



Childline

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CHILDREN'S ACT COMMENT ON THE REGULATIONS August 2008

Introduction

Childline South Africa welcomes the opportunity to comment on the regulations for the Children's Act no 38 of 2005 and Children's Amendment Act no 30 of 2007

1. Virginty Testing, Regulation 4

The word "penetration" should be replaced by inspection. Virginty testing should not involve the penetration of the genitals by either fingers or implements. A proper positioning of the child, the separation of the labia and a visual inspection should be sufficient. The use of the words "penetration" and "instrument" in this regulation may tacitly give permission for virginty testing practice that is potentially damaging and more intrusive than it need be to the child.

2. Circumcision

There are no regulations for cultural circumcision – this is a grave oversight given the problems experienced with cultural circumcision of boys. An extension of the regulations for religious and medical circumcision will not be sufficient. It is also essential that the mixing of body fluids should not only be avoided between the boy undergoing the circumcision and the person performing the circumcision but also between others who may be involved, for example in dressing the circumcised penis.

Regulations 9(2) (d) should therefore read “there is no direct blood contact, contact with any body fluid or contact with any foreign substance between the child undergoing the circumcision and the person performing the circumcision or any other person/child;”

3. Partial Care

Regulation 20: Childline believes it is critically important for crèches at Casinos to be registered but exempt from providing Early Childhood Education. The rationale for this is that Casino crèches also require qualified and competent staff who are thoroughly screened to deal with children who are left for temporary periods whilst parents gamble. There should be minimum standards of care. It must be noted that parents and caretakers may lose track of time whilst gambling and entertaining, children are sometimes distressed. Children left at Casino crèches may also include a wide range of ages, and supervision may be minimal to keep costs low. Childline considers this a potentially high risk environment unless well managed and sees no logical reason for their exclusion from registration as partial care facilities.

4. Child Protection Policies at Partial Care and Early Childhood Education Facilities, Child and Youth Care Centres, Drop in Centres, Cluster Foster Care Schemes and Designated Child Protection Agencies.

Childline motivates strongly for regulations for all of the above that make the development and registration of Child Protection Policies an essential requirement for registration. At present few organisations that have children in their care have written child protection policies; therefore when children report abuse, either in the home or partial care facility, by either caretakers or other children, this tends to be dealt with in an ad hoc and inconsistent manner. Child and Youth Care Workers, Staff at Partial Care Facilities and indeed Social Work Professionals, etc employed in these settings have occasionally been reported for acts of child abuse and neglect.

Delays in reporting, concealment and other forms of mismanagement keep children in situations of continued risk and abuse.

It is therefore critically important that appropriate Child Protection Policies are an essential component of registration, and a training requirement for all staff and volunteers included in the minimum standards for all the above places of care for children.

Furthermore this is now becoming an international standard in child protection and many international funders require this as a pre-requisite to funding.

The policy should contain inter alia:

- a brief statement of legal obligations when abuse is reported or witnessed
- procedures to be followed when abuse is observed

- procedures to be followed when a staff member or volunteer is alleged to have abused and/or neglected a Child
- procedures to be followed when a child reports/alleges abuse and/or by a parent or caretaker
- procedures to be followed when child on child abuse is observed or reported by either an employee/volunteer in the facility, reported by a parent or caretaker, or by a child
- how records of such incidents should be kept
- who has access to such records

5. Child Protection

Childline has made some small additions to this regulations 40 and 42 in order to ensure comprehensiveness of these regulations. They are attached to this submission.

6. Part B of the Child Protection Register

6.1. Regulation 47 – persons unfit to work with children.

It is recommended that those found guilty of

- acts falling within the worst forms of child labour as described in the principle act
- crimen injuria (not repealed by the Criminal Law (Sexual Offences and Related Matters) Amendment Act no 32 of 2007

be placed on Part B of the register. The latter is especially important when one considers the present legal context in which negotiated pleas are encouraged by the criminal justice system.

6.2. **Regulation 47 (2) (d) (ii)** should include both “statutory and common law” offences.

6.3. **Regulation 51 (2) (a) (i) – Removal of names from the Register:** It is entirely unacceptable that reports should be limited to those professionals registered under the Health Professions Act and this speaks of elitism and a lack of acknowledgement that Social Workers may also develop specialised skills in this area. Childline suggests the ff as an alternative:

- at least 5 years experience in a specialised programme, conducted in a team setting, with regards to rehabilitation of those who have committed offences against children, particularly an act of physical or sexual violence
- the inclusion of professional social workers, subject also to professional registration and experience.
- The inclusion of the reporters CV in relation to professional registration, experience and special expertise in this aspect of work in accredited programmes.

- An obligation on the part of the presiding officer of the court to examine the CV of the report writer.
- Where a report to the registrar of the Part B register for inclusion on the Part B register has been made more than once, removal of the person's name should not be permitted.
- Section 51 (3) (2) (b) should also be amended to include registered professional social workers and the appropriate experience.
- This should only be considered in the case of sexual offenders, where the rehabilitation programme in which they have participated is accredited.

7. Reports from Designated Social Workers to the Children's Court – regulation 61

These should contain a list of sources of information and dates of contacts with such sources. This would ensure that Social Workers have exercised diligence with regard to the collection of the information contained in the report.

8. Deaths in foster care or cluster foster Care – regulation 81

A reporting period of 14 days to report such a death is totally unacceptable – reporting of the death of a child should be immediate, in case of the need to assess the safety needs of other children placed with the same foster mother/cluster foster care.

9. Cluster Foster Care

Childline supports the submission of the NACCW on this issue and believes that many of the regulations applied to child and youth care centres should be applied to cluster foster care placements.

10. Child and Youth Care Centres

- Regulation 84 focuses on health and education – there needs to be an holistic focus on the child and the inclusion of access to psycho-social health care.
- Regulation 85 (2) (k) – Children should not be subjected to undue influence by service providers regarding their religious, *political* or personal beliefs
- Regulation 87 (2) – the complaints mechanism should be developed and approved in consultation with the children's forum
- Regulation 88 – care plans should be reviewed on at least a three month period
- Regulation 90 (e) Psycho-social reports should be included in this sub-section – the reports of social workers do not appear to be given the same recognition as those of other professionals.
- Regulation 95 (b) – staff in Child and Youth Care Centres should have access to debriefing, mentoring and consultation as needed

11. Drop in Centres

The regulations relating to drop in centres indicates a far more formal process of registration than Childline had envisaged – they almost make the drop in centre as formal as partial care. One would like some flexibility to facilitate the child's gradual development of trust and attachment to a centre – if all that information has to be collected in the initial stages of a relationship process one may end up with the child not remaining. This may be particularly true of street children who may take some time to develop a sense of trust.

12. The Adoption Register

The following further inclusions are recommended for the register of adoptive parents to facilitate matching with appropriate children:

- (i) the race of the adoptive parents
- (ii) the cultural background of the adoptive parents
- (iii) The religious background of the adoptive parents

And for the register of adoptable children – the child's address/place of care should be included for ease of contact.

13. National Norms and Standards for Children in Partial care

- all drivers should be screened against part B of the Child Protection Register – Childline has had numerous reports of abuse by drivers.
- h: food preparation – all food should be kept covered after preparation and when not presented for immediate consumption stored in hygienic and sealed containers. This standard should be applied to all the appropriate norms and standards relating to the the preparation of food.

14. Surrogacy

Although this chapter applies to what may be a comparatively small number of children, there are no regulations that give guidance to the provisions on surrogacy. As no social workers reports are required and the process is mediated by legal professionals, there are no safety and protective measures protecting children who are the product of surrogacy contracts. Childline believes that this is inadequate.

I am attaching the regulations with some tracked minor changes for the perusal of the Department.

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