

REPUBLIC OF SOUTH AFRICA

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# CHILDREN'S AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette  
No. 48630 of 19 May 2023)  
(The English text is the official text of the Bill)*

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(Ms B MASANGO, MP)

[B 19—2023]

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**Amendment of heading of Chapter 5 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

4. The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:

“**PARTIAL CARE AND MICRO-PARTIAL CARE**”. 5

**Substitution of section 76 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

5. The following section is hereby substituted for section 76 of the principal Act:

**“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, guardians or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents, guardians or care-givers and the provider of the service, but excludes the care of a child— 10

- (a) by a school as part of tuition, training and other activities provided by the school; 15
- (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[.]; 20
- (d) by a domestic worker;
- (e) by a family member;
- (f) by an *au pair*;
- (g) by a friend or any other person known to the parents, guardians or care-givers, who would not ordinarily take care of a child but for the special request from the parents, guardians or care-givers; or 25
- (h) by any other person as the Minister may determine from time to time.”. 30

**Insertion of section 76A in Act 38 of 2005**

6. The following section is hereby inserted in the principal Act after section 76: 30

**“Micro-Partial Care**

76A. Micro-partial care is provided when a person, whether for or without reward, takes care of six or less children on behalf of their parents, guardians or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents, guardians or care-givers and the provider of the service, but excludes the care of a child— 35

- (a) by a school as part of tuition, training and other activities provided by the school; 40
- (b) as a boarder in a school hostel or other residential facility managed as part of a school;
- (c) by a hospital or other medical facility as part of medical treatment provided to the child;
- (d) by a domestic worker;
- (e) by a family member; 45
- (f) by an *au pair*;
- (g) by a friend or any other person known to the parents, guardians or care-givers who would not ordinarily take care of a child but for the special request from the parents, guardians or care-givers; or
- (h) by any other person as the Minister may determine from time to time.”. 50

**Amendment of section 77 in Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

7. Section 77 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 

**“Strategy concerning partial care and micro-partial care”**; and
  - (b) by the substitution for subsections (1) and (2) of the following subsections:
    - “(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 and micro-partial care facilities throughout the Republic, 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 registered partial care and registered micro-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 and micro-partial care facilities in the province.”.

**Amendment of section 78 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

8. Section 78 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 

**“Provision of partial care and micro-partial care”**;
  - (b) by the substitution for subsection (1) of the following subsection:
 

“(1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund partial care and micro-partial care facilities and services for the province, taking into consideration the national and provincial strategies contemplated in section 77.”;
  - (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 

“A partial care and a micro-partial care facility referred to in subsection (1)—”;
  - (d) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:
 

“(ii) the structural safety, health and other requirements of the municipality of the area where the partial care or micro-partial care facility is situated.”;
  - (e) by the substitution for subsection (3) of the following subsection:
 

“(3) The owner or manager of a partial care or micro-partial care facility or the provider of a partial care or micro-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.”; and
  - (f) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
 

“The funding of partial care and micro-partial care facilities must be prioritised—”.

**Amendment of section 79 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

9. Section 79 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 

**“National norms and standards for partial care and micro-partial care”**;
  - (b) by the substitution for subsection (1) of the following subsection:
 

“(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 and for micro-partial care by regulation.”;

- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
 “The national norms and standards for partial care contemplated in subsection (1) must relate to the following.”;
- (d) by the insertion after subsection (2) of the following subsection: 5  
 “(2A) The national norms and standards for micro-partial care 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; 10  
 (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; and  
 (h) a hygienic area for the preparation of food for children.”; 15
- (e) by the substitution for subsection (3) of the following subsection:  
 “(3) A partial care and a micro-partial care facility for children with disabilities or chronic illnesses must, in addition to the national norms and standards contemplated in subsection (1)— 20  
 (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, or ensure that the persons that take care of the children at the facility are trained on— 25  
 (i) the needs, health and safety of such children;  
 (ii) appropriate learning activities and communication strategies for such children; and  
 (iii) basic therapeutic interventions.”; and
- (f) by the substitution for subsection (4) of the following subsection: 30  
 “(4) A partial care or a micro-partial care facility may offer programmes appropriate to the developmental and functional needs of the children in that facility as may be prescribed.”.

**Amendment of section 80 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

10. Section 80 of the principal Act is hereby amended— 35  
 (a) by the substitution for the heading of the following heading:  
 “**Partial care and micro-partial care facility to be registered**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
 “Any person or organisation may establish or operate a partial care or a micro-partial care facility provided that the facility—”;
- (c) by the substitution for subsection (3) of the following subsection:  
 “(3) Partial care or micro-partial care facilities operated or managed by a national or provincial state department or by a municipality must comply with subsection (1).”; and 40  
 (d) by the addition after subsection (5) of the following subsection:  
 “(6) A registered micro-partial care facility is registered for a period of 10 years, unless its registration is cancelled in terms of section 84 before the expiry of that period.”. 45

**Amendment of section 81 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007** 50

11. Section 81 of the principal Act is hereby amended—  
 (a) by the substitution for the heading of the following heading:  
 “**Application for registration and renewal of registration for partial care or micro-partial care facility**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 55  
 “An application for registration or conditional registration of a partial care or a micro-partial care facility or for the reinstatement or renewal of registration must—”; and

(c) by the substitution for subsection (4) of the following subsection:

“(4) The provincial head of social development must renew the registration of a partial care or a micro-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).”.

**Amendment of section 82 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

12. Section 82 of the principal Act is hereby amended—

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

“(a) within six months of receiving the application consider an application for registration or conditional registration of a partial care or a micro-partial care facility or for the renewal of registration of such facility and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions;”;

(b) by the substitution in subsection (2) for paragraphs (a), (b), (c), (d) and (e) of the following paragraphs:

“(a) the facility complies with the prescribed national norms and standards for such facility as 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 or a micro-partial care facility;

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

(d) each person employed at or engaged in the partial care or micro-partial care facility is a fit and proper person to assist in operating [a partial care] such a facility; and

(e) each person employed at or engaged in the partial care or micro-partial care facility has the prescribed skills and training to assist in operating that [partial care] facility.”;

(c) by the substitution for subsection (3) of the following subsection:

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

(d) by the substitution for subsection (5) of the following subsection:

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

**Substitution of section 83 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

13. The following section is hereby substituted for section 83 of the principal Act:

**“Conditional registration and conditions relating to registration** 45

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

(a) conditions specifying the type of partial care or micro-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 the period for compliance with the conditions contemplated in paragraph (a); and

(c) [providing for] any other [matters] matter that may be prescribed.”. 55

**Amendment of section 84 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

14. Section 84 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
 “The provincial head of social development may cancel the registration or conditional registration of a partial care or a micro-partial care facility by written notice to the registration holder if—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  
 “(a) the facility is not maintained in accordance with the prescribed national norms and standards for such facility as contemplated in section 79 and such other requirements as may be prescribed;”;
- (c) by the substitution in subsection (1) for paragraphs (d) and (e) of the following paragraphs:  
 “(d) the registration holder becomes a person who is not a fit and proper person to operate a partial care or a micro-partial care facility; or  
 (e) a person who is not a fit and proper person to assist in operating a partial care or a micro-partial care facility is employed at or engaged in operating the facility.”.

**Substitution of section 85 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

15. The following section is hereby substituted for section 85 of the principal:

**“Notice of enforcement**

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

- (a) a person or organisation operating an unregistered partial care or an unregistered micro-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

(b) a person or organisation operating a registered partial care or a registered micro-partial care facility otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(2) A person or organisation operating an unregistered partial care or an unregistered micro-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.

(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 or a micro-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 or micro-partial care facility referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

(5) The owner, manager or organisation operating a partial care or a micro-partial care facility, which has been instructed or ordered to stop operating such facility, must immediately after receiving such instruction or order, notify the parents, guardians or care-givers of any affected child.”.

**Amendment of section 87 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

16. Section 87 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:  
**“Record and inspection of and provision for partial care and micro-partial care facility”;**

- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) monitor partial care facilities and conduct routine inspections at the prescribed intervals of partial care facilities in the province to enforce the provisions of this Act.”; and
- (c) by the addition after subsection (2) of the following subsections:
- “(3) A provincial head of social development must—
- (a) maintain a record of all micro-partial care facilities in the province; and
- (b) upon the initial registration of a micro-partial care facility, but subject to subsection (4), conduct a once off inspection of the micro-partial care facility.
- (4) A provincial head of social development may conduct further inspections of a micro-partial care facility following its initial registration in the event of any complaints that may arise in respect of the micro-partial care facility.
- (5) A provincial strategy contemplated in section 77(2) must include a strategy for the provision of micro-partial care facilities in the province, which must include measures facilitating the establishment and operation of sufficient micro-partial care facilities in that province.”.

**Amendment of section 89 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

17. Section 89 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
- “Serious injury, abuse or death of child in partial care or in micro-partial care facility”;**
- (b) by the substitution for subsection (1) of the following subsection:
- “(1) If a child is seriously injured or abused while in partial care or in micro-partial care or following an occurrence at a partial care or at a micro-partial care facility, the person operating the [partial care] facility in question or a person employed at [the partial care] that 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.”; and
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words—
- “If a child dies while in partial care or in micro-partial care or following an occurrence at a partial care or at a micro-partial care facility, the person operating the [partial care] facility in question or a person employed at [the partial care] that facility must immediately after the child’s death report such death to—”.

**Amendment of section 90 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

18. Section 90 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of the following paragraph:
- “(a) the national norms and standards that partial care and micro-partial care facilities must comply with;”;
- (b) by the substitution for paragraph (d) of the following paragraph:
- “(d) the period for which registration in respect of partial care facilities is valid;”;
- (c) by the substitution for paragraphs (f) and (g) of the following paragraphs:
- “(f) the management of partial care and micro-partial care facilities;
- (g) the procedure to be followed with regard to the children in a partial care or micro-partial care facility if the partial care or micro-partial care facility is closed down;”.

**Amendment of section 93 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

19. Section 93 of the principal Act is hereby amended—
- (a) by the deletion in subsection (5) of the word “and” at the end of paragraph (a); and

(b) by the insertion in subsection (5) after paragraph (a) of the following paragraph:

“(aA) a micro-partial care facility providing micro-partial care services for any children up to school-going age; and”.

**Amendment of section 99 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007** 5

20. Section 99 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(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 or a micro-partial care facility or a child and youth care centre.” 10

**Amendment of section 100 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007**

21. Section 100 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs: 15

“(a) a person operating or managing a partial care or a micro-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 or a micro-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; 20  
or” 25

**Amendment of section 110 of Act 38 of 2005, as inserted by section 5 of Act 41 of 2007**

22. Section 110 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30

“(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 or a micro-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.” 35  
40

**Amendment of section 114 of Act 38 of 2005**

23. Section 114 of the principal Act is hereby amended by the substitution in subsection (2)(a) for subparagraph (vii) of the following subparagraph:

“(vii) the name and physical address of the institution, child and youth care centre, partial care or a micro-partial care facility or shelter or drop-in centre, if the incident occurred at such a place;” 45

**Amendment of section 123 of Act 38 of 2005**

24. Section 123 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: 50

“(a) manage or operate, or participate or assist in managing or operating, an institution providing welfare services to children, including a child and youth care centre, a partial care or a micro-partial care

- facility, a shelter or drop-in centre, a cluster foster care scheme, a school, club or association providing services to children;
- (b) work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care or a micro-partial care facility, a shelter or drop-in centre, a school, club or association providing services to children, or in implementing a cluster foster care scheme, either as an employee, volunteer or in any other capacity;” and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) No person managing or operating or who participates or assists in managing or operating an institution providing welfare services to children, including a child and youth care centre, a partial care or a micro-partial care facility, a shelter or drop-in centre or a school may allow a person whose name appears in Part B of the Register to work with or have access to children at the centre, facility, shelter or school, either as an employee, volunteer or in any other capacity.”.

**Amendment of section 124 of Act 38 of 2005**

25. Section 124 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) works with or has access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care or a micro-partial care facility, a shelter or drop-in centre or a school either as an employee, volunteer or in any other capacity, that person must disclose that fact to the person who manages or operates the institution, centre, facility, shelter or school;”.

**Amendment of section 126 of Act 38 of 2005**

26. Section 126 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) to work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care or a micro-partial care facility, a shelter or drop-in centre or school, the person managing or operating the institution, centre, facility, shelter or school must establish whether or not that person’s name appears in Part B of the Register;”.

**Amendment of section 156 of Act 38 of 2005, as amended by section 9 of Act 41 of 2007 and section 8 of Act 17 of 2022**

27. Section 156 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:
- “(d) that the person in whose care the child was must make arrangements for the child to be taken care of in a partial care or in a micro-partial care facility at the expense of such person, if the court finds that the child became in need of care and protection because the person in whose care the child was, lacked the time to care for the child;”.

**Amendment of section 191 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007 and as amended by section 99 of Act 75 of 2008**

28. Section 191 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:
- “(aA) a micro-partial care facility;”.

**Amendment of section 304 of Act 38 of 2005, as amended by section 12 of Act 41 of 2007**

29. Section 304 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:

“**Inspection of child and youth care centre, partial care or micro-partial care facility, shelter and drop-in centre**”; and

- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5  
 “A person authorised by the Director-General, a provincial head of social development or a municipality may enter any child and youth care centre, partial care or micro-partial care facility, shelter or drop-in centre or any place which on reasonable suspicion is being used as an unregistered child and youth care centre, partial care or micro-partial care facility, shelter or drop-in centre, in order—”. 10

**Amendment of section 305 of Act 38 of 2005, as amended by section 13 of Act 41 of 2007 and section 48 of Act 7 of 2013**

**30.** Section 305 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (g) of the following paragraph: 15  
 “(g) fails to stop operating an unregistered child and youth care centre, partial care or micro-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 or micro-partial care facility or drop-in centre;”; and 20
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
 “(a) operates or assists in any way in operating a partial care or a micro-partial care facility, child and youth care centre, shelter or drop-in centre;”. 25

**Amendment of section 306 of Act 38 of 2005, as amended by section 14 of Act 41 of 2007**

**31.** Section 306 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs: 30  
 “(c) codes of ethical practice for persons operating and assisting in the operation of child and youth care centres, partial care or micro-partial care facilities, shelters and drop-in centres;  
 (d) procedures for the interview of persons to be employed or engaged in child and youth care centres, partial care or micro-partial care facilities, shelters and drop-in centres;”; 35
- (b) by the substitution in subsection (2)(a) for subparagraph (iii) of the following subparagraph:  
 “(iii) generally to all child and youth care centres, partial care or micro-partial care facilities, shelters or drop-in centres or to a category of such centres, facilities, shelters or drop-in centres; or”; and 40
- (c) by the substitution in subsection (2)(b) for subparagraph (iii) of the following subparagraph: 45  
 “(iii) child and youth care centres, partial care or micro-partial care facilities, shelters or drop-in centres or categories of such centres, facilities, shelters or drop-in centres.”.

**Short title and commencement**

**32.** This Act is called the Children’s Amendment Act, 2023, and comes into operation 50 on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE CHILDREN'S AMENDMENT BILL, 2023**

### **1. BACKGROUND**

- 1.1 Section 28(1)(d) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) affords all children the right to be protected from maltreatment, neglect, abuse or degradation. Furthermore, section 28(2) of the Constitution pronounces that a child’s best interests are of paramount importance in every matter concerning the child.
- 1.2 In a country where the protection of children is of utmost importance, the Children’s Act, 2005 (Act No. 38 of 2005) (“the Act”), has a glaring gap when it comes to the protection of children as far as partial care is concerned. In terms of section 76 of the Act, partial care is provided when a person 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 service provider. As per the Act, a partial care facility is required to be registered and comply with norms and standards as well as structural safety, health and other requirements if such facility caters for more than six children. However, there is no such regulation, registration or requirements for facilities that cater for and provide such care for six or less children.
- 1.3 Whilst it appears that the intention of the Act was not to overburden smaller facilities with red tape and over-regulation, this relaxation of regulations for such smaller facilities has become a double-edged sword. The effect, in reality, is that certain facilities that cater for, and care for, six or less children are not inspected, nor are they required to maintain their facilities in accordance with the norms and standards as per section 79(2) of the Act.
- 1.4 The result of this is that children are being catered for in facilities that are not regulated and which have deplorable conditions which would violate not only the norms and standards, if regulated, but also section 28(2) of the Constitution.

### **2. PURPOSE OF THE BILL**

- 2.1 The purpose of the Children’s Amendment Bill, 2023 (“the Bill”) is to address the consequences of the non-regulation of facilities that cater for, and care for, six or less children by amending the Act so as to, *inter alia*, introduce the concept of micro-partial care for such smaller facilities and to regulate micro-partial care facilities.

### **3. CONTENT OF THE BILL**

- 3.1 Clause 1 seeks to insert a new definition into the Act, namely “micro-partial care”.
- 3.2 Clause 2 amends section 45 of the Act by empowering the children’s court to adjudicate on any matter involving a micro-partial care facility.
- 3.3 Clause 3 amends section 46 of the Act by empowering the children’s court to make a micro-partial care order instructing the parent or caregiver of the child to make arrangements with a micro-partial care facility to take care of the child during specific hours of the day or night or a specific period.
- 3.4 Clause 4 amends the heading of Chapter 5 of the Act to include a reference to “micro-partial care”.
- 3.5 Clause 5 seeks to substitute section 76 of the Act so as to provide for further exclusions from what partial care entails. In this regard, the clause provides that partial care further excludes the care of a child by a domestic worker,

family member, *au pair*, by a friend or any person known to the parents, guardians or care-givers who would not ordinarily take care of a child but for the special request from the parents, guardians or care-givers; or by any person as the Minister may determine from time to time.

- 3.6 Clause 6 seeks to insert a new section 76A into the Act. The new section provides for micro-partial care. It explains that micro-partial care is provided when a person takes care of six or less children on behalf of their parents, guardians or care-givers during specific hours of the day or night or for a temporary period by agreement. It also lists certain exclusions to describe what micro-partial care does not entail.
- 3.7 Clause 7 seeks to amend section 77 of the Act so as to empower the Minister of Social Development to include, in the departmental strategy, a comprehensive national strategy aimed at ensuring an appropriate spread of micro-partial care facilities throughout the Republic, giving due consideration to children with disabilities or chronic illnesses. Furthermore, the clause places an obligation on the Member of the Executive Council to, amongst others, maintain a record of all registered micro-partial care facilities and also to provide for a provincial strategy to ensure an appropriate spread of micro-partial care facilities in the province.
- 3.8 Clause 8 seeks to amend section 78 so as to provide that the MEC for social development may provide and fund micro-partial care facilities and services for the province. The clause also amends section 78 to provide that a micro-partial care facility must be managed and maintained in accordance with the Act and must comply with the prescribed national norms and standards and the structural safety, health and other requirements of the municipality of the area where the facility is situated. The clause also stipulates the situations in which the funding for micro-partial care facilities must be prioritised.
- 3.9 Clause 9 seeks to amend section 79 of the Act so as to place an obligation on the Minister of Social Development to determine national norms and standards for micro-partial care.
- 3.10 Clause 10 seeks to amend section 80 of the Act so as to provide for the registration of micro partial care facilities with the provincial government. The clause also provides that micro-partial care facilities are registered for a period of 10 years.
- 3.11 Clause 11 seeks to amend section 81 of the Act so as to provide for the registration and renewal of registration for a micro-partial care facility.
- 3.12 Clause 12 seeks to amend section 82 of the Act so as to provide for the consideration of the application for the registration or renewal of registration of a micro-partial care facility.
- 3.13 Clause 13 seeks to substitute section 83 of the Act so as to provide that the registration or renewal of a micro-partial care facility may be granted on such conditions as the provincial head of social development may determine.
- 3.14 Clause 14 seeks to amend section 84 of the Act so as to provide for the cancellation of registration of a micro-partial care facility under certain circumstances.
- 3.15 Clause 15 seeks to substitute section 85 of the Act so as empower the provincial head of social development to issue a written notice of enforcement to instruct a person or organisation operating an unregistered micro-partial care facility, or operating a registered micro-partial care facility otherwise than in accordance with the Act, to stop operating that facility or to apply for registration.

- 3.16 Clause 16 seeks to amend section 87 of the Act so as to place an obligation on the provincial head of social development to maintain a record of all micro-partial care facilities in the province; compile a profile of all children in micro-partial care and conduct a once off inspection of the micro-partial care facility upon its initial registration. The clause also provides that a provincial head of social development may conduct further inspections of a micro-partial care facility where complaints arise in respect of the micro-partial care facility.
- 3.17 Clause 17 seeks to amend section 89 of the Act so as to provide for how serious injury, abuse or death of a child in a micro-partial care facility should be dealt with.
- 3.18 Clause 18 seeks to amend section 90 of the Act so as to empower the Minister to make regulations in respect of norms and standards and management of micro-partial care facilities.
- 3.19 Clause 19 seeks to amend section 93 of the Act so as to provide that an early childhood development programme must be provided by a micro-partial care facility providing micro-partial care services for any children up to school-going age.
- 3.20 Clause 20 seeks to amend section 99 of the Act so as to provide that the cancellation of the registration or conditional registration of an early childhood development programme does not affect the registration or conditional registration of a micro-partial care facility.
- 3.21 Clause 21 seeks to amend section 100 of the Act so as to provide that a provincial head of social development may issue written notices of enforcement on persons managing or operating a micro-partial care facility.
- 3.22 Clause 22 seeks to amend section 110 of the Act so as to place an obligation on a list of persons to report the abuse and neglect of any child at a micro-partial care facility to a designated child protection organisation, the provincial department of social development or a police official.
- 3.23 Clause 23 seeks to amend section 114 of the Act so as to provide that, in the case of reported incidents of abuse or neglect of a child, Part A of the register must reflect the name and physical address of the micro-partial care facility, if the incident occurred at such place.
- 3.24 Clause 24 seeks to amend section 123 of the Act so as to provide that no person whose name appears in Part B of the register may manage or operate or assist in managing or operating a micro-partial care facility; or work with or have access to children at a micro-partial care facility either as an employee, volunteer or in any other capacity.
- 3.25 Clause 25 seeks to amend section 124 of the Act so as to provide that a person whose name is entered in Part B of the register and such person works with or has access to children at a micro-partial care facility, that person must disclose that fact to the person who manages the facility.
- 3.26 Clause 26 seeks to amend section 126 of the Act so as to provide that, before a person is allowed to work with or have access to children at a micro-partial care facility, the person managing or operating the facility must establish whether or not that person's name appears in Part B of the register.
- 3.27 Clause 27 seeks to amend section 156 of the Act so as to empower a children's court to order that the person in whose care the child was, must make arrangements for the child to be taken care of in a micro-partial care facility.
- 3.28 Clause 28 seeks to amend section 191 of the Act so as to provide that a child and youth care centre excludes a micro-partial care facility.

- 3.29 Clause 29 seeks to amend section 304 of the Act so as to provide that a person authorised by the Director-General, a provincial head of social development or a municipality may enter a micro-partial care facility which on reasonable suspicion is being used as an unregistered micro-partial care facility to inspect that facility or observe an interview with any child or to cause a child to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist.
- 3.30 Clause 30 seeks to amend section 305 of the Act so as to provide that a person commits an offence if that person fails to stop operating an unregistered micro-partial care facility after that person has been instructed to do so.
- 3.31 Clause 31 seeks to amend section 306 of the Act so as to empower the Minister to make regulations regarding codes of ethical conduct for persons operating and assisting in the operation of micro-partial care facilities and the procedures for interview of persons to be employed at a micro-partial care facility.
- 3.32 Clause 32 provides for the short title and commencement of the Act.

#### **4. FINANCIAL IMPLICATIONS FOR THE STATE**

- 4.1 Financial implications are linked to line-function responsibilities of the Department of Social Development and would not include any new functions or actions other than now providing for the registration, regulation and inspections of micro-partial care facilities.

#### **5. PARLIAMENTARY PROCEDURE**

- 5.1 The member is of the opinion that the Bill should be classified as a section 76 Bill as the content of the Bill in a substantial manner falls within the functional area of “welfare services” and “child care facilities”, which are listed as areas of concurrent national and provincial legislative competence in Schedule 4 to the Constitution.
- 5.2 The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain any provisions pertaining to customary law or customs of traditional or Khoi-San communities, nor does the Bill deal with a matter referred to in section 154(2) of the Constitution.

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