
GAUTENG PROVINCIAL LEGISLATURE

**GAUTENG STREET CHILDREN
SHELTERS ACT, 1998**

No 16, 1998

ACT

To provide for the establishment, regulation and subsidisation of street children shelters; to prevent abuse, exploitation and discrimination of street children; to establish methods of governance, operation and monitoring of street children shelters; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of Gauteng, as follows:—

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CHAPTER 1**DEFINITIONS, APPLICATION AND PURPOSE****Definitions**

- 1. In this Act, unless the context otherwise indicates — 40
- “**Board**” means a board of management referred to in section 12;
- “**child**” means a person under the age of 18 years;

“**Department**” means the department in the administration of the Province responsible for welfare and population development;

“**Head of Department**” means the most senior official in the Department;

“**MEC**” means the Member of the Executive Council responsible for matters relating to welfare and population development in the Province; 5

“**prescribed**” means prescribed by regulation;

“**Province**” means the province of Gauteng;

“**registration certificate**” means a certificate issued in terms of section 32 of this Act;

“**regulation**” means a regulation made in terms of this Act;

“**shelter**” means any premises used for the reception, protection and temporary care of more than six street children and includes a drop-in centre; 10

“**shelter employee**” means a person employed by a shelter operator;

“**shelter operator**” means a person, body corporate, voluntary association, trust or governmental unit that operates a shelter for street children;

“**shelter volunteer**” means an unpaid volunteer working for a shelter operator; 15

“**street child**” means a child —

- (a) living on the street mainly concerned with survival and shelter; or
- (b) who is detached from his or her family and —
 - (i) lives in a temporary shelter such as a transit facility or abandoned house or building; or 20
 - (ii) who moves from one place to another; or
- (c) who remains in contact with his or her family but because of poverty, overcrowding, sexual abuse or other abuses within the family, spends some nights and most days on the street; or
- (d) who is in institutional care and has come from a situation of homelessness and seems at risk of returning to a homeless existence; and 25

“**this Act**” includes any regulation

Application of Act

2. (1) This Act applies to all shelters, shelter operators, shelter employees and shelter volunteers in the Province. 30

(2) All shelters, shelter operators, shelter employees and shelter volunteers must comply with the provisions of this Act.

Objects of this Act

3. The objects of this Act are —

- (a) to meet the basic needs of street children; 35
- (b) to protect the rights of street children;
- (c) to promote the development of a nurturing environment for street children in shelters;
- (d) to promote the development of social and physical environments within shelters in order to empower street children to deal with their world in socially constructive ways; 40
- (e) to promote the development of programmes, strategies and services to encourage street children to return to their communities and families where possible;
- (f) to promote the development of appropriate placement programmes for street children; 45

- (g) to ensure competent care, treatment, development and education for street children;
- (h) to promote the development of shelters; and
- (i) to regulate the operation of shelters in the Province.

CHAPTER 2

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DUTIES OF SHELTER OPERATORS, SHELTER EMPLOYEES AND SHELTER VOLUNTEERS

Protection against abuse, exploitation and discrimination

4. (1) A shelter operator, shelter employee and shelter volunteer must take the highest degree of care to protect children in the shelter operator's care from abuse, exploitation, malnourishment, exploitation and discrimination. 10

(2) No shelter operator, shelter employee and shelter volunteer may strike or otherwise physically or mentally abuse street children in the shelter operator's care.

Disciplinary measures

5. (1) No shelter operator, shelter employee or shelter volunteer may use corporal punishment or other forms of physical punishment on a street child in the shelter operator's care. 15

(2) No shelter operator, shelter employee or shelter volunteer may place a street child in solitary confinement.

(3) A shelter operator, shelter employee or shelter volunteer may use or permit only those disciplinary measures that may be prescribed. 20

Disciplinary register

6. A shelter operator must—

- (a) keep a disciplinary register; and
- (b) record in that register any disciplinary measures taken with respect to each street child in the shelter. 25

Safety

7. A shelter operator must ensure the highest feasible degree of care for the health, nutrition and safety of street children in the shelter.

Programmes for street children 30

8. (1) A shelter operator must provide, in accordance with the prescribed standards, for each street child in its care —

- (a) a development programme and a treatment plan;
- (b) a family reunification or other appropriate placement programmes;
- (c) access to educational services; 35
- (d) access to health services;
- (e) access to social welfare services; and
- (f) any other prescribed programme or service.

(2) A shelter operator must provide an outreach programme for street children not within the shelter operator's care but who are in geographical proximity of the shelter. 40

Privacy

9. (1) A shelter operator, shelter employee or shelter volunteer must respect confidentiality and privacy concerning street children in their care.

(2) Subsection (1) does not apply to information reasonably required by the MEC or the Head of Department. 45

Prohibition on unfair discrimination

- 10.** (1) A shelter operator must neither practice, nor permit, unfair discrimination when selecting street children for admission to the shelter or treating such street children. 5
- (2) A shelter operator must not unreasonably exclude street children from the shelter.
- (3) A shelter operator must provide a programme within the shelter that seeks to inculcate among shelter employees, shelter volunteers and street children in its care, an appreciation of cultural, religious and language diversity.

Children's rights

- 11.** A shelter operator must provide a programme within the shelter that seeks to inculcate among shelter employees and shelter volunteers a respect for children's rights. 10

CHAPTER 3

GOVERNANCE OF SHELTERS

Board of management

- 12.** A shelter operator must have a board of management as the governing body of a shelter. 15

Composition of board of management

- 13.** (1) A Board must consist of the number of persons prescribed.
- (2) The Board contemplated in subsection (1), must consist of at least the following— 20
- (a) a chairperson;
 - (b) a secretary; and
 - (c) treasurer.

Powers and duties of board of management

- 14.** The Board must—
- (a) oversee the overall management of the shelter; 25
 - (b) provide ongoing consultation and support to shelter employees and shelter volunteers;
 - (c) monitor the implementation of programmes developed in accordance with section 8;
 - (d) monitor and regulate the finances of the shelter; 30
 - (e) provide audited financial statements as may be prescribed;
 - (f) monitor and ratify the employment and dismissal of staff;
 - (g) oversee the disciplinary issues of staff in the shelter;
 - (h) embark on fundraising projects aimed at the sustainability of the shelter;
 - (i) embark on marketing projects for enhancing the image of the shelter; and 35
 - (j) perform such functions and duties as may be prescribed by the MEC in order to promote the objects of this Act.

Governance of shelter

- 15.** A shelter operator must ensure that—
- (a) the membership of the Board is reasonably representative of the demographics of race and gender in the Province; 40
 - (b) persons appointed to the Board have skills, knowledge or experience relevant to the governing of a shelter; and
 - (c) the shelter has a democratic, accountable and transparent system of governance and financial control. 45

CHAPTER 4

OPERATION OF THE SHELTER

Hours of operation

16. A shelter operator must operate its shelter twenty-four hours a day.

Personnel

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17. (1) A shelter operator must have on the shelter premises at all times, personnel suitably qualified or experienced in child and youth care, in accordance with any prescribed ratio of shelter staff to street children.

(2) A shelter operator, shelter employee and shelter volunteer must comply with any prescribed provincial norms and standards in respect of — 10

- (a) the conduct of shelter personnel; and
- (b) the management of abuse of street children.

Register of children

18. (1) A shelter operator must maintain a daily attendance register of street children who utilise the shelter or its facilities. 15

(2) A shelter operator must keep such other records in respect of street children as may be prescribed.

Financial records

19. (1) A shelter operator must maintain —

- (a) accurate and detailed books recording income and expenditure and other financial transactions; and 20
- (b) financial controls that ensure the proper use of the funds of the shelter operator.

(2) The financial records contemplated in subsection (1) must be audited in the prescribed manner. 25

Physical facilities

20. (1) A shelter operator must provide, in accordance with any prescribed standards —

- (a) a structure appropriate to the safety and development of street children;
- (b) safe, warm, adequate and appropriate sleeping facilities; 30
- (c) adequate and appropriate ablution facilities, with running water, and sufficient showers or bathing facilities;
- (d) separate facilities appropriate to the age and sex of street children in its care;
- (e) adequate and appropriate cooking, eating and recreational facilities; and
- (f) adequate and economical administrative facilities. 35

Hygiene

21. A shelter operator must ensure that the shelter meets prescribed standards of hygiene and cleanliness.

Display of registration certificate

22. A shelter operator must conspicuously display the shelter's registration certificate in the shelter. 40

CHAPTER 5

FUNDING

Funding

23. (1) The MEC, with the concurrence of the Member of the Executive Council responsible for finance in the Province, may grant funding to a shelter operator in respect of a particular shelter, programme or other prescribed purpose. 5

(2) The MEC may grant funding in terms of subsection (1) unconditionally or on such conditions as he or she may deem fit.

(3) The MEC may impose different conditions under subsection (2) if there is a reasonable basis for such differentiation. 10

Revocation of funding

24. (1) The MEC may revoke the funding granted in terms of section 23 at any time, if the shelter operator —

- (a) contravenes or fails to comply with any provision of this Act; or
- (b) contravenes or fails to comply with any condition attached to its funding in terms of section 23(2). 15

(2) The MEC may not act under subsection (1) unless he or she —

- (a) has informed the shelter operator of the intention so to act and the reasons therefor;
- (b) has granted the shelter operator and other interested persons an opportunity to make representations in relation to such action; and 20
- (c) has considered such representations.

CHAPTER 6

MONITORING OF SHELTERS

Appointment of inspectors 25

25. (1) The Head of Department may appoint any suitably qualified or experienced person as an inspector.

(2) Any person appointed under subsection (1) must perform his or her functions in terms of this Chapter, subject to the direction and control of the Head of Department.

(3) The Head of Department must provide each inspector with the prescribed certificate of identification. 30

Functions of inspectors

26. An inspector appointed under section 25(1) must promote, monitor and enforce compliance with this Act by —

- (a) advising shelter operators, shelter employees, shelter volunteers and street children of their rights and obligations in terms of this Act; 35
- (b) conducting inspections in terms of this Chapter;
- (c) investigating complaints;
- (d) issuing compliance orders; and
- (e) performing any other prescribed function. 40

Inspectors' powers

27. (1) An inspector may for the purposes of monitoring or enforcing compliance with this Act —

- (a) enter any shelter without warrant or notice; and
 - (b) enter any other place, after obtaining the necessary consent of the owner or occupier thereof, or a warrant in terms of subsection (5). 45
- (2) While the inspector is at any shelter or any place referred to in subsection (1), the inspector may, for the purposes of monitoring or enforcing compliance with this Act—

- (a) question any person, including street children, on any matter to which this Act relates;
 - (b) require any person who has control over, or custody of, any document to produce that document to the inspector immediately or at any other time and place that the inspector requires; 5
 - (c) require from any person who has control over, or custody of, any electronic, digital or magnetic items, including but not limited to computers, computer disks, audio and video tapes, to produce those items to the inspector immediately or at any other time and place that the inspector requires;
 - (d) require from any person referred to in paragraph (b) or (c), an explanation of any entry or non-entry in any document or item referred to in paragraphs (b) or (c); 10
 - (e) examine any document or electronic, digital or magnetic item produced in terms of paragraph (b) and (c), and make a copy of it or take an extract from it; 15
 - (f) inspect —
 - (i) any article, substance or thing; or
 - (ii) the whole or any part of the shelter or place;
 - (g) seize any document, article, substance or thing;
 - (h) require any person to disclose any information, either orally or in writing, and either alone or in the presence of witnesses, on any matter to which this Act relates, and require that disclosure be made under oath or affirmation; and 20
 - (i) perform any other prescribed function.
- (3) An inspector may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection. 25
- (4) An inspector must —
- (a) produce on request, the certificate referred to in section 25(3);
 - (b) provide a receipt for any document, articles, substance or thing removed in terms of subsection (2)(e) or (g); and
 - (c) return anything removed within a reasonable period of time. 30
- (5) A magistrate may issue a warrant contemplated in subsection (1)(b) only on written application by an inspector setting out under oath or affirmation the need to enter the place to monitor or enforce compliance with this Act.

Co-operation with inspectors

- 28.** (1) Any person who is questioned by an inspector in terms of section 27(2) must answer each question truthfully or to the best of his or her ability, but no person is required to answer any question if the answer may be self-incriminating. 35
- (2) Any person who is required to produce or disclose any document, item or information required by the inspector in terms of section 27(2), must disclose or produce such document, item or information at the request of the inspector. 40

Compliance order

- 29.** (1) An inspector who has reasonable grounds to believe that a shelter operator has not complied with a provision of this Act may issue a compliance order.
- (2) The compliance order may instruct the shelter operator to take any steps that the inspector — 45
- (a) considers necessary to comply with the provision; and
 - (b) specifies in the compliance order.
- (3) When issuing a compliance order under subsection (2), an inspector must specify a reasonable period within which the specified steps must be taken.
- (4) The shelter operator must display a copy of the compliance order prominently at a place accessible to the street children in the shelter. 50
- (5) The shelter operator must comply with the compliance order within the time period stated in the compliance order.

Annual evaluation of shelter

- 30.** (1) The Head of Department must evaluate the operation of a shelter annually in the prescribed manner. 55

(2) An annual evaluation report for each shelter must be compiled by the Head of Department and may include recommendations for changes in any matter or aspect relating to the shelter.

(3) A copy of the annual evaluation report must be delivered to a shelter within a reasonable period of being compiled. 5

CHAPTER 7

REGISTRATION OF SHELTERS

Registration of shelters

31. (1) A shelter operator may not operate a shelter in the Province, unless —
 (a) the shelter has been registered in accordance with section 32 of this Act; and 10
 (b) the shelter has been registered in accordance with the Child Care Act, 1983 (Act No. 74 of 1983).

(2) An application for registration of a shelter must be made to the Head of Department in the prescribed manner.

Determination of application for registration 15

32. (1) The Head of Department must consider any application for registration of a shelter.

(2) The Head of Department may, when considering an application in terms of subsection (1), require that he or she be furnished with any information in connection with the application. 20

(3) The Head of Department may —

- (a) reject the application for registration of a shelter; or
- (b) grant the application for registration of a shelter.

(4) If the Head of Department decides —

- (a) to grant the application, the Head of Department must — 25
 - (i) enter the applicant's name in the appropriate register of shelters;
 - (ii) issue a certificate of registration, stating the terms of such registration;
 - (iii) provide the certificate to the applicant; and
 - (iv) as soon as practicable after the decision, publish the certificate of registration in the Provincial Gazette; or 30
- (b) not to grant the application, the Head of Department must advise the applicant in writing of the decision and provide the applicant with written reasons for his or her decision.

(5) An applicant may lodge an appeal to the MEC in the prescribed manner against the decision of the Head of Department not to grant the application. 35

Conditions of registration

33. (1) The Head of Department may impose any reasonable condition on a shelter in respect of its registration.

(2) The Head of Department may impose different conditions under subsection (1) in respect of different shelters, if there is a reasonable basis for such differentiation. 40

(3) The Head of Department may, on reasonable grounds, cancel or amend any condition imposed in terms of this section or impose new conditions under this section.

Cancellation of registration

34. (1) The Head of Department may on reasonable grounds, cancel the registration of a shelter in terms of this Act if — 45

- (a) the shelter operator contravenes or fails to comply with the provisions of this Act;
- (b) the shelter operator fails to comply with the conditions attached to funding granted in terms of section 23;
- (c) the shelter operator fails to comply with a compliance order issued in terms of 50 section 29;
- (d) the shelter operator fails to comply with the recommendations made in an annual evaluation report in terms of section 30;

- (e) the shelter operator fails to comply with the conditions imposed in terms of section 33; or
 - (f) the shelter operator contravenes or fails to comply with the provisions of the Child Care Act, 1983 (Act No. 74 of 1983) or any other applicable law.
- (2) The Head of Department may not act under subsection (1) unless he or she — 5
- (a) has informed the shelter operator of the intention so to act and the reasons therefor;
 - (b) has granted the shelter operator and other interested persons an opportunity to make representations in relation to such action; and
 - (c) has considered such representations. 10
- (3) Where the Head of Department cancels the registration of a shelter, the Head of Department must oversee the closure of the shelter and ensure the removal of the street children to alternative suitable facilities.

Appeal against cancellation of registration

35. (1) A shelter operator may lodge an appeal to the MEC in the prescribed manner 15 against the decision of the Head of Department to cancel a shelter's registration.
- (2) If the MEC upholds the appeal, the Head of Department must reinstate the registration of the shelter by—
- (a) re-issuing a certificate of registration; and
 - (b) amending the register accordingly. 20

Register of shelters

36. The Head of Department must keep a register in the prescribed form of —
- (a) all registered shelters; and
 - (b) all shelters whose registrations have been cancelled.

Register of street children 25

37. The Head of Department must keep a register in the prescribed form of street children utilising shelter services in the Province.

Certificate of registration

38. If the Head of Department has cancelled the registration of the shelter under section 34, the shelter operator must return the original certificate of registration to the 30 Head of Department within 14 days of cancellation.

CHAPTER 8

OFFENCES AND PENALTIES

Failure to comply with this Act

39. Any person who contravenes or fails to comply with — 35
- (a) any provision of this Act;
 - (b) any regulation; or
 - (c) any condition, order, or exemption imposed, given, issued or granted in terms of this Act,
- shall be guilty of an offence. 40

Penalties

40. Any person who is convicted of an offence contemplated in section 39 is liable to a sentence of a fine or a period of imprisonment not exceeding three (3) years.

CHAPTER 9

MISCELLANEOUS

Development of shelters

- 41.** The MEC may facilitate the development of shelters through — 5
- (a) agreements with appropriate third parties;
 - (b) twinning of shelters;
 - (c) the provision of specialised services; or
 - (d) any other means that promotes the objects of this Act.

Removal of children

- 42.** (1) The Head of Department may remove a street child from a shelter — 10
- (a) if, in the opinion of the Head of Department, the physical and mental well-being of a street child is threatened; or
 - (b) if it is in the best interests of the street child.
- (2) The Head of Department must ensure that a street child removed from a shelter in terms of subsection (1) is placed in an alternative suitable facility 15

Information

- 43.** A shelter operator must provide the MEC or the Head of Department, as the case may be, with any information reasonably required by him or her.

Exemption

- 44.** (1) A shelter operator may apply to the MEC for an exemption from any or all the provisions of this Act in the prescribed manner. 20
- (2) The MEC may, for such period and on such conditions as may be determined by him or her, exempt any shelter operator from any or all the provisions of this Act.
- (3) When an exemption is granted under subsection (2), the MEC must issue a certificate of exemption to the shelter operator, specifying the scope, period and conditions of the exemption. 25
- (4) The MEC may amend or withdraw a certificate of exemption at any time.
- (5) The shelter operator must conspicuously display, in the shelter, an exemption certificate granted under this section.

Regulations 30

- 45.** (1) The MEC may make regulations not inconsistent with this Act, as to —
- (a) the form of any certificate, order or authority to be made in terms of this Act;
 - (b) the registration of shelters;
 - (c) the classification of shelters or shelter operators;
 - (d) the care, training and development of street children; 35
 - (e) with the concurrence of the MEC for Finance, the granting of funding;
 - (f) the procedure relating to exemptions from the provisions of this Act;
 - (g) any matter which in terms of this Act is required or permitted to be prescribed by regulation; and
 - (h) any matter he or she deems necessary or expedient in order to promote the objects of this Act, and the generality of this provision is not limited by the preceding paragraphs of this section. 40
- (2) Different regulations may be made under subsection (1) in respect of different areas or in respect of different categories or classes of shelters or shelter operators.

Delegation of powers and assignment of duties 45

- 46.** (1) The MEC may delegate to the Head of Department or any officer of his or her department any power, function or duty conferred or imposed upon him or her by this Act except the powers referred to in sections 32, 35 and 45.
- (2) The Head of Department may delegate to any other officer of his or her department any power, function or duty conferred or imposed upon him or her by this 50

Act or delegated to him or her in terms of subsection (1), except the powers referred to in section 42.

- (3) The MEC or Head of Department, as the case may be, may —
- (a) impose any reasonable conditions on a delegation contemplated in this section; and 5
 - (b) impose different conditions in respect of a different delegations.
- (4) Any delegation of a power, function or duty under this section —
- (a) must be done in writing;
 - (b) does not prevent the MEC or Head of Department, as the case may be, from exercising that power or performing that function or duty himself or herself; 10
and
 - (c) may at any time be withdrawn in writing by the person who granted it.

Transitional and savings provisions

47. Any shelter existing at the commencement of this Act, and registered in terms of the Child Care Act, 1983 (Act No.74 of 1983)— 15
- (a) must continue to operate in terms of that Act; and
 - (b) must comply with the provisions of this Act by a date to be determined by the MEC by notice in the Provincial Gazette.

Short title and commencement

48. This Act is called Gauteng Street Children Shelters Act, 1998 and comes into 20
operation on a date fixed by the Premier by proclamation in the Provincial Gazette.