



CHILDREN'S ACT GUIDE

for Child & Youth Care Workers

July 2013

Second Edition

Lucy Jamieson

Children's Institute, University of Cape Town
and National Association of Child Care Workers

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SUMMARY OF FORMS

These forms are required in terms of the Children's Act. Some of them cover the registration of a child and youth care centre, temporary safe care, or cluster foster care; others relate to reporting requirements. This guide explains how and when they should be used. The most essential forms are reproduced in full at the end of the guide; the rest can be downloaded from www.ci.org.za.

- Form 22** Reporting of abuse or deliberate neglect of child
- Form 29** Inquiry by employer to establish whether person's name appears in Part B of NCPR
- Form 36** Authority for removal of child to temporary safe care
- Form 39** Approval to provide temporary safe care
- Form 40** Reporting of serious injury, abuse or death of child in alternative care
- Form 42** Application for the registration of a cluster foster care scheme
- Form 43** Certificate of registration of a cluster foster care scheme
- Form 44** Rejection of application for the registration of a cluster foster care scheme
- Form 45** Notice of intention to deregister cluster foster care scheme
- Form 46** Representation to provincial HSD by cluster foster care scheme regarding notice of deregistration
- Form 47** Notice of deregistration after consideration of representation
- Form 48** Application for the registration/conditional registration/renewal of registration of a CYCC
- Form 49** Certificate of registration/conditional registration/renewal of registration of a CYCC
- Form 50** Refusal of an application for the registration/renewal of registration of a CYCC
- Form 51** An appeal against a decision of a provincial HSD in terms of section 207 of the Act in respect of a CYCC

ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
CDG	Care Dependency Grant
CHH(s)	Child-Headed Household(s)
CSG	Child Support Grant
CYCC(s)	Child and Youth Care Centre(s)
CYCW(s)	Child and Youth Care Worker(s)
DCPO	Designated Child Protection Organisation
DG	Director-General
DBE	Department of Basic Education
DSD	Department of Social Development
DSW	Designated Social Worker
ECD	Early Childhood Development
FCG	Foster Child Grant
HSD	Head of Social Development
MEC(s)	Member(s) of the Executive Council
NCPR	National Child Protection Register
NGO(s)	Non-Governmental Organisation(s)
NN&S	National Norms and Standards
NPO(s)	Non-Profit Organisation(s)
P&EI	Prevention and Early Intervention
PO	Presiding Officer
QA	Quality Assurance
UNCRC	United Nations Convention on the Rights of the Child

KEY WORDS

Key terms	Definition
Abandoned	A child is abandoned if he or she has been deserted by the parent, guardian or caregiver, or if he or she has not had contact with the parent, guardian or caregiver for at least three months for no apparent reason.
Abuse	Abuse means any form of harm or ill-treatment deliberately inflicted on a child. It includes: <ul style="list-style-type: none">• assaulting or deliberately injuring a child;• sexually abusing a child or allowing a child to be sexually abused;• bullying by another child;• a labour practice that exploits a child; or• exposing or subjecting a child to behaviour that may harm him or her psychologically or emotionally.
Alternative care	A child is in alternative care if he or she has been placed by a court in temporary safe care, a child and youth care centre or foster care.
Budget	A budget is a plan for spending money that has been received or raised for a certain purpose. The available funds are divided up (or allocated) to cover the cost of different activities.
Caregiver	A caregiver is anyone who cares for a child. Caregivers include: <ul style="list-style-type: none">• grannies, aunts and other relatives who care for the child with the consent of the child's parents or guardian;• a foster parent;• someone offering temporary safe care;• the head of a shelter or child and youth care centre;• a child and youth care worker supporting children in the community; and• a child (of 16 years and older) heading a child-headed household.

Child and youth care centre

A child and youth care centre (CYCC) is a facility that provides residential care for more than six children who are not living with their biological families. Examples include children's homes; places of safety; secure care centres; schools of industry; reformatories; and shelters for street children. Every CYCC must offer a therapeutic programme. This could be a programme for children with behavioural, psychological and emotional difficulties; alternatively, it could be a programme for children who have been abused. (In section 191(2), the Children's Act gives a full list of the types of programme that can be offered.)

Child labour

Child labour means any work that is likely to be hazardous to or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Child-headed household

A child-headed household (CHH) is a household where a child has taken on the responsibility of caring for all other children living in the household because the parent, guardian or caregiver is either dead, terminally ill or has abandoned the children. An example of a child-headed household is one in which the parent is very ill with AIDS and a child (often the eldest brother or sister) is looking after the sick adult as well as the other children in that home.

Child(ren) in need of care and protection

Section 150 of the Children's Act says the government has to take action to protect children who are in need of care and protection, which includes a child who:

- has been abandoned or orphaned and does not have any visible means of support;
- displays behaviour that cannot be controlled by the parent or caregiver;
- lives or works on the streets or begs for a living;
- is addicted to substances that cause dependency and does not have any support to get treatment for his or her addiction;
- has been or is at risk of serious physical or mental harm; or
- has been abused, neglected, or exploited.

If a child is found to be a victim of child labour or is living in a child-headed household, a social worker must investigate to find out if the child is in need of care and protection.

Chronic	“Chronic” means long-lasting, ongoing.
Designated child protection organisation	A child protection organisation that has been given written approval by the Director-General or provincial Head of Social Development to perform child protection services.
Designated social worker	A designated social worker is any social worker who works for the Department of Social Development (DSD), a municipality or a designated child protection organisation. There are many times when the Children’s Act says that a certain task should be done only by a designated social worker.
Enabling documents	Enabling documents are official papers that children need in order to access important services. Examples include birth certificates, identity documents and the road-to-health book.
Exploitation	To exploit children is to take advantage and treat them unfairly. Children can be exploited in different ways. Child pornography and child prostitution are examples of sexual exploitation. Child labour and using children to commit crimes are examples of economic exploitation. ¹
Family environment	The family environment is the environment in which the child lives, and it refers, among other matters, to the kind of relationship the child has with his or her family members. The word “family” means different things to different people. In South Africa, children may be cared for by different caregivers who are not necessarily their mothers and fathers. In addition, children may move between different caregivers, meaning that the “family environment” changes each time that this happens.
Fit and proper person	The Children’s Act does not provide a definition of a “fit and proper person”. However, it does give examples of people who are <i>not</i> suitable to work with children (for instance, people whose names appear in Part B of the National Child Protection Register). A “fit and proper” person should also have the skills and qualifications that are required by the Act.

¹ Wright JH (2006) *What is child exploitation?* <http://ezinearticles.com>

Inter-sectoral approach	An inter-sectoral approach means working closely with different sectors such as health, education and social development to ensure children's needs are met.
Intermediary	The function of an intermediary is to communicate between the people involved in proceedings in a court and a child witness in another location. The intermediary repeats questions to the witness and reports the answers given by the witness back to the court room. The intermediary explains such questions and answers in ways that enable them to be understood by the witness or people in the courtroom. This gives the child the opportunity to testify in a room away from the accused, so that the child does not suffer secondary abuse.
Multi-disciplinary approach	A multi-disciplinary approach involves drawing on the skills of people from different disciplines or sectors. This allows people to understand problems from a range of perspectives. By working with people who have different skills, training and experience, teams are able to find new solutions to complex problems.
Neglect	A child is said to have been neglected when the caregiver has not fulfilled his or her basic parental responsibilities. According to the Children's Act, these responsibilities are "to provide for the basic physical, intellectual, emotional or social needs" of the child.
Non-discrimination	"Non-discrimination" means treating people fairly or equally.
Orphan	An orphan is a child who has no surviving parent caring for him or her.
Person who has rights and responsibilities in respect of the child	The child's parent, guardian or caregiver is a person who has rights and responsibilities in respect of the child.
Positive discipline	Positive discipline involves teaching children how to behave well without hurting or belittling them. Positive discipline also builds children's self-confidence by praising good behaviour and showing them how to do things correctly.

Prescribed	If something is prescribed, it means it is required by law. For example, the forms contained in the Regulations of the Children’s Act are prescribed – that is, they are the legally required forms that must be completed for particular purposes.
Psychological programmes	Psychological programmes promote children’s mental and emotional health.
Re-zoning	If a centre in a residential area is based in a house or private residence, the local municipality may ask the centre manager to apply to have the premises re-zoned. When the land on which the house is built is registered with the local municipality for use only for domestic residential purposes, this means that it may only be used for families to live in and not for the purpose of running a residential care facility. A child and youth care centre is classified as an institutional residential, rather than a domestic residential home. Therefore, if a centre in a residential area is based in a house or private residence, the local municipality may ask the centre manager to apply to have the premises re-zoned. Re-zoning the premises means that permission is sought from the local municipality to reclassify the land from “residential” to “institutional”. Once the re-zoning application is approved, centres should receive a re-zoning certificate. This certificate may be needed for the centre to be registered. Note that the re-zoning application process is quite complicated and there is usually a cost for applying for the certificate. It is advisable to contact a professional town and regional planner to assist you with the application. ²
Registration holder	A registration holder is a person whose name is on the centre’s registration certificate (Form 53).
Rehabilitative programmes	Rehabilitative programmes help children to cope with, or recover from, difficulties they are experiencing. The aim of these programmes is for children to return to a healthy, independent life.

² Contact the South African Association of Consulting Professional Planners to find the names and contact details of town and regional planners. <http://www.saacpp.org.za/default.asp?subid=21>

Repealed

If a law is repealed, it means it is no longer in force and cannot be used anymore.

Secondary disabilities

A child with a disability is more prone than one without a disability to illness and health-related complications. If precautions are not taken, or if prompt treatment is not given at the first signs of illness or a health condition, then a child who already has a disability (the primary, or main, disability) is at risk of developing a secondary health condition.

Sexual abuse

In relation to a child, sexual abuse means:

- sexually molesting or assaulting a child, or allowing a child to be sexually molested or assaulted (subjecting the child to unwanted or improper sexual activity, for example, by touching the child on his or her private parts);
- encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
- using a child in, or deliberately exposing a child to, sexual activities or pornography;
- giving a child, or anyone else, money or other rewards for the child to perform sexual activities, including prostitution and pornography; or
- allowing anyone else to sell the sexual services of children.

Shelters

Simply put, a shelter is a child and youth care centre. Shelters currently registered in terms of the Child Care Act must be registered as child and youth care centres within five years from 1 April 2010 – that is, by 31 March 2015. New and upcoming facilities should register immediately as child and youth care centres.

Social assistance

Government gives support to people who are unable to provide for their basic needs or those of their dependants. This support – or “social assistance” – is usually in the form of a cash grant.

Social service professional

In its definition of a “social service professional”, the Children’s Act lists only probation officers, development workers, child and youth care workers, youth workers, registered social auxiliary workers and social security workers. However, social workers are also social service professionals.

Stage of development

As children grow up, they pass through different stages of development. For example, they learn to crawl before they can walk. Children learn certain skills (known as milestones) during each stage. In addition, children have different needs at different stages of development.

Street child

A street child is any child who “lives, begs or works on the streets”. This includes children who have left home and sleep on the streets, as well as children who work or beg on the streets during the day but go home at night – “day strollers”, as some people call them.

Substantiate

To substantiate a statement is to give proof or good reasons why it is correct.

Therapeutic programmes

Therapeutic programmes help children with their problems by treating the problem as well as by promoting emotional and physical healing and wellness.



A



**INTRODUCTION TO THE CHILDREN'S ACT
FOR CHILD AND YOUTH CARE WORKERS**



1 WHO IS THIS GUIDE FOR?

The guide is written for child and youth care workers (CYCWs), and it focuses on the parts of the Children's Act that are most relevant to them. This is an updated edition of the guide which contains extra information for professionals who provide services to children living and working or begging on the streets. It also has updated information on developments in the law and in government policy.

This guide is not meant to replace the Children's Act. Instead, it should be read together with a copy of the Act itself. All social service providers responsible for the care and development of children are strongly encouraged to study the Act and attend a training course on it.



To obtain a copy of the Act, its Regulations and the latest versions of its forms, visit www.ci.org.za. Contact the NACCW at 021 762 6076 to find out about training on the Act.

A BIC 2 WHAT IS THE CHILDREN'S ACT?

The Children's Act is a law which governs the provision of a range of social services for children and families. The aim of the Act is to support families to enable them to ensure their children's well-being, to prevent the abuse and neglect of children, and to ensure that **children in need of care and protection** are provided with appropriate care.

The social services governed by the Act include:

- early childhood development programmes and partial care services;
- prevention and early intervention programmes (including home-based care for families affected by **chronic** illnesses such as HIV/AIDS; parenting programmes; child and family counselling; and providing families with the basic necessities);
- drop-in centres;
- protection services (these involve identifying, reporting and supporting abused and vulnerable children);
- foster care and cluster foster care;
- adoption; and
- **child and youth care centres** (children's homes, schools of industry, places of safety and shelters for street children).

Child(ren) in need of care and protection: Section 150 of the Children's Act says the government has to take action to protect children who are in need of care and protection, which includes a child who: has been abandoned or orphaned and does not have any visible means of support; displays behaviour that cannot be controlled by the parent or caregiver; lives or works on the streets or begs for a living; is addicted to substances that cause dependency and does not have any support to get treatment for his or her addiction; has been or is at risk of serious physical or mental harm; or has been abused, neglected, or exploited. If a child is found to be a victim of child labour or is living in a child-headed household, a social worker must investigate to find out if the child is in need of care and protection.

Chronic: "Chronic" means long-lasting, ongoing.

Child and youth care centre: A child and youth care centre (CYCC) is a facility that provides residential care for more than six children who are not living with their biological families. Examples include children's homes; places of safety; secure care centres; schools of industry; reformatories; and shelters for street children. Every CYCC must offer a therapeutic programme. This could be a programme for children with behavioural, psychological and emotional difficulties; alternatively, it could be a programme for children who have been abused. (In section 191(2), the Children's Act gives a full list of the types of programme that can be offered.)

In addition, the Children's Act regulates who provides these services and how they go about it. The Act does so by identifying who should provide the services and by setting out the norms and standards for the services.

The original Children's Act 38 of 2005 was amended by the Children's Amendment Act 41 of 2007. Some of the provisions came into force on 1 July 2007, and the rest of them — along with their associated Regulations — on 1 April 2010.

2.1 Children's rights in the Children's Act

The Act aims to make sure that the following children's constitutional rights are made a living reality – the rights to:

- family care, parental care or appropriate **alternative care** when the child has been removed from the **family environment**;
- social services;
- protection from maltreatment, neglect, abuse or degradation; and
- the right to have the child's best interests put first in every matter concerning him or her.

How does the Act work to make children's rights a reality?

- It strengthens the rights they already have under the Constitution of South Africa.
- It also introduces new rights, such as the right of children to participate in decisions affecting them.
- Where there is a right, there is a duty and a responsibility. Everyone working with children must respect, protect, promote and fulfil the rights set out in the Children's Act.

Alternative care: A child is in alternative care if he or she has been placed by a court in temporary safe care, a child and youth care centre or foster care.

Family environment: The family environment is the environment in which the child lives, and it refers, among other matters, to the kind of relationship the child has with his or her family members. The word “family” means different things to different people. In South Africa, children may be cared for by different caregivers who are not necessarily their mothers and fathers. In addition, children may move between different caregivers, meaning that the “family environment” changes each time that this happens.

These people have a duty to:

- **Respect children's rights.** People must not interfere with children's enjoyment of their rights. For example, all people who work with children must respect children's right to be free from violence by not smacking them.
- **Protect children's rights.** The government must take active steps to prevent other people from interfering with (or violating) children's rights. For example, the government must run programmes to prevent people from abusing children. Similarly, anyone caring for children must protect them from abuse.
- **Promote and fulfil children's rights.** The State must take action and put programmes in place to make these rights a reality. For example, the State must provide prevention and early intervention programmes to fulfil children's rights to protection from abuse.

2.2 Putting the Children's Act into practice

It is important to see the Children's Act as a living document that will change over time in order to meet children's needs in the best way possible.

The Act took more than 10 years to write and put into practice. During this time, the context in which children live and in which services are delivered has changed. For example, the number of orphans has grown. The Act was not designed to meet this particular challenge, so certain parts of it need to change. What's more, some of the services in the Act are new and being implemented for the first time. As a result, you might come across things in it that do not work well in practice.

This is normal with any new law, and at the time this guide was written, the Department of Social Development (DSD) was talking to practitioners to find out their experiences and what changes to the Children's Act they recommend. These changes will be outlined in an Amendment Bill that the DSD hopes to take to Parliament after the elections in 2014.

TAKE ACTION

Write down any challenges you experience in implementing the Act as well as suggestions you have for improving it. Contact Lucy Jamieson at the Children's Institute for information on how to make a submission to the Department of Social Development.



3 WHY IS THE CHILDREN'S ACT IMPORTANT FOR CYCWS?

The Children's Act is a "one-stop-shop" law that covers a huge range of matters affecting children. Because of this, it has **repealed** (replaced) a number of older laws that used to deal with children. These include the:

- Child Care Act of 1983;
- Children's Act of 1960;
- Age of Majority Act of 1972;
- Children's Status Act of 1987;
- Guardianship Act of 1993;
- Natural Fathers of Children born out of Wedlock Act of 1997; and
- Section 4 of the Prevention of Family Violence Act of 1993.

In order to promote children's rights and well-being, the Children's Act provides a legal framework to guide people who are involved in the care, development and protection of children on the actions and steps they must take to secure children's rights. Among other things, the Act:

- clearly states what the rights of children are;
- defines a child in need of care and protection;
- defines child-headed households and the responsibilities of the supervising adults;
- defines child and youth care centres;
- states what programmes a child and youth care centre can run; and
- sets out the rules for centre managers and management boards (for example, it tells you how to register a centre).

Child and youth care workers at the levels of learners, auxiliaries and professional are required to perform their duties and responsibilities according to the Children's Act. It is therefore essential for child and youth care workers to have thorough knowledge of this law.

Repealed: If a law is repealed, it means it is no longer in force and cannot be used anymore.



4 WHO DOES THE CHILDREN'S ACT APPLY TO?

The Act applies to:

- individuals (parents or **caregivers** of children, as well as people working with children);
- civil society organisations;
- companies; and
- all organs of state.

Organs of state are government departments and institutions such as schools and the people who work for government, such as educators, social workers, doctors and other officials.



Caregiver: A caregiver is anyone who cares for a child. Caregivers include grannies, aunts and other relatives who care for the child with the consent of the child's parents or guardian; a foster parent; someone offering temporary safe care; the head of a shelter or child and youth care centre; a child and youth care worker supporting children in the community; and a child (of 16 years and older) heading a child-headed household.



5 WHAT ARE THE GENERAL PRINCIPLES OF THE CHILDREN'S ACT?

The Act sets out general principles to guide the implementation of the Children's Act and all other laws that apply to children. In terms of these principles, all proceedings, actions and decisions to do with children must:

- respect, promote, protect and fulfil children's constitutional rights, the child's best interests, and the rights and principles set out in the Children's Act;
- respect the child's dignity and treat children fairly and equitably;
- protect the child from unfair discrimination – including discrimination based on the health status or disability of the child or his or her family;
- recognise the child's need for development – including the need for play and recreational activities that suit the child's age; and
- recognise a child with a disability and respond to his or her special needs.

The general principles also say that, in any matter concerning the child:

- the child's family should be given an opportunity to express their views (if that would be in the child's best interests);
- conflict should be avoided and people should work together to resolve their differences;
- people should try to avoid delays in taking actions or making decisions; and
- the child (depending on his or her age, maturity and **stage of development**) and the **person who has rights and responsibilities in respect of the child** must be informed of any actions or decisions that will affect the child significantly, and be made part of the decision-making process.

The United Nations Convention on the Rights of the Child (UNCRC) has four general principles. They deal with survival and development; participation; **non-discrimination**; and the child's best interests. These principles must inform everything we do for children.

Stage of development: As children grow up, they pass through different stages of development. For example, they learn to crawl before they can walk. Children learn certain skills (known as milestones) during each stage. In addition, children have different needs at different stages of development.

Person who has rights and responsibilities in respect of the child: The child's parent, guardian or caregiver is a person who has rights and responsibilities in respect of the child.

Non-discrimination: "Non-discrimination" means treating people fairly or equally.



Chapter 2 of the Children's Act, which sets out the Act's governing general principles, provides guidance on the content and implementation of three of the UNCRC's general principles: the child's best interests; participation; and non-discrimination. In addition, it lists and gives guidance on a number of further general principles, including social, cultural and religious practices; information on health care; privacy and confidentiality; and the age of majority.

5.1 The best interests principle (section 9)

Section 9 of the Children's Act says that "the child's best interests [are] of paramount importance" in all matters concerning the care, protection and well-being of a child.

This means that the child's best interests must be considered and must override other interests when any person makes decisions about any service, care or other form of support provided to the child and his or her family.

How do I know what a child's best interests are?

There is no easy answer to this question. Each case will be different, and practitioners will have to make their own decisions. What the Children's Act does is to describe the factors that have to be taken into account when making a decision that is in the best interests of the child. Section 7 contains a long list of such factors. The following are the ones most relevant to child and youth care workers:

- the child's age, maturity and stage of development;
- the child's gender;
- the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
- any disability or chronic illness that a child may have;
- the child's personal relationships with the parents, family or caregivers;
- the attitude of the parents, or any specific parent, towards the child;
- the capacity of the parents, or of any other caregiver, to provide for the needs of the child;
- the likely effect on the child of any change in the child's circumstances; and
- the need to protect the child from any physical or psychological harm, or from witnessing harmful behaviour towards another person.

Please consult the Act for the full list.

5.2 Children's participation (section 10)

The UNCRC and the African Charter on the Rights and Welfare of the Child (ACRWC) are international laws that apply in South Africa. They both contain provisions that protect children's right to participate in actions and decisions that affect them. These rights include:

- the right to be heard;
- freedom of expression;
- the right to information; and
- the principle that the best interests of the child should be put first in every matter affecting a child (or a group of children).



Following in the footsteps of international law, section 10 of the Children's Act states:

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.

Children's right to participate is one of the principles of the Children's Act, and it should be respected whenever a section of the Act is being put into practice.

What the principle means is that the child's opinion should be heard and taken into account in all matters that affect him or her; similarly, children must be informed of any action or decision taken that will affect them in a significant way. It is important to remember that children's right to participate is not about taking decision-making away from adults, but ensuring that adult decisions are truly responsive to children's needs and protect their best interests.



For example, every child at a child and youth care centre has a right to a permanency plan. In accordance with the right to participation, the Regulations to the Act require that a child must participate in the development of a permanency plan that will create stability in his or her life. The child must also be told about the plan as well as any changes that are made to it. In addition, the right to participation extends to collective decision-making, policy-making and planning – which includes decisions about the operation of child and youth care centres. To ensure that resident children participate in making decisions about the centre, the Act requires that a forum made up of resident children be established and included in the centre's management board.

It is important to think about the stage of development of individual children. Allowing children to communicate and express their views and wishes in a manner they are comfortable with is vital. Doing this means that you often have to be creative and make use of play or other forms of self-expression. Paying attention to children's body language, facial expressions and gestures is as important as listening to the words they say – particularly in the case of younger children.

5.3 Children with disability and chronic illnesses (section 11)

The rights of children with disabilities are protected by international and regional laws.

The United Nations Convention on the Rights of the Child, especially article 23, recognises children with disabilities as a vulnerable group needing special protection. In the same vein, the United Nations Convention on Persons with Disabilities calls for full and effective steps to make children with disabilities a part of society. It also calls for such children to enjoy equal opportunities; respect; dignity; non-discrimination; and accessible services and programmes. This means that children with disabilities should have access to, and be included in, all services and programmes offered to children.

Section 11 of the Children's Act recognises the needs of children with disabilities and chronic illnesses and calls for special measures to ensure equal enjoyment of their rights. Section 11 is expressed as one of the general principles of the Act, which means that it should guide all proceedings, actions and decisions concerning children with disabilities or chronic illnesses.

Section 11 says that careful thought must be given to the form and manner of services and support provided in terms of the Act so as to ensure that:

- all children with disabilities and chronic illnesses are provided with parental, family or special care (as and when it is appropriate);
- conditions are created that ensure the dignity, promote self-reliance and facilitate the active participation of children with disabilities or chronic illnesses in the community;



- support services are provided to these children and their caregivers; and
- opportunities are created for these children to share in social, cultural, religious and educational activities.

Section 11 of the Act aims to ensure that children with disabilities or chronic illnesses are treated equally and with dignity, and that their right to participation is respected. It also aims to provide the children and their families with the necessary support services to prevent further discrimination or neglect. In addition, children with disabilities or chronic illnesses have the right not to be subjected to medical, social, cultural or religious practices that are harmful to their health, well-being or dignity.

The development of appropriate programmes and services to support children with disabilities is important to give effect to their rights. However, prevention is equally important. Giving parents, caregivers and communities useful information about how to prevent disability is a major step towards protecting children's health and well-being.

5.4 Social, cultural and religious practices (section 12)

Section 12 protects all children against social, cultural and religious practices that are detrimental to their well-being. This includes under-age and/or forced engagements or marriages.

In recent times, child and youth care workers have come across a harmful practice – the practice of *ukuthwala* (forced child marriages) – especially in rural areas in the Eastern Cape and KwaZulu-Natal.

Traditionally *ukuthwala* was a pretended kidnapping of the consenting bride, not a real one. When two people wanted to get married – in other words, when there was mutual consent – and the *lobola* (bride price) negotiations had finished between the two families, the bridegroom would pretend to kidnap the bride and take her to his home.³ In some areas the bride would be “captured” before the *lobola* negotiations to speed up the process – but the bride had to agree to this and the couple were not allowed to have sex until the *lobola* was paid.

³ Bekker JC (1989) *Seymour's Customary Law in Southern Africa*. Cape Town: Juta. Koyana DS & Bekker JC (2007) 'Indomitable *Ukuthwala* custom' *De Jure*. 139–144



Today, in violation of the Children's Act, young girls are being abducted and forced into marriage in the name of *ukuthwala*. These young brides are then forced to have sex with their "husbands". However, forced marriage and rape are not part of the true culture of *ukuthwala*, and the law carries heavy penalties for these criminal offences.

Section 12 (2) of the Children's Act protects children's right not be forced into marriage or engagement. Section 305 (1)(a) makes it an offence to contravene section 12 (2), and section 305 (6) makes such an offence punishable by a fine, imprisonment for a period not exceeding ten years, or both.

What should you do if you find a child who has been forced into marriage?

Child abduction and forced marriage are a crime. Report the matter to the police and the provincial Department of Social Development.

5.5 Information about health, health status and treatment (section 13)

Section 13 of the Act recognises and protects children's right to information about their health. This includes general information about leading a healthy lifestyle and preventing ill-health and disease. It also includes information about sexuality, reproduction and contraception.

In addition, children have a right to know about any illnesses they may have, such as HIV, and to receive information about the causes of their illness and the various options for treatment and care. The reason for the protection of their right to health information is so that they can participate in decisions or – based on their ability to do so – make decisions about what happens to their bodies.

What this means is that child and youth care workers must assist children in obtaining information about health in general as well as information about their own health in particular. The person who gives the information to them has a responsibility to make sure it's presented in such a way that children at different stages of development can understand it.

5.6 Privacy and confidentiality

Privacy and respect for confidentiality are issues that are especially important for older children. The right to privacy is enshrined in South Africa's Constitution as well as African and international law. In keeping with this, the Children's Act describes specific situations in which the right must be protected (for example, in the case of health matters and certain court proceedings). Section 13 of the Act protects children's right to confidentiality about their health status and that of their parents and caregivers. It is a criminal offence to tell other people about the HIV status of a child without his or her consent.

It must be pointed out, however, that the Act has nothing to say about privacy and confidentiality in the more day-to-day affairs of children. To fill in the gap, the UNCRC provides clearer guidance in this respect.

The UNCRC has advised governments that what the right to privacy means in practice is that, among other things, children should know what information is kept on file about them, why it is being kept, and who controls it.



5.7 Age of majority (section 17)

According to the Children's Act, children reach the age of majority (that is, become adults) when they turn 18. Generally, children need their parents' consent to take big decisions, but once they reach the age of 18 they are considered legally responsible for their own actions or omissions.

The law does create some exceptions to the age of majority. For example, the Act also allows young adults to remain in alternative care until they reach the age of 21 if they are still undergoing full-time education.



B



THE PROVISION OF CARE AND PROTECTION TO VULNERABLE CHILDREN



1 THE CHILDREN'S ACT AND THE CYCLE OF CARE AND SUPPORT FOR VULNERABLE CHILDREN

One of the primary roles of child and youth care workers is to provide care and support to children who are vulnerable to harm because of their circumstances. The Children's Act provides guidance on the identification of vulnerable children and sets out rules governing the manner in which care and support must be provided to them.

The care provided by child and youth care workers starts with the identification of children who are at risk of harm or who are being harmed, and continues until the relationship comes to an end when the child reaches the age of 18 years or is reunited with his or her family.

The rules of the Act govern this relationship and must be followed by child and youth care workers throughout the full cycle of the provision of care and support to vulnerable children in their care.



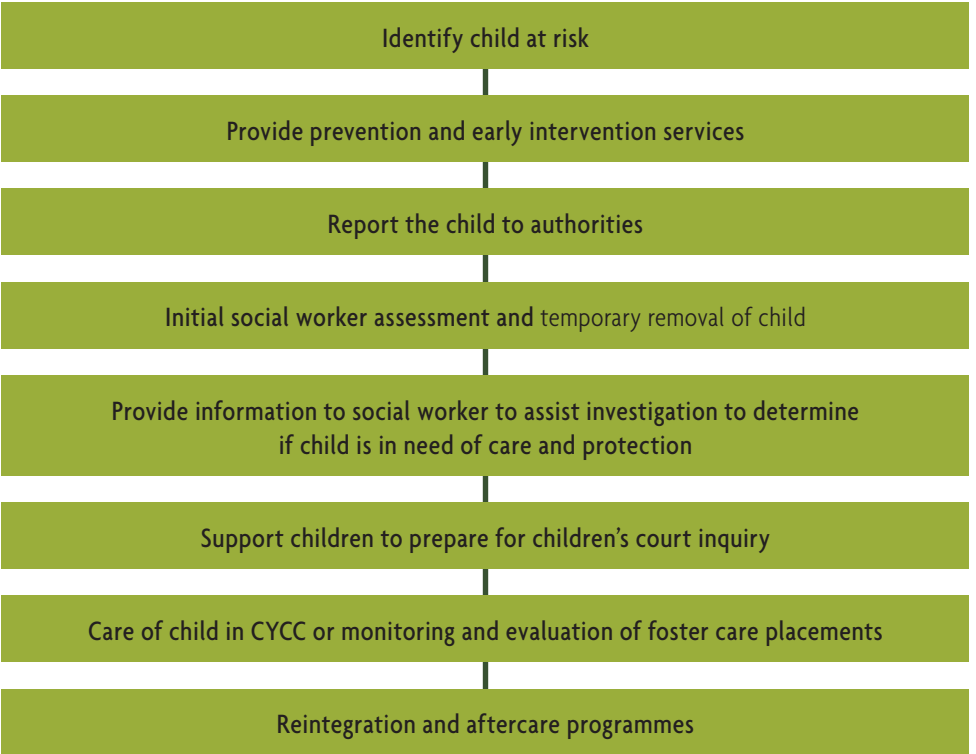


FIGURE 1: The life-cycle of the care and support relationship between child and youth care workers and vulnerable children



2 IDENTIFYING VULNERABLE CHILDREN

The role of the CYCW starts with the identification of children who are vulnerable to harm, abuse or neglect because of their surrounding circumstances. The Children's Act empowers and requires CYCWs to identify and take prescribed actions once they have identified vulnerable children. The prescribed actions differ depending on the specific circumstances and the threat of harm faced by the child in question.

2.1 Which children are vulnerable?

The Children's Act recognises three different groups of vulnerable children, and prescribes different actions to be taken to protect each group:

1. Children that are at risk of harm or non-deliberate neglect (which has not yet occurred) because of low levels of material resources and/or parenting skills and capacities – that is to say, the risk of neglect caused by parents not having sufficient money, time, and/or parenting skills and knowledge to provide adequate or appropriate care for their children.
2. Children that have been physically or sexually abused or deliberately neglected.
3. Children that are in need of care and protection as defined by the Act. This group is described in detail in the next sections.





2.2 When is a child in need of care and protection?

The Children's Act identifies specific children as being in need of care and protection, including a child that:

- has been **abandoned** or **orphaned**⁴ and is without any visible means of support;⁵
- is in a state of physical or mental **neglect**;
- is being maltreated, **abused**, deliberately neglected or degraded;
- has been exploited or lives in circumstances that expose him or her to **exploitation**;
- displays behaviour which cannot be controlled by the parent or caregiver;
- lives or works on the streets or begs for a living;
- has been trafficked;
- is addicted to a dependence-producing substance and is without any support to obtain treatment;
- lives in, or is exposed to, circumstances which may seriously harm that child's physical, mental or social well-being; or
- if there is reason to believe that the child will live in, or be exposed to, seriously harmful circumstances if he or she is returned to the parent, guardian or caregiver.

Abandoned: A child is abandoned if he or she has been deserted by the parent, guardian or caregiver, or if he or she has not had contact with the parent, guardian or caregiver for at least three months for no apparent reason.

Orphan: An orphan is a child who has no surviving parent caring for him or her.

Neglect: A child is said to have been neglected when the caregiver has not fulfilled his or her basic parental responsibilities. According to the Children's Act, these responsibilities are "to provide for the basic physical, intellectual, emotional or social needs" of the child.

Abuse: Abuse means any form of harm or ill-treatment deliberately inflicted on a child. It includes assaulting or deliberately injuring a child; sexually abusing a child or allowing a child to be sexually abused; bullying by another child; a labour practice that exploits a child; or exposing or subjecting a child to behaviour that may harm him or her psychologically or emotionally.

Exploitation: To exploit children is to take advantage and treat them unfairly. Children can be exploited in different ways. Child pornography and child prostitution are examples of sexual exploitation. Child labour and using children to commit crimes are examples of economic exploitation.

⁴ Regulation 56 states that social workers must place an advert in a local newspaper to establish that a child has been abandoned or orphaned if the death certificates of the parents are not available.

⁵ Regulations to the Act set out all the factors that must be taken into account by the children's court to decide if a child has been abandoned or orphaned before making a decision as to whether the child is in need of care and protection.



What is an orphan?

The Act defines an orphan as a child who has no surviving parent caring for him or her. In practice, people distinguish between a maternal orphan (a child whose mother has died), a paternal orphan (one whose father has died), and a double orphan (a child who has lost both parents). In 2010 South Africa had more than 1.5 million maternal and double orphans and 2.2 million paternal orphans. However, over 70% of paternal orphans live with their mothers and do not require child protection services.⁶



Is an orphan a child in need of care and protection?

According to the Act, a child who is abandoned or orphaned is not automatically regarded as being in need of care and protection. The child must also be “without any visible means of support”.

⁶ Meintjes H & Hall K (April 2010) *Demography - Orphanhood*. Children Count website. <http://www.childrencount.ci.org.za/indicator.php?id=1&indicator=4>



How are the courts interpreting “visible means of support”?

CASES FROM THE FIELD

Paula Proudlock, Children’s Institute, Western Cape

From the age of two years old, Siphso lived with his great aunt and uncle because his mother was not able to care for him. His great aunt and uncle received the Child Support Grant (CSG) for his basic needs. However, the family has a very low income and the money from the CSG (R270 per month in 2011) wasn’t enough to cover Siphso’s food, clothing, transport and education. When Siphso’s mother died, leaving him an orphan, the family approached the DSD to make them foster parents so they could get the higher-valued Foster Child Grant (FCG) (R740 per month in 2011).

As a result, the court had to decide if Siphso was in need of care and protection. The Children’s Act states that a child is in need of care and protection if she or he is “abandoned or orphaned and is without visible means of support”. The Presiding Officer (PO) ruled that Siphso was not “in need of care and protection” because he was living with extended family and therefore had visible means of support.

The family appealed this decision. The judge in the High Court said the phrase “without visible means of support” should be interpreted to mean a child who has no one with a legal duty to care for him or her. Siphso was declared a child “in need of care and protection” because he was an orphan and his great aunt and uncle had no legal duty to care for him.

The High Court appointed them as foster parents and they were eventually able to get the FCG, which was back-dated to April 2011.

In a second High Court case, the judge considered how the term “visible means of support” is applied to caregivers who do have a common law duty of support (for example, grannies and siblings). This second judgment makes it clear that children can be legally placed in the foster care of relatives (such as grannies) and they can receive the FCG where the legal duty of support is not enforceable because the relative does not have the financial means to support the child. The effect of the ruling, in short, is that poor grannies can be foster parents and receive the FCG.



This judgment helps solve one of the challenges that has been preventing access to the FCG for grandparents, i.e. confusion over the interpretation of the Act. However, it does not resolve other systemic problems such as the shortage of social workers. The shortage of social workers has led to long waiting periods for families when they apply for foster care orders for orphans, and although social workers try to prioritise their caseloads, abused and neglected children are also waiting longer for social services than they should.

Are children in child-headed households and victims of child labour in need of care and protection?

A child may be in need of care and protection if he or she:

- lives in a **child-headed household**; or
- is a victim of **child labour**.

In terms of the Act, a child who lives in a child-headed household or is the victim of child labour may potentially (but not necessarily) be a child in need of care and protection. A **designated social worker** must investigate the matter to assess if the child is, in fact, in need of care and protection. Here, the Act recognises that although a child lives in a child-headed household, the child might have strong support structures and not require state intervention. The Act thus allows for a social worker to write a report explaining to the court why he or she believes that the child is not in need of care and protection.

Child-headed household: A child-headed household (CHH) is a household where a child has taken on the responsibility of caring for all other children living in the household because the parent, guardian or caregiver is either dead, terminally ill or has abandoned the children. An example of a child-headed household is one in which the parent is very ill with AIDS and a child (often the eldest brother or sister) is looking after the sick adult as well as the other children in that home.

Child labour: Child labour means any work that is likely to be hazardous to or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Designated social worker: A designated social worker is any social worker who works for the Department of Social Development (DSD), a municipality or a designated child-protection organisation. There are many times when the Children's Act says that a certain task should be done only by a designated social worker.



The social worker must also explain what measures he or she has taken to support the child and family. Such measures include “*counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organization*”.

Other children in need of care and protection (section 154)

If a court has ordered the removal of a child to temporary safe care, it is possible that any other children living on the same premises could be at risk as well. If there are reasonable grounds to suspect that these other children are also in need of care and protection, the provincial DSD or the person in whose care the first child is placed may refer the children to a designated social worker for investigation.





2.3 What are the signs of abuse and neglect?

Regulation 35 sets out the following signs to consider when assessing if a child has been abused or neglected:

- signs of physical abuse include *“bruises in any part of the body; grasp marks on the arms, chest or face; variations in bruising colour; black eyes; belt marks; tears around or behind the ears; cigarette or other burn marks; cuts; welts; fractures; head injuries; convulsions that are not due to epilepsy or high temperature; drowsiness; irregular breathing; vomiting; pain; fever or restlessness”*;
- emotional and behavioural signs of physical, psychological or sexual abuse include *“aggression; physical withdrawal when approached by adults; anxiety; irritability; persistent fear of familiar people or situations; sadness; suicidal actions or behaviour; self-mutilation; obsessive behaviour; neglect of personal hygiene; age of child demonstrating socially inappropriate sexual behaviour or knowledge; active or passive bullying; unwillingness or fearfulness to undress or wearing layers of clothing”*;
- developmental signs of physical, psychological or sexual abuse include *“failure to thrive; failure to meet physical and psychological developmental norms; withdrawal; stuttering; unwillingness to partake in group activities; clumsiness; lack of coordination or orientation or observable thriving of children away from their home environment”*;
- signs of deliberate neglect include *“underweight; reddish scanty hair; sores around the mouth; slight water retention on the palm or in the legs; extended or slightly hardened abdomen; thin and dry skin; dark pigmentation of skin, especially on extremities; abnormally thin muscles; developmental delay; lack of fatty tissue; disorientation; intellectual disability; irritability; lethargy, withdrawal, bedsores and contractures”*;
- *“... a disclosure of abuse or deliberate neglect by the child”*; or
- *“... a statement relating to a pattern or history of abuse or deliberate neglect from a witness relating to the abuse of the child”*.

In deciding whether a child has been abused or neglected, the Act requires that these signs or indicators be considered in the *“total context of the child’s situation”*. This means that the focus should not fall on only one factor or indicator.



CASES FROM THE FIELD

Christina Nomdo, RAPAN, Western Cape

The Sexual Offences Act was called “the kissing law” by children in South Africa when it was passed in 2007. Sections 15 and 16 of the Act make it a crime for children between 12 and 16 years old to engage in any sexual activity including kissing, hugging and holding hands with children of the same age. In 2012, the Teddy Bear Clinic and RAPAN, supported by the Centre for Child Law, went to court to say that this law is unconstitutional and does not serve the best interests of children. It violates children’s right to privacy, dignity and the right to make decisions about their own bodies. Instead of punishing children for developmentally normal sexual experimentation, the organisations believed that children should be supported by adults providing guidance and information about sexuality.

The Sexual Offences Act also requires adults – such as child and youth care workers – who know about children who consented to sexual activities to report this to the police as a crime. This mandatory reporting provision is contained in section 56(2)(b) of the Act. It applies to everyone, including, for example, health workers who are assisting children confidentially with HIV counseling and testing, to report children if they disclosed any sexual acts.

Judge Rabie from the North Gauteng High Court found, on the 15 January 2013, the criminalisation of consensual sexual engagements between children 12 and 16 years to be unconstitutional. He declared that this intrusion into the private lives of children in order to control their sexuality was unjustified and would cause them harm. The judge was also concerned about the risk of public exposure and humiliation of children, which may lead to negative labeling, stigma and victimisation. He noted that the criminalisation of consensual sexual engagements and the duty to report limit education, guidance and support that adults are able to provide to children in their sexual development. The matter was heard in the Constitutional Court on 30 May 2013 for confirmation of the declaration of unconstitutionality.



3 THE ROLE OF CYCWS ONCE THEY HAVE IDENTIFIED VULNERABLE CHILDREN

3.1 The duty to report vulnerable children

The Act creates different reporting obligations on CYCWs depending on the category of vulnerability into which the child falls.

1. The Act requires that all child and youth care workers (as well as any members of staff or volunteers at a child and youth care centre) who suspect that a child has been physically abused causing injury or **sexually abused** or deliberately neglected at home, school or elsewhere in the community, must report their suspicion to a **designated child protection organisation**, the provincial DSD or a police official.⁷

Failure to report such incidents is a criminal offence, so it is important to know what to report, when to report it, to whom, and how.

2. If a CYCW suspects other forms of abuse or non-deliberate neglect, or that a child is in need of care and protection for reasons other than physical or sexual abuse or deliberate neglect, he or she may report their suspicion if they choose to do so.

Sexual abuse: In relation to a child, sexual abuse means: sexually molesting or assaulting a child, or allowing a child to be sexually molested or assaulted (subjecting the child to unwanted or improper sexual activity, for example, by touching the child on his or her private parts); encouraging, inducing or forcing a child to be used for the sexual gratification of another person; using a child in, or deliberately exposing a child to, sexual activities or pornography; or giving a child, or anyone else, money or other rewards for the child to perform sexual activities, including prostitution and pornography; or allowing anyone else to sell the sexual services of children.

Designated child protection organisation: A child protection organisation that has been given written approval by the Director-General or provincial Head of Social Development to perform child protection services.

⁷ Child and youth care workers must also be aware that the Sexual Offences Act of 2007 requires anyone who has knowledge of a sexual offence committed against a child to report the incident to a police official.



What form should be used to report incidents that happen in the home or community?

Use a **Form 22** to report incidents that occur in the home or the community.

Why should you report these cases?

The reason for reporting a case, whether the CYCW is obliged to do so or chooses to do so, is to start a process of investigation of the matter by social workers and the children's court so that an order can be made confirming whether the child is in need of care and protection (as defined by the Act), for the removal of the child (where necessary) from his or her harmful environment, and the placement of the child in alternative care (where necessary).

3.2 Temporary removal of the child in immediate danger

When the provincial Head of Social Development (HSD) receives a report of an incident, the HSD must arrange for an investigation to be done by a designated social worker (DSW).

Any person reporting abuse or neglect has to **substantiate** their belief – in other words, they must provide evidence to back up their suspicions. Some of the key indicators or signs of abuse and neglect are outlined in Regulation 35.

If you report abuse or neglect in good faith and it turns out after an investigation that you were incorrect, you will not be liable to civil action.

However, if you fail to report it when there are reasonable grounds to suspect abuse or deliberate neglect, you are guilty of a criminal offence.

Form 22: Reporting of abuse or deliberate neglect of child.

Substantiate: To substantiate a statement is to give proof or good reasons why it is correct.



Investigation by a designated social worker

Once a report is made to any of the three authorities, a designated social worker is assigned to investigate the case. The DSWs must conduct a full investigation to determine if the child is in need of care and protection and develop recommendations as to the most appropriate placement solution for the child.



Immediate removal of the child to temporary safe care

Ordinarily, the DSW has 90 days to complete his or her investigation into the circumstances of the child, whereafter the matter goes before the children's court for a decision as to whether the child is in need of care and protection and for an order, which may include the removal of the child from his or her home and their placement in alternative care. However, if a child is in immediate danger he or she can be removed to temporary safe care before the investigation by the DSW starts, with or without a court order.



Removing a child to temporary safe care with a court order (section 151)

In a situation where the child's safety or well-being is in danger, the children's court can be approached before the social worker conducts his or her investigation to make an order that the child be removed and placed into temporary safe care. Once this order is made and the child is placed into temporary safe care, the child is officially in alternative care and the strict rules regarding absconding and leave from alternative care apply to him or her.

The Presiding Officer (PO) can authorise any person to remove the child. So if a child and youth care worker tells the court about a child who might be in need of care and protection, the PO can authorise that CYCW worker to remove the child. When the CYCW has the order, he or she – either alone or accompanied by a police official – can enter any premises mentioned in the order and remove the child.

Removing a child without a court order (section 152)

In an emergency the child can be placed in temporary safe care without a court order. Only a designated social worker or a police official⁸ can remove a child and put him or her into temporary safe care without a court order. They can remove the child only when there are grounds to believe all of the following, namely that:

- the child is in need of care and protection;
- the child needs immediate emergency protection;
- any delay caused by waiting for a court order might result in harm to the child;
- removing the child from the home environment is the best way to secure the child's safety and well-being; and
- the danger to the child outweighs the potential trauma caused by the removal.

A **Form 36** must be completed by the police official or designated social worker and submitted to the person or place of temporary safe care as soon as is practical.

Form 36: Authority for removal of child to temporary safe care.

⁸ The Child Care Act allowed anyone “*authorized in writing by a commissioner of child welfare, social worker or policeman*” to do an emergency removal of a child without a warrant. Designated social workers and police officers can still do a removal, but they cannot authorise anyone else.



If a social worker has removed a child and placed him or her in temporary safe care, the social worker must inform the parent, guardian or caregiver of the child about the child's removal within 24 hours if they are traceable. The clerk of the children's court must be informed about the removal on the next court day. The matter must also be reported to the provincial DSD.

If a police official has removed the child and placed him or her into temporary safe care, the official must inform the parent, guardian or caregiver of the child about the child's removal within 24 hours if they are traceable. The matter must then be referred to a designated social worker; in addition, the provincial DSD must be notified within 24 hours of the removal and the location where the child has been placed. The clerk of the children's court must also be informed of the child's removal no later than the next court day.

It constitutes unprofessional or improper conduct if a social worker misuses his or her power to remove a child to temporary safe care without a court order. If a police official misuses his or her powers to remove a child without a court order, it constitutes grounds for disciplinary proceedings against that official.

Review of an emergency temporary removal

In 2010, the High Court⁹ declared that sections 151 and 152 of the Children's Act 38 of 2005 (which regulated the temporary removal of children from their families) to be unconstitutional because they failed to allow for a review of the decision to remove the child. There was no procedure for the child or his or her parents to contest the removal until the children's court hearing. Legally, this hearing could be up to 90 days after the removal, but in reality it could be even longer than that.

By comparison, the old legislation – the Child Care Act – required a child to be brought before the court within 48 hours after the removal whether or not there had been warrant for the removal. When a child was removed, the parent was given notice of the time, date and place at which the review would be heard by the court. The parent thus had an opportunity to challenge the decision.

⁹ *Chirindza and others versus Gauteng Department of Health and Social Welfare and others*. North Gauteng High Court, Pretoria, Case: 47723/2010.



Justice Fabricius held that the Act currently does not give enough protection to children and their families. In particular, sections 151 and 152 infringe the rights to:

- family care or parental care (Constitution section 28 (1)(b));
- the best interests of the child (Constitution section 28 (2));
- the child shall not be separated from his or her parents unless necessary for the best interests of the child and subject to judicial review (UNCRC art. 9 and the ACRWC art. 19), with an opportunity to participate in the proceedings (UNCRC art. 9); and
- the right to privacy (Constitution section 12).

The judge recognised that it is sometimes necessary to limit the rights of the child to achieve a greater benefit – in this situation, limiting a child’s right to family (by removing the child from the family environment) to protect the child from abuse. He maintained, however, that a judicial review must be a critical part of the balancing of these competing interests.

He ruled that the Children’s Act should be changed to ensure that all children who are removed from the care of their parents, guardians or caregivers are brought before the children’s court for review within 48 hours if the removal was by court order, or within 24 hours if there was no court order.

Access to the child when he or she is in a place of safety

While the child is at a temporary place of safety, the child’s relatives, as well as any relevant health or legal professionals, child and youth care worker or any other person authorised by the DSW, must be permitted see the child at all reasonable times. This is on the condition that any contact is in the child’s best interests and in line with the terms of the court order.¹⁰

Court-ordered early intervention programmes

The court should approve the removal of a child to temporary safe care only if such an order is in the best interests of the child and necessary for his or her safety. If the child is not in immediate danger the court can order that the family participates in an appropriate prevention and early intervention programme (for example, a parenting programme) until the social work investigation is completed.

¹⁰ Regulation 53(2).



Do street children have to be placed in temporary safe care to get support?

In terms of section 150 (1)(c), a child who lives or works on the streets or begs for a living is in need of care and protection. A CYCW that comes into contact with a **street child** should report the child to a social worker for investigation. The question that arises is whether the child must be placed in temporary safe care while the social worker investigates the child's circumstances, or whether the child can participate in a stabilisation programme offered by a registered child and youth care centre offering specialist programmes for street children.

In the past, **shelters** were not registered as child and youth care centres and it was recognised that children living and working on the street could go to shelters and stay for a day or two, leave and then come back again later. This process of coming and going allowed the child a degree of independence and also built trust between the child and the adults running the shelter. The programmes offered at the shelter could then gently draw the child into the formal system or develop the capacity of the family to care for the child. If the children's court inquiry found the child to be in need of care and protection, she or he would be placed in alternative in children's home.

Shelters are now regarded as child and youth care centres, raising some doubt as to whether it is still possible to allow children to stay at the centre and to come and go as a method of engaging them in trusting relationships with centre staff. Whilst the Act generally views CYCCs (which include shelters) as places where children must be in alternative care under a court order, the Act does foresee a set of specialist CYCCs where children are voluntarily admitted. For example, the range of CYCCs contemplated by the Act includes treatment centres for children abusing substances to which children may, in terms of The Prevention of and Treatment for Substance Abuse Act, be voluntarily admitted. If voluntary admissions are possible in treatment centres, there is no reason why children have to be placed in shelters in terms of a court order. In fact, section 167 (2) of the Children's Act allows a child to be in a registered CYCC without a court order, but not for more than six months.

Street child: A street child is any child who "lives, begs or works on the streets". This includes children who have left home and sleep on the streets, as well as children who work or beg on the streets during the day but go home at night – "day strollers", as some people call them.

Shelters: Simply put, a shelter is a child and youth care centre. Shelters currently registered in terms of the Child Care Act must be registered as child and youth care centres within five years from 1 April 2010 – that is, by 31 March 2015. New and upcoming facilities should register immediately as child and youth care centres.



Any decision about the most appropriate intervention for the child and family must be made in the best interests of the child, and the child should only be removed from the care of his or her family if necessary. The court can make an order in terms of section 46 (1)(g) obliging the child and/or family to participate in early intervention services, a family preservation programme or both. A stabilisation programme offered by a registered CYCC is an early intervention service.

What is central to the implementation of the Act is to recognise that it is not always going to be in the best interests of the street child to force him or her to remain in a shelter, and this should be reflected in the social worker's initial assessment report as to whether the child is in need of care and protection and as to appropriate short-term interventions.

In some cases, the child may be at extreme risk if allowed any freedom to come and go, making it necessary for him or her to be placed in alternative care. There will be other cases where forcing the child to remain in a shelter breaks trust and blocks the door to establishing relationships with the staff. In these cases it might be better for the child to participate in a stabilisation programme that slowly draws him or her into the care system. This approach is in line with the obligation created by the Government's Strategy and Guidelines for Children Living and Working on the Streets to take into account the street child's views and their participation in the intervention design, implementation and evaluation of programmes and interventions.¹¹

In all instances a report must be completed and a designated social worker must do a risk assessment.

The court must make an order obliging the child to participate in an early intervention service; placing the child in temporary safe care; confirming the placement of a child in temporary safe care following an emergency removal; or returning the child to the care of the family.

The designated social worker has 90 days to complete his or her investigation and submit a report to the children's court. During the investigation the social worker will evaluate the circumstances of the child to determine whether or not the child is in need of care and protection; the report for the children's court will include recommendations on the interventions required to support the child. One of the options available to the court is to extend the existing order for the stabilisation programme for a maximum of 6 months. After this period the child must be placed in alternative care or reunified with the family. Again, it is up to the court to make the decision based on the recommendation of the designated social worker.

Specialist early intervention programmes aimed at stabilising children on the streets can only be offered by child and youth care centres registered to run such a program. N.B. drop-in centres can provide specialist programs but cannot offer overnight accommodation.

¹¹ Department of Social Development (2011) *Strategy and Guidelines for Children Living and Working on the Streets*, p.23.



3.3 The decision as to whether the child is in need of care and protection

The designated social worker's report, discussed under previous headings, provides an assessment, based on the facts found during the investigation, of whether the child is in need of care and protection. However, only a children's court can make the final decision as to whether the facts indeed show that the child is in need of care and protection. In order to make this decision and to make a ruling about the placement and/or other treatment for the child, the court considers the information provided in the designated social worker's report and evidence provided by the child, the family and any other witnesses.

Investigation by the designated social worker

A designated social worker investigates whether the child is in need of care and protection. The social worker's report must contain a detailed presentation of the prescribed information on Form 38 (see Regulation 55). After the investigation, the social worker must share the findings with the provincial DSD and the report must be submitted to the children's court.

The report must state the social worker's conclusion as to whether the child is, or is not, in need of care and protection, and it must provide the reasons for his or her conclusion. The report should also include recommendations for assisting the child and family, *"including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation"*.

The children's court inquiry

The parent, guardian or caregiver of the child must be notified of the children's court inquiry. Regulation 54 states that the children's court inquiry should take place not later than 90 days after the social worker started the investigation and that the court can adjourn the case for a period of 14 days at a time. However, the children's court inquiry must be held within six months if the child is in temporary safe care.

Children's participation in the children's court inquiry

The children's court inquiry is held in the district where the child resides, or where the child was found or happens to be. The child has a right to participate in the inquiry if he or she chooses to do so.



Who is responsible for bringing the child to court?

- If the child is in temporary safe care, the DSW must ensure that the child is taken to the children's court.
- If the child is not in temporary safe care, a parent, guardian or caregiver must bring the child to the court.

The court can decide that any child involved in a children's court inquiry as a party or a witness should be questioned through an **intermediary**.

After hearing the matter the court can adjourn for up to 14 days and order that, while the court is making a final decision, the child must:

- remain in temporary safe care at the place where he or she is kept;
- be transferred to another place in temporary safe care;
- remain with the person under whose control he or she is;
- be put under the control of a family member or other relative; or
- be placed in temporary safe care.

3.4 What happens if the court finds that the child is not in need of care and protection?

If the children's court finds that the child is not in need of care and protection, it can make the following orders:

- If the child was not placed into temporary safe care, the court cannot make a placement order but can order that the child receives certain services or programmes. For example, the court can order that the parents make arrangements to have the child cared for in a partial care facility while they go to work.
- If the child was placed into temporary safe care, the court can order the child to be returned to the person who was caring for him or her before the removal. The court can also make an order for prevention and early intervention services or family reconstruction services.

Intermediary: The function of an intermediary is to communicate between the people involved in proceedings in a court and a child witness in another location. The intermediary repeats questions to the witness and reports the answers given by the witness back to the court room. The intermediary explains such questions and answers in ways that enable them to be understood by the witness or people in the courtroom. This gives the child the opportunity to testify in a room away from the accused, so that the child does not suffer secondary abuse.



- If a child who is living and working on the streets is in a stabilisation programme at a CYCC and the social worker finds that he or she needs to carry on with this programme before being placed in alternative care, then the child can continue with the programme provided that the court agrees and makes an order. Once the child is stabilised, the matter can be referred back to the children's court and another investigation conducted while the child is formally placed at the centre as a temporary safe care placement. Note that since a child cannot be kept at a child and youth care centre or facility for more than six months without a court order, the stabilisation process must have been completed before the six months expires.

3.5 What happens if the court finds that the child is in need of care and protection?

A court can make various orders after it finds that a child is in need of care and protection. One of the improvements of the Children's Act is that it gives the court a lot of options, something which was not the case under the Child Care Act. These orders include the following:

- The court can make orders to support the family to keep the child at home (for example, a partial care order to ensure that the child is looked after during the day whilst the parents are at work).
- The court can order that the child receives medical, psychological or other treatment or that the child and family attend counselling. This type of order is particularly useful for street children, who often have substance-abuse problems or serious psychological issues as result of using glue, drugs, and the like.
- In more extreme cases the court can make orders that require the child's removal from the family. If a child is found in need of care and protection and has no parent or caregiver (or the parent or caregiver is unsuitable to care for the child), the child can be placed in alternative care – that is, foster care or a CYCC providing a residential care programme suited to his or her needs. Part C provides detailed information about the rights of children and responsibilities of child and youth care workers in respect of children placed in all relevant forms of alternative care.
- Similarly, if the parent or caregiver cannot control the child's behaviour or the child displays criminal behaviour, the child can be placed at a CYCC which provides a secure care programme suited to his or her needs. Part C provides detailed information about the rights of children and responsibilities of child and youth care workers in respect of children placed in all relevant forms of alternative care.
- A children's court can place the child in CYCC only if no other option would be appropriate.



When it makes these orders, the court can also add further conditions to them. For instance, it can order:

- that the placement is subject to supervision by a designated social worker or authorised officer; or
- that the placement is subject to family reunification services provided by a designated social worker or authorised officer.

Before making an order to remove the child from the care of his or her parents or guardian, the court must obtain and consider a social worker's report on the conditions of the child's life. This report must include an assessment of:

“...the developmental, therapeutic and other needs of the child;
details of family preservation services that has been considered or attempted; and
a documented permanency plan ... aimed at achieving stability in the child's life...”

If the court decides to place the child in a CYCC, it must determine the residential care programme that the child needs and order that he or she be placed at a centre which offers that particular programme. The provincial HSD is then responsible for actually placing the child at a centre that offers the programme determined by the court. For example, a child who is abusing substances should be placed in a centre that provides counselling and support programmes to help the child deal with this dependency. The rights of children and responsibilities of child and youth care workers in respect of children placed in child and youth care centres are dealt with in detail in Part D of this guide.

3.6 Duration and extension of orders

For children placed in a child and youth care centre, a court order lapses after two years unless it indicates that the placement will be for less than two years. The court must review the order every two years and decide whether to extend it or release the child. (This differs from the Child Care Act, in terms of which the provincial HSD could review and, where necessary, extend court orders.) According to the Children's Act, orders can't be extended beyond a child's eighteenth birthday.

A child and youth care worker can play a role in this process, for example, by reminding the social worker that the court order is about to expire and has to be extended.

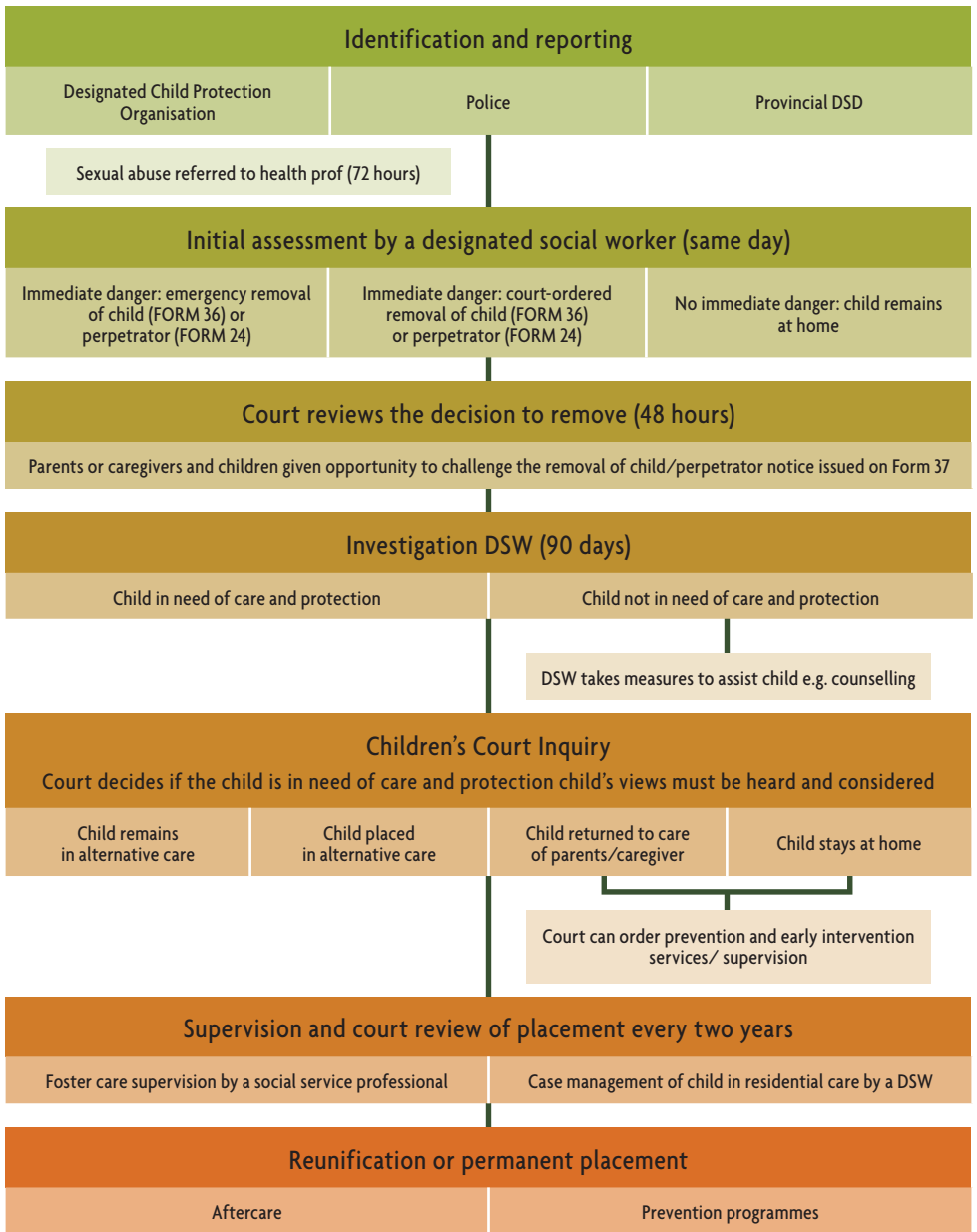


FIGURE 2: The process for the investigation, court review and order process for children in need of care and protection



4 PREVENTION AND EARLY INTERVENTION PROGRAMMES

In addition to the reporting and referral of vulnerable children to designated social workers and the children's courts, child and youth care workers can also provide care and support to children at risk of neglect or harm through prevention and early intervention programmes. These are commonly provided through community programmes such as Isibindi.

4.1 What are prevention and early intervention programmes?

Prevention programmes aim to strengthen families and help them address and prevent problems. For example, building relationships with significant people in a child's life, such as school teachers, can assist children with learning problems and prevent the problem from escalating. Prevention programmes can be targeted at large groups of families at community-level or at specific households that need help in serving the best interests of their children. In both cases, child and youth care workers should start by identifying the strengths and weaknesses of the family or community and then develop programmes to make families better able to support the well-being of their children.

Early intervention programmes are provided to families where children have been identified as vulnerable or at risk of harm (or removal) from their family environment. In the case of children with disabilities, early intervention is especially important for promoting their development and preventing **secondary disabilities**. For example, an outreach worker serves the important role of identifying children with health problems and making the appropriate referrals.

Secondary disabilities: A child with a disability is more prone than one without a disability to illness and health-related complications. If precautions are not taken, or if prompt treatment is not given at the first signs of illness or a health condition, then a child who already has a disability (the primary, or main, disability) is at risk of developing a secondary health condition.

The Children's Act describes the kinds of activities on which prevention and early intervention programmes should focus. These include:

- Strengthening family relationships.
- Developing parenting skills and caregivers' ability to protect the well-being and best interests of their children, especially children with disabilities. Such programmes should promote **positive discipline**.¹² (The case study on page 73 provides some examples.)
- Promoting healthy relationships within the family.
- Providing **psychological, rehabilitation and therapeutic programmes** for children. Such programmes offer support to children with psychological or behavioural problems.
- Preventing, among other things, the neglect, exploitation¹³ and abuse of children.
- Preventing family problems from recurring so that they do not harm children or interfere with their development.
- Stopping problems from getting so bad that children need to be removed from the family and placed in foster care or child and youth care centres.
- Keeping children and families together.

The case study on the next page illustrates a programme that supports a family to provide for the multiple needs of a child with a disability.

Positive discipline: Positive discipline involves teaching children how to behave well without hurting or belittling them. Positive discipline also builds children's self-confidence by praising good behaviour and showing them how to do things correctly.

Psychological programmes: Psychological programmes promote children's mental and emotional health.

Rehabilitative programmes: Rehabilitative programmes help children to cope with, or recover from, difficulties they are experiencing. The aim of these programmes is for children to return to a healthy, independent life.

Therapeutic programmes: Therapeutic programmes help children with their problems by treating the problem as well as by promoting emotional and physical healing and wellness.

¹² See for example: Siers M (2008) *A teacher's guide to positive discipline*.
<http://www.rapcan.org.za/resources/resources.asp?ResourceFilter=Corporal Punishment and Positive Discipline&filter=8>

¹³ Wright J (2006) *What is child exploitation?* <http://ezinearticles.com>



CASES FROM THE FIELD

Katrin Auf der Heyde, Isibindi, KwaZulu-Natal

Mbali is an 8-year-old girl who was born deaf. She lives with her brother, her father and her paternal grandparents in a very remote rural community. Her mother lives elsewhere. In June 2012, when she was first registered with Isibindi, a CYCW recognised that Mbali was struggling at the local primary school where she was attending Grade 1. Mbali was not using any verbal communication but it was clear that her cognitive functioning seemed clear and sharp. She was also independent in all her age-appropriate ADL's (activities of daily living). However, Mbali had not developed any of the basic literacy or numeracy skills at school and her teacher said she was unable to support Mbali in the way she needed. So although Mbali was in school her right to an education was not being upheld, because it was not in an appropriate school environment where she could learn and develop her full potential. Although Mbali seemed somewhat apprehensive and withdrawn initially, her family was very anxious for her to attend the "right" school.

In addition, Mbali was also not accessing a Care Dependency Grant (CDG) at the time, she had never been referred for a speech/audiology (hearing) assessment, she had never received hearing aids, and she was not receiving ongoing rehabilitation. Mbali's rights to social support, assistive devices and ongoing rehabilitation had thus not been upheld.

With the permission and support from her family, Mbali was referred for an audiology assessment. She was also sent for a school assessment at a resource school for learners with hearing impairment and/or deaf learners. This process meant numerous visits to the local clinic, the district hospital and a specialist hospital, and involved a significant amount of transport money. Mbali received sponsorship for this from the Isibindi disability funds. At the beginning of 2013 Mbali was admitted to the resource school as a boarder. The family is being assisted with the hostel fees by a private overseas funder. Mbali is receiving speech/hearing therapy at the school and in May she finally got hearing aids.

The biggest challenge has been to obtain Mbali's personal documents required for a CDG application. It has been almost a year since this process was initiated. Unfortunately, the DSD has not been very proactive in their assistance, and it has taken a real team effort involving two Isibindi sites to get the initial papers from Mbali's mother, that were used to finally apply for Mbali's birth certificate and to continue from there with the CDG application. But, as with the other barriers Mbali has faced, there is hope that this last one too will be overcome in the near future.



C



**RIGHTS AND RESPONSIBILITIES IN RESPECT
OF CHILDREN PLACED IN ALTERNATIVE CARE**



1 WHEN IS A CHILD IN ALTERNATIVE CARE AND HOW DO THEY GET PLACED THERE?

The Act has a dedicated chapter (chapter 11) dealing with the rights and responsibilities in respect of children placed in all forms of alternative care. In addition, the Act has dedicated chapters dealing with their placement in specific forms of alternative care, including child and youth care centres (chapter 13) and foster care (chapter 12). To gain a full understanding of how the Act regulates CYCCs and the protection of children placed at these facilities, this section should be read together with the section on child and youth care centres which are dealt with in more detail in Part D of this guide.

According to the Act, a child is in alternative care if the court has ordered that he or she be placed in foster care, in a CYCC or in temporary safe care. A child cannot be in temporary safe care or be kept at a child and youth care centre for more than six months without a court order.

Existing places of safety registered under the Child Care Act are regarded as being approved as temporary safe care in terms of the Children's Act. New applications should be made to the provincial HSD, who must give approval in writing. A person, facility, place or premises can be approved for temporary safe care.

Most children are placed in a CYCC through a court order or by a social worker and/or police official placing the child in temporary safe care. However, sometimes the child can be referred to a centre or choose to go there voluntarily (for example, to receive treatment for substance abuse). See the procedures discussed on page 70 for admitting children to child and youth care centres.

The provisions on alternative care apply only to the child who was placed at the centre through a court order or by a social worker or police official as a temporary safe care measure. **These provisions do not apply to the child who voluntarily goes to the centre or was referred to the centre privately.**

For example, when a child who is abusing substances voluntarily goes to a centre to get treatment, he or she is not regarded as being in alternative care. As a result, the provisions discussed in this section of the guide do not apply to such a child.



2 LEAVE OF ABSENCE FROM ALTERNATIVE CARE

Once a child has been placed in alternative care, he or she may not come and go at will. The child may only be absent from the centre, place of safety or foster parents with the permission of the person prescribed by the Act. Leave of absence is when a child temporarily leaves the care of the person, scheme or centre that was appointed by the court to look after the child. The child may be returning to the care of the parents or a family member. Leave of absence cannot be longer than six weeks at any given time.

2.1 Who authorises leave of absence?

Who authorises the leave of absence depends on where the child is and under what conditions. Leave of absence is granted by:

- the manager if the child is in a child and youth care centre;
- the foster parent or the head of a cluster foster care scheme if the child is in foster care; or
- the provincial HSD if the child was placed into temporary safe care.¹⁴

After the period allowed for the leave of absence comes to an end, or after the leave of absence is cancelled, the child must return to the centre or the person/s where he or she was placed. It is an offence to assist or persuade a child not to return to alternative care. Similarly, it is an offence to prevent the child from returning. The penalty for not complying with this provision is a fine, or imprisonment of up to 10 years – or both.

A child in alternative care cannot leave the country without permission from the provincial HSD. It is thus an offence to remove a child in alternative care from South Africa without written approval for the child's removal. The penalty for committing this offence is the same as above.

¹⁴ Complete the form in DSD (2013) *Information Guide on the Management of Statutory Services in Terms of the Children's Act 38 of 2005* Annexure 16.



3 ABSCONDING FROM ALTERNATIVE CARE

If a child absconds from a CYCC or foster care, or if the leave of absence expired or was cancelled and the child did not return, then there is a duty on staff in the CYCC or the foster parents to report the matter.¹⁵ It is the responsibility of a staff member at a child and youth care centre to report the absence of a child without permission to the manager of the centre within an hour of the discovery of the incident.¹⁶ The manager of the centre must report the incident to the social worker and the case manager and the child's parent, guardian or caregiver within 24 hours. The centre manager must lodge a missing person report with the nearest police within 24 hours.

A police official or designated social worker can apprehend the child. They can enter and search places without a search warrant if they believe the child to be on the premises. If a child who absconded is apprehended, the police official must ensure the safety of the child. The provincial Department of Social Development (DSD) or a designated child protection (DCPO) organisation must also be informed that the child has been apprehended.

The child must appear before the children's court as soon as possible after the child has been apprehended or after he or she returns voluntarily. The child may be placed into temporary safe care by a social worker or a police official until he or she appears before the children's court if the child claims, for example, that he or she was abused at the CYCC or needs a different programme. When the child appears before the court, the Presiding Officer must ask the child why he or she absconded or failed to return to the centre. The Presiding Officer has to decide what happens to the child in the short term (until the proceedings are completed), and can order that the child either remain in temporary safe care or return to the centre or person in whose care he or she was before absconding.

The court can order that the child be placed in another form of alternative care. If the Presiding Officer thinks there are good reasons why the child should not be returned to the centre or person from whom he or she escaped, the court can order that the child is not returned to the centre or person until the provincial HSD has considered the matter. After considering this order made by the court, the provincial HSD can decide to transfer the child to another CYCC or person, remove or discharge the child from alternative care, or order the child to be returned to the centre where the child was placed before absconding.

¹⁵ Complete the form in DSD (2013) *Information Guide on the Management of Statutory Services in Terms of the Children's Act 38 of 2005* Annexure 16.

¹⁶ Regulation 77 (e).



A person who knows that a child has absconded from alternative care commits an offence if that person assists or persuades the child not to return to the centre or person where the child was placed, or if they provide accommodation for that child or prevent the child from returning to the centre or person. If found guilty, the penalty for committing this offence is imprisonment of up to 10 years, or a fine, or both.



CASES FROM THE FIELD

Carly Tanur and Gerald Jacobs, Mamelani Projects, Western Cape

Anele is about to turn 18. He was placed in a CYCC at the age of 12 because his mother had a serious drinking problem. Anele used to go home for weekends, but things were difficult for the family: his mother wasn't working, she never got help for her drinking problem, so they would fight. His relationship with his mother did not improve and four years ago she died. Last year, Anele's social worker managed to trace his father. His father is married. When Anele visits the family, things are difficult for him. His father's wife is angry that Anele is coming back home – she never knew about Anele – with no-one working he is just another mouth to feed. Anele fears leaving the CYCC.

Then Anele joined an independent living programme that prepares young people for life after the CYCC. As part of the process, Anele spends time with a youth worker talking about the future and working through his emotions. He feels as if time is running out for him. Where will he live and how will he survive? How will he cope with all these changes? Every week he meets with other young people leaving the CYCC and they share their stories. The youth worker talks to them about the importance of building networks of support, and how to be both independent and inter-dependent. The group starts to learn to do things for themselves, and also to build relationships with others who can help them. In Anele's case, it is very important that he continue to strengthen his relationship with his father. They share a love of soccer, so Anele joins his father at weekend to watch the local team play.

Anele and the other youth go to the mountains for what they call a Rites of Passage Process. During the process youth workers support the youth to get in touch with their fears and dreams. Anele is reminded how much he has already overcome in his life, and starts to make plans for his future. Anele is now trying to do things for himself, like going to book his learners license. He has been cooking some meals at the CYCC. He has always wanted to be a chef, but was not sure how to get there. Anele researches what it takes to become a chef, he talks to people working in kitchens and restaurants and hotels, and he finds out about a course that he can get without a matric. He also finds out about a post-18 home where he can stay and get support until he can start working. After being committed to the process this year, Anele has discovered new things about himself and what he wants for his life. He remembers the youth worker always saying, "I am not going to do it for you, but with you..." He still feels nervous, but thanks to the programme he has people to walk alongside him on his journey.



4 TRANSFER AND DISCHARGE OF A CHILD IN ALTERNATIVE CARE

Only the provincial HSD can transfer a child to alternative care if he or she makes a decision to change a child's residential care programme.¹⁷ The child can be transferred from one child and youth care centre or temporary safe care placement to another centre or placement. If the child is to be transferred to a centre in a different province, the HSD of that province must approve the transfer. When a child is transferred to a CYCC or person in temporary safe care, the fees that the provincial DSD has to pay in respect of the child must be paid to that centre or person where the child is transferred.¹⁸

If the child is being transferred into the care of parents, guardians or former caregivers, the transfer order must state what is required of them. If those requirements are not met, the designated social worker responsible for supervising the placement can bring the child before the children's court again. The court can then either change the order of the provincial HSD or make a new order.

Before the provincial HSD makes a transfer order, a designated social worker must speak to the child, parents or guardians, if they are available, as well as the staff of the CYCC or the person in whose care the child was placed. However, the children's court must approve an order of the provincial HSD that the child is transferred from the care of a person to a CYCC or from a centre to secure care or a more restrictive placement.

4.1 Provisional transfer

A child in alternative care can also be provisionally transferred to another form of care as long as that care is not more restrictive, is in the child's best interests, and is not for longer than six months. For example, a child who is in foster care could be transferred provisionally into the care of his or her parents as the start of a family reunification. Regulation 60 sets out the procedure for assessing the child's best interests before deciding on a provisional transfer. The transfer must be managed by a designated social worker to determine which is more workable – reintegrating the child with his or her family or transferring him or her to another centre or placement. The transfer must be withdrawn, however, if the child requests it and the social worker agrees. The provincial HSD may also confirm the placement during or at the end of the trial period.

¹⁷ See section 172.

¹⁸ See Regulation 59.



4.2 Discharge from alternative care

The provincial HSD can discharge a child who was provisionally transferred from one alternative care placement to another; he or she can also decide at any time to discharge any child in alternative care if it would be in the child's best interests. The procedure in Regulation 60 for assessing the best interests of the child and for reuniting the child with his family also applies before a child can be discharged from alternative care.

In addition, the Regulations spell out the manner in which children in alternative care must be transferred or removed or permanently discharged from alternative care. These include specific provisions about who should accompany the child, who must make the travel arrangements, and how the child is to be transported.¹⁹



¹⁹ See Regulation 62. The application for discharge of a child in alternative care is in DSD (2013) *Information Guide on the Management of Statutory Services in Terms of the Children's Act 38 of 2005* Annexure 20.



5 REMAINING IN ALTERNATIVE CARE BEYOND THE AGE OF 18 YEARS



A child is entitled to stay in alternative care until the end of the year in which he or she turns 18 years. After turning 18, a young adult can make an application to the provincial HSD to allow him or her to remain in alternative care until the age of 21. The HSD can allow the extension if the current alternative caregiver agrees and is able to care for the applicant, and if the extension is needed to help the applicant complete his or her studies or training.²⁰

²⁰ The application form for an extension can be found in DSD (2013) *Information Guide on the Management of Statutory Services in Terms of the Children's Act 38 of 2005* Annexure 15.



6 APPEAL AND REVIEW

Any decisions or actions in terms of the alternative care chapter of the Act can be appealed with the Member of the Executive Council (MEC) for Social Development. The appeal must be lodged on the prescribed form within 90 days, and the MEC must decide the appeal within 90 days of receiving it. If the MEC's decision is unsatisfactory, the High Court can be approached to review it.



Note: There is currently no prescribed form to use for a review or appeal in terms of section 177, but nothing stops an aggrieved person from requesting an appeal or review from the MEC for Social Development by way of a formal letter.



D



**CHILD AND YOUTH CARE CENTRES AND
THE CHILDREN'S ACT**



1 WHAT IS A CHILD AND YOUTH CARE CENTRE (CYCC)?

The Children's Act defines a child and youth care centre as *"a facility that provides residential care to more than six children outside of the child's family environment in accordance with a residential programme suited for the children in the facility"*. This new definition encompasses a range of facilities that were registered separately from children's homes to schools of industry. Each centre will provide specialist programmes (see below).

1.1 Which facilities are not CYCCs?

In terms of the Act, certain facilities are not considered child and youth care centres. They include:

- a partial care facility;
- a drop-in centre;
- a boarding school;
- a school hostel or other residential facility attached to a school;
- a prison; or
- *"... any other establishment which is maintained mainly for the tuition or training of children other than an establishment which is maintained for children ordered by a court to receive tuition or training"*.

1.2 What programmes can CYCCs provide?

The Children's Act places a strong emphasis on programmes that respond to the developmental and therapeutic needs of children in the centre. This is in contrast to the Child Care Act, which had a facility-based approach and put its emphasis on meeting the material needs of children.

A child and youth care centre must offer therapeutic programmes for the residential care of children outside the family environment. These could include programmes that are designed for the following:

- The reception, care and development of children outside the family environment or on a shared basis with the parent or other person with parental responsibilities in respect of the child.
- The reception and temporary safe care of children under these circumstances:
 - children awaiting decisions about their placement;
 - children who are victims of trafficking or commercial sexual exploitation;
 - protecting children from abuse or neglect; or
 - observing and assessing children, providing them with counselling and other treatment, or helping them to reconnect with their families and communities.



- The reception, development and secure care of children who are awaiting trial or sentence; or who have behavioural, psychological and emotional difficulties; or who have been placed in a CYCC by a court order due to criminal activity; or who have been transferred from an alternative care placement.
- Early childhood development.
- The reception and care of street children.

In addition to residential care programmes, a CYCC may also offer the following programmes either for children in their care or children living at home:

- providing appropriate care and development for children with disabilities or illnesses;
- additional therapeutic and developmental programmes;
- programmes for treating children with addictions or treating children with psychiatric conditions;
- transitional programmes to assist children leaving the facility after they reach the age of 18; or
- any other service that may be prescribed.

Child and youth care centres should specialise in the provision of particular programmes. However, if a centre does not offer a programme suited to a child's development or therapeutic needs, it has to refer the child to another, more suitable centre or, failing this, provide appropriate care as far as possible.

1.3 The assessment of the adequacy of child and youth care programmes

The provincial HSD must authorise a suitably qualified person to assess the contents of the programmes offered by the centre, whereafter the HSD approves those particular programmes. The assessment is done to determine whether the programmes comply with prescribed national norms and standards. The Regulations detail the core components of programmes aimed to meet the developmental, therapeutic and recreational needs of children in centres.²¹

²¹ See Regulation 75 for more detail.



CASES FROM THE FIELD

Premie Pillay, Durban Children's Home, KwaZulu-Natal

Patience has microcephalic cerebral palsy. Her mother is an alcoholic and has a mental disability, so she could not provide adequate care for Patience. When Patience was admitted to the special needs unit of Durban Children's Home, she could neither walk nor talk and was severely stunted for her age. A dedicated CYCW was contracted to meet Patience's needs, special equipment was purchased, and renovations were made to assist with the mobility and physical care of the child.

She was unable to feed herself, bathe, use the toilet, clothe herself or sit without support. The CYCW spent hours every day trying to feed Patience soft foods and indicate motions of chewing to help her eat. To prepare Patience for school in the mornings the CYCW had to bath, dress and feed her, after which she would be put in a wheelchair and taken to school by bus. Gradually, with the support of the CYCW, Patience began to sit up straight in her chair until her body eventually grew strong enough for her to be able to sit on the floor without the need for support.

At first Patience was highly sensitive to stimuli, and touch frightened her. She was unable to recognise people, and lacked focus and coordination. But after a year she started to interact with the other children by touching them and tasting whatever she could get her hands on.

Patience is now able to recognise people familiar to her and smile at them. Indeed, she gets so excited that she tries to catch their attention by making sounds and clapping her hands to mimic communication. Patience is comfortable and safe with the children around her. The children who live with her assist the CYCW by encouraging Patience to walk towards an object and rewarding her with cheers and applause.

The CYCW takes Patience to weekly stimulation sessions at the Association for the Physically Disabled, and also encourages her to use a walker in order to stimulate her mobility. Patience can stand with support and, with assistance from her caregiver, is able to walk. She can hold fruit and sandwiches as well as feed herself.

In three years Patience achieved milestones that were believed almost impossible. Thanks to consistent and dedicated support, she is on the verge of gaining control of her bodily movement, and has amazed everyone with her zest for life.



1.4 The assessment and matching of children with appropriate programmes

A child must be assessed before²² and after²³ he or she is admitted to a child and youth care centre.

“[A]ssessment of a child’ means a process of investigating the developmental needs of a child, including his or her family environment or any other circumstances that may have a bearing on the child’s need for protection and therapeutic services ...”

The child and youth care worker can play a role by supporting the child and gathering information from him or her.



In keeping with the principle of child participation, the child must be involved in the assessment process.

²² When a children’s court still has to decide whether the child should be placed in alternative care, the social worker must assess the child and produce a report.

²³ Once admitted, a multi-disciplinary team must assess the child within 48 hours of the child’s admission.



2 THE RIGHTS OF CHILDREN IN CYCCS

Regulation 73 sets out the rights of all children in child and youth care centres.²⁴ Over and above these rights, each child should have an individual development plan that describes the services and programmes he or she needs.

Rights of Children in Child and Youth Care Centres (Regulation 73)

“Every child who is cared for in a child and youth care centre has the right to:

- (a) be informed promptly, in a language which he or she understands, of the reason for his or her admission or detention, as the case may be;
- (b) have his or her parent, guardian, next of kin or significant other person informed, within 48 hours of admission, of the place to which he or she has been admitted or in which he or she is being detained, as the case may be, and of the reason for his or her admission or detention, as the case may be;
- (c) regularly communicate with and be visited by his or her parent or parents, guardian, next of kin, social worker, probation officer, case manager, religious counsellor, health care professional, psychologist, legal representative, child and youth care worker, unless a court order or his or her care or development programme indicates otherwise or unless he or she chooses otherwise;
- (d) adequate nutrition, clothing, nurturing and to be given the same quality of care as other children in the child and youth care centre;
- (e) be consulted and to express his or her views, according to his or her abilities, about significant decisions affecting him or her;
- (f) reasonable privacy, possession and protection of his or her personal belongings;
- (g) be informed that prohibited items in his or her possession may be removed and withheld;
- (h) be informed of the behaviour that is expected of him or her by service providers, the consequences of his or her failure to meet the expectations of service providers, and assistance that he or she can expect from the service providers regarding the attaining of such behavioural expectations;
- (i) care and intervention which respects, protects and promotes his or her cultural, religious, linguistic heritage and the right to learn about and maintain this heritage;
- (j) positive discipline appropriate to his or her level of development;

²⁴ See also the norms and standards for CYCCs as prescribed in the Regulations. These norms and standards give further protection to children.



- (k) education or training appropriate to his or her level of maturity, aptitude and ability;
- (l) respect and protection from exploitation and neglect;
- (m) opportunities of learning and developing his or her capacity to demonstrate respect and care for others;
- (n) the necessary support and to an interpreter if language or disability is a barrier to consulting with them on decisions affecting his or her custody or care and development;
- (o) privacy during discussions with people referred to in paragraph (c) unless a court order or his or her care or development programme indicates otherwise or unless he or she chooses otherwise; and
- (p) have access to community activities and structures unless a court order or his or her care or development programme indicates otherwise.”





3 MANAGING THE BEHAVIOUR OF CHILDREN IN CYCCS

The Act recognises and protects the rights of children in CYCCs to protection from harm and abuse, including protection against corporal punishment. As part of this protective framework, the Act not only outlaws corporal punishment, but also promotes the use of positive discipline to manage the behaviour of children at child and youth care centres.²⁵

It expressly forbids actions such as:

- physical punishment (including smacking);
- verbal, emotional or physical harm;
- deprivation of basic rights and needs such as food and clothing; and
- deprivation of access to family members or significant other persons.

There are strict provisions when it comes to isolating children. For instance, centres must keep a register detailing the reasons for the isolation and how long it lasted. In addition, a report must be compiled on the support and counselling given to the child during the period of isolation as well the child's response.

CASES FROM THE FIELD

Zanele Manyoni, Isibindi, KwaZulu-Natal

A group of adolescents were playing soccer in the safe park under the supervision of the child and youth workers and one of the members of the safe park committee (a group of children who meet under the guidance of a child and youth care worker). An incident started while two boys were arguing over a ball. Msuzi was trying to pass the ball; unfortunately, the ball went straight and hit Siyanda head on. Siyanda angrily shouted, "You did that on purpose!"

I remembered they had a misunderstanding the previous week. I intervened immediately to stop the behaviour from escalating; I applied my training on positive discipline. I cannot take away the right to play and stop a game because of a conflict between two young people, so I took the two boys off the field for a while. I sat under a tree with them and asked what happened. We started talking about how to resolve this and they came up with some good ideas. Msuzi explained to Siyanda that he had not kicked the ball at him on purpose and he apologised. Siyanda understood and accepted the apology. Then they went back and continued with the game. The two young boys are friends and they participate in many activities together in the safe park.

²⁵ See Regulation 76.



The child and youth care worker used her knowledge in managing children's behaviour by recognising that there is a purpose behind any behaviour. In this case Zanele remembered that teenage boys will and could seek revenge in an inappropriate manner, and the opportunity to do this presented itself when one of the boys hit the other boy with the ball. She used her skill of observation and stepped in before the behaviour reached a crisis point. The child and youth care worker also used the environment by taking the boys away from the rest of the group to discuss the issue in a more private space. This emphasises the approach: "I respect you enough to talk to you about your behaviour separately from your peers."



4 THE DUTY TO REPORT CASES OF ABUSE, SERIOUS INJURY, HARM OR DEATH OF CHILDREN IN A CYCC

The Act requires that all cases of child abuse or death in a CYCC or place of safety must be reported to the provincial HSD.²⁶

4.1 Who and how to report a case of abuse or serious injury at a CYCC

If a child in alternative care is seriously injured or abused,²⁷ then the management of the child and youth care centre or the person in whose care the child has been placed must immediately report the incident to the provincial HSD.

What form should be used to report incidents in a CYCC?

Use a **Form 40** to report incidents of harm or abuse that occur while the child is in a child and youth care centre or a place of safety.

Who investigates cases of serious injury or abuse?

When the provincial HSD receives a report of an incident, he or she must arrange for an investigation to be done by a designated social worker (DSW).

Form 40: Reporting of serious injury, abuse or death of child in alternative care

²⁶ Section 178.

²⁷ Child and youth care workers must also be aware that the Sexual Offences Act of 2007 requires anyone who has knowledge of a sexual offence committed against a child to report the incident to a police official.



What to do if a child dies in a CYCC?

If a child dies in a child and youth care centre, the child and youth care worker must inform the manager of it within an hour. The manager must immediately report the child's death to:

- the caregiver of the child;
- a police official;
- the provincial HSD; and
- the designated social worker managing the child's case.



What form to use to report a death in a CYCC or place of safety?

Use a **Form 40** to report the death of a child that occurs while the child is in a child and youth care centre or a place of safety.

There is no specific form for reporting the death of a child in other circumstances, for example, if the child is at a safe park. But just because there is no form does not mean the incident does not have to be reported. Report the child's death to:

- the caregiver of the child;
- a police official; and
- the provincial HSD.

Who investigates the death of a child?

The police will investigate the death if an unnatural cause of death is suspected.



5 WHAT STAFF AND STAFF TRAINING ARE REQUIRED FOR CYCCS?

The person or organisation operating the centre must appoint or designate a manager and other staff after interviewing them and must ensure that appointees have the prescribed skills and training and that they are fit and proper persons to assist in running a centre. A person unsuitable to work with children cannot be employed at a CYCC.

5.1 How are staff recruited?

The manager and other staff at the centre must be recruited through an advert in at least one local newspaper. An interview panel must screen the applicants' CVs and draw up a shortlist of candidates. The interview panel should include:

- two members of the management board;
- one person with a qualification in child and youth care work; and
- one representative from the community where the centre is situated.

The panel should consider whether the candidate is a registered professional from an appropriate discipline; has specialised knowledge of child and youth care work; has proven leadership ability; has management and administration skills; and has knowledge of and experience in the particular programme(s) that the CYCC is registered to provide.

5.2 What skills and training are required?

The manager and staff of the CYCC must have the necessary qualifications and skills to operate and/or assist in the operation of a child and youth care centre as prescribed by Regulations 75 (1), 82, and 83 (3). The Regulations do not prescribe the specific qualifications that the centre manager or staff must have. These qualifications may include degrees, diplomas or certificate courses in: Social work, auxiliary social work, child and youth care work, psychology, educational psychology, ECD, inclusive education/special needs education, nursing (especially psychiatric and/or paediatric specialisation), and many others.

Child and youth care work is recognised as an accredited qualification provided by Further Education and Training colleges. Further information about the qualification can be accessed at: <http://regqs.sqa.org.za/showQualification.php?id=60209>



Whilst the Act does not specify the required qualifications, it does provide guidance on the skills that the relevant qualifications should provide.

The centre manager must:

- have specialised knowledge of child and youth care work;
- have a suitable professional qualification from an appropriate discipline (Regulation 83 (3));
- have leadership ability;
- have management and administration skills; and
- have knowledge and experience of the particular programme or programmes that the child and youth care centre is registered to provide.

The centre manager and staff must:

- have the training, knowledge and skills necessary to develop and deliver the core components of the developmental, therapeutic and recreational programmes required by Regulation 75 (1) to meet the specific needs of the children at the centre.

5.3 What are the ratios of staff to children in a CYCC?

Type of programme	Day shift One CYCW to:	Night shift
Children below six	3 children	20 children
Residential care	10 children	20 children
Secure care and reform schools	8 children	20 children

There should be one social worker per 30 children in all types of facility, and one psychologist for every 60 children.



6 WHAT ARE THE OPERATIONAL AND MANAGEMENT REQUIREMENTS FOR CYCCS?

The centre must divide responsibilities between the management board and the manager, who is responsible for the centre's day-to-day functioning. The CYCC must also be managed according to the organisational development plan established for the centre in terms of its quality assurance process. Overall, the centre must be managed in a way that allows it to implement the residential care and other programmes it offers to children.

6.1 What is a management board?

Each centre must have a management board of no less than six people and a maximum of nine members. Board members are appointed by the MEC for Social Development if the centre is operated by the provincial government; if the centre is privately operated, the **registration holder** appoints the board members.

The procedures for board appointments are set out in the Regulations.²⁸ There must be equitable representation of all stakeholders on the board, including community members, but a person considered not to be a fit and proper person may not be a member of the board. Thus, everyone elected on the board must have submitted a clearance certificate indicating that his or her name does not appear on the National Child Protection Register or the National Register for Sex Offenders.

The board must create a children's forum as part of the management board to ensure that resident children have the opportunity to participate in the operation of the centre, taking into account the age, maturity and stage of development of such children.

The Regulations require the management board to approve written complaint procedures which are fair and allow all children to complain about certain incidents or staff.²⁹ Further functions and responsibilities of the management board are detailed in the Regulations.³⁰

Registration holder: A registration holder is a person whose name is on the centre's registration certificate (Form 53).

²⁸ See Regulation 84.

²⁹ Regulation 74.

³⁰ Regulations 85 and 86.



7 THE REGISTRATION AND OPERATIONAL REQUIREMENTS OF CYCCS

7.1 Registration of CYCCs

All child and youth care centres must be registered with their relevant provincial Departments of Social Development and must be operated in accordance with the requirements of the Children's Act. This includes all existing children's homes, places of safety, secure care facilities, schools of industry and reform schools.

The Act distinguishes between government-operated and privately-operated facilities and facilities that were established and registered before April 2010 under the Child Care Act as opposed to those that were/are to be established after the commencement of the Children's Act.

Government-operated centres that were established before April 2010 in terms of the Child Care Act were required to re-register as child and youth care centres within two years of the commencement of the Children's Act. In other words, they were to be re-registered by 31 March 2012.³¹

All privately-operated centres that were established and registered under the old Child Care Act are to be re-registered within a period of five years of commencement of the Children's Act. That is to say, they must register before 31 March 2015. Until that date, they will be regarded as being registered as a child and youth care centre, unless the registration is withdrawn before the expiry period.

Any centre (whether government or private) that is established after the date of commencement of the Children's Act (1 April 2010) must first, before commencing its operation, register as a child and youth care centre with the relevant provincial Department of Social Development.³²

³¹ Section 196.

³² Section 197.



SHELTERS BECOMING CYCCS

Shelters registered in terms of the Child Care Act must register as a child and youth care centre before 31 March 2015.

The Children's Act now classifies shelters as child and youth care centres. Shelters that were registered in terms of the Child Care Act have five years to register as child and youth care centres, and must provide the same programmes as child and youth care centres.

In the meantime, those shelters registered in terms of the Child Care Act have no law governing their operation since they are not yet child and youth care centres and the law under which they registered has been repealed by the Children's Act.

Other facilities – such as children's homes and industrial and reform schools – that were registered under the Child Care Act are currently deemed to have been registered under the Children's Act. However, no arrangement like this was made in the case of shelters.

As a result, shelters are operating in a vacuum until such time as they register as child and youth care centres under the Children's Act.

7.2 Registration and re-registration requirements

In order to register or re-register, all child and youth care centres must, in the application form and supporting document, show that:³³

- a. They comply with the prescribed national norms and standards for child and youth care centres set out in Annexure B, part V of the Regulations to the Children's Act (these norms and standards are discussed in more detail on page 116 of this guide).
- b. They comply with the structural safety, health and other requirements of the municipality in which the child and youth care centre is situated.
- c. The applicant is a fit and proper person to operate a child and youth care centre.
- d. The applicant has the necessary skills, funds and resources available to operate the child and youth care centre.
- e. Each person employed at or engaged in the child and youth care centre is a fit and proper person to assist in operating a child and youth care centre.
- f. Each person employed at or engaged in the child and youth care centre has the prescribed skills to assist in operating a child and youth care centre.

7.3 Management and operational requirements

In addition to the registration requirements, there are a number of operational and management requirements that all child and youth care centres must comply with. Section 197 of the Act prescribes that all child and youth care centres (whether established before or after the commencement of the Children's Act) must:

- a. be managed and maintained in accordance with the Children's Act;
- b. comply with the **norms and standards prescribed by the Act** for child and youth care centres; and
- c. comply with the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is situated.

If these requirements are not met, the provincial HSD may cancel the registration of the child and youth care centre.³⁴

³³ Section 200(2).

³⁴ Section 203.



National norms and standards for child and youth care centres

The Regulations set out detailed national norms and standards (NN&S) for child and youth care centres on the following:

- residential care, therapeutic and developmental programmes;
- permanency and individual development plans of children;
- temporary safe care and after-care support;
- protection from abuse and neglect;
- assessment of children, family reunification and reintegration;
- children's access to and provision of health care, schooling, education and early childhood development;
- security measures for child and youth care centres; and
- measures for the separation of children in secure care programmes from children in other programmes.

See part G of this guide on page 116 for a full list of the national norms and standards for child and youth care centres.

7.4 How to make an application for registration or renewal of registration of a CYCC

Section 199 of the Children's Act sets out the process to be followed when applying for the registration or re-registration of a child and youth care centre.

Applications for both registration or the renewal of a registration must be made using **Form 48**. The applicant must include all the information and attach all documents prescribed by the Act and Regulations, as well as any other documents required by the provincial department of social development. The full set of application documents must be submitted to the provincial HSD.

Form 48: Application for the registration/conditional registration/renewal of registration of a CYCC

What information must be included in your application, and what documents must be attached to the application?

Section 200 and regulation 78 (2) sets out the information that must be provided in the application, which includes:

- a. the particulars of the applicant;
- b. the physical and postal address of the child and youth care centre;
- c. the constitution and non-profit organisation (NPO) certificate of the applicant organisation;
- d. details of the committees functioning under the management board of the applicant, if any, and the nature of their functions;
- e. the staff composition employed at the centre, including staff for the care of children with special needs or disabilities;
- f. the extent of the premises, buildings and playgrounds;
- g. details of the rooms and amenities available for use by the children;
- h. details of the children that will be, or are being cared for at the child and youth care centre;
- i. access to the building by children with disabilities;
- j. a business plan containing the (a) vision, (b) mission, (c) a child protection plan, (d) short-, medium- and long-term goals, (e) action plans to achieve goals, (f) a detailed description of the programme or programmes to be offered in terms of section 191 (2) of the Act;
- k. a certificate issued by the relevant local authority indicating that the child and youth care centre complies with the national and local building regulations;
- l. the financial statements of the centre, including an indication of the funds available to operate the child and youth care centre;
- m. a daily menu and a daily programme of the child and youth care centre;
- n. an emergency plan; and
- o. a clearance certificate issued by the Directors-General of the Departments of Social Development and Justice and Constitutional Development that confirm that no member of the centre management board appointed in terms of Regulation 84 and no employee of the centre appear in Part B of the National Child Protection Register or the National Register for Sex Offenders.



When to make application for the renewal of a registration

An application for renewal must be made at least 90 days before the registration expires, but the provincial HSD can allow a late application on good grounds. If the application was lodged at least 90 days before the registration was due to expire, then the provincial HSD must review the application before the registration expires.

An application to register a child and youth care centre or renew its registration must be lodged with the provincial HSD by completing a Form 48. This form must be sent with all the prescribed documentation, including:

- a certified copy of the constitution or founding document of the centre; and
- a certificate from the municipality where the centre is or is to be situated that states that the premises comply with all the structural, safety, health and other requirements of the municipality and other legislation.



Consideration of the application for registration of a child and youth care centre (section 200)

An application for registration or for renewal of registration must be considered and be either refused or granted with or without conditions by the provincial HSD within six months of receiving the application, or before the existing registration expires.

In making his or her decision whether to grant the registration, the HSD is required to consider the centre's compliance with all registration and operational requirements.³⁵

Your application form and supporting documents must therefore show that the centre complies with the following registration and operational requirements of the Act:

- a. It complies with the prescribed national norms and standards contemplated in section 194.
- b. It complies with the structural safety, health and other requirements of the municipality in which the child and youth care centre is situated.
- c. The applicant is a fit and proper person to operate a child and youth care centre.
- d. The applicant has the necessary skills, funds and resources available to operate the child and youth care centre.
- e. Each person employed at or engaged in the child and youth care centre is a fit and proper person to assist in operating a child and youth care centre.
- f. Each person employed at or engaged in the child and youth care centre has the prescribed skills to assist in operating a child and youth care centre.

The provincial HSD can also request additional information relating to the application.

The provincial HSD must obtain and consider a report of a designated social worker in respect of the centre before deciding on a registration application. The Act does not specify who is responsible for obtaining this report or what the report must contain.

For further information on how to show compliance with these requirements and how to obtain the prescribed supporting documents, see the Centre for Child Law's *Guide to the Registration of Child and Youth Care Centre*, which can be accessed at www.centreforchildlaw.co.za.

³⁵ Section 200(2).



7.5 Ask the provincial Department of Social Development for help in making an application for registration

Before you start with your application for registration of a child and youth care centre, contact your provincial Department of Social Development and ask for help. Regulation 78 (3) says that you may request that the provincial HSD allocates a designated social worker or **social service professional** to help to you in the preparation of the application for registration.

7.6 What if your centre does not meet any of the registration requirements?

If you are unable to comply with any of the norms and standards or any of municipal health, safety and structural requirements but would like to have the centre registered, you can make an application for conditional registration of the centre using a Form 48. See the Centre for Child Law's *Guide to the Registration of Child and Youth Care Centres*, which can be accessed at www.centreforchildlaw.co.za for detailed information on how to make such an application.

In terms of section 201, the provincial HSD is authorised to conditionally register a centre for a limited period of time (no longer than one year), subject to any conditions that the provincial HSD may determine.

Where you are unable to meet all the prescribed requirements, you should make an application for a conditional registration subject to the provision that your centre will remedy the relevant defect or omission within the interim registration period.

In addition, if your centre cannot comply with any of the norms and standards or any other prescribed requirements, you can:

- apply to the provincial HSD in terms of section 200 (5) for financial (and other forms of assistance) to help you fulfil the prescribed registration requirements; and/or
- request that the provincial HSD provide assistance to you in terms of section 203 (4) to enable your centre to comply with the prescribed national norms and standards, any structural, safety, health and as well as other requirements of the municipality.

Social service professionals: In its definition of a “social service professional”, the Children’s Act lists only probation officers, development workers, child and youth care workers, youth workers, registered social auxiliary workers and social security workers. However, social workers are also social service professionals.

7.7 The Head of Social Development's decision

Once the application is submitted to the provincial HSD, he or she must, within six months of receipt, consider the application in accordance with the registration criteria spelt out in section 200 of the Act and make a decision either to:

- a. refuse to grant the registration;
- b. grant the registration for a period of five years; or
- c. grant the registration conditionally, for a limited period of time (maximum one year), subject to any prescribed conditions.

If the application is granted, the applicant must receive a certificate of registration or renewal of registration on **Form 49**. This certificate must indicate the period for which the registration is valid. In terms of the Regulations, the application is only valid for five years.³⁶ If the application is refused, the provincial HSD must inform the applicant of the refusal on **Form 50** set out in the Regulations, as well as the reasons for refusal.

The registration of a centre can also be amended by the provincial HSD following an application by the registration holder. The application for registration amendment must be made within 30 days of the registration holder becoming aware of a deviation from the conditions and requirements for the registration³⁷ – for example, a change of physical location, change of management, or significant changes to the programmes offered and the clients served.

If a conditional registration certificate is granted, it must also:

- specify the type of residential care programme that may or must be provided in terms of the registration;
- state the period for which the conditional registration will remain valid (it may not be longer than one year); and
- provide for any other matter that may be prescribed.

Form 49: Certificate of registration/conditional registration/renewal of registration of a CYCC

Form 50: Refusal of an application for the registration/renewal of registration of a CYCC

³⁶ Section 80(3).

³⁷ Section 202 and Regulation 81.



7.8 Cancellation of registration (section 203)

The registration of a CYCC may be cancelled by written notice to the registration holder.

Registration can be cancelled if:

- the centre is not maintained in accordance with the prescribed norms and standards;
- there is a breach of the conditions on which the original registration was granted;
- the registration holder or management of the centre fails to comply with the provisions of the Act;
- the registration holder becomes a person who is not a fit and proper person to operate the centre; or
- a person who is not fit and proper is employed at or involved in activities at the centre.



The Director-General or the provincial HSD can assist the registration holder to comply with the norms and standards and with the specific municipality's health, structural and safety requirements. The provincial HSD can suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation and reinstate the registration if the holder corrects the cause of the cancellation within that period. However, this rule does not apply where cancellation is due to the fact that the registration holder is no longer considered a fit and proper person to operate the centre.

If the registration was cancelled and the cancellation was not suspended, then the cancellation takes effect from the date given in the cancellation notice, but not earlier than 90 days from the date on which the notice was given. There can be exceptions to the 90-days rule if the provincial HSD and registration holder come to an agreement that the cancellation will take effect sooner, or if the cancellation should happen earlier to protect the safety of the children at the centre.



7.9 Inspections of unregistered centres

In terms of section 304, a person authorised by the Director-General, a provincial HSD or a municipality can enter any child and youth care centre or shelter suspected of being used as an unregistered facility. That person can inspect the facility and its management, observe or interview any child or also cause a child to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist. To determine if the facility is being operated illegally, the person inspecting the facility may determine if the facility is complying with the prescribed norms and standards as well as any structural safety, health and other requirements prescribed by law and the provisions of the Children's Act. The inspector must send a report to the body that authorised the inspection.

7.10 Notice of Enforcement in respect of unregistered centres

If a person or organisation operates an unregistered child and youth care centre, the provincial HSD can issue a Notice of Enforcement in terms of section 204, instructing them to stop operating the centre or to apply for registration of the centre within a given period.

The organisation or person instructed to apply for registration within a specified period can be given permission to continue operating the centre until the end of that period. If the person or organisation decides to apply for registration, they may be allowed to operate the centre until a final decision is made regarding the registration application. The provincial HSD can also send a Notice of Enforcement to a person operating a registered centre if the centre is contravening the Act or the conditions of registration to comply with the provisions or conditions.

If a person operating an illegal child and youth care centre has been instructed by a Notice of Enforcement to stop operating the centre but fails to do so, he or she is committing an offence which may lead to imprisonment of up to 10 years, or a fine, or both.



8 CLOSURE OF A CENTRE AND REMOVAL OF CHILDREN



Where an unregistered centre is ordered to stop operating or where a registered centre's registration is cancelled (without the option of a suspension of the cancellation), or where a centre is voluntarily closed, any subsequent removal of the children must be done in a manner that protects their rights and complies with the requirements of the Act.

If the registration holder of a CYCC voluntarily closes the centre, he or she must give written notice of closure to the provincial HSD and surrender the registration certificate for cancellation. If the centre is closed voluntarily by the registration holder – or following a decision by the provincial HSD to cancel the registration due to the holder's non-compliance with registration requirements – then every child placed in that centre must be transferred in terms of section 171 to other CYCCs or into the care of their parents, guardians or former caregivers.

The requirements and recommendations for the legal and safe removal of children from a centre are described in detail in the Centre for Child Law's *Guide to the Registration of Child and Youth Care Centres*, which can be accessed at www.centreforchildlaw.co.za.



9 QUALITY ASSURANCE OF REGISTERED CYCCS

In terms of section 211, the provincial HSD must ensure that each child and youth care centre undergoes a quality assurance (QA) process and may also assist a centre to conduct the QA process. The QA process must be undertaken within two years of registration of the centre and thereafter periodically every three years. However, this does not stop the provincial HSD from ordering a QA process at any time if there are reasons to believe that the centre has failed to comply with the Act or the Regulations.



The quality assurance process must be done in the following manner:

- an internal assessment of the centre must be done by a team connected to the centre;
- an independent assessment must be made by a team not connected to the centre;
- the teams must then establish an organisational development plan by agreement, containing the required particulars for the centre; and
- a mentor must be appointed by the team not connected to the centre to oversee the implementation of the plan by the management of the centre.

After completing the QA process, the management board of the centre must give the MEC for Social Development a copy of the organisational development plan for the centre.



10 THE RIGHT TO APPEAL DECISIONS OF THE HEAD OF SOCIAL DEVELOPMENT

If you are dissatisfied with any decision taken by the provincial HSD in terms of the chapter on child and youth care centres, you can appeal that decision with the MEC for Social Development³⁸ on a Form 51. The appeal must be lodged within 90 days following the original decision. The MEC has to decide on the appeal within 90 days after it was received.

If the appeal is refused, you may then apply to the relevant division of the High Court to review the MEC's decision.



³⁸ Section 207



E



**THE ROLE OF THE CHILD AND YOUTH CARE
WORKER IN FOSTER CARE**



1 WHEN IS A CHILD IN FOSTER CARE?

A child is in foster care when the child has been placed in the care of a person other than a parent or guardian. Foster care is supposed to recreate the family environment, and normally only six children can be placed with one family. This placement is done through a court order or through a decision to transfer a child who is in alternative care in terms of section 171 of the Act (see page 62 for information on transferring a child to alternative care).

The court can place a child in the care of a non-family member, or a family member other than a parent or guardian, or in a registered cluster foster care scheme. Depending on the circumstances of the case, a children's court will first decide if the child is in need of care and protection before making a decision to place a child in foster care. (See the section of the guide dealing with children in need of care and protection on pages 33 – 52).

Placing a child in temporary safe care or in a CYCC is not a foster care placement.

A possible role for a child and youth care worker in the Isibindi programme could be to identify children who could be placed in foster care and to approach a designated social worker to arrange for the foster placement of the child. Other roles could include gathering information for the reports, supervision of placements, case conferencing as well as the tracing of family members.

FIT AND PROPER PERSON

The Act does not define a “fit and proper person”. If a person's name is on the National Child Protection Register (NCPR) or the National Sexual Offences Register, he or she is definitely unsuitable to work with children and is not considered a fit and proper person to foster children.

However, this should not be the only check on a person's suitability. The court making a foster care placement order must consider all relevant factors before deciding who is deemed a fit and proper person to be a prospective foster parent.



2 THE PURPOSE OF FOSTER CARE



The purpose of foster care is to:

- “(a) protect and nurture children by providing a safe, healthy environment with positive support;*
- (b) promote the goals of permanency planning, first towards family reunification, or by connecting children to other safe and nurturing family relationships intended to last a lifetime; and*
- (c) respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity.”*

A prospective foster parent and anyone working for, or involved in, an NPO that manages a cluster foster care scheme must:

- “(a) be a fit and proper person to be entrusted with the foster care of the child;*
- (b) be willing and able to undertake, exercise and maintain the responsibilities of such care;*
- (c) have the capacity to provide an environment that is conducive to the child’s growth and development; and*
- (d) be properly assessed by a designated social worker for compliance with the above requirements.”*



3 PLACEMENT OF A CHILD IN FOSTER CARE

In terms of section 184, the court must consider the report of a designated social worker before it places a child in foster care. That report must indicate “the cultural, religious and linguistic background of the child” and whether someone suitable and with a similar background to the child is available, willing and able to foster the child.



A child can be placed in foster care with someone from a different cultural, religious and linguistic background to the child only if:

- there is an existing bond between that person and the child, or
- no suitable or willing person with a similar background to the child is available.



4 DURATION OF FOSTER CARE PLACEMENT

In terms of section 186, usually a children's court order relating to the placement of a child in alternative care, including in foster care, expires after two years (or even earlier). Once it expires, the order is reviewed and can be extended for another two years (see section 176, page 51).

However, if a child has been in the care of a foster parent (who is not a family member) for more than two years, the court can order that no further social worker supervision or social worker report is required for that placement and that the placement extends until the child turns 18. This is done to create stability in the child's life.

The court also has the option of placing a child in foster care with a family member for more than two years, or extending the placement for more than two years at a time, or making an order that the foster placement extends until the child turns 18. The court can do this if:

- the child has been abandoned by the biological parents or those parents are deceased; or
- reunification between the child and his or her biological parents is not possible; and
- it is in the best interest of that child.

If a court makes an order that no social work supervision or report is required and that the foster care placement extends for more than two years, the Act still requires a social service professional to visit the child in foster care at least once every two years to monitor and evaluate the placement.

Child and youth care workers could play a role here by monitoring the placement and reporting to the social worker.



4.1 Extending foster care orders

Between April 2009 and April 2011, 110 000 foster care orders lapsed.³⁹ This number is significantly higher than in previous years. An investigation into the causes of the increase showed that the new requirement to have the court extend a foster care order could not be implemented. As a result, many orders expired and families lost the FCG even though they stayed eligible for it. To address this problem, the High Court ruled that all foster care orders that were made before 01 April 2010 are to be renewed by a social worker (rather than by the children's court), and that foster care orders that had lapsed (unless the child had turned 18) are valid until 21 June 2013.⁴⁰



³⁹ Hall K & Proudlock P (2011) *Orphaning and the foster child grant: A return to the 'care or cash' debate*. Children Count brief, July 2011. Children's Institute, University of Cape Town. www.ci.org.za.

⁴⁰ *Centre for Child Law versus the Minister for Social Development and others North Gauteng High Court, Pretoria*. Case: 21726/2011.



5 REUNIFICATION OF THE CHILD WITH BIOLOGICAL PARENTS



If there is a chance that the child going into foster care could be reunited with his or her biological parents, the children's court can, in terms of section 187, make the foster care order subject to certain conditions. These conditions allow a designated social worker to provide reunification services to the child and parents. However, if the child and parents have not been reunited by the time the court order expires, the social worker must submit a report to the court explaining why the reunification did not work and recommend steps that can be taken to stabilise the child's life. Following this report, the court can either order the social worker to continue trying to reunite them or order that the reunification services come to an end if there is little chance of success.

Child and youth care workers could assist in supporting the child in the reunification process as part of the family preservation services they provide.



6 RESPONSIBILITIES AND RIGHTS OF FOSTER PARENTS

The rights and responsibilities of foster parents are described in different places:

- in the court order (it can be the foster care order or an order assigning parental rights and responsibilities to a foster parent);
- in a foster care plan between the child's parent or guardian and the foster parent; or
- in any applicable provision of the Children's Act and its Regulations. For example, the Act indicates that a foster parent is also considered to be a caregiver of a child. Thus, a foster parent has all the rights and responsibilities of a caregiver under the Act, including the right to consent to the foster child's medical treatment or HIV-testing.

The Regulations⁴¹ detail more rights and responsibilities for foster parents, including:

Rights to:

- be informed by a DSW or designated child protection organisation (DCPO) of any occurrence that may substantially affect the foster placement;
- apply for the adoption of the foster child and to be informed of any application to adopt the foster child; and
- ongoing training and support from a social worker to enable the foster parent to deal effectively with a foster child and the child's biological parents.

Responsibilities to:

- cooperate with a DCPO or DSW in the reunification process with the biological parents or family members if that is part of the permanency plan for the child;
- cooperate with the DCPO or the DSW in any review process to extend the foster care order; and
- allow a DCPO or DSW to access his or her home and to have access to the child in order to monitor the placement, provide reunification services, and review the foster care order, or for any other matter relevant to the foster placement.

⁴¹ See Regulations 65 and 66 for the full list of rights and responsibilities of foster parents.



6.1 Making major decisions involving the foster child [section 188 (2) read with section 31]

Before making any major decisions involving the child, the foster parent must consider the views and wishes of the child depending on the age, maturity and stage of development of the child, and any views and wishes expressed by the child's guardian or parent.

Note, however, that the foster parent is only required to give due consideration to these views and wishes – he or she does not have to follow them. Although the foster parent does not need the consent of the child, parent or guardian before making a **major decision**, he or she must think about their views very seriously.

Major decisions include:

- decisions that would affect contact between the child and his or her parents; or
- decisions likely to change, or have a negative effect on, the child's living conditions, education, health, personal relationship with a parent or family member or, generally, the child's well-being.

If the foster child was abandoned, is an orphan, or cannot be reunified with family because this would not be in the child's best interests, then the children's court can give the foster parent extra parental rights and responsibilities (through a court order).

The court can also monitor the foster care placement, for example, by requiring social worker reports to be submitted from time to time. It can also order that the child and/or foster parent must appear before the court to update the court about compliance with its order or to give the court an opportunity to change or withdraw the order.

The Act says that any person may report any alleged non-compliance with a children's court order, or any alleged worsening of the circumstances of a child following a court order. This report is made to the clerk of the children's court (section 65).

7 TERMINATION OF FOSTER CARE

A children's court can terminate a foster care order at any time if it is in the best interests of the child. Before the court terminates the order it must consider all relevant factors, including the existing bond between the child and his or her biological parents (if the parents want to reclaim the child), as well as the bond that has developed between the child and the foster parent and the family of the foster parent. The court must also consider the chances of achieving permanency in the child's life by:

- *“returning the child to the biological parent;*
- *allowing the child to remain permanently in foster care with the foster parent;*
- *placing the child in any other alternative care; or*
- *adoption of the child.”*





8 WHAT IS A CLUSTER FOSTER CARE SCHEME AND HOW IS IT ESTABLISHED AND MANAGED?

This is a scheme that allows children to be taken into foster care and which is managed by a non-profit organisation (NPO) registered for that purpose by the provincial HSD. Foster care usually does not permit more than six children to be placed with a single foster parent, or two people sharing a household, unless the children are siblings or related or if a court considers it to be in the best interests of the children. However, more than six children can be placed in foster care in terms of a registered cluster foster care scheme.

An organisation that wants to manage and provide cluster foster care must be registered as an NPO and be approved by the provincial HSD. The requirements for registration as a cluster foster care scheme are set out in Regulation 68. An application to the provincial HSD to register a foster care scheme must be made on **Form 42**. When an organisation wants to register more than one scheme, a separate form must be completed for each scheme. If the application is granted, the applicant must receive a certificate of registration (**Form 43**). The registration can have conditions attached. If the application is unsuccessful the applicant must be informed of the rejection and the reasons for the rejection on **Form 44**.

A cluster foster care scheme can be deregistered if the conditions of registration have not been complied with or if any of the registration requirements were not complied with. However, before deregistration can take place, the cluster foster care scheme must be given 90 days' notice of the intention to deregister the scheme on **Form 45**. After receiving a notice of intention to deregister, the cluster foster care scheme can appeal the decision to the HSD of the relevant province within the 90 days' notice, on **Form 46**. If the HSD rejects the appeal after considering the representations, then the scheme must be notified of deregistration and be given reasons for the decision on **Form 47**.

Form 42: Application for the registration of a cluster foster care scheme

Form 43: Certificate of registration of a cluster foster care scheme

Form 44: Rejection of application for the registration of a cluster foster care scheme

Form 45: Notice of intention to deregister cluster foster care scheme

Form 46: Representation to provincial HSD by cluster foster care scheme regarding notice of deregistration

Form 47: Notice of deregistration after consideration of representation



8.1 Functioning and management of cluster foster care schemes (Regulations 69 – 71)

An organisation managing or operating a cluster foster care scheme must:

- keep a financial record of social assistance and other funds received to provide social services for the support of the children they are fostering; and
- operate or be managed according to a written plan or agreement detailing prescribed information.⁴²

The best interests of the children in cluster foster care must be promoted through the provision of prescribed types of services.⁴³ These are services that:

- “(a) provide support, mentoring, supervision and advice to active members of an organisation to whom responsibility for foster care of a child or children in the cluster foster care scheme has been assigned;*
- (b) require the active members of an organisation to whom responsibility for foster care of children has been assigned to:*
 - (i) ensure that the children in cluster foster care benefit from educational and health services, including early childhood development services;*
 - (ii) fulfil the special needs of any child in cluster foster care, including chronic illness or a disability, by providing psychological, rehabilitation and therapeutic programmes for children with such needs;*
 - (iii) ensure that the rights of children in cluster foster care are respected, protected, promoted and fulfilled; and*
 - (iv) fulfil the social, cultural and religious needs of any child in cluster foster care.*
- (c) assist the active members of an organisation to whom responsibility for foster care of children has been assigned to obtain the basic necessities of life themselves, including by providing access to income-generation projects and skills development programmes as appropriate;*

⁴² Regulation 69 (b) read with Regulation 70.

⁴³ See Regulation 71.



- (d) *ensure that a foster care plan as contemplated in section 188(1) of the Act is compiled in respect of each child in cluster foster care, as soon as possible, but not later than 21 days after the child's placement in the cluster foster care scheme;*
- (e) *develop appropriate parenting skills and the capacity of active members of an organisation to safeguard the well-being of the children, including the promotion of positive, non-violent forms of discipline;*
- (f) *prevent the neglect, exploitation, abuse, inadequate supervision of children or other failures to meet children's needs on the part of active members of an organisation;*
- (g) *assist a young person with the transition when leaving cluster foster care after reaching the age of 18; and*
- (h) *involve active members of an organisation, as well as the children in cluster foster care, in identifying and seeking solutions to their problems."*

An annual report must be provided to the provincial HSD containing a range of different reports and information. This includes: a financial report; the number of children and duration of each placement over the year; number of children per active member of the organisation; the number of active members; details of child protection services rendered and which children in the scheme received these services; details concerning the provision of services for children with special needs who are part of the scheme; and the extent to which the rights of children in the scheme have been met.

The organisation managing or operating a cluster foster care scheme has to ensure that all members of the scheme who are providing foster care to children have clearance certificates indicating that their names do not appear on the NCPR or the National Sexual Offences Register.

The organisation operating or managing the scheme must employ at least one registered social worker (not specifically a designated social worker) for every 50 children served by the scheme, or must have a formal agreement with a designated child protection organisation to provide the required social work services. The transfer of children between foster parents who are members of the organisation managing the scheme must be carried out according to the provisions of the Act relating to the transfer of children in alternative care (see the discussion of section 171 on page 62).



F



**CHILD-HEADED
HOUSEHOLDS**



1 WHAT IS A CHILD-HEADED HOUSEHOLD?

The protection of child-headed households is governed by section 137 of the Act and the Regulations.

The Children's Act allows for the legal recognition of child-headed households by the provincial HSD in the following circumstances:

- “(a) the parent, guardian or caregiver of the household is terminally ill, has died or has abandoned the children in the household;*
- (b) no adult family member is available to provide care for the children in the household;*
- (c) a child over the age of 16 years has assumed the role of caregiver in respect of the children in the household; and*
- (d) it is in the best interest of the children in the household.”*

Before a household can be recognised as a child-headed household, two things need to happen. First, a designated social worker must complete an investigation to determine that the children are not in need of care and protection. Second, the child heading the household has to undergo a developmental assessment to determine if he or she has the capacity to become the head of the household.⁴⁴ The child must also be willing to take on these responsibilities.



⁴⁴ National norms and standards, p 247.



2 THE APPOINTMENT OF A SUPERVISING ADULT

The provincial DSD, a children's court or a non-governmental organisation (NGO) approved by Department of Social Development must appoint an adult to give support to children in a child-headed household. The adult must be suitable to work with children (that is, must be screened against the National Child Protection Register using **Form 29**).

A child and youth care worker could be appointed as a supervising adult for children in a child-headed household.

The role of the supervising adult is to support the child heading the household to care for the other children. The adult must perform the following duties set out in Regulation 50:

- “(a) facilitate psychological, social and emotional support to all members of that household when required;*
- (b) ensure that all members of that household who are by law required to attend school or who are required to attend an appropriate education programme, do so;*
- (c) assist with the supervision of homework of members of that household;*
- (d) educate the members of that household with regard to basic health and hygiene and, if possible, sexually transmitted infections depending on the age and maturity of the child;*
- (e) assist with the health care requirements of any member of that household, including the supervision of the taking of medicine and assistance to members with disabilities and ensuring that the children access health care facilities and that their health needs are met;*
- (f) assist the members of that household with legal documentation when required;*
- (g) compile a roster indicating the responsibility of various members of that household in relation to domestic chores in consultation with the members of the household to prepare children for independent living;*
- (h) in consultation with a social worker or a social service professional, attempt to reconnect the members of the household with their parents or relatives and supervise contact between the children and relatives or parents where it is deemed appropriate by the social worker or social service professional;*

Form 29: Inquiry by employer to establish whether person's name appears in Part B of NCPR



- (i) engage the members of that household in issues that affect the household;
- (j) ensure proper provision of resources due to that household, if any, in terms of section 137(5)(a) of the Act for that household's basic needs;
- (k) ensure, subject to paragraph(j), proper utilisation of available resources and adherence to a financial **budget**;
- (l) keep record of all expenditure of that household;
- (m) utilise available and applicable child protection services to ensure the safety and well-being of the members of that household if and when required;
- (n) assist the member heading that household with his or her responsibilities;
- (o) be available to a child when the child requires services after hours;
- (p) report incidents of abuse to the relevant authority in a form identical to Form 22; and
- (q) report any death within that household to a police official and to the provincial head of social development”.



Budget: A budget is a plan for spending money that has been received or raised for a certain purpose. The available funds are divided up (or allocated) to cover the cost of different activities.



CASES FROM THE FIELD

Zeni Thumbadoo and Sbo Mzulwini, Isibindi, Mpumalanga

Noni rises early. She prepares breakfast for her own family, washes and dresses for work. It is dark as she walks across to the Zuma family. She knocks and a sleepy Zondi (11 years old) opens the door. Zondi complains that Princess (6 years old) wet the bed again, is crying and saying that she is not going to school. Noni goes to Princess's room and finds her crying. Noni comforts her and asks her if she had a bad dream. Princess says that she was thinking of Ma. Noni helps Princess get out of bed and into the bath. Noni promises to take her to visit her mother's grave in the afternoon and Princess stops crying. Noni cooks mealie-meal porridge for breakfast and with the help of Zondi makes peanut butter sandwiches for school lunches. Hlengewe (16 years old) arrives in the kitchen, and shouts at Princess for crying, but she sees the wet bedding and quickly takes it outside to wash. Before she leaves, Noni reminds Zondi to help Hlengewe to tidy up before they go to school, gives Princess a hug, and wishes Hlengewe well for her history test.

When Noni arrives at the Gumede's home, Robert (18 years old), Sweetness (17 years old) and Musa (10 years old) are ready for school; Lucky (14 years old) is not. Robert and Lucky are arguing about an incident at school. Lucky angrily says he will never apologise to his teacher as she was rude about their family. Noni joins in the discussion, reducing the tension. She and Lucky head off to school to discuss the incident with the principal and the teacher. As they walk, Noni reminds Lucky of their preparation and warns him not to lose his temper. The discussion lasts over an hour, then Noni leaves Lucky at the school and goes to the DSD office. The social worker informs her that Robert Gumede will get the FCG for the other children and he is owed back-pay of R7 000. This is good news. The social worker asks Noni to discuss the budget with the family and prepare them for a family discussion. She asks Noni to be present.

After a stop at home to check on her own family, Noni hurries back to the Zuma household where she finds Princess waiting. Noni suggests to Princess that they should take a plant to put on Ma's grave. As Princess plants her flowers, she talks about her dream and the bed-wetting. Noni reassures her and discusses with Princess things she could do to feel better if it happens again. Noni accompanies Princess home and asks Hlengewe to walk her out. They discuss the visit to the graveyard, Princess's grief and Hlengewe's own reaction and feelings. Hlengewe asks what to do about the bed-wetting. Noni advises her not to give Princess water after 6:00pm and to visit the clinic if that does not work.

When Noni arrives at the Gumede home, she finds Lucky smiling and happy. He offers her a cup of tea which she accepts thankfully as she hands over the food parcel. Everybody unpacks and packs, commenting on the food items. Then they gather around Noni, who gives feedback about the school visit and grant. A full discussion on budgeting takes place in preparation for the social worker's visit. The family eats together and the discussion continues at the supper table, after which Noni says goodbye and Robert walks her home.



3 THE RIGHTS AND RESPONSIBILITIES OF THE CHILD HEADING THE HOUSEHOLD

The Act recognises the child heading the household as the caregiver of the younger children. He or she has all the rights and responsibilities of a caregiver, for example, the right and responsibility to consent to the medical treatment or HIV-testing of the younger children.

As such, the supervising adult cannot take decisions concerning the household or the children in the household without consulting the child that heads the household as well as the other children depending on their age, maturity and stage of development. All the day-to-day decisions relating to the household or the children in it can be taken by the child heading the household. The Act requires only consultation with the children in the household, but if there is a sick adult in the household, steps should be taken to include him or her in any dialogue.

Social grants or other benefits to which the household is entitled can be collected by the child heading the household, or by the supervising adult. If the adult collects money for the household, he or she must report to the body that appointed him or her.⁴⁵

The supervising adult must also draw up a monthly expenditure plan in consultation with the members of the household. The expenditure plan must be signed by the child heading the household and submitted with proof of expenditure (such as receipts and invoices) to the body that appointed the supervising adult. If the plan was not signed by the child heading the household, or if there is reason to think that the finances are mismanaged, the organ of state or NGO that appointed the supervising adult can investigate the matter and take appropriate steps, including laying charges against the supervising adult and replacing him or her.⁴³

The Act says the supervising adult has to consult the household children – but it does not say he or she must do exactly what they want. What it says is that the adult must act in the children's best interests. However, if the children are unhappy with the way the supervising adult performs his or her duties, they can report the adult to the NGO or organ of state that made the appointment.

GAP IN THE ACT

There is a gap in the Children's Act when it comes to child-headed households. Such households can include a parent or caregiver who is terminally ill – but the Act does not refer to the need to consult with this sick person. However, if the parent or caregiver is living in the child-headed household, his or her views should also be taken into account in any decisions that are made.

⁴⁵ Regulation 51.



4 NATIONAL NORMS AND STANDARDS FOR CHILD-HEADED HOUSEHOLDS (CHH)

The Regulations set out national norms and standards (NN&S) for child protection, which include detailed NN&S for child-headed households.⁴⁶ These focus on:

- general NN&S that promote keeping siblings together, promote the independent functioning of such households, and that deal with the support to be given to CHHs;
- safe and nurturing environments for children in CHHs;
- benefits and assistance for children in CHHs to do with official birth registration, social assistance, social and community services, access to education and development of skills;
- protecting property or possessions belonging to children in CHHs;
- preventing children in CHHs from exposure to harm and protecting them from community risk factors;
- support and assistance to children with disabilities living in CHHs;
- the rights of children in CHHs to be consulted and to participate in decisions affecting the household;
- the monitoring and supervision of CHH; and
- obligations on the child heading the household to give effect to the NN&S “*to the maximum extent reasonably possible*” (bearing in mind his or her age, maturity and stage of development) in order to ensure that all children in the household enjoy their rights. See Part G on page 122 for a full list of the national norms and standards for child-headed households.

⁴⁶ Regulation, Annexure B, Part III, Section 11.



G



**GOVERNMENT'S OBLIGATIONS AND
NATIONAL NORMS AND STANDARDS**



1 GOVERNMENT'S OBLIGATIONS IN TERMS OF THE ACT

The national Minister of Social Development must consult with interested persons and other relevant departments to produce a national strategy for CYCCs and prevention and early intervention programmes. Provincial MECs for Social Development must develop a similar provincial strategy. These strategies should aim to:

- ensure an appropriate spread of each service throughout the country or province; and
- give special attention to including children with disabilities and chronic illnesses in such centres and programmes.

The Children's Act requires that MECs provide funding for registered centres and programmes that meet the national norms and standards.

The Department of Social Development has an obligation to quality-assure all services and to build the capacity of the service providers. This process is called developmental quality assurance, and it requires the provincial DSD to assess the strengths and weaknesses of the services and assist the service-providers to improve their quality and meet the norms and standards.

In addition, each province has to develop and maintain a management information system to monitor the availability and spread of services. Provinces must also keep registers of programmes for children, of all registered CYCCs, and of children in need of care and protection. They are required to conduct research into social risks identified by communities as well as to consult with communities about their needs. Provinces must use all this information to pick up gaps in service delivery and adjust their strategies so that there can be an equal and effective spread of services available to children in South Africa.



2 WHAT ARE THE NATIONAL NORMS AND STANDARDS FOR CYCCS, CHHS AND PREVENTION AND EARLY INTERVENTION PROGRAMMES?

The regulations to the Act set out detailed national norms and standards for child and youth care centres. A centre must meet these norms and standards to get full registration and qualify for funding.⁴⁷ The regulations also provide norms and standards for child-headed households as well as prevention and early intervention programmes.

The norms and standards most relevant to child and youth care workers are presented in the summary tables below. For the full NN&S, consult the regulations to the Children's Act.

2.1 Norms and standards for child and youth care centres (Regulation 72, Annexure B Part V)

Residential care programmes

- Children must be received in a manner and a climate which is caring and safe, and which minimises trauma and maximises developmental opportunity during engagement or admission processes.
- Children must receive services in a safe environment in which they are protected from physical, social and emotional harm.
- Children must be accommodated in a safe, healthy, well-maintained environment which provides appropriate access to the community and which meets their needs in terms of privacy, safety and well-being.
- All reasonable measures must be taken to ensure that children and staff are safe from the risk of fire, accidents and other hazards.

⁴⁷ Centres can apply for conditional registration and receive assistance to meet the norms and standards.



Therapeutic programmes

- The privacy and confidentiality of children must be respected and protected.
- A child must have access to legal or other assistance to prepare for any court process he or she is involved with.
- Children must receive emotional and social care which enables quality interaction with adults and peers, and which promotes positive, sustained relationships at school and with families, significant others and friends.
- Every child and youth care centre must offer a residential care programme that provides a therapeutic environment for the care and development of children.
- Every child must receive an effective and appropriate developmental assessment and referral service which should lead to appropriate placement.
- Every child must be provided with the capacity and support which enables constructive and inoffensive social behaviour.
- Therapeutic programmes must be conducted by service providers with appropriate training, support, supervision and mentoring.
- Therapeutic programmes must be conducted in a non-discriminatory manner.
- Therapeutic programmes must minimise secondary abuse and trauma.
- Therapeutic programmes must ensure that recipients are free to express dissatisfaction with service providers and that concerns and complaints are addressed seriously.
- Therapeutic programmes must be reviewed on a regular basis according to the needs of the recipients.
- Therapeutic programmes must be sensitive to the linguistic needs, religious and cultural norms and values of children and their families.

Developmental programmes

- A child's development plan and programme must be based on an appropriate and competent assessment of his or her developmental needs and strengths.
- Every child in a child and youth care centre must have a plan and programme of care and development.
- Every child in a child and youth care centre must participate in formulating their care and development plans and must be informed of those plans.



Permanency plans for children

- Every child in a child and youth care centre must have a permanency plan based on a developmental assessment of the child.
- The child must participate in the development of the permanency plan and be informed about the plan and any changes to it.

Individual development plans

- Children must receive services in accordance with their individual development plan which facilitates their well-being within a temporary programme and which enables them, where necessary, to make a successful transition to new circumstances.
- Every child in a child youth care centre has the right to a permanency plan, which include reunification, security and life-long relationships.
- Every child has the right to participate in formulating his or her individual development plan and to be informed about their plan, and to be involved in decisions to make changes to their plan.
- The individual development plan must be based on an appropriate and competent assessment of their developmental needs and strengths and, where reasonably possible, be in the context of their family and community environments.
- The family of the child, or other persons with bonds to the child, must be involved in the child's individual development plan unless it is shown that this would not be in the best interests of the child.
- There must be a review of each child's placement and individual development plan at least once every six months while the child remains in the centre.

Temporary safe care

- Every child and youth care centre must provide temporary safe care to children if appropriate and if the centre allows for it.
- Every child should be placed in temporary safe care for the shortest period possible and for the minimum number of days per week appropriate to their needs.
- After reception of a child, a developmental assessment must take place to evaluate a more permanent placement of the child.



- Children in conflict with the law must be offered the option of diversion in a manner which protects their rights and involves them and their families in decision making.
- Children must be given information about their rights and responsibilities within the programme in a manner and form which takes into account their age.

Protection from abuse and neglect

Assessment of children

- Children in child and youth care centres should be received in a caring and safe climate which minimises trauma and maximises developmental opportunity.
- The environment should protect children from physical, social and emotional harm, and threats of harm from themselves and others.
- Children must be given information about their rights and responsibilities within the programme.
- Children must be informed about policy and procedure regarding reportable incidents or actions and must be provided with information and knowledge which ensure that they can use these procedures effectively when needed.

Assessment of children

- Assessment of a child in a child and youth care centre must be undertaken by a multi-disciplinary team.
- The initial assessment must take place within 48 hours of the child's admission to the centre, and there must be regular reviews of the process.
- Assessment must be strengths-based, holistic and appropriate to the child's culture, language and developmental stage.
- Assessment must be done with the participation of the child and, as far as it is reasonably possible, with the child's family.
- The assessment process must aim to increase insight and competency and must include shared decision-making.
- Assessment processes and documentation must be of such a nature that they can be used at the point of reception, and do not need to be repeated.



Family reunification

- Every child should have a plan to ensure that they are reunified with their own family or an appropriate alternative within the shortest possible time-frame.

Aftercare

- Children should receive after-care programmes focussing on support in terms of training and education, employment, independent living, family and community integration and psychosocial support.

Access to and provision of adequate health care

- All children in child and youth care centres must have access to health care services, and where the centre is registered to provide specialist programmes for the:
 - care for children with disabilities and chronic illnesses in terms of section 191(3)(a) of the Act; or
 - treatment for children addicted to dependence producing substances in terms of section 191(3)(c) of the Act.
- The centre must provide specialist care or treatment.

Access to schooling, education and early childhood development

- All children in child and youth care centres must have access to schooling, education, other appropriate training, skills programmes or early childhood development programmes where appropriate.
- The education must as far as possible, be accessed at a school or other training facility in the community.
- Where children cannot access education or other appropriate training in the community, such education or training must be provided at the child and youth care centre.



Security measures

- Children must experience safety and feel cared for.
- Premises must be safe.
- There must be adult supervision at all times.
- All reasonable precautions must be taken to protect children and staff from the risk of fire, accidents or other hazards.
- A first-aid kit must be available and maintained.
- Where obvious signs of injury or trauma are detected, a child must be referred to a hospital or clinic for further assessment and treatment, and his or her parents or caregiver be informed thereof as soon as possible, if their whereabouts are known.
- Where it is suspected that a child may have been abused and in need of child protection services, such child must be referred to a designated child protection organisation.

Separation of children in secure care from children in other programmes

- Children in secure care must be kept separate from children in other programmes at night.
- Where it is not possible to keep children in secure care separate from children in other programmes during the day, there must be appropriate containment.
- Children who are awaiting trial and children who have been sentenced may be housed in the same facility, however, the centre must be registered to provide appropriate programmes for the children in their care and containment.



2.2 Norms and standards for child headed households (Regulation 72, Annexure B, Part III, Section 11)

General

- Siblings in a child-headed household should, as far as is possible and practicable, remain together.
- The right to family life of any child-headed household should be promoted in accordance with the objectives of the Act.
- The independent functioning of a child-headed household must be promoted as far as possible.
- Support to child-headed households must be aimed at enhancing the capacity of the children living in the child-headed household to function as a family.

Safe and nurturing environment for children

- Children must experience safety, support, security and feel cared for while living in a child-headed household, and have their basic needs met.
- Adequate nutrition, water and means for preparing food must be available to meet the basic needs of the children in a child-headed household.
- Adequate care of the health of children living in child-headed households must be undertaken.
- Children living in child-headed households must be able to benefit from the right to rest, leisure and play.
- A child-headed household must respect and nurture the culture, spirit, dignity, individuality, language and development of each child living in that household and children must be encouraged to develop positive social values.
- The resources available to the household must be used equitably to promote the well-being of all children living in the child-headed household.
- Children living in child-headed households must have access to psychosocial support.



Birth registration, social assistance, social and community services, access to education and the development of skills

- Children living in a child-headed household must benefit from official registration of their births in terms of the Births and Deaths Registration Act, Act 51 of 1992.
- Children living in child-headed households must benefit from social assistance, as provided for in the Social Assistance Act, 2004 (Act No.13 of 2004), where the relevant criteria for access to such social assistance are met.
- Children living in child-headed households may benefit from such other forms of social assistance, social relief of distress, emergency assistance or aid, as may from time to time be available, including food, goods or transport assistance
- Children living in child-headed households who are of school going age must attend school regularly, and receive any necessary assistance to enable them to access education.
- Children living in child-headed households must have access to social services and community services generally and to resources which promote their capacities and increase their ability to participate in community life.
- Child living in child-headed households must be enabled to develop the skills necessary to participate in social and economic life.

Property

- Children living in child-headed households must be enabled to assume responsibility for any property or possessions belonging to that household.
- Children living in child-headed households must be assisted to maintain and preserve any property belonging to the household, where such children wish to preserve such property, but may freely dispose of property in the best interests of the household.

Exposure to harm

- Children living in child-headed households should not be exposed to violence, abuse, maltreatment or degradation, to sexual abuse or to harmful or hazardous forms of child labour.
- Children living in child-headed households must as far as possible be protected from community risk factors.



Disability, chronic illness and vulnerability

- Child-headed households must accommodate any special needs of a child living in that household, including any disability, chronic illness or other vulnerability.
- Child-headed households in which a child with a disability or a chronic illness resides must be assisted to obtain any special grants, assistance devices, educational or vocational programme, or other form of support necessary to ensure the optimal development of such child.

Participation and consultation

- Child-headed households must strive for the participation of children living in the household in all matters affecting the functioning of the household.
- Child-headed households must be consulted in any investigation by a designated social worker referred to in section 150(2) and (3) of the Act.

Monitoring and supervision

- Children living in child-headed households must be encouraged to report any change in living arrangements to a designated social worker, a mentor appointed in terms of section 136(3)(a) of the Act or other suitable adult.
- Children living in child-headed households in respect of whom a mentor has been appointed in accordance with section 136(3)(a) of the Act, or in respect of whom an investigation has been concluded in terms of section 150 of the Act, where no finding has been made that the child or children are in need of care and protection, are entitled to be visited on a regular basis, and not less than once every two weeks, for the purposes of monitoring and supervision.

Child heading the household

- The child heading the household must give effect to the norms and standards contained in the regulations to the maximum extent possible, bearing in mind the child's age, maturity and stage of development, to ensure that other children living in the child headed-household are assured of their right to survival and development and to protection from harm.



2.3 Norms and standards for Prevention and Early Intervention Programmes (Regulations, Annexure B Part IV)

Outreach services

Outreach services should:

- Be aimed at reaching out to especially vulnerable children and families to meet the needs of the children, in the context of family and community.
- Promote the identification of children who are at high risk of requiring child protection services.
- Be aimed at developing community-based services and facilities to promote the safety and well-being of children in communities.
- Provide opportunities to children to identify their needs in their communities.
- Use community strengths and resources to promote neighbourhoods that enable the safety and well-being of children.
- Be aimed at addressing community risk factors including violence, substance abuse and crime.
- Ensure that children and families are able to access **enabling documents** to help with access to **social assistance** and other services.
- Make sure that children in different settings (such as home, school and partial care) are able to access outreach services.
- Make sure that children and their families have access to resources that build on strengths and develop new capacities that promote resilience.
- Teach communities to recognise the signs of child abuse and deliberate neglect and the linked risk factors.

Enabling documents: Enabling documents are official papers that children need in order to access important services. Examples include birth certificates, identity documents and the road-to-health book.

Social assistance: Government gives support to people who are unable to provide for their basic needs or those of their dependants. This support — or “social assistance” — is usually in the form of a cash grant.

⁴⁸ Evans J (1997) *Breaking down the barriers: creating integrated early childhood development programmes*. Keynote address at the Conference on the Holistic/Integrative Concept in Early Childhood Education and Development, Larnaca, Cyprus, February 15 18.



- Be based on a **multi-disciplinary** and **inter-sectoral approach**⁴⁸.
- Be delivered in a non-discriminatory manner and with sensitivity to language, religion and the culture of communities.
- Include home-based care, community-based care and community outreach to especially vulnerable children and families, including persons affected by HIV/AIDS.

Education, information and promotion programmes

These programmes should:

- Provide education and awareness on children's rights and responsibilities and promote support for children's rights.
- Promote the importance of the early years, especially ECD.
- Provide children and families with information and assistance on how to access the full range of government and civil society services available.
- Provide information and support to high risk families, families affected by HIV/AIDS and other chronic illnesses and families of children with disabilities.
- Provide information on the nature and type of services available to children, families and communities.
- Use available media and other communication measures.
- Be delivered in the language of the target groups and be sensitive to the cultural values and norms of communities.
- Promote values aimed at protecting children in their communities.
- Promote opportunities for community talks on matters affecting children.
- Provide information on community risk factors and resources to address them.

Multi-disciplinary approach: A multi-disciplinary approach involves drawing on the skills of people from different disciplines or sectors. This allows people to understand problems from a range of perspectives. By working with people who have different skills, training and experience, teams are able to find new solutions to complex problems.

Inter-sectoral approach: An inter-sectoral approach means working closely with different sectors such as health, education and social development to ensure children's needs are met.



Therapeutic programmes

Therapeutic programmes should:

- Provide psychosocial care and support to children and families and promote the emotional well-being and growth of children.
- Be delivered according to children's stage of development and should be based on a needs assessment of individual children and their families.
- Be delivered in an emotionally and physically safe environment and not be harmful to children.
- Be run by service providers who have suitable training, support, supervision and mentoring.
- Assist children and families to use their strengths and be conducted in a non-discriminatory manner.
- Include children, their families and significant persons in the programme.
- Make sure that recipients receive the service provider's name and contact number, and ensure that proper records are kept and data captured.
- Be aimed at reducing secondary abuse and trauma.
- Allow recipients to express dissatisfaction with service providers, and concerns and complaints should be taken seriously.
- Be reviewed regularly according to the needs of the recipients.
- Be sensitive to the language needs, religious and cultural norms and values of children and their families.

Skills development programmes

Skills development programmes should:

- Be aimed at –
 - developing parenting skills and capacity development programmes;
 - improving children's and adults' ability to read and write
 - alleviating poverty and its effects on children;
 - creating employment and improving family income; and
 - providing skills to enable families to care for sick and chronically ill children.
- Be sensitive to the language needs, religious and cultural norms and values of children and their families.



Assessment of programmes

- Assessment of programmes should be done by service providers who have the suitable training, support and abilities to conduct such assessments.
- They may be conducted by a multi-disciplinary group.
- Assessments should be done annually.
- Assessments should be done in response to a report or complaint submitted to the provincial HSD and should help programme managers to develop quality services.
- Assessments should focus on the strengths of the programme, be holistic and suitable to the programme's cultural context.
- Such assessments should be aimed at protecting and promoting the rights of children, and promoting decision-making about future programmes.
- Assessments should monitor adherence to the national norms and standards and ensure that suitable action is taken where norms and standards violations exist. They should result in the development of a plan for capacity-building and improved service delivery, within 30 days of the assessment taking place.
- Assessments should be done with the participation of programme staff and children.
- Assessments should encourage the participation of families and communities, promote children's safety and well-being, and make sure that programmes promote positive social values.
- Assessments should aim to address the developmental needs of children and to build community support for programmes.
- Programme assessments should consider:
 - the extent to which the programme is reaching the intended children and families;
 - the profile of the population the programme intends to reach;
 - whether the programme is of a good quality;
 - the impact of the service on children, families and communities;
 - the availability and efficient use of programme resources;
 - quantitative and qualitative data on children and families and services provided;
 - whether the programme is viable in the long term;
 - the ability of staff to run the programme;
 - the roles, abilities and skills of management;
 - whether the programme meets registration conditions and the requirements of national financial Regulations.

FORM 22

REPORTING OF ABUSE OR DELIBERATE NEGLECT OF CHILD

(Regulation 33)

[SECTION 110 OF THE CHILDREN'S ACT 38 OF 2005]

REPORTING OF ABUSE TO PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT,
DESIGNATED CHILD PROTECTION ORGANISATION OR POLICE OFFICIAL

NOTE: A SEPARATE FORM MUST BE COMPLETED FOR EACH CHILD

TO: THE HEAD OF DEPARTMENT

Pursuant to section 110 of the Children's Act, 2005, and for purposes of section 114(1)(a) of the Act, you are hereby advised that a child has been abused in a manner causing physical injury/sexually abused/deliberately neglected or is in need of care and protection.

Source of report (do not identify person)			
<input type="checkbox"/> Victim	<input type="checkbox"/> Relative	<input type="checkbox"/> Parent	
<input type="checkbox"/> Neighbour	<input type="checkbox"/> Friend		
<input type="checkbox"/> Professional (specify) _____			
<input type="checkbox"/> Other (specify) _____			
Date reported to child protection organization:	DD	MM	CCYY

1. CHILD: (COMPLETE PER CHILD)						
Surname			Full name(s)			
Gender:	M	F	Date of Birth:	DD	MM	CCYY
School Name:			Grade:		Age/Estimated Age:	
* ID no:			* Passport no:			
Contact no:						

2. CATEGORY OF CHILD IN NEED OF CARE/PROTECTION	
<input type="checkbox"/> Child abuse	<input type="checkbox"/> Child labour
<input type="checkbox"/> Child trafficking	<input type="checkbox"/> Street child
<input type="checkbox"/> Commercial sexual exploitation	<input type="checkbox"/> Exploited children
<input type="checkbox"/> Child abduction	

3. OTHER INTERVENTION—CONTACT PERSON TRUSTED BY CHILD	
Surname:	Name:
Address:	Telephone number:
Other children interviewed: <input type="checkbox"/> Yes <input type="checkbox"/> No Number :	

(*) = Complete if available or applicable

4. CAREGIVER INFORMATION (If not same as trusted person or parent(s) of child)	
Surname:	Name:
Physical Address:	Postal Address:
Relationship with child:	
Telephone number:	Mobile:

5. ALLEGED ABUSER						
5.1) Surname				Full Name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID No:				Age:		
* Passport No:				* Drivers license:		

Also known as*	Relationship to child: <input type="checkbox"/> Father <input type="checkbox"/> Mother <input type="checkbox"/> Grandfather <input type="checkbox"/> Grandmother <input type="checkbox"/> Stepfather <input type="checkbox"/> Stepmother <input type="checkbox"/> Foster father <input type="checkbox"/> Foster mother <input type="checkbox"/> Uncle <input type="checkbox"/> Aunt <input type="checkbox"/> Sibling <input type="checkbox"/> Caregiver <input type="checkbox"/> Professional: social worker/police officer/teacher/caregiver/priest/Dr/volunteer <input type="checkbox"/> Other (specify)
Street Address (include postal code):	
5.2) WHEREABOUTS OF ALLEGED PERPETRATOR: <input type="checkbox"/> Section 153 (request for removal by SAPS) <input type="checkbox"/> Still in home <input type="checkbox"/> In hospital (Name/Place) <input type="checkbox"/> In detention (Place) <input type="checkbox"/> Living somewhere else <input type="checkbox"/> Where abouts unknown <input type="checkbox"/> Un-identified	

6. PARENTS OF CHILD (If other than above)						
Surname: Father/Step-father				Full name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID No:				Age:		
Surname: Mother/Step-mother				Full name(s)		

Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID No:				Age:		
Also known as:				Names and ages of siblings or other children if helpful for tracking		
Street Address (include postal code):					Postal Code:	

7. ABUSE

Date of Incident:			If date unknown (mark with X here):	Episodic/ongoing from (date)			Reported to CPR:		
DD	MM	CCYY		DD	MM	CCYY	DD	MM	CCYY
Place of incident: <input type="checkbox"/> Child's home <input type="checkbox"/> Field <input type="checkbox"/> Tavern <input type="checkbox"/> School <input type="checkbox"/> Friend's place <input type="checkbox"/> After school centre <input type="checkbox"/> Neighbour <input type="checkbox"/> ECD Centre <input type="checkbox"/> Private Hostel <input type="checkbox"/> Child and Youth Care Centre <input type="checkbox"/> Foster home <input type="checkbox"/> Temporary safe care <input type="checkbox"/> Temporary respite care <input type="checkbox"/> Other (specify)									
7.1) TYPE OF ABUSE (Tick only the one that indicates the key motive of intent)									
Physical			Emotional			Sexual			Deliberate neglect

7.2) INDICATORS (Check any that apply)**PHYSICAL:**

- | | | |
|--|---|--|
| <input type="checkbox"/> Abrasions | <input type="checkbox"/> Bruises | <input type="checkbox"/> Burns/Scalding |
| <input type="checkbox"/> Fractures | <input type="checkbox"/> Other physical illness | <input type="checkbox"/> Cuts |
| <input type="checkbox"/> Welts | <input type="checkbox"/> Repeated injuries | <input type="checkbox"/> Fatal injury (date of death) |
| <input type="checkbox"/> Injury to internal organs | <input type="checkbox"/> Head injuries | <input type="checkbox"/> No visible injuries (elaborate) |
| <input type="checkbox"/> Poisoning (specify) | | |
| <input type="checkbox"/> Other Behavioural or physical (specify) | | |

EMOTIONAL:

- | | |
|---|--|
| <input type="checkbox"/> Withdrawal | <input type="checkbox"/> Depression |
| <input type="checkbox"/> Self destructive aggressive behaviour | <input type="checkbox"/> Corruption through exposure to illegal activities |
| <input type="checkbox"/> Deprivation of affection | <input type="checkbox"/> Exposure to anti-social activities |
| <input type="checkbox"/> Exposure to family violence | <input type="checkbox"/> Inappropriate and continued criticism |
| <input type="checkbox"/> Parent or caregiver negative mental condition | |
| <input type="checkbox"/> Humiliation | <input type="checkbox"/> Isolation |
| <input type="checkbox"/> Threats | <input type="checkbox"/> Development Delays |
| <input type="checkbox"/> Oppression | <input type="checkbox"/> Rejection |
| <input type="checkbox"/> Accusations | <input type="checkbox"/> Anxiety |
| <input type="checkbox"/> Lack of cognitive stimulation | |
| <input type="checkbox"/> Mental, emotional or developmental condition requiring treatment (specify) | |

SEXUAL:

- | | | |
|---|--|--|
| <input type="checkbox"/> Contact abuse | <input type="checkbox"/> Rape | <input type="checkbox"/> Sodomy |
| <input type="checkbox"/> Masturbation | <input type="checkbox"/> Oral sex area | <input type="checkbox"/> Molestation |
| <input type="checkbox"/> Non contact abuse (flashing, peeping) | | <input type="checkbox"/> Irritation, pain, injury to genital |
| <input type="checkbox"/> Other indicators of sexual molestation or exploitation (specify) | | |

DELIBERATE NEGLECT:

- Malnutrition Medical Physical
 Educational Refusal to assume parental responsibility
 Neglectful supervision Abandonment

7.3) Indicate overall degree of Risk to child:

- Mild Moderate Severe Unknown

7.4) When applicable, tick the secondary type of abuse or multiple abuse:

- Yes No

Physical

Emotional

Sexual

Deliberate neglect

Brief explanation of occurrence(s) including a statement describing frequency and duration

8. MEDICAL INTERVENTION (*)

Examined by: <input type="checkbox"/> Doctor <input type="checkbox"/> Reg. Nurse	Treatment received: <input type="checkbox"/> Yes <input type="checkbox"/> No	Where (name of hospital, clinic, private doctor):	Hospitalised: <input type="checkbox"/> For assessment <input type="checkbox"/> For treatment <input type="checkbox"/> As temporary safe care (place of safety)
Contact person:	Contact person:	Contact person:	Contact person:

Telephone Number:	Telephone Number:	Telephone Number:	Telephone Number:
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9. CHILDREN'S COURT INTERVENTION (*)

Removal of child to temporary safe care (Section 152): <input type="checkbox"/> Yes <input type="checkbox"/> No	Date		
	DD	MM	CCYY

10. SAPS: (ACTION RELATED TO ALLEGED ABUSER(S)) – (*)

Reported to SAPS: <input type="checkbox"/> Yes <input type="checkbox"/> No	Charges laid: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date		
		DD	MM	CCYY
CASE Nr	Police Station	Telephone Nr		
Name of Police Officer		Rank of Police Officer		

11. CHILD KNOWN TO DESIGNATED CHILD PROTECTION ORGANISATIONS (DCPO)/ SOCIAL DEVELOPMENT (DSD)?

11.1) Child known to DCPO/DSD office:	Contact number	Reference number

12. DETAILS OF PERSON WHO REPORTS ALLEGED ABUSE

(Refers to a professional or mandatory obliged to report child abuse in terms of Section 110 (1))

CAPACITY (OF INFORMANT)

Caregiver	Correctional officer	Child and Youth Care Centre	Dentist	Doctor	Drop in Centre
Homeopath	Labour Inspector	Legal Practitioner	Midwife	Member of staff—partial care facility	Medical Practitioner
Minister of Religion	Nurse	Occupational Therapist	Psychologist	Police Official	Physio-therapist
Religious Leader		Social Service Professional		Social Worker	
Speech Therapist		Shelter		Traditional Leader	
Teacher		Traditional Health Practitioner		Volunteer Worker—Partial Care Facility	
Other (specify)					
Surname of informant		Name of informant		Name of employer	
Employer Address		Work Telephone Nr		Fax Number	
Email Address					

(*) = Complete if information is available or applicable

I declare that the particulars set out in the above mentioned statement are true and correct to the best of my knowledge.

Signature of informant: _____

Date: _____

Official Stamp

FORM 29

INQUIRY BY EMPLOYER TO ESTABLISH WHETHER PERSON'S NAME APPEARS IN PART B OF NATIONAL CHILD PROTECTION REGISTER

(Regulation 44)

[SECTION 126 OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director- General
Department of Social Development
Private Bag X901
PRETORIA
0001

Dear Sir / Madam,

In terms of section 126(1) / 126 (2)* of the Children's Act, (No. 38 of 2005), I,(full names and surname) wish to inquire whether the name of a certain person is included in Part B of the National Child Protection Register. The particulars of the person are:

(* - Delete which is not applicable)

1. EMPLOYEES DETAILS:						
Surname			Full Name (s)			
Gender:	M	F	Date of Birth	DD	MM	CCYY
* He / she is known as:			Driver's licence no:			
Alias (also known as):						

* ID no:	* Passport no:
Physical Address:	Postal Address:
Telephone no:	Mobile no:
The above-mentioned person will be / is currently * employed in the following position:	

2. DETAILS OF EMPLOYER – (My/our details are the following:)

Employee's name or name of NPO	NPO Registration number:
Employers Physical Address:	Employer's Postal Address:
Employer's telephone no/s:	Other contact details:

3. ATTACHED DOCUMENTS

A certified copy of the following documents is attached as verification of identity:

- authentic signed letterhead of employer or prospective employer
- certified copy of birth certificate, identity document or passport of person who signed letterhead
- certified copy of birth certificate, identity document or passport of person to be screened

Please note that section 126(5)(a) of the Act requires you to respond to this inquiry within 21 working days.

Your sincerely

(Signature)

(Designation)

(Date)

Official Stamp of employer / Organisation

FORM 36

AUTHORITY FOR REMOVAL OF CHILD TO TEMPORARY SAFE CARE

(Regulation 53)

[SECTION 150-152 OF THE CHILDREN'S ACT 38 OF 2005]

TEMPORARY SAFE CARE

Temporary safe care where child is to be placed	
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AUTHORITY

Authority is hereby given for the placement of the following child/children until this authority is confirmed by the presiding officer of a child's court.

DETAILS OF CHILD(REN)

Name(s) and Surname	Gender	Disability	Date of Birth/ Estimated Age

REASON FOR REMOVAL OF CHILD

(Mark with an "x") (Attach a substantial statement containing the specific details/circumstances of the removal, reflecting dates and facts relevant to the chain of events)

MARK	SECTION OF ACT	REASONS FOR REMOVAL
	151(2)	I have removed the above-mentioned child/children in terms of a children's court order (Document attached as per annexure)

MARK	SECTION OF ACT	REASONS FOR REMOVAL
	47(3)	I have removed the above-mentioned child/ children in terms of an order of another court (Document attached as per annexure)
	170(4)	I have apprehended the above-mentioned child/children who has/have absconded or failed to return to alternative care (Document attached as per Annexure)
		I have reason to believe that the child/ children is / are in need of care and protection due to the following:
	150(1)(b)	Displays behaviour which cannot be controlled by the parent or care-giver
	150(1)(c)	Lives or works on the streets or begs for a living
	150(1)(d)	Is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency
	150(1)(e)	has been exploited or lives in circumstances that expose the child to exploitation
	150(1)(f)	Lives in or is exposed to circumstances which may seriously harm that child's physical mental or social well-being
	150(1)(g)	My be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is no reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child
	150(1)(h)	Is in a state of physical and mental neglect
	150(1)(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 whose control the child is.

MARK	SECTION OF ACT	REASONS FOR REMOVAL
		I have found the child/children in the following circumstances and I have reason to believe that the child/children may be in need of care and protection:
	150(2)(a)	A child who is a victim of child labour
	150(2)(a)	A child in a child-headed household

RESPONSIBLE PERSON

Details of parent(s), guardian or care-giver from whose custody child/children was/were removed

Name(s) and surname		
Residential address		
Work address		
Telephone numbers	Residence	
	Office	
	Cellular	
Facsimile number		
Email address		
Relationship to the child		

ADDITIONAL INFORMATION: CHILD(REN)

(Special needs, medical conditions, behaviour, etc)

OFFICIAL CONDUCTING REMOVAL OF CHILD(REN)

Details of person conducting removal of child(ren)

Name(s) and surname		
Rank/position		
Identity number		
Social Worker/ police official/ authorized person		
Work address		
Registration number		
Telephone numbers	Office	
	Cellular	
Facsimile		
Email address		

ACKNOWLEDGEMENT OF RECEIPT**PARENT'S, GUARDIAN OR CARE-GIVER**

Signature			
Name and surname			
Place			
Date		Time	

TEMPORARY SAFE CARE

Signature			
Name and surname			
Place			
Date		Time	

COPIES OF AUTHORITY

A **true copy** of this authority must be provided to the following and must be confirmed by the issue of a **Form 37 court order** within the applicable time limits:

Care-giver from whose custody child/ children was/were removed and who can readily be traced	Within 24 hours
Temporary safe care	With admittance
Social worker (case worker)	Within 24 hours
Provincial Department of Social Development	Within 24 hours
Children's Court (clerk of the children's court)	Not later than the next court date
Office record(case file, case docket)	Filed as soon as possible

REFERRAL

Case referred to Organisation/Social worker

Name & surname	
Organisation	
Telephone number	
Facsimile number	
Reference number	

SEE NOTES ON NEXT PAGE

Note 1**A. Directions for social workers:**

A true copy of this authority is to be delivered or handed, after removal of the child/children to the

- Parent/guardian/care-giver who can readily be traced within 24 hours;
- Relevant clerk of the children's court by not later than the next court day; and
- Closest office of the relevant provincial department of social development within 24 hours.

B. Directions for police officials

A true copy of this authority is to be delivered or handed, after removal of the child/children, to

- The parent/guardian/care-giver who can readily be traced within 24 hours;
- The relevant clerk of the children's court by no later than the next court day;
- The closest office of the relevant provincial department of social development within 24 hours;
- A designated social worker within 24 hours.

C. General

- The parent/guardian/care-giver must be informed of the date, time and place of the review of the detention of the child/children and the right to furnish the court with information which must be the first court day after the removal of the child. The person issuing the authority must bring the child/children or cause the child/children to be brought before the children's court of the district of removal.
- The place where the child is placed in temporary safe care must report to the children's court concerned if the placement is not confirmed by court order within seven days

Note 2

Section 152(1) of the Act makes it clear that, before a child may be removed to temporary safe care without a court order, ALL of the following factors HAVE to be present –

- The child must be in need of care and protection;
- The child must require immediate emergency protection
- The delay in obtaining a court order may jeopardize the child's safety and well-being; and
- Removal is the best way to secure the child's safety and well-being.

FORM 39

APPROVAL TO PROVIDE TEMPORARY SAFE CARE

(Regulation 57)

[SECTION 167 OF THE CHILDREN'S ACT 38 OF 2005]

It is hereby certified that:

the following facility has been approved for temporary safe care:

the following place has been approved for temporary safe care:

the following premises has been approved for temporary safe care:

the following person has been approved for temporary safe care :

Name of facility/premises/person

Physical address of facility / place/ premises/ person:

PROVINCIAL HEAD OF SOCIAL DEVELOPMENT

DATE:

FORM 40

REPORTING OF SERIOUS INJURY, ABUSE OR DEATH OF CHILD IN ALTERNATIVE CARE

(Regulation 64)

[SECTION 178 OF THE CHILDREN'S ACT 38 OF 2005]

A. Serious injury or abuse of child in alternative care.

To: The Provincial Head of Social Development

Pursuant to section 178 of the Children's Acct, 38 of 2005, you are hereby informed that a child in alternative care has been seriously injured or abused.

Details of child: _____

Name: _____

Surname: _____

ID Number: _____

Date of birth: _____

Gender: _____

Age: _____

Date and place of serious injury or abuse: _____

Type of serious injury or abuse: _____

Brief explanation of incident of serious injury or abuse:

Brief explanation of medical intervention:

Details of alleged abuser:

B. Death of a child in alternative care

To: The Provincial Head of Social Development / Police official/ Social worker/ Parent or guardian of child

Pursuant to section 178 of the Children's Act, 38 of 2005, you are hereby informed that a child in alternative care has died

Details of child: _____

Name: _____

Surname: _____

ID Number: _____

Date of birth: _____

Gender: _____

Date and place of death : _____

Brief explanation of incident leading to death of child:

Brief explanation of medical intervention:

I declare that the information set out above is true and correct to the best of my knowledge.

Name of person in whose care or temporary safe care the child had been placed

Name of organisation in whose care or temporary safe care the child had been placed

Date:

FORM 48

APPLICATION FOR THE REGISTRATION / CONDITIONAL REGISTRATION / RENEWAL OF REGISTRATION OF A CHILD AND YOUTH CARE CENTRE

(*Delete which is not applicable)

(Regulation 78)

[SECTION 199 OF THE CHILDREN'S ACT 38 OF 2005]

This is an application for:

- Registration in terms of section 199
- Conditional registration in terms of section 201
- Renewal of registration in terms of section 199

(A) PARTICULARS OF APPLICATION

Name of child and youth care centre: _____

Physical address: _____

Postal address: _____

_____ Postal code: _____

Name of person of body who manages the child and youth care centre or
who wishes to establish it:

Physical address: _____

Telephone : _____ Cell phone : _____

Fax number : _____ E-mail : _____

Accreditation reference number: _____

(B) MANAGEMENT BOARD

Constitution of the management board:

Chairperson: _____

Vice-chairperson:

Secretary: _____

Treasurer: _____

Member: _____

Member: _____

Member: _____

Member: _____

Committees (state nature and number of members):

(a) Nature : _____ Number : _____

(b) Nature : _____ Number : _____

(c) Nature : _____ Number : _____

(d) Nature : _____ Number : _____

Auditors

Name : _____

Address: _____

Telephone number: _____

Registration number: _____

(C) STAFF

Staff provision (names of incumbents not required)

Designation	Sex	Salary or remuneration	Skills, qualifications and experience

(Further particulars must be furnished in an annexure)

If disabled children or children with special needs are to be catered for state the proposed staff provision:

(D) BUILDINGS, SITE AND EQUIPMENT

Extent of premises: _____

Extent of buildings: _____

Extent of playgrounds: _____

Rooms and amenities for use by children:

Type	Number	Floor Space
Bedrooms:		
Boys		
Girls		
Dining room		
Kitchen		

Type	Number	Floor Space
Bathrooms:		
Boys		
Girls		
Washbasins:		
Boys		
Girls		
Showers:		
Boys		
Girls		
Recreation rooms		
Isolation room		
Others		

Are all the rooms properly furnished according to community practice and standards:

State what provisions has been made for recreation:

Indoors: _____

Outdoors: _____

(E) **CHILDREN**

Provide details regarding the programme or programmes to be offered:

Total number of children that will be accommodated: _____

Boys: _____

Girls: _____

Particulars of children (reply yes or no):

Destitute and neglected children: _____

Abused children: _____

Children with substance abuse challenges: _____

Children with behaviour challenges: _____

Children with developmental or psychological disabilities: _____

Children with physical disabilities (also state nature); _____

Abandoned children: _____

Arrangements for religious instruction: _____

(F) **GENERAL**

State whether the premises is the property of the applicant: _____

If rented premises, state monthly rent: _____

State whether the child and youth care centre possesses any other fixed assets:

(G) SUPPORTING DOCUMENTS

The following supporting documents must accompany the application:

- A certified copy of the constitution or founding document of the child and youth care centre as prescribed by section 200(1)(c)(i) of the Act;
- a business plan containing the information as prescribed by regulation 78(2);
- the staff composition employed at a child and youth care centre as prescribed by regulation 78(2)
- the financial statements of the child and youth care centre including an ex-position of the funds available to operate the child and youth care centre as prescribed by regulation 78(2);
- the emergency plan as prescribed by regulation 78(2); and
- clearance certificates that the names of any Board member appointed in terms of regulation 15 and the names of any employee do not appear in the National register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amended Act 32 of 2007 and in Part B of the National Child Protection Register established by Part 2 of Chapter 7 of the Act as prescribed by regulation 78(2)

(H) REMARKS

Any additional remarks by the applicant in support of the application:

I certify that the above-mentioned particulars are, to the best of my knowledge, true and correct.

SIGNATURE OF APPLICANT	CAPACITY	DATE
------------------------	----------	------

FORM 49

CERTIFICATE OF REGISTRATION / CONDITIONAL REGISTRATION / RENEWAL OF REGISTRATION OF A CHILD AND YOUTH CARE CENTRE

(*Delete which is not applicable)

(Regulation 80)

(SECTION 200 OF THE CHILDREN'S ACT 38 OF 2005)

It is hereby certified that:

- The following child and youth care centre has been registered in terms of section 200 of the Act;
- The following child and youth care centre has been conditionally registered in terms of section 201 of the Act; or
- The registration of the following child and youth care centre has been renewed in terms of section 219 of the Act; or

on _____ (insert date) until _____ (insert date)

to accommodate _____ children (insert number)

Name of child and youth care centre: _____

Physical address of child and youth care centre:

The validity of the registration expires on: _____
(insert date)

The registration or renewal of registration is subject to the following conditions:

The child and youth care centre is registered to run the following programmes:

The Department of Social Development will provide the following assistance to the child and youth care centre to comply with the conditions of registration and the national norms and standards.

Provincial Head: Social Development

Province/ Municipality: _____

Date of issue: _____

FORM 50

REFUSAL OF AN APPLICATION FOR THE REGISTRATION/
RENEWAL OF REGISTRATION OF A CHILD AND YOUTH CARE CENTRE

(*Delete which is not applicable)

(Regulation 80)

[SECTION 200 OF THE CHILDREN'S ACT 38 OF 2005]

Name of applicant: _____

Name of child and youth care centre: _____

Physical address of child and youth care centre: _____

Date of application: _____

I have refused the application for the following reasons:

PROVINCIAL HEAD OF SOCIAL DEVELOPMENT

PROVINCE: _____

DATE: _____

FORM 51

AN APPEAL AGAINST A DECISION OF A PROVINCIAL HEAD
IN TERMS OF SECTION 207 OF THE ACT IN RESPECT OF
CHILD AND YOUTH CARE CENTRE

(Regulation 90)

[SECTION 207 OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Name of child and youth care centre: _____

Physical address of child and youth care centre:

This appeal against a decision of the provincial head of social development
of _____ (insert name and province)
against the exercise of his or discretion in respect of a decision relating to:

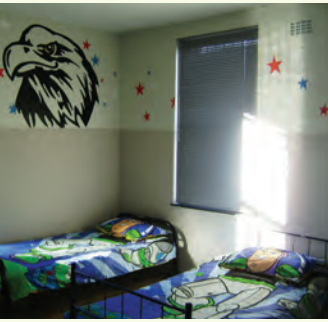
Indicate decision against which this appeal is lodged (indicate yes or no)	Grounds on which appeal is lodged
	Section 200: Consideration of new application for registration
	Section 200: Consideration of application for renewal of registration
	Section 201: Conditions on which registration was granted
	Section 203: Cancellation of registration
	Other grounds of appeal

The reasons provided by the provincial head of social development for his or her decision are attached. My reasons for appealing against the decision are attached.

APPLICANT/REGISTRATION HOLDER

DATE

NOTE: The appeal must be lodged with the MEC for social development in the province where the decision was taken by the provincial head of social development.



This guide is written for people working in child and youth care and focuses on the parts of the Children's Act that they will find most useful. In particular, the guide targets:

- the managers of child and youth care centres including shelters;
- trainers; and
- CYCWs working in residential care or community programmes.

The **Children's Act Guide for Child and Youth Care Workers** aims to equip these people with the necessary knowledge and understanding of how to interpret and apply the law when delivering services to children. The guide gives details on the role of CYCWs in delivering prevention and early intervention services; protecting vulnerable children; child and youth care centres; foster care and child-headed household; and amongst others.

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