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THE PRESIDENCY

No. 1543 **5 January 2023**

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

Act No. 17 of 2022: Children's Amendment Act, 2022

OFISI KAMONGAMELI

No. 1543 **5 January 2023**

Esi sisaziso sokuba uMongameli uwamkele lo mthetho ulandelayo nonikezelwa kuluntu jikelele kolu xwebhu:—

Ino 17 ka 2022: Ukuchitshiyelwa Komthetho Wezingane, 2022

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GENERAL EXPLANATORY NOTE:

- [] 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 22 December 2022)

ACT

To amend the Children's Act, 2005, so as to amend and insert certain definitions; to extend the children's court jurisdiction; to further provide for the care of abandoned or orphaned children and additional matters that may be regulated; to provide for additional matters relating to children in alternative care; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 38 of 2005, as amended by section 3 of Act 41 of 2007, section 48 of Act 7 of 2013, section 1 of Act 17 of 2016 and section 1 of Act 18 of 2016 5

1. Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of "abandoned" of the following definition:
- " **'abandoned child'**[, in relation to a child,] means a child who— 10
- (a) has [**obviously**] been deserted by [**the**] a parent, guardian or care-giver; [**or**]
- (b) [**has,**] for no apparent reason, had no contact with the parent, guardian or care-giver for a period of at least three months; or
- (c) has, if applicable, no knowledge as to the whereabouts of the parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities;" 15
- (b) by the substitution for the definition of "cluster foster care scheme" of the following definition:
- " **'cluster foster care scheme'** means a scheme providing for the 20 reception of children in foster care, managed [**by a non-profit organisation**] and operated by a designated child protection organisation or the provincial department of social development and registered by the provincial head of social development for this purpose;"
- (c) by the substitution for the definition of "orphan" of the following definition: 25
- " **'orphan'** means a child whose parent or both parents are deceased;"
- (d) by the deletion of the definition of "social service professional";

UMBHALO OCHAZA OKUJWAYELEKILE:

[] Amagama agqamile akubakaki abayisikwele amele okukhishiwe emthethweni osebenzayo.

Amagama adwetshelwe ngomugqa amele okufakiwe emthethweni osebenzayo.

(English text signed by the President)
(Assented to 22 December 2022)

UMTHETHO

Ukuchibiyela uMthetho Wezingane, wezi-2005, ukuze kuchitshiyelwe futhi kufakwe izincazelo ezithile; ukudlondlobalisa igunya lenkantolo equla amacala abantwana; ukuphinde uhlinzekela ngokunakekelwa kwabantwana abalahliwe noma abayizintandane kanye nezinye izindaba ezingalawulwa; ukuhlinzekela ngezinye izindaba ezihambisana nenye indlela yokunakekelwa kwabantwana; kanye nokuhlinzekela izindaba eziphathelene nalokho.

UZOMISWA yiPhalamende laseNingizimu Afrika, ngale ndlela elandelayo:—

Ukuchitshiyelwa kwesigaba 1 soMthetho 38 wezi-2005, njengoba uchitshiyelwe isigaba 3 soMthetho 41 wezi-2007, isigaba 48 soMthetho 7 wezi-2013, isigaba 1 soMthetho 17 wezi-2016 kanye nesigaba 1 soMthetho 18 wezi-2016 5

1. Isigaba 1 soMthetho Wezingane, wezi-2005 (ozobizwa ngoMthethongqangi), ngalokhu siyachitshiyelwa—

- (a) ngokufaka esikhundleni sencazelo “kolahliwe” le ncazelo elandelayo:
 “**‘ukulahla ingane’**[, **maqondana nengane,**] kusho lapho ingane—
 (a) ishiywe khona ngumzali, oyigadile noma yisihlobo sayo; 10
[noma]
 (b) ngasizathu simbe, ingakwazi ukuxhumana nomzali, oyigadile noma isihlobo kuze kuphele isikhathi esingaphezulu kwezi-nyanga ezintathu; **noma**
 (c) engenalo ulwazi ngokuthi ukuphi umzali, umqaphi noma umnakekeli futhi lolo lwazi lungakwazi ukutholwa yiziphathimandla ezifanele;” 15
- (b) ngokufaka esikhundleni sencazelo “uhlelo lomsebenzi wokuthola ingane” le ncazelo elandelayo:
 “**‘uhlelo lomsebenzi wokuthola ingane’** luchaza uhlelo 20
 lokwamukelwa kwezingane ezindaweni zokunakekelwa, olunganyelwe **[inhlango engakhokhelwa]** futhi oluphethwe inhlango eqokelwe ukuvikela abantwana noma umnyango wesifundazwe wezokuthuthukiswa komphakathi futhi olubhaliswe inhloko yomnyango wezokuthuthukiswa komphakathi olujutshelwe le njongo;” 25
- (c) ngokufaka esikhundleni sencazelo “intandane” le ncazelo elandelayo:
 “**‘intandane’** ichaza ingane eshonelwe umzali noma abazali bobabili abazali;”
- (d) ngokususa incazelo “uchwepheshe womsebenzi wenhlalakahle”;

- (e) by the insertion after the definition of “sexual offence“ of the following definition:

“**social service practitioner**” means any person registered in a social service profession or occupation with the South African Council of Social Service Professions as contemplated in the Social Service Professions Act, 1978 (Act No. 110 of 1978), to practise and render a service within the social service sector;”.

Amendment of section 24 of Act 38 of 2005

2. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person having an interest in the care, well being and development of a child may apply to the High Court or children’s court for an order granting guardianship of the child”.

Amendment of section 45 of Act 38 of 2005

3. Section 45 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) guardianship of a child as contemplated in section 24;”;

- (b) by the substitution in subsection (1) for paragraph (j) of the following paragraph:

“(j) a child and youth care centre, a partial care facility or a [**shelter or**] drop-in centre, or any other facility purporting to be a care facility for children; [**or**]”;

- (c) by the insertion in subsection (1) after paragraph (j) of the following paragraph:

“(jA) an unaccompanied or separated migrant child or a child who is an asylum seeker or refugee as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998); or”;

- (d) by the substitution for subsection (2) of the following subsection:

“(2) A children’s court must refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in section 305 to a criminal court having jurisdiction.”;

- (e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“Pending the establishment of family courts by an Act of Parliament, the High Courts [**and Divorce Courts**] have exclusive jurisdiction over the following matters contemplated in this Act:”;

- (f) by the deletion in subsection (3) of paragraphs (a) and (b);

- (g) by the substitution in subsection (3) for paragraph (h) of the following paragraph:

“(h) surrogate motherhood agreement; and

- (h) by the insertion after subsection (3) of the following subsections:

“(3A) The High Court and children’s court have concurrent jurisdiction over the guardianship of a child as contemplated in section 24 of this Act.

(3B) The High Court, children’s court and regional court have concurrent jurisdiction over the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.”.

- (e) ngokushutheka ngemuva kwencazelo “icala lokuxhaphaza ngocansi” le ncazelo elandelayo:

“**‘umsebenzi wezokuthuthukiswa komphakathi’** uchaza noma ubani obhalise njengomsebenzi wezokuthuthukiswa komphakathi okufundele noma obhalisiwe kuMkhandlu waseNingizimu Afrika Wabasebenzi bezokuThuthukiswa koMphakathi Abakufundele njengoba kuveziwe ku-*Social Service Professions Act, 1978* (uMthetho 110 wezi-1978), ukuba asebenze futhi aphakele ngosizo emkhakheni wezokuthuthukiswa komphakathi;”.

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Ukuchibiyela isigaba 24 soMthetho 38 wezi-2005

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2. Isigaba 24 soMthethongqangi siyachitshiyelwa ngalesi sigatshana esilandelayo:

“(1) Noma ubani onentshisekelo ngokunakekela, inhlalakahle noma ukuthuthukiswa komtwana angafaka isicelo eNkantolo ePhakeme noma enkantolo equla amacala abantwana ukuthola umyalelo ogunyaza ukuqapha umntwana”.

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Ukuchibiyela isigaba 45 soMthetho 38 wezi-2005

3. Isigaba 45 soMthethongqangi siyachitshiyelwa—

- (a) ngokushutheka esigatshaneni (1) ngemuva kwendima (b) le ndima elandelayo:

“(bA) oqaphe umntwana njengoba kuveziwe esigatsheni 24;”;

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- (b) ngokufaka endaweni yesigatshana (1) sendima (j) le ndima elandelayo:

“(j) isikhungo sabantwana kanye nentsha, indawo yokunakekela ngokungagcwele noma **[umpheme noma]** isikhungo sokubeka, noma enye indawo okuhloswe ngayo ukunakekela abantwana; **[noma]**”;

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- (c) ngokushutheka esigatshaneni (1) ngemuva kwendima (j) le ndima elandelayo:

“(jA) umntwana ongakhashiwe noma wokufika ohlukaniswe nabazali noma umntwana ofisa ukukhoseliswa kwelinye izwe noma ofihliwe njengoba kuveziwe i-Refugees Act, 1998 (uMthetho 130 ka-1998); noma”;

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- (d) ngokufaka endaweni yesigatshana (2) lesi sigatshana esilandelayo:

“(2) Inkantolo equla amacala abantwana kufanele idlulise udaba lobulelesi olubangelwe ukungawulandeli umyalelo waleyo nkantolo noma icala elihambisana necala elivezwe esigabeni 305 enkantolo yezobulelesi enegunya.”;

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- (e) ngokufaka endaweni yesigatshana (3) amagama andulela indima (a) lawa magama alandelayo:

“Kusalindeleke ukusungulwa kwezinkantolo eziqula amacala emindeni ngoMthetho wePhalamende, iziNkantolo eziPhakeme **[kanye Nezinkantolo zokwehlukana Umshado]** zinegunya elikhethekile kulezi zindaba ezilandelayo ezivezwe kulo Mthetho;”;

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- (f) ngokususa isigatshana (3) ezindimeni (a) kanye (b);

- (g) ngokufaka endaweni yesigatshana (3) sendima (h) le ndima elandelayo:

“(h) isivumelwano sokuthwalela omunye umuntu ingane.”; futhi

- (h) ngokushutheka ngemuva kwesigatshana (3) izigatshana ezilandelayo:

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“(3A) INkantolo ePhakeme nezinkantolo eziqula amacala abantwana zinegunya ngokulingana ngokuqashwa kwabantwana njengoba kuveziwe esigabeni 24 salo Mthetho.

(3B) INkantolo ePhakeme, inkantolo equla amacala abantwana kanye nenkantolo yesifunda iznamagunya ngokulingana mayelana nokunikezelwa, ukwenziwa, ukunwetshwa, ukubekwa kwemikhawulo, ukumiswa noma ukunqunywa ngokuqapha umntwana.”.

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Amendment of section 105 of Act 38 of 2005, as inserted by section 5 of Act 41 of 2007

4. Section 105 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

- “(6) The Department must, as prescribed, develop and conduct a quality assurance process for the evaluation of— 5
(a) child protection services; and
(b) child protection organisations as contemplated in section 107.”.

Amendment of section 142 of Act 38 of 2005, as amended by section 6 of Act 41 of 2007 10

5. Section 142 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (f) of the following paragraph:
 “(f) prescribing the conditions for the examination or assessment of children who have been abused, abandoned or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child;” and 15
 (b) by the deletion of the word “and” at the end of paragraph (j) and the insertion after paragraph (j) of the following paragraphs:
 “(jA) prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register; 20
 (jB) prescribing the criteria for the establishment and resourcing of designated child care and protection units; and”.

Amendment of section 150 of Act 38 of 2005, as amended by section 5 of Act 17 of 2016

6. Section 150 of the principal Act is hereby amended— 25

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) has been abandoned or orphaned and **[does not have the ability to support himself or herself and such inability is readily apparent]** has no family member who is able and suitable to care for that child;” 30
 (b) by the deletion of the word “or” at the end of subsection (1)(h);
 (c) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
 “(i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person **[under]** in whose **[control]** care the child is;” and 35
 (d) by the insertion after paragraph (i) of the following paragraphs:
 “(j) is an unaccompanied migrant child from another country; 40
 (k) is a victim of trafficking; or
 (l) has been sold by a parent, care-giver or guardian.”.

Amendment of section 155 of Act 38 of 2005, as amended by section 7 of Act 17 of 2016

7. Section 155 of the principal Act is hereby amended— 45

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) **[Before the child is brought before the children’s court, a] A** designated social worker must investigate the matter and within 90 days compile a report in the prescribed manner on whether the child is in need of care and protection.”; 50
 (b) by the substitution for subsection (5) of the following subsection:
 “(5) If, after an investigation contemplated in subsection (2), the designated social worker finds the child to be in need of care and protection, that child must be brought before the children’s court for a hearing upon which such court must make a determination.” 55

Ukuchibiyela isigaba 105 soMthetho 38 wezi-2005, njengoba kushuthekwe isigaba 5 soMthetho 41 wezi-2007

4. Isigaba 105 soMthethongqangi siyachitshiyelwa ngokushutheka ngemuva kwesigatshana (5) lesi sigatshana esilandelayo:

- “(6) UMnyango kufanele, njengoba kunqunywe, uthuthukise futhi wenze uhlelo lokuhlola izinga ukuze kuhlolwe— 5
 (a) ukuvikeleka komntwana; futhi
 (b) inhlangotho evikela umntwana njengoba kuveziwe esigabeni 107.”.

Ukuchibiyela isigaba 142 soMthetho 38 wezi-2005, njengoba sichitshiyelwe ngesigaba 6 soMthetho 41 wezi-2007 10

5. Isigaba 142 soMthethongqangi siyachitshiyelwa—

- (a) ngokufaka endaweni yendima (f) le ndima elandelayo:
 “(f) ukunquma imibandela yokuhlola noma ukuhlaziya abantwana abahlukumezekile, abalahlwe noma abadengwane, kubandakanya imvume yomntwana ukuba ahlolwe noma ahlaziye ngokweminyaka nangokukhula komntwana;” futhi 15
 (b) ngokususa igama “kanye” lapho kuphela khona indima (j) kanye nokushutheka ngemuva kwendima (j) lezi zindima ezilandelayo:
 “(jA) ukunquma amandla, imisebenzi kanye negunya likaNobhala woMqulu kaZwelonke wokuVikelwa kwabaNtwana; 20
 (jB) ukunquma inqubo yokusungula nokuthola ukuvikelwa komntwana okufanele kanye nezizinda zokuvikela; kanye.”.

Ukuchibiyela isigaba 150 soMthetho 38 wezi-2005, njengoba sichitshiyelwe ngesigaba 5 soMthetho 17 wezi-2016

6. Isigaba 150 soMthethongqangi siyachitshiyelwa— 25

- (a) ngokufaka endaweni yesigatshana (1) sendima (a) le ndima elandelayo:
 “(a) elahlwe noma eyintandane futhi **[engenawo amandla okuzondla futhi ukungabi khona kwalawo mandla kuvele kubonakala] ongenalo ilungu lomndeni elikwazi nelifanele ukunakekela lowo mntwana;**” 30
 (b) ngokususa igama “noma” lapho kuphela khona isigatshana (1)(h);
 (c) ngokufaka endaweni yesigatshana (1) sendima (i) le ndima elandelayo:
 “(i) ongaphethwe kahle, ohlukunyeziwe, olahliwe ngamabomu noma walaxazwa ngumzali, omunakekelayo, umuntu okufanele abe njengomzali nonamalungelo noma ilungu lomndeni womntwana noma umuntu lowo mntwana **[olawulwa] onakekelwa uyena;**” 35
 (d) ngokushutheka ngemuva kwendima (i) lezi zindima ezilandelayo:
 “(j) kuyingane yokufuduka engakhashwe muntu ebuya kwelinye ilizwe;
 (k) kuyisisulu sokushushumbiwa kwabantu; noma
 (l) idayiswe umzali, oyinakekelayo noma oyiqaphile.” 40

Ukuchitshiyelwa kwesigaba 155 soMthetho 38 wezi-2005, njengoba sichitshiyelwe ngesigaba 7 soMthetho 17 wezi-2016

7. Isigaba 155 soMthethongqangi siyachitshiyelwa—

- (a) ngokufaka endaweni yesigatshana (2) lesi sigatshana esilandelayo: 45
 “(2) **[Ngaphambi kokuba umntwana afike enkantolo equla amacala abantwana,]** Usonhlalakahle kufanele aphenye udaba futhi zingakapheli izinsuku ezingama-90 ahlanganise umbiko ngendlela enqunywe ukuthi ngabe lowo mntwana uyakudinga ukunakekelwa nokuvikelwa.”; 50
 (b) ngokufaka endaweni yesigatshana (5) lesi sigatshana esilandelayo:
 “(5) Uma, ngemuva kophenyo oluvezwe esigatshaneni (2), usonhlalakahle oqokiwe ethola ukuthi umntwana uyakudinga ukunakekelwa nokuvikelwa, lowo mntwana kufanele avele enkantolo equla amacala abantwana ukuzomulalela ngemuva kwalokho leyo nkantolo kufanele yenze isinqumo.” 55

- (c) by the substitution for subsection (6) of the following subsection:
- “(6) The children’s court hearing the matter may—
- (a) adjourn the matter for a period not exceeding **[14] 30** days at a time; and
- (b) order that, pending decision of the matter, the child must— 5
- (i) remain in temporary safe care at the place where the child is kept;
- (ii) be transferred to another place in temporary safe care;
- (iii) remain with the person **[under] in** whose **[control] care** the child is;
- (iv) be **[put under] placed in** the **[control] care** of a family member 10 or other relative of the child; or
- (v) be placed in temporary safe care.”; and
- (d) by the substitution in subsection (8) for paragraph (a) of the following paragraph:
- “(a) must make an order that the child, if the child is in temporary safe 15 care, be returned to the person in whose **[control] care** the child was before the child was **[put] placed** in temporary safe care;”.

Amendment of section 156 of Act 38 of 2005, as amended by section 9 of Act 41 of 2007

8. Section 156 of the principal Act is hereby amended— 20
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) confirming that the person **[under] in** whose **[control] care** the child is, may retain **[control] care** of the child, if the court finds that that person is a suitable person to provide for the safety and 25 well-being of the child;”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) that the child be returned to the person **[under] in** whose care the child was before the child was placed in temporary safe care, if the 30 court finds that that person is a suitable person to provide for the safety and well-being of the child;”;
- (c) by the insertion in subsection (1) after paragraph (c) of the following paragraph:
- “(cA) that the child be placed in the care of a parent or family member, if the court finds that such person is a suitable person to provide 35 for the safety and well-being of the child;”;
- (d) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
- “(d) that the person **[under] in** whose care the child was must make 40 arrangements for the child to be taken care of in a 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 **[under] in** whose care the child was lacked the time to care for the child;”;
- and 45
- (e) by the substitution in subsection (1)(e) for subparagraph (ii) of the following subparagraph:
- “(ii) foster care with **[a group of persons or an organisation operating] an identified foster parent who is part of** a cluster foster 50 care scheme;”.

Amendment of section 157 of Act 38 of 2005

9. Section 157 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “Before a children’s court makes an order in terms of section 156 for 55 the removal of the child from the care of the child’s parent, guardian or care-giver, the court must—”;

- (c) ngokufaka endaweni yesigatshana (6) lesi sigatshana esilandelayo:
 “(6) Inkantolo equla amacala ezingane ethamele lolu daba inga—
 (a) misa lolu daba isikhathi esingadlulile ezinsukwini [eziyi-14] ezingama-30 ngesikhathi; futhi
 (b) kipha umyalelo othi, ngesikhathi kusalindwe isinqumo mayelana nodaba, umntwana kufanele—
 (i) agcinwe endaweni ephephile yesikhashana lapho umntwana esagcinwe khona;
 (ii) adluliselwe kwenye indawo azonakekelwa khona ephephile;
 (iii) aqhubeka ahlale nomuntu [olawula] onakekela leyo ngane;
 (iv) [abekwe] ahlaliswe lapho [ezolawulwa] ezonakekelwa khona ilungu lomndeni noma esinye isihlobo somntwana; noma
 (v) Abekwe endaweni yesikhashana ezomunakekela.”; futhi
 (d) ngokufaka endaweni yesigatshana (8) sendima (a) le ndima elandelayo:
 “(a) kufanele ikhiphe umyalelo wokuthi lowo mntwana, uma lowo mntwana esendaweni yesikhashana lapho anakekelwa khona, abuyiselwe kumuntu [owayelawula] owayenakekela lowo mntwana ngaphambi kokuba lowo mntwana [afakwa] wabekwa endaweni yesikhashana emnakekelayo;”.

Ukuchitshiyelwa kwesigaba 156 soMthetho 38 wezi-2005, njengoba sichitshiyelwe ngesigaba 9 soMthetho 41 wezi-2007

8. Isigaba 156 soMthethongqangi siyachitshiyelwa—
 (a) ngokufaka endaweni yesigatshana (1) sendima (b) le ndima elandelayo:
 “(b) qinisekisa ukuthi umuntu [olawula] onakekela umntwana, angaqhubeka [nokulawula] nokunakekela umntwana, uma inkantolo ithola ukuthi lowo mntu ungumuntu ofanele ukunakekela inhlalakahle yomntwana;”;
 (b) ngokufaka endaweni yesigatshana (1) sendima (c) le ndima elandelayo:
 “(c) ukuthi umntwana abuyiselwe kumuntu [angaphansi kwakhe] omnakekelayo ngaphambi kokuba umntwana abekwe endaweni yesikhashana yokunakekela, uma inkantolo ithola ukuthi lowo mntu ungumuntu ofanele ukuhlinzekela ngokuphepha nenhlalakahle yomntwana;”;
 (c) ngokushutheka esigatshaneni (1) ngemuva kwendima (c) le ndima elandelayo:
 “(cA) ukuthi umntwana anakekelwe umzali noma ilungu lomndeni, uma inkantolo ithola ukuthi lowo mntu ungumuntu ofanele ukuhlinzekela ngokuphepha nenhlalakahle yomntwana;”;
 (d) ngokufaka endaweni yesigatshana (1) sendima (d) le ndima elandelayo:
 “(d) ukuthi umuntu owayenakekela umntwana kufanele enze amalungiselelo okuba umntwana ahanjiswe endaweni enakekela ngokungagcwele ahanjiswe ilowo mntu, uma inkantolo ithola ukuthi lowo mntwana udinga ukunakekelwa nokuvikelwa ngoba lo mntu [angaphansi kwakhe] omunakekelayo akabanga nesikhathi sokunakekela umntwana;”; futhi
 (e) ngokufaka endaweni yesigatshana (1)(e) sendimana (ii) le ndimana elandelayo:
 “(ii) indawo yokunakekela [eneqembu labantu noma inhlango ebezayo] enomzali oqokwe ozonakekela oyingxeny yohlelo lwezokunakekela;”.

Ukuchitshiyelwa kwesigaba 157 soMthetho 38 wezi-2005

9. Isigaba 157 soMthethongqangi siyachitshiyelwa—
 (a) ngokufaka endaweni yesigatshana (1) amagama andulela indima (a) lawa magama alandelayo:
 “Ngaphambi kokuba inkantolo equla amacala abantwana yenze umyalelo ngokwemigomo yesigaba 156 wokuba kukhishwe umntwana lapho anakekelwa khona umzali, umqaphi noma onakekela umntwana, inkantolo kufanele—”;

- (b) by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph: 5
 “(i) leaving the child in the care of the parent, guardian or care-giver under the supervision of a designated social worker, provided that the child’s safety and well-being must receive first priority;”;
- (c) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: 10
 “(ii) placing the child in alternative care for a limited period to allow for the reunification of the child and the parent, guardian or care-giver with the assistance of a designated social worker;”;
- (d) by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph: 15
 “(iii) placing the child in alternative care with or without terminating parental responsibilities and rights of the parent, guardian or care-giver;”;
- (e) by the substitution for subsection (3) of the following subsection: 20
 “(3) A [**very young**] child who is three years of age or less who has been orphaned or abandoned [**by its parents**] must be made available for adoption in the prescribed manner and within the prescribed period except when this is not in the best interests of the child.”;
- (f) by the substitution for subsection (4) of the following subsection: 25
 “(4) When issuing an order involving the removal of the child from the care of the child’s parent, guardian or care-giver, the court may include in the court order instructions as to the implementation of the permanency plan for the child.”.

Amendment of section 159 of Act 38 of 2005, as amended by section 8 of Act 17 of 2016

10. Section 159 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

- “**2A.** A court may extend an alternative care order that has lapsed or make an interim order for a period not exceeding six months on good cause shown. 30
- 2B.** Notwithstanding the amendment to section 150(1)(a), an order placing an orphaned or abandoned child in foster care with a family member in terms of section 156 before or on the date of this Amendment Act, may be extended by the court in terms of section 159(2) or section 186(2).” 35

Amendment of section 160 of Act 38 of 2005

11. Section 160 of the principal Act is hereby amended—

- “(cA) the procedure, form and manner that a social service practitioner must follow when assessing, screening, investigating, referring to the relevant authority and placing a child who is in need of care and protection.” 40

Amendment of section 183 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

12. Section 183 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 45
 “(a) The organisation operating or managing the cluster foster care scheme must [**be a non-profit organisation registered in terms of the Non-profit Organisations Act, 1997 (Act 71 of 1997)**] register as a designated child protection organisation within two years of this provision coming into operation;” and 50

- (b) ngokufaka endaweni yesigatshana (1)(b) sendimana (i) le ndimana elandelayo:
 “(i) ukuyeka umntwana anakekelwe umzali, umqaphi noma onakekela umntwana eqashwe usonhlalakahle oqokiwe, inqobo nje uma umntwana ephephile nenhlalakahle yakhe kufanele kube ikhona okubhekwa kuqala;”;
- (c) ngokufaka endaweni yesigatshana (1)(b) sendimana (ii) le ndimana elandelayo:
 “(ii) ukubeka umntwana kwenye indawo ezomvikela isikhashana esingumkhawulo ukuze umntwana ahlangani nomzali, umqaphi noma onakekela umntwana ngokusizana nosonhlalakahle oqokiwe;”;
- (d) ngokufaka endaweni yesigatshana (1)(b) sendimana (iii) le ndimana elandelayo:
 “(iii) ukubeka umntwana kwenye indawo ezomunakekela etheniwe noma engatheniwe amandla kanye namalungelo omzali, umqaphi noma onakekela umntwana;”;
- (e) ngokufaka endaweni yesigatshana (3) lesi sigatshana esilandelayo:
 “(3) Umntwana [**omncane kakhulu**] oneminyaka emithathu noma engaphansi oyintandane noma owahlwa [**abazali bakhe**] kufanele kunikelwe ngaye kwabanye abafisa ukumkhulisa ngendlela enqunyiwe futhi esikhathini esinqunyiwe ngaphandle uma lokhu kungeke kumsiza umntwana.”; futhi
- (f) ngokufaka endaweni yesigatshana (4) lesi sigatshana esilandelayo:
 “(4) Uma kukhishwa umyalelo ophathelene nokususwa komntwana kumzali, umqaphi noma konakekela umntwana, inkantolo ingabandakanya emyalelweni wenkantolo imiyalelo yokwenziwa kohlelo lokubekwa ngokuphelele umntwana.”.

Ukuchitshiyelwa kwesigaba 159 soMthetho 38 wezi-2005, njengoba sichitshiyelwe ngesigaba 8 soMthetho 17 wezi-2016

10. Isigaba 159 soMthethongqangi siyachitshiyelwa ngokushutheka ngemuva kwesigatshana (2) lezi sigatshana ezilandelayo:

“**2A.** Inkantolo inganweba umyalelo wokunakekelwa komntwana kwenye indawo osuphelelwe isikhathi noma yenze umyalelo wesikhashana isikhathi esingadlulile izinyanga eziyisithupha uma kunezizathu ezizwakalayo.

2B. Nakuba kuchitshiyelwe isigaba 150(1)(a), umyalelo wokubeka umntwana oyintandane noma olahliwe endaweni yokunakekelwa nelungu lomndeni ngokwemigomo yesigaba 156 ngaphambi noma ngosuku lokuChitshiyelwa koMthetho, unganwetshwa inkantolo ngokwemigomo yesigaba 159(2) noma yesigaba 186(2).”.

Ukuchitshiyelwa kwesigaba 160 soMthetho 38 wezi-2005

11. Isigaba 160 soMthethongqangi siyachitshiyelwa—

“(cA) inqubo, indlela nohlelo umsebenzi wezenhlalakahle okufanele ayilandele uma ehlola, ebheka, ephenya, ebuka igatsha eliqondene uma kubekwa umntwana odinga ukuvikelwa nokunakekelwa.”.

Ukuchitshiyelwa kwesigaba 183 soMthetho 38 wezi-2005, njengoba kushuthekwe isigaba 10 soMthetho 41 wezi-2007

12. Isigaba 183 soMthethongqangi siyachitshiyelwa—

(a) ngokufaka endaweni yesigatshana (1) sendima (a) le ndima elandelayo:
 “(a) Inhlango esebenzayo noma engamele uhlelo lokunakekelwa kwabantwana kufanele [**kube inhlango engatholi nzuzo ebhaliswe ngokwemigomo ye-Non-profit Organisations Act, 1997 (uMthetho 71 wezi-1997)**] ibhaliswe njengenhlango eqokelwe ukunakekela umntwana ingakapheli iminyaka emibili lo mbandela usuqalile ukusebenza;”;

- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) the provincial department of social development or a designated child protection organisation must manage and operate a cluster foster care scheme in the prescribed manner;”.

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Amendment of section 185 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

13. Section 185 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[More]** Not more than six children may be placed in foster care with a single person or two persons sharing a common household in terms of a registered cluster foster care scheme.”.

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Amendment of section 186 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

14. Section 186 of the principal Act is hereby amended—

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- (a) by the insertion after subsection (1) of the following section:

“(1A) Despite the provisions of subsection (1), a children’s court may deem it necessary to order further supervision services as contemplated in section 65(2)(a)(ii).”;

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

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“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]** and order that the foster care placement subsists until the child turns 18 years, if—”;

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

“(3) Despite the provisions of subsections (1) and (2), a social service **[professional] practitioner** must visit a child in foster care at least **[once every two years]** annually to monitor and evaluate the placement.”; and

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- (d) by the insertion after subsection (3) of the following subsection:

“(4) This section does not apply to a cluster foster care scheme contemplated in section 183.”.

Short title and commencement

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15. This Act is called the Children’s Amendment Act, 2022, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

- (b) ngokushutheka isigatshana (1) ngemuva kwendima (a) le ndima elandelayo:
 “(aA) umnyango wesifundazwe wezokuthuthukiswa komphakathi noma inhlangotho eqokelwe ukuvikela umntwana kufanele iphathe futhi isebenzise uhlelo lokunakekelwa kwabantwana ngendlela enqunyelwe;” 5

Ukuchitshiyelwa kwesigaba 185 soMthetho 38 wezi-2005, njengoba kushuthekwe isigaba 10 soMthetho 41 wezi-2007

13. Isigaba 185 soMthethongqangi siyachitshiyelwa ngokufaka endaweni yesigatshana (2) lesi sigatshana esilandelayo:
 “(2) [Abangaphezulu] Mabangabi ngaphezulu kwabayisithupha abantwana ababekwe endaweni ezobanakekela enomuntu oyedwa noma ababili abahlala emzini owodwa ngokwemigomo yohlelo lokubekwa kwabantwana.” 10

Ukuchitshiyelwa kwesigaba 186 soMthetho 38 wezi-2005, njengoba kushuthekwe isigaba 10 soMthetho 41 wezi-2007

14. Isigaba 186 soMthethongqangi siyachitshiyelwa— 15
- (a) ngokufaka ngemuva kwesigatshana (1) lesi sigaba esilandelayo:
 “(1A) Nakuba kunemibandela yesigatshana (1), inkantolo equla amacala abantwana ingabona kunesidingo sokuyalela somsebenzi wokungamela njengoba kuveziwe esigatsheni 65(2)(a)(ii).”;
- (b) ngokufaka esikhundleni sesigatshana (2) amagama andulela indima (a) lawa magama alandelayo: 20
 “Inkantolo equla amacala abantwana, nakuba kunemibandela yesigaba 159(1)(a) mayelana nesikhathi somyalelo wenkantolo futhi ngemuva kokucubungula isidingo sokwenza ukuba impilo yomntwana izinze, ingabeka umntwana endaweni lapho azonakekelwa khona ilungu lomndeni [iminyaka edlulile kwemibili, yengeze futhi lowo myalelo iminyaka edlulile kwemibili ngesikhathi noma] futhi ikhiphe umyalelo wokuba indawo enakekela umntwana iqhubeke nokusebenza umntwana aze abe neminyaka eyi-18, uma—”; 25
- (c) ngokufaka endaweni yesigatshana (3) lesi sigatshana esilandelayo: 30
 “(3) Nakuba kunemibandela yezigatshana (1) nesesi-(2), umsebenzi wononhlalakahle [abafundele] abenza umsebenzi wokuvikela ingane [okungenani kanye njalo eminyakeni emibili] njalo ngonyaka ukuze baqaphe futhi bahlale indawo ehlala umntwana.”; futhi
- (d) ngokushutheka ngemuva kwesigatshana (3) lesi sigatshana esilandelayo: 35
 “(4) Lesi sigaba asisebenzi ohlelwemi lomsebenzi wokunakekelwa kwabantwana oluvezwe esigabeni 183.”

Isihloko esifushane nokuqala ukusebenza komthetho

15. Lo Mthetho ubizwa ngokuthi Umthetho Wokuchitshiyelwa koMthetho Wezingane, wezi- 2022, futhi uyoqala ukusebenza ngosuku oluyonqunywa nguMongameli ngokumemezela kuSomqulu. 40

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