ebhaliswe ngaphansi kwawo; futhi 40
  - (c) ithobela—
    - (i) imikhuba namazinga anqunyiwe ezindawo zokuquba njengalokho bekucatshangwa esigabeni 216 kanye nezinye izidingo ezingahle zinqunyiwe; kanye 45
    - (ii) nezidingo zesakhiwo, zokuphepha, zempilo nezinye izinto ezidingwa ngumasipala.
  - (2) Kusukela ngosuku lapho lesi sigaba siqala ukusebenza ngalo indawo yokuquba evela ikhona ebhaliswe ngokoMthetho Wokunakekela iZingane kufanele ithathwe njengendawo ebhaliswe njengendawo yokuquba ngokwalesi sigaba. 50
  - (3) Indawo yokuquba ekukhulunywe ngayo esigatshaneni (2) ithathwa ngokuthi yindawo yokuquba ebhaliswe isikhathi esiyiminyaka emihlanu kusukela ngosuku leso sigatshana esaqala ukusebenza ngalo, ngaphandle uma ukubhalisa kuhoxiswa ngokwesigaba 221 ngaphambi kokufika kwalolo suku. 55

**Application for registration and renewal of registration**

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

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

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

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

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

**Consideration of application**

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

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

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

- (a) the drop-in centre complies with—
  - (i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and
  - (ii) the structural, safety, health and other requirements of the municipality and any other relevant legislation;
- (b) the applicant is a fit and proper person to operate a drop-in centre;
- (c) the applicant has the necessary skills, funds and resources available to operate the drop-in centre;
- (d) each person employed at or engaged in the drop-in centre is a fit and proper person to assist in operating a drop-in centre; and
- (e) each person employed at or engaged in the drop-in centre has the prescribed skills and training to assist in operating a drop-in centre.

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

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

(5) Notwithstanding the provisions of section 215(3) a provincial head of social development may assist the person or organisation operating a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

**Isicelo sokubhalisa nokuvuselela ukubhalisa**

**218.** (1) Isicelo sokubhalisa noma sokubhalisa okunemibandela kwendawo yokuquba noma sokuvuselela ukubhalisa kufanele—

(a) sifakwe, ngokuhambisana nenqubo enqunywe yinhloko yesifundazwe yentuthuko yezenhlalakahle esifundazweni lapho indawo ikhona noma izoba khona; 5

(b) siqukathe imininingwane enqunywe wumgomo; futhi

(c) sihambisane nanoma yimiphi imibhalo engahle inqunywe wumgomo;

(2) Ofake isicelo kufanele alethe eminye imininingwane efanele ehambisana nesicelo kuye nokuyonqunywa yinhloko yesifundazwe yentuthuko yezenhlalakahle. 10

(3) Isicelo sokuvuselela ukubhalisa kufanele senziwe kusasele okungenani izinsuku ezingu 90 ngaphambi kokuphela kwesikhathi sokubhalisa, kepha inhloko yesifundazwe yentuthuko yezenhlalakahle ingasivuma isicelo esilethwa emuva kwesikhathi uma kubekwa izizathu ezizwakalayo. 15

(4) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele ivuselele ukubhaliswa kwendawo yokuquba ngaphambi kokuphela kwesikhathi uma isicelo ekufanele sibhaliswe uma isicelo safakwa okungenani kusasele izinsuku ezingu-90 ngaphambi kokuthi ukubhaliswa kuphelelwe yisikhathi njengoba bekucatshangiwe esigatshaneni (3). 20

**Ukucutshungulwa kwesicelo**

**219.** (1) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele—

(a) icubungule isicelo sokubhalisa noma sokubhalisa okunemibandela noma sokuvuselela ukubhalisa bese iyasenqaba isicelo noma inikeze ukubhalisa noma ivuselele ukubhalisa kube noma kungabi nemibandela, emuva kokubhekela isigatshana (2); futhi 25

(b) inike ofake isicelo isitifiketi sokubhalisa, sokubhalisa okunemibandela noma sokuvuselela ukubhalisa ngendlela enqunywe ngumgomo uma isicelo sivunyiwe. 30

(2) Lapho icubungula isicelo inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele ikhumbule zonke izimo ezithintekayo, okufaka nokuthi—

(a) indawo yokuquba iyayithobela yini—

(i) imikhuba namazinga anqunyiwe ezindawo zokuquba obekucatshangwa esigabeni 216; kanye 35

(ii) nezidingo zesakhiwo, zokuphepha, zempilo nokunye okufunwa ngumasipala neminye imithetho efanele;

(b) umuntu ofake isicelo ungumuntu okwaziyo nofanele yini ukuqhuba indawo yokuquba; 40

(c) ofake isicelo unamakhono afunekayo, unemali nengcebo yokuqhuba indawo yokuquba;

(d) umuntu ngamunye oqashwe noma oxhumene nendawo yokuquba ngumuntu okwaziyo futhi ofanele ukusiza ekuqhutshweni kwendawo yokuquba; kanye nokuthi 45

(e) umuntu ngamunye oqashwe noma oxhumene nendawo yokuquba ngumuntu onamakhono anqunyiwe azokwenza akwazi ukusiza ekuqhutshweni kwendawo yokuquba. 50

(3) Umuntu ongafanelekile ukusebenza nezingane akakwazi futhi akafanele ukuqhuba noma ukusiza ekuqhutshweni kwendawo yokuquba.

(4) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele icubungule umbiko kachwepheshe wensizakalo yezenhlalakahle ngaphambi kokwenza isinqumo ngesicelo sokubhalisa, sokubhalisa okunemibandela noma sokuvuselela ukubhalisa. 55

(5) Kungakhathaleki ukuthi ithini imibandela yesigaba 215(3) inhloko yesifundazwe yentuthuko yezenhlalakahle ingasiza umuntu noma inhlangothi ekuqhuba indawo yokuquba ekutheni ithobele imikhuba namazinga kazwelonke anqunyiwe abecatshangwa esigabeni 216 kanye nezinye izidingo ezingahle zinqunywe.

**Conditional registration**

**220.** (1) The registration or renewal of the registration of drop-in centres may be granted on such conditions as the provincial head of social development may determine, including conditions—

- (a) specifying the type of services that may or must be provided in terms of the registration; 5
- (b) stating the period for which the conditional registration will remain valid; and
- (c) providing for any other matters that may be prescribed. 10

(2) A provincial head of social development may assist a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed. 10

**Cancellation of registration**

**221.** (1) A provincial head of social development may cancel the registration of a drop-in centre by written notice to the registration holder if— 15

- (a) the drop-in centre is not maintained in accordance with—
  - (i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; 20
  - and
  - (ii) any other requirements of this Act;
- (b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;
- (c) the registration holder or the management of the drop-in centre contravenes or fails to comply with any provision of this Act; 25
- (d) the registration holder becomes a person who is not a fit and proper person to operate a drop-in centre; or
- (e) a person who is not a fit and proper person to assist in operating a drop-in centre is employed at or engaged in operating the drop-in centre. 30

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

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

- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and 35
- (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) A provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed. 40

**Notice of enforcement**

**222.** (1) The provincial head of social development may by way of a written notice of enforcement instruct— 45

- (a) a person or organisation operating an unregistered drop-in centre—
  - (i) to stop operating that drop-in centre; or
  - (ii) to apply for registration in terms of section 217 within a period specified in the notice; or
- (b) a person or organisation operating a registered drop-in centre otherwise than in accordance with the conditions subject to which the registration was issued, to comply with those conditions. 50

**Ukubhalisa okunemibandela**

- 220.** (1) Ukubhalisa noma ukuvuselela ukubhalisa kwendawo yokuquba kungakhishwa ngaphansi kwemibandela enganqunywa yinhloko yesifundazwe yentuthuko yezehlalakahle, kufaka nemibandela—
- (a) ecacisa uhlobo lohlelo noma lwezinhlelo ezingahlinzekwa noma ekufanele zihlinzekwe maqondana nokubhaliswa; 5
  - (b) esho isikhathi ukubhalisa okunemibandela okuzosebenza ngaso; futhi
  - (c) ehlinzekela noma yiziphi ezinye izindaba ezingahle zinqunywe wumgomo.
- (2) Inhloko yesifundazwe yentuthuko yezehlalakahle ingasiza indawo yokuquba ngokuthobela imikhuba namazinga kazwelonke anqunyiwe ekukhulunywe ngawo esigabeni 216 kanye nezinye izidingo ezingahle zinqunywe. 10

**Ukwesula ukubhalisa**

- 221.** (1) Inhloko yesifundazwe yentuthuko yezehlalakahle ingesula ukubhalisa kwendawo yokuquba ngesaziso esilotshiwe asinike umnikazi wokubhalisa uma— 15
- (a) indawo yokuquba ingagciniwe ngokuhambisana—
    - (i) nemikhuba namazinga anqunyiwe ezindawo zokuquba ekukhulunywe ngawo esigabeni 216 kanye nezinye izidingo ezingahle zinqunywe; kanye 20
    - (ii) nanoma yisiphi esinye isidingo salo Mthetho;
  - (b) noma yimiphi imibandela ukubhalisa noma ukuvuselelwa kokubhalisa okukhishwe ngaphansi kwayo yephuliwe noma ingathotshelwa;
  - (c) umnikazi wokubhalisa noma abaphathi bendawo yokuquba bephula noma behluleka ukuthobela noma yimiphi imibandela yalo Mthetho; 25
  - (d) umnikazi wokubhalisa eba ngumuntu ongakwazi futhi ongafanele ukuqhuba indawo yokuquba; noma
  - (e) umuntu ongakwazi nongafanele ukusiza ekuqhutshweni kwendawo yokuquba eqashwe noma exhumene nokuqhutshwa kwendawo yokuquba. 30
- (2) Umuntu ongafanele ukusebenza nezingane akakwazi futhi akufanele aqhube noma asize ekuqhutshweni kwendawo yokuquba.
- (3) Inhloko yesifundazwe yentuthuko yezehlalakahle kungathi esimweni lapho kwesulwa ukubhalisa ngokwesigatshana (1)(a), (b), (c) noma (e)— 35
- (a) amise ukwesula ukubhalisa isikhashana esizonikeza umnikazi wokubhalisa ithuba lokulungisa isizathu esiholele ekucishweni kokubhalisa; futhi
  - (b) abuyisele ukubhalisa uma umnikazi wokubhalisa elungisa isizathu esiholele ekusulweni kokubhalisa ngaleso sikhathi asinikiwe. 40
- (4) Inhloko yesifundazwe yentuthuko yezehlalakahle ingasiza umnikazi wokubhalisa ekutheni athobe imikhuba namazinga kazwelonke anqunyiwe ezindawo zokuquba okukhulunywa ngawo esigabeni 216 kanye nezinye izidingo ezingahle zinqunywe. 45

**Isaziso sokusebenzisa umthetho**

- 222.** (1) Inhloko yesifundazwe yentuthuko yezehlalakahle kungathi ngesaziso esilotshiwe iyale—
- (a) umuntu noma inhlangothi eqhuba indawo yokuquba engabhalisiwe—
    - (i) ukuba bayeke ukuqhuba leyo ndawo yokuquba; noma 50
    - (ii) ukuba bafake isicelo sokubhaliswa ngokwesigaba 217 singakapheli isikhathi esibalulwe esazisweni; noma
  - (b) umuntu noma inhlangothi eqhuba indawo yokuquba ebhaliswe ngenye indlela kungekhona ngokwalo Mthetho noma ngokwanoma yimiphi imibandela ekukhishwe ukubhalisa ngaphansi kwayo ukuthi athobe leyo mibandela. 55
- (2) Umuntu noma inhlangothi eqhuba indawo yokuquba engabhalisiwe futhi oyalwe ngokwesigatshana (1)(a)(ii) ukuba afake isicelo sokubhaliswa

(2) A person or organisation operating an unregistered drop-in centre and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 217 regarding the establishment of drop-in centres, be given permission by the provincial head of social development to continue operating the drop-in centre during that period and, if that person or organisation applies for registration, until that application has been finalised.

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

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

### **Appeal against and review of certain decisions**

**223.** (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

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

### **Record and inspection of and provision for drop-in centres**

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

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

(2) The provincial strategy contemplated in section 214(2) must include a strategy for the provision of drop-in centres in the province, which must include measures—

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

### **Assignment of functions to municipality**

**225.** (1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 217, 218, 219, 220, 221, 222 and 224 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

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

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

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

- (a) is subject to any limitations, conditions and directions which the municipal manager may impose;
- (b) must be in writing; and

singakapheli isikhathi esibaluliwe, ngale kokubheka imibandela yesigaba 217, anganikwa imvume yinhloko yesifundazwe yentuthuko yezenhlahalakahle ukuba aqhubeke nokuqhuba indawo yokuquba ngaleso sikhathi futhi, uma lowo muntu efaka isicelo sokubhaliswa, kuze kube isicelo salowo muntu siyaphothulwa.

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(3) UMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezenhlahalakahle angafaka isicelo eNkantolo ePhakeme ukuba ikhiphe umyalo othi indawo yokuquba, noma ngabe ibhalisiwe noma cha, iyeke ukusebenza.

(4) INkantolo ePhakeme inganika umyalo othi izindleko zikhokhwe ngumnini noma imeneja yendawo yokuquba ekukhulunywe ngayo esigatshaneni (3) uma lokho kucelwe nguMqondisi-Jikelele noma inhloko yesifundazwe yentuthuko yezenhlahalakahle.

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#### Ukudlulisa isikhalo nokubukezwa kwezinqumo ezithile

**223.** (1) Ofake isicelo onesikhalo ngesinqumo esithathwe yinhloko yesifundazwe yentuthuko yezenhlahalakahle maqondana ngokwalesi sahluko angafaka isikhalo maqondana naleso sinqumo ngendlela enqunyiwe zingakapheli izinsuku ezingu 90 asiyise kuNgqongqoshe wesifundazwe yentuthuko yezenhlahalakahle, yena ekufanele athathe isinqumo ngalokho kwedluliswa kwesikhalo zingakapheli izinsuku ezingu 90 ethole isikhalo.

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(2) Ofake isicelo onganelisekile ngomphumela wokudlulisa isikhalo esifakwe ngokulandela okushiwo yisigatshana (1), angafaka isicelo esigabeni esinamandla afanele seNkantolo ePhakeme ukuba ibukeze leso sinqumo.

#### Ukuqopha nokuhlola izindawo zokuquba nokuhlinzekela

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**224.** (1) Inhloko yesifundazwe yentuthuko yezenhlahalakahle kufanele—  
(a) igcine irekhodi lazo zonke izindawo zokuquba ezitholalakayo endaweni yayo; futhi

(b) ihlale ihlola izindawo zokuquba esifundazweni ngokubambisana nomasipala lapho izindawo zokuquba zikhona ukuze kusetshenziswe lo Mthetho.

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(2) Isu lesifundazwe ekukhulunywe ngalo esigabeni 214(2) kufanele lifake isu lokuhlinzeka izindawo zokuquba esifundazweni, ekufanele lifake nezinyathelo—

(a) ezizosiza ekusunguleni izindawo zokuquba ezanele esifundazweni;

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(b) ezibeka phambili ngenxa yokubaluleka lezo zinhlobo zezindawo zokuquba ezidingeka ngokushesha; futhi

(c) ezizosiza ekukhombeni nasekuhlinzekeni izakhiwo ezifanele.

#### Ukunika umasipala imisebenzi

**225.** (1) Inhloko yesifundazwe yentuthuko yezenhlahalakahle, ngokuvumelana nomasipala ngokuloba phansi, inganika imeneja kamasipala yenze ingxenye noma yonke imisebenzi ebalulwe ezigabeni 217, 218, 219, 220, 221, 222 no 224 uma inhloko yesifundazwe yentuthuko yezenhlahalakahle yanelisekile ngokuthi umasipala uthobela izidingo ezinqunyiwe maqondana namandla alowo masipala okwenza imisebenzi ethintekayo.

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(2) Isivumelwano kufanele sibe ngendlela enqunyiwe futhi siqukathe imininingwane enqunyiwe.

(3) Imeneja kamasipala okukhulunywa ngayo esigatshaneni (1) ingadlulisa amandla noma umsebenzi onikwe yona ngokwalesi sigaba kuchwepheshe wezenhlalakahle oqokiwe oqashwe ngumasipala.

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(4) Ukudlulisa amandla noma umsebenzi ngokwesigatshana (3)—

(a) kuncike kunoma yimiphi imikhawulo, imibandela kanye nemiyalo engabekwa yimeneja kamasipala;

(b) kufanele kulotshwe phansi; futhi

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(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may—

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

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.

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

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

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

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

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

#### **Serious injury, abuse or death of child in drop-in centre**

**226.** (1) If a child is seriously injured or abused while in a drop-in centre or following an occurrence at a drop-in centre, the person operating the drop-in centre or a person employed at the drop-in centre must immediately report such injury or abuse to the provincial head of social development, who must cause an investigation into the circumstances of the serious injury or abuse to be conducted.

(2) If a child dies while in a drop-in centre or following an occurrence at a drop-in centre, the person operating the drop-in centre or a person employed at the drop-in centre must immediately after the child's death report such death to—

(a) the parent, guardian or care-giver of the child, if he or she can be traced;

(b) a police official; and

(c) the provincial head of social development.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.



(c) akususi umthwalo oqondene nokusetshenziswa kwalawo mandla noma ukwenziwa kwalowo msebenzi emahlombe emeneja kamasipala.

(5) Imeneja kamasipala—

(a) ingaqinisa, yenze umehluko noma ichithe noma yisiphi isinqumo esithathwe ngenxa yokudluliswa kwamandla noma komsebenzi ngokwalesi sigaba, kuncike kunoma yimaphi amalungelo angabe eseqongelelwe yilowo muntu ngenxa yaleso sinqumo; futhi

(b) ingahoxisa ukudluliswa kwamandla noma komsebenzi noma nini.

(6) Ofake isicelo noma umnini wokubhalisa onesikhalo ngesinqumo sesisebenzi esiqashwe ngumasipala maqondana nalesi sahluko angafaka isikhalo aphikise leso sinqumo ngendlela enqunyiwe zingakapheli izinsuku ezingu 90 asiye emkhandlwini kamasipala ekuyodingeka ukuthi uthathe isinqumo ngalokho kudluliswa kwesikhalo zingakapheli izinsuku ezingu 90 usitholile.

(7) Ofake isicelo noma umnini wokubhalisa onganiselike ngomphumela wokudluliswa isikhalo esifakwe ngokulandela okushiwo yisigatshana (6) angafaka isicelo esigabeni esinamandla afanele seNkantolo ePhakeme ukuba ibukeze leso sinqumo.

(8) (a) Inhloko yesifundazwe yentuthuko yezenhlalakahle kufanele iqaphe ukwenziwa kwemisebenzi ekuthiwe yenziwe ngokwalesi sigaba.

(b) Inhloko yesifundazwe yentuthuko yezenhlalakahle ingasebenzisa inothi elotshiwe ukucela imeneja kamasipala noma omunye umuntu ophethe ulwazi oludingwa yinhloko yesifundazwe yentuthuko yezenhlalakahle ukuze ikwazi ukuqapha ukusebenza kwemisebenzi enikezwe yilesi sigaba, ukuba ahlinzeke lolo lwazi kwinhloko yesifundazwe yentuthuko yezenhlalakahle singakapheli isikhathi esibalulwe kwinothi.

(c) Uma, emva kokuba imisebenzi ebekukhulunywe ngayo esigatshaneni (1) ibinikwe umasipala, kubonakala sengathi umasipala othize akasenawo amandla okwenza eminye noma yonke imisebenzi ayinikiwe, inhloko yesifundazwe yentuthuko yezenhlalakahle—

(i) ingachibiyela isivumelwano esilotshiwe ebekukhulunywe ngaso esigatshaneni (1); noma

(ii) ingahoxisa ukunikezwa kwemisebenzi kulowo masipala.

#### **Ukulimala kabi, ukuhlukunyezwa noma ukushona kwengane endaweni yokuquba**

226. (1) Uma ingane ilimala kabi noma ihlukunyezwa ngesikhathi inakekelwe esikhungweni sokunakekela isikhashana esinqunyiwe noma emuva kwesigameko esenzeke esikhungweni sokunakekela isikhashana esinqunyiwe, umuntu oqhuba isikhungo sokunakekela isikhashana esinqunyiwe noma umuntu oqashwe esikhungweni sokunakekela isikhashana esinqunyiwe kufanele abike lokho kulimala kwinhloko yesifundazwe yentuthuko yezenhlalakahle masinyane, yona ekufanele yenze ukuthi kuphenywe ngezimo eziphathelele nokulimala kabi noma ukuhlukunyezwa.

(2) Uma ingane ishona ngesikhathi inakekelwe esikhungweni sokunakekela isikhashana esinqunyiwe noma emuva kwesigameko esenzeke esikhungweni sokunakekela isikhashana esinqunyiwe, umuntu oqhuba isikhungo sokunakekela isikhashana esinqunyiwe noma umuntu oqashwe esikhungweni sokunakekela isikhashana esinqunyiwe kufanele emuva kokushona kwengane abike lokho kushona—

(a) kumzali, kumondli wengane noma kumuntu oyinakekelayo, uma engatholakala;

(b) ephoyiseni; kanye

(c) nakwinhloko yesifundazwe yentuthuko yezenhlalakahle.

(3) Iphoyisa kufanele lenze ukuthi kube nophenyo oluzothola ngezimo ezihambisana nokushona kwengane lwenziwe uMbutho wamaPhoyisa aseNingizimu Afrika ngaphandle uma iphoyisa lanelisekile ukuthi ingane ishone ngezimo zemvelo.

**Regulations**

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

- (a) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of registration; 5
- (b) the different programmes and services that may be provided in terms of such registration;
- (c) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter; 10
- (d) the management of drop-in centres; and
- (e) any other matter that may be necessary to facilitate the implementation of this Chapter.”.

**Amendment of section 250 of Act 38 of 2005**

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

“(3) A welfare organisation referred to in section 107 which was lawfully engaged in providing adoption services when this section took effect may, despite the provisions of subsection (1), continue with such services for a period of two years without being accredited in terms of section 251 to provide adoption services, but must within that period apply for such accreditation in terms of section 251.”. 20

**Amendment of section 304 of Act 38 of 2005**

**12.** Section 304 of the principal Act is hereby amended by the insertion before subparagraph (iii) of paragraph (a) of subsection (3) of the following subparagraphs: 25

- “(i) the prescribed national norms and standards referred to in section 79, 194 or 216 applicable to it;
- (ii) other national norms and standards as may be prescribed by regulation;”.

**Amendment of section 305 of Act 38 of 2005**

**13.** Section 305 of the principal Act is hereby amended— 30

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

“(c) fails to comply with section 12(5), 12(9), 57(2), 89(1), 89(2), 110(1), 124, 126(1), 134(1), 138(1), 141(1), 167(2), 178(1), 178(2), 226(1), 226(2) or 232(6);” 35

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

“(e) misappropriates money for which that person is accountable in terms of section 137(5)(b);

- (f) fails to comply with section 80(1), 95(1), 197(1) or 217(1) after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to comply with the relevant section; 40

- (g) fails to stop operating an unregistered child and youth care centre, partial care facility or drop-in centre after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to stop operating that child and youth care centre, partial care facility or drop-in centre; 45

- (h) fails to stop providing early childhood development programmes after that person has been instructed by way of a notice of enforcement in terms of section 100 to stop providing those programmes; 50

**Imigomo**

- 227.** UNgqongqoshe, emuva kokubonisana noNgqongqoshe Wezobulungiswa Nokuthuthukiswa koMthethosisekelo lapho kuhanjiswa ngomthetho ukubukezwa kwezinqumo zenkantolo, angenza imigomo ngokwesigaba 306 maqondana—
- (a) nenqubo ekufanele ilandelwe maqondana nokufaka nokucutshungulwa kwezicelo zokubhalisa ngokwalesi Sahluko nangokuvuselelwa kokubhalisa;
  - (b) nezinsizakalo ezihlukene ezingahlinzekwa ngokokubhalisa okunjalo;
  - (c) nenqubo ekufanele ilandelwe nezimali ekufanele zikhokhwe maqondana nokufaka nokucutshungulwa kwezikhalo ngokwalesi Sahluko;
  - (d) nokuphathwa kwezindawo zokuquba; kanye
  - (e) nanoma yiluphi olunye udaba olungadingeka ukwenza lula ukusebenza kwalesi Sahluko.”.

**Ukuchibiyela isahluko 250 soMthetho 38 ka 2005**

**11.** Isigaba 250 soMthetho omkhulu siyachitshiyelwa lapha ngokuthi kufakwe isigatshana esilandelayo emuva kwesigatshana (2):

- “(3) Inhlango yezenhlalakahle okukhulunywa ngayo esigabeni 107 ebisetshenziswa ngokusemthethweni ekuhlinzekeni insizakalo yokuthola izingane ngesikhathi lesi sigaba siqala ukusebenza, ngale kokubhekela imibandela yesigatshana (1), ingaqhubeka nezinsizakalo ezinjalo isikhathi esiyiminyaka emibili ngaphandle kokuphasiswa ngokwesigaba 251 ukuba ihlinzeke insizakalo yokuthola izingane kephe kufanele singakapheli leso sikhathi ifake isicelo sokuphasiswa okunjalo ngokwesigaba 251.”.

**Ukuchibiyela isigaba 304 soMthetho 38 ka 2005**

**12.** Isigaba 304 soMthetho omkhulu siyachitshiyelwa lapha ngokufaka izindinyana ezilandelayo ngaphambi kwendinyana (iii) yendima (a) yesigatshana (3):

- “(i) imikhuba namazinga kazwelonke anqunyiwe abalulwe esigabeni 83, 209 noma 220 asebenza kusona;
- (ii) eminye imikhuba namazinga kazwelonke kuye nokunganqunywa wumgomo.”.

**Ukuchibiyela isigaba 305 soMthetho 38 ka 2005**

**13.** Isigaba 305 soMthetho omkhulu siyachitshiyelwa lapha—

- (a) ngokufaka indima elandelayo esikhundleni sendima (c) yesigatshana (1):  
“(c) ehluleka ukuthobela isigaba 12(5), 12(9), 57(2), 89(1), 89(2), 110(1), 124, 126(1), 134(1), 138(1), 141(1), 167(2), 178(1), 178(2), 226(1), 226(2) noma 232(6);”
- (b) ngokufaka izindima ezilandelayo emuva kwendima (d) yesigatshana (1):  
“(e) ekhwabanisa imali lowo muntu ekufanele ayigade ngokwesigaba 137(5)(b);
- (f) ehluleka ukuthobela isigaba 80(1), 95(1), 197(1) noma 217(1) emuva kokuba lowo muntu eyalwe ngesaziso ngokwesigaba 85, 100, 204 noma 222 ukuba athobele isigaba esifanele;
- (g) ehluleka ukuyeka ukuqhuba isikhungo sokunakekela izingane nentsha, isikhungo sokunakekela ngesikhashana esinqunyiwe, indawo yokuquba okungabhalisiwe emuva kokuba lowo muntu eyalwe ngesaziso ngokwesigaba 85, 100, 204 noma 222 ukuba ayeke ukuqhuba leso sikhungo sokunakekela izingane nentsha, isikhungo sokunakekela ngesikhashana esinqunyiwe, indawo yokukhosela noma indawo yokuquba;
- (h) ehluleka ukuyeka ukuhlinzeka insizakalo yokukhulisa ingane isencane emuva kokuba lowo muntu eyalwe ngesaziso ngokwesigaba 100 ukuba ayeke ukuhlinzeka lezo zinsizakalo;
- (i) ngokuqondile noma ngokungaqondile eyala, eheha noma esiza ingane enikwe isikhathi sokuthatha ikhefu ngokwesigaba 168

**Act No. 41, 2007****CHILDREN'S AMENDMENT ACT, 2007**

- (i) directly or indirectly counsels, induces or aids any child to whom leave of absence has been granted in terms of section 168 not to return to the child and youth care centre or person in whose care or temporary safe care that child has been placed, or prevents the child from returning to that centre or person after the expiration of the period of leave or after the cancellation of such leave; 5
- (j) remove a child in alternative care from the Republic without the prior written approval for such removal first being obtained in terms of section 169;”.

**Amendment of section 306 of Act 38 of 2005**

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14. Section 306 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) any matter referred to in sections 90, 103, 142, 160, 179, 190, 212, 227, 253 and 280;”.

**Short title and commencement**

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15. This Act is called the Children's Amendment Act, 2007, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

## UMTHETHOSICHIBIYELO WEZINGANE, KA 2007

Act No. 41, 2007

- ukuba ingabuyeli esikhungweni sokunakekela izingane nentsha noma kumuntu leyo ngane ebithola ukunakekelwa noma ukunakekelwa okuphephile okwesikhashana kuyena, noma evimbela ingane ekubuyeleni kuleso sikhungo noma kulowo muntu emuva kokuphela kwesikhathi sokuthatha ikhefu noma emuva kokwesulwa kwesikhathi sekhefu esinjalo; 5
- (j) esusa ingane esekunakekelweni kwenye indawo kwiRiphabhuliki ngaphandle kokuthola imvume elotshwe ngokwesigaba 169 kuqala emvumela ukuba asuse ingane ngaleyo ndlela;".

**Ukuchibiyeka isigaba 306 soMthetho 38 ka 2005**

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**14.** Isigaba 306 soMthetho omkhulu siyachitshiyelwa lapha ngokufaka indima elandelayo esikhundleni sendima (a):

“(a) noma yiluphi udaba okukhulunywe ngalo ezigabeni 90, 103, 142, 160, 179, 190, 212, 227, 253 no 280;”.

**Isibloko esifushane nokuqala ukusebenza**

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**15.** Lo Mthetho ubizwa ngokuthi uMthethosichibiyelo Wezingane, ka 2007, futhi uyoqala ukusebenza ngosuku oluyonqunywa nguMongameli ngokumemezela kwiGazethi.