

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NO. 3432

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MS BRIDGET MASANGO, MP

NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON THE DRAFT BILL, NAMELY THE CHILDREN'S AMENDMENT BILL, 2023

Ms Bridget Masango, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), intends to introduce the Children's Amendment Bill, 2023 ("the draft Bill"), in Parliament. An explanatory summary of the draft Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

Section 28(1)(d) of the Constitution affords all children the right to be protected from maltreatment, neglect, abuse or degradation. Furthermore, section 28(2) pronounces that a child's best interests are of paramount importance in every matter concerning the child.

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 six or more children. However, there is no such regulation, registration or requirements for facilities that cater for and provide such care for less than six children. Whilst it appears that the intention of the Act was to not 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, less than six children are not inspected and nor are they required to maintain their facilities in accordance with the norms and standards as per section 79(2) of the Act. The result of this is that children are being cared 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.

The draft Bill thus aims to address the consequences of the non-regulation of facilities that cater for, and care for, less than six children by *inter alia*:

- introducing the concept of micro-partial care to cater for and care for less than six children at a micro-partial care facility;
- differentiating between partial care facilities (as currently provided for in the Act) and micro-partial care facilities (as proposed in the draft Bill), which would cater for less than six children;

- providing for the regulation of micro-partial care facilities, subject to certain exemptions;
- providing that micro-partial care facilities be required to comply with certain basic norms and standards;
- providing that a micro-partial care facility be registered for a period of ten years, as opposed to the five-year registration period for partial care facilities; and
- providing for a once-off inspection of a micro-partial care facility upon its initial registration as a micro partial care facility.

The draft Bill takes cognisance of the already over-regulated industry and hence does not intend to overburden micro-partial care facilities unnecessarily. It is for this reason that provisions relating to the registration period and inspections of micro-partial care facilities are specifically different to that of partial care facilities to ensure that micro-partial care facilities are not overburdened with various compliance requirements which may affect their ability to operate freely. It is important to note that a micro-partial care facility is only required to be inspected once, namely, at the commencement of its business. This is to assist both the facility as well as the Department of Social Development. However, it must be noted that this does not prevent further inspections of the micro-partial care facility being conducted in the future when a complaint may arise. The purpose of the draft Bill is to merely ensure that micro-partial care facilities are also registered and compliant with certain norms and standards from its inception to ensure the protection of children in such facilities.

In addition, the draft Bill also amends certain provisions of the Act in relation to partial care by, *inter alia*, providing that partial care excludes care by a domestic worker; by a family member; by an au pair; or by any other person as the Minister may determine from time to time; and that partial care facilities, in addition to being routinely inspected, also need to be monitored.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker at PO Box 15, Cape Town 8000; or e-mailed to speaker@parliament.gov.za and copied to legislation@da.org.za.

Copies of the draft Children's Amendment Bill, 2023 may, after introduction, be obtained from the Democratic Alliance by requesting a copy from legislation@da.org.za.