

CHAPTER 15

PARTIAL CARE

15.1 Introduction

This Chapter deals with the temporary care of children by persons other than their parents or ordinary care-givers.

15.2 Overview of the proposals in Discussion Paper 103

15.2.1 Defining partial care

The Commission recommended that, for purposes of the new children's statute, a definition of partial care is required which is not confined only to day-time care. The definition needs to target a range of situations where children are temporarily placed by parents or primary caregivers with persons designated by them, for limited periods of time.¹ The Commission stated that the definition of 'partial care' should be linked to that of 'partial care facility', which is a reworking of the definition of 'place of care' in the Child Care Act² and accordingly recommended the following definitions:³

'Partial care facility' means any place, building or premises, including a private residence, maintained or used partly or exclusively, whether for profit or otherwise, for the reception, protection and temporary or partial care of more than six children apart from their parents, but does not include –

- any boarding school, school hostel or any establishment which is maintained or used mainly for the tuition or training of children and which is controlled by or which has been registered or approved by the State, including a provincial administration;

¹ Par. 16.6 of the discussion paper.

² 74 of 1983.

³ Par. 16.6 of the discussion paper.

- any hospital or medical facility which is maintained or used mainly for the medical treatment of children;
- the statutory placement of a child in substitute family care;
- ECD services as defined in this Act.

‘**Partial care**’ means the services offered at a partial care facility.

15.2.2 Licensing of partial care facilities

The Commission recommended that the existing registration system be replaced with a licensing system.⁴ The Commission expressed the view that it is desirable to introduce a system of *licensing* as a method of regulating partial care in South Africa. Licensing offers a mechanism by which:⁵

- standards may be set before a person or agency is authorised to provide child care;
- adherence to required standards can be regularly monitored; and
- those who fail to meet these standards can be compelled to do so or be excluded from the provision of partial care.

The Commission therefore recommended that where more than six children are cared for on a partial basis apart from their parents, whether for profit or otherwise, in any building or premises maintained or used for such purpose, that such facility be licensed as a partial care facility with the (provincial) Department of Social Development. As the term partial care facility more accurately reflect the type of facility involved, the Commission accordingly recommended a change in terminology from ‘place of care’ to ‘partial care facility’.

15.2.3 Minimum building standards for partial care facilities (places of care)

The Commission did not recommend that the new children’s statute should provide for

⁴ Par. 16.4.2 of the discussion paper.

⁵ Par. 16.5.2 of the discussion paper.

the formulation, in the Regulations, of minimum building requirements for partial care facilities. In this regard, the Commission stated that the present requirement, in the Regulations,⁶ for a certificate to be issued by the local authority to the effect that the premises comply with all structural and health requirements set by the local authority is flexible enough to cater for local and regional differences.⁷

However, the Commission recommended that the health and safety appropriateness of the *building or premises*, whether it is a private dwelling, a church building, or a community centre, being used or to be used as a partial care facility, should be assessed by the local authority in terms of appropriate bye-laws. The adequacy and appropriateness of the proposed partial care *service or programme* should be assessed by the Department of Social Development and the latter Department should, after receiving a health and safety clearance certificate from the relevant local authority, finalise the licensing of the partial care facility.⁸

15.2.4 Assistance to providers of partial care services

The Commission recommended that the (provincial) Department of Social Development, or any local authority may support, financially and otherwise, any licensed partial care facility. Such support, or the continuation of such support, may be made subject to conditions.⁹

15.2.5 Partial care not provided at partial care facilities (places of care)

The Commission recognised that not all partial care services are rendered in buildings or premises (in other words, not in a 'place of care' as defined in the Child Care Act) and that not all early childhood development (ECD) or partial care situations involve the care of more than six children apart from their parents. While not registered as places of care, some facilities do care for children apart from their parents and sometimes offer ECD services. The Commission also realised that some partial care arrangements

⁶ Regulation 30A(2)(b).

⁷ Par. 16.4.1 of the discussion paper.

⁸ Ibid.

⁹ Par. 16.5.4, p. 708 of the discussion paper.

involving fewer than six children can be very harmful to children. The Commission thus recommended that the Department of Social Development should be empowered to prevent an ECD service or partial care facility from continuing to operate, even though such service is not registered¹⁰ or such facility is not licensed. It is accordingly recommended that where an unregistered ECD service or an unlicensed partial care facility is de facto in effect or operational, the Director-General: Social Welfare be empowered to issue an enforcement notice to such unregistered or unlicensed operator. Such notice would then either instruct the operator to register or obtain a license or to cease operation forthwith.¹¹

15.2.6 Monitoring and inspection

The Commission recommended that monitoring provisions be included in the new children's statute which must allow for a power to monitor both the environment and quality of care provided at partial care facilities and the implementation of ECD programmes - by means of inspections or other methods - regardless of the number of children involved.

15.3 Evaluation and recommendations

The Commission has received no comment on the issue of partial care. Notwithstanding the lack of comments on the issue, the Commission revisited some of its recommendations in respect of partial care. With regard to the recommendation that the existing registration system be replaced with a licensing system, the Commission has come to the conclusion that there is no substantive difference between licensing and registration. For this reason, the Commission reverts to the existing system in terms of which partial care facilities are required to register.

The Commission further abandons its initial recommendation that partial care facilities must be registered (or licensed as previously suggested) with the relevant provincial Departments of Social Development. The Commission now recommends that local

¹⁰ See Par. 14.4 above where it is stated that the Commission has abandoned its recommendation that ECD services should be registered.

¹¹ Par. 16.7 of the discussion paper.

authorities should be responsible for the registration of partial care facilities.¹² This recommendation is in line with section 156 read with Schedule 4, Part B of the Constitution in terms of which the administration of child care facilities is a local government competency. The Commission is mindful of the fact that local authorities are under-resourced. This is, however, not reason enough to impede on municipalities' right to exercise their powers by vesting the administration of child care facilities in the provincial Departments of Social Development. However, if a local authority fails to fulfill its functions, the relevant provincial executive may take appropriate steps to ensure fulfillment of those functions in terms of section 139 of the Constitution.

In line with the Commission's decision to assign the registration of partial care facilities to local authorities, the Commission further recommends that a municipality must maintain a record of all available partial care facilities in its area,¹³ and must conduct regular inspections of partial care facilities in its area.¹⁴ Furthermore, a municipality or the provincial head of social development may issue a notice of enforcement to a person operating a partial care facility.¹⁵

¹² Sections 146(1)(a), 149(1)(a), 150(1) and 152 of the Bill. See also Noel Zaal and Carmel Matthias 'Local government and the provision of child care services: An essential area for legislative reform' (2002) 119:1 **South African Law Journal** 138.

¹³ Section 155(1)(a) of the Bill.

¹⁴ Section 155(1)(b) of the Bill.

¹⁵ Section 148 of the Bill.