



Children's Institute submission on the draft regulations to the Children's Act 38 of 2005

To the Department of Social Development

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Chapter 1: General Provisions

Reg 2: Intervals of provincial profiles

- Each chapter of the Act (governing different service areas) contains sections which oblige the MECs of Social Development to compile a provincial profile on the relevant service area (e.g. ECD) so that this information can be used in developing and reviewing the provincial and national strategies for that service area. However, regulation 2 prescribes the timing of these profiles and provides that they must be completed *“within one year AFTER the incorporation of the relevant provincial strategy into the relevant national strategy and every year thereafter”*. However, the Act requires that the profiles are needed for the **development** and review of the national and provincial strategies (see the wording used in s77(3) of the Act as an example)¹. This means that the

¹ s77(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the **development** and review of the strategies contemplated in sub-sections (1) and (2).

profiles must be compiled BEFORE the provincial and national strategies are compiled and not after. The purpose of the profiles is to give the province (and national government) an accurate reflection on the levels of need versus service provision in order for them to set targets for increased service delivery in their strategies. We therefore recommend that the wording is changed so that it is clear that the provincial profiles must **precede** the provincial and national strategies.

- The words “*the incorporation of the relevant provincial strategy into the relevant national strategy*” imply that the provincial strategies precede the national strategies. However the wording of the Act makes it clear that the national strategies precede the provincial strategies –i.e. the provinces must adopt strategies that are in line with the national strategy. See for example the wording used in s92 (2) (b)².
- Regulation 2 only prescribes intervals for the provincial profiles to be compiled but does not prescribe what information must be contained in the provincial profiles. In order to enable the national minister to compile national strategies per service area he/she needs access to specific information that is collated by each province in a similar format. The provincial budget narratives have started to contain detailed data elements, indicators and targets to enable national treasury to assess delivery and budget expenditure. However, not all provinces are using the standard list of indicators and data elements that has been set by national treasury³. The current lack of data and lack of uniformity in data collection and collation methods used across the provinces will make it difficult for the national Minister to obtain a national picture or a comparative picture across the provinces. Without this information the Minister will not be able to for example compile a “*comprehensive national strategy aimed at ensuring an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential programmes in the various regions, ...*”⁴

This problem also made the costing exercise in respect of the Bill difficult and resulted in the costing consultant drafting and recommending an implementation plan format with prescribed data elements, indicators and targets that must be collated and reported on each year by each province. The provinces are in fact currently using this format for their planning purposes. The regulations could contribute to this drive to improve data collection, collation and analysis by specifying what information the

² 92(2) The MEC for social development must – (b) **within the national strategy referred to in subsection (1)**, provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed early childhood development system.

³ Budlender D and Proudlock P. *Analysis of the 2008/09 budgets of the provincial departments of social development: Are the budgets adequate to implement the Children’s Act?* Children’s Institute, University of Cape Town, 1 July 2008. Pg 26. Available on www.ci.org.za

⁴ S192(1). Sections using this same wording can be found in each service area chapter in the Act.

provincial profiles should contain. The data elements listed in the implementation plan format could be listed in the regulations as these are already in use by the provinces⁵. The Act also requires information to be compiled “*in the prescribed manner*”⁶ which opens the door for the regulations to specify what information must be provided and how it must be packaged/presented.

We therefore recommend that additional regulations are included in chapter 1 of the Regulations using the following wording.

Suggested wording (this one is for partial care but the drafters would need to draft one per service area⁷):

- (1) **The MEC must compile a provincial profile on partial care on an annual basis and submit the profile to the National Minister for Social Development by the...of every year (the due date should be prior to the beginning of the budget cycle).**
- (2) **The provincial profile must contain the following information:**
 - (a) **a record of all registered partial care facilities in the province including:**
 - **the number of registered partial care facilities**
 - **the number of registered partial care facilities that are funded by government**
 - **the number of conditionally registered partial care facilities**
 - **the number of conditionally registered partial care facilities that are funded by government**
 - **the number of children accommodated in the facilities**
 - **the number of children with disabilities and chronic illnesses accommodated in the facilities**
 - **the location of each facility**

⁵ Some of the sections of the implementation plan format would need to be updated because it was compiled based on the composite Bill before it had been passed by Parliament.

⁶ E.g. s87(1) A provincial head of social development must –

(a) maintain a record of all partial care facilities in the province, the types of partial care facility and the number of each type of facility

(b) compile a profile of the children in that province in the prescribed manner

⁷ The data fields per service area can be found in the implementation plan format and the Western Cape provincial social development budget narrative 2008/09 (The WC narrative contains the national prescribed list of indicators, data elements and targets).

(b) an analysis of the need for partial care facilities in the province including:

- **the number of children in the province in need of partial care facilities**
- **the number of unfunded registered partial care facilities**
- **the number of unregistered partial care facilities**
- **the number of registration applications received in the past year**
- **the number of registration applications processed in the past year**
- **the number of registration applications received but not yet processed**
- **the number of funding applications received in the past year**
- **the number of funding applications processing in the past year**
- **the number of funding applications received but not yet processed in the past year**

If the department would prefer not to be so specific in the regulations, the alternative wording for sub-section(2) above would be:

(2) The provincial profile must contain the information specified by the National Minister by notice in the government gazette.

This would give the Department more flexibility as a government notice is easier and quicker to issue than an amendment to regulations.

Chapter 5: Partial care

20. Categories of partial care facilities

20(c) specifies that after school care centres qualify as “partial care” if the children attending the after care are attending a primary school. This leaves after care centres for children attending secondary schools out of the ambit of the Act. The Act in section 76 provides an express list of the types of partial care that are excluded from the Act, and after school care centres for children in secondary school are not expressly excluded. It is submitted that the regulations cannot limit this list further. There is also a contradiction between regulation 20(c) and Form 13. Form 13 includes after care centres caring for children attending a secondary school as one of the categories of partial care that can be registered while Reg 20(c) limits it to after school care for children attending primary school only.

Suggested amendment:

(c) an after school centre, providing care for a child attending a primary or a secondary school;

21. Exemption from registration as a partial care facility

It is not clear why casinos or shopping malls should be exempt from having to register and be regulated under the Act. We recommend that Reg 21(2) should be deleted.

24. Consideration of application

Form 14 and conditional registration

The Act provides in section 83 for conditional registration. This mechanism allows for emerging organisations that are not yet able to meet the norms and standards to be conditionally registered and therefore to access government funding in order to enable them to gradually develop the capacity to meet the norms and standards. Section 82(5) also provides that a provincial head of social development may assist a partial care facility to comply with the prescribed national norms and standards. To promote pro-active support and assistance by the department to emerging organisations, we suggest that Form 14 contain a section which specifies the support/assistance that the department of social development will provide to the organisation to meet the norms and standards. Such assistance could be, for example, a commitment to fund the organisation or a commitment to liaise with the municipality to exempt the centre from having to pay electricity and water bills.

Suggested section insert at end of the form:

The Department of Social Development will provide the following assistance to the centre to assist the centre to comply with the conditions of registration and the national norms and standards:

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Annexure A: Norms and Standards

The ECD norms and standards contain a clause [(c)3] which prohibits staff from using corporal punishment to discipline children. However, the partial care norms and standards do not have such a clause. In order to promote the use of positive non-violent discipline in partial care centres we recommend the insertion of a clause along the lines of the one on the ECD norms and standards, into the partial care norms and standards.

Suggested amendment: Insert

Discipline must be affected in a humane way and promote integrity with due regard to the child’s developmental stage and evolving capacities. Children may not be punished physically by hitting, smacking, slapping, kicking or pinching.

Chapter 6: Early Childhood Development

31. Consideration of application

Form 19 and conditional registration

The Act provides in section 96 and 98 for conditional registration. This mechanism allows for emerging organisations that are not yet able to meet the norms and standards to be conditionally registered and therefore to access government funding in order to enable them to gradually develop the capacity to meet the norms and standards. Section 97(5) also provides that a provincial head of social development may assist a person providing an ECD programme to comply with the prescribed national norms and standards. To promote pro-active support and assistance by the department to emerging organisations, we suggest that Form 19 contain a section which specifies the support/assistance that the department of social development will provide to the organisation to meet the norms and standards. Such assistance could be, for example, a commitment to fund the organisation, provide accredited training to the ECD workers, link the centre with the expanded public works programme on ECD, or a commitment to liaise with the municipality to exempt the centre from having to pay electricity and water bills.

Suggested section insert at end of the form:

The Department of Social Development will provide the following assistance to the applicant to assist the applicant to comply with the conditions of registration and the national norms and standards:

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Chapter 11: Prevention and Early Intervention Services

Annexure A: Norms and Standards

The norms and standards do not encompass the full range of programmes that are listed in s 144 of the Act but only prescribe for the areas listed in s147 of the Act. The error lies more in the lack of synergy between s144 and 147 of the Act than in the regulations. However, it could be remedied if the regulations were to be expanded to include all the programmes in s144.

The full list of programmes in s144 follows. The programmes underlined are not adequately provided for in annexure A of the draft regulations.

- Family preservation services
- Parenting skills programmes/counselling
- Parenting skills programmes/counselling and support groups for parents of children with disabilities and chronic illnesses (e.g. the parent support groups run by Disabled Children's Action Group)
- Parenting skills programmes and counselling to teach parents positive, non violent forms of discipline (e.g. programmes run by Resources Aimed at the Prevention of Child Abuse and Neglect)
- Psychological, rehabilitation and therapeutic programmes for children who have suffered abuse, neglect, trauma, grief, loss or who have behaviour or substance abuse problems (e.g. services offered by Childline).
- Diverting children in trouble with the law away from the criminal justice system and into diversion programmes (e.g. The programmes run by the National Institute for Crime Prevention and the Reintegration of Offenders children in trouble with the law).
- Programmes aimed at strengthening/supporting families to prevent children from having to be removed into child and youth care centres
- Programmes that support and assist families who have a member (child or adult) who is chronically or terminally ill (home- and community-based care)
- Programmes that provide families with information on how to access government services (water, electricity, housing, grants, education, police, courts, private maintenance, food parcels, protection services, health services)
- Programmes that assist and empower families to obtain the basic necessities of life for themselves (e.g. skills development projects, sustainable livelihoods programmes, sewing projects, expanded public works projects and stipends, food garden and farming projects).

Standard (a) (10)

The most notable exclusion is home and community base care (HCBC) programmes [s144(2)(d) of the Act]. The Children's Institute's recent analysis of the budgets of the provincial departments of social development for 2008/09 for implementing the Children's Act shows that there is considerable

attention focused on home and community based care projects⁸. This attention is also translated into budget growth in this area⁹. HCBC is also identified as a national social development priority and linked to the expanded public works programme.

However, in the draft regulations, HCBC programmes are briefly mentioned in section (a)(10) of the norms and standards. Only three lines are devoted to them. In comparison, diversion programmes (which reach and impact on considerably less children than HCBC) has a whole page in the regulations. We recommend that given the national and provincial attention devoted to HCBC, as well as the potential for the HCBC programmes to reach large numbers of HIV affected and infected families and to link these vulnerable families with the full range of government services (school fee exemptions, no fee schools, clinics, free water, free electricity, social grants, housing subsidies, social protection services), the norms and standards should flesh out more what these programmes should look like and what norms they need to adhere to. The mentorship scheme norms and standards and regulations provide a good example of how it could be done. It would also be a good idea to look at how the HCBC programmes run by Social Development and the programmes run by Health can be better integrated so that home based carers visiting families can attend to the family's health and social needs.

This suggested amendment could be accommodated by merely expanding section (a) (10). The HIV/AIDS sub-directorates in the National Department or members of NACCA could be approached for assistance on drafting these norms and standards.

Section (a) (10) also appears to restrict the HCBC services to families where a **child** has a chronic illness, disability or has been orphaned, whereas section 144(2) (d) of the Act refers to programmes aimed at "supporting and assisting families with a chronically ill or terminally ill **family member**". Children living in families where an adult is chronically ill also need support because they end up having to shoulder adult responsibilities.

Standard (b)

The other notable exclusion is parenting skills and capacity development programmes. These feature strongly in the Act in section 144 (1) (b) – (d) but are not mentioned in the norms and standards. Examples of such

⁸ Budlender D and Proudlock P. *Analysis of the 2008/09 budgets of the provincial departments of social development: Are the budgets adequate to implement the Children's Act?* Children's Institute, University of Cape Town, 1 July 2008. Pg . Available on www.ci.org.za. See pages 13, 16 – 17

Looking at all provinces combined, the 2008/09 allocation for the sub-programme HIV/Aids (the sub-programme HCBC programmes are located) is 41% larger than that for 2007/08. The budget narratives note increased attention to the expanded public works programme (EPWP) of home- and community-based care (HCBC).

⁹ *ibid*

programmes are already in existence and norms and standards can be drawn from these (e.g. programmes run by the Parent Centre and RAPCAN in Cape Town, and by DICAG's parent support groups around the country). Notably absent is any mention of programmes to promote positive discipline.

An insertion of a section on parenting skills and capacity development into standards (b) could easily address this omission.

Standard (b) (4)

Sections 144(2) (a) – (c) of the Act should be used as guidance for standard (b) (4). While the Act uses broad terms such as “basic necessities of life” or “services”, standard (b) (4) restricts the information to “how to access health and appropriate social services”.

While government does provide a comprehensive range of services for families living in poverty, these services (e.g. the housing subsidy or school fee exemptions) are not always known by families or easily accessible. Many NPO projects have been set up to help inform and link vulnerable families to these programmes. To recognise the comprehensive nature of the needs of vulnerable families, we suggest an amendment to standard (b) (4).

Suggested amendment:

4. provide children and families with information and assistance on how to access the full range of government and civil society services available to vulnerable families and children, including health, social services, education, housing, water, electricity, food parcels, disaster relief, and social grants. ~~health and appropriate social services~~

Chapter 14: Foster Care and Cluster Foster Care

Introduction

The Children's Act, the Amendment Act and the regulations do not provide a clear working model for cluster foster care (CFC) schemes. In addition, some of the provisions of the Act contradict each other. In particular it is not legally clear who the foster parent is if the court order places the child in a CFC scheme ito s180(3) (c). In such circumstances, is the scheme the foster parent or is the active member the foster parent?

The definition of “foster parent” is “a person who has foster care of a child by order of the children's court, and includes an active member of an organisation operating a cluster foster care scheme and who has been assigned responsibility for the foster care of a child”. The definition of foster parent creates the impression that it is the active member that is the foster parent and not the scheme. Yet s180(3) (c) gives the court the authority to place the child in the care of the CFC scheme. Clarity is needed as to whether the scheme or the active member is legally the foster parent.

This is important because there are a number of provisions that apply to “foster parents” in the Act and the regulations. Clarity is needed on whether these apply to the scheme or to the active member. For example, section 129 read with the definition of care-giver in s 1 provides that a foster parent can consent to medical treatment on a child under 12 in their care. In the case of a child placed in a CFC scheme, who can give consent to medical treatment – the manager of the scheme or the active member? The answer to this dilemma lies in clarifying who the foster parent is.

Another example is where a child in foster care dies due to negligence of the foster parent and the child’s biological parents take legal action for damages. Who will the biological parent take action against? Is the scheme financially liable or is the active member accountable or both?

Despite these contradictions, the provisions of the Act can be interpreted to mean that the active member is the foster parent, and not the scheme. We would recommend such an interpretation. If such an interpretation is accepted, then we recommend that the most appropriate model for cluster foster care schemes is as follows:

- The court appoints the individual active member of the scheme as the foster parent (and not the scheme). Or if the child is transferred in terms of s171 (1) by the provincial head of social development, the order of transfer appoints the active member of the scheme as the foster parent (and not the scheme).
- The court order includes a condition that the foster parent (active member) must belong to the relevant scheme, participate in the programmes and services provided by the scheme, and adhere to the rules of the scheme. Or if the child is transferred in terms of s171 (1) by the provincial head of social development, the order of transfer should include a condition that the foster parent (active member) must belong to the relevant scheme, participate in the programmes and services provided by the scheme, and adhere to the rules of the scheme.
- The foster parents/active members are not employed by the scheme and do not receive any salary from the scheme. They belong to the scheme as members and are bound by the court order or transfer order to participate in the scheme and adhere to the rules of the scheme. The benefit of belonging to the scheme is that they receive additional support in the form of training, development, linkages to other government services, and professional statutory services.
- Schemes operate as formal networks of foster parents (active members), through which recruitment, training, specialised programmes, targeted material and other support (possibly including access to housing and statutory social work services) are channelled to the foster parents by the organisation managing the scheme.
- The number of children per foster parent (active member) is limited to 6
- The number of foster parents (active members) per physical address is limited to a maximum of 3

- The foster care grants are paid directly to the foster parents (“active members” of the scheme) and provide financial support to the foster parents for the children in their care
- The organisation managing the scheme is provided with adequate funding from the Department of Social Development to support the provision of recruitment/training and support programmes to the foster parents and the children in their care. This funding would for instance include funding for the salaries of social workers to do statutory work, child and youth care workers to provide mentorship and training to the foster parents, and funding for programmes such as specialised training for foster parents caring for children with special needs (e.g. children with HIV, children with drug addictions, children with challenging behaviour as a result of abuse.). .

Bearing this model in mind we make the following recommendations for amendments to the draft regulations:

Size of cluster foster care schemes and units

The provisions for Cluster Foster Care (CFC) in the Children's Act no. 38 of 2005, the Amendment Act no 41. of 2007 and the draft Regulations do not limit the number of children that can be placed in the care of a single active member of a scheme. They also do not specify the number of active members/children who may be accommodated per residential site.

In the absence of such limitations, it is possible for organisations to establish large group care settings for children as CFC schemes, without having to conform to the stricter regulations required of Child and Youth Care Centres. These could include children's village-type models, institutions providing long-term care to children, and other forms of institutional/residential care. There are already a number of such settings in operation around the country (see Meintjes H, Moses S, Berry L and Mampane R (2007) *Home truths: The phenomenon of residential care for children in a time of AIDS*, Cape Town: Children's Institute, University of Cape Town & Centre for the Study of AIDS, University of Pretoria).

This is of considerable concern. The un-ideal nature and detrimental effects of group/institutional care on children's well-being and development are well-documented by local and international research. Concerns regarding inadequately supported and unregulated long-term group care for children include that it can:

- “Threaten children's normal developmental processes, primarily through a lack of individual attention and opportunities for attachment with adults;
- Fail to transfer critical life-skills to children, resulting in children being inadequately prepared to cope with life when they leave care and, in instances, predisposing care-leavers to antisocial behaviour;
- Result in children being dislocated from their families, their communities, and concomitantly, their cultural background and identity; resulting in problems of ‘reintegrating’ into society.
- Marginalise children from society, and is accompanied by experiences of

stigma and discrimination;

- Fail to respond to children’s individual needs, characteristically prioritising the needs of institutional functioning;
- Expose children to overcrowding and a lack of privacy;
- Expose children to increased illness, a lack of access to medical care, and/or education;
- Put children at risk of sexual and physical abuse by residential care staff and older children, and in extreme circumstances has resulted in trafficking of children;
- Operate as a ‘magnet’ in poor neighbourhoods: i.e. residential care settings can be used by poverty-stricken caregivers / under-resourced social workers as an “economic coping mechanism” resulting in children being placed there because of lack of access to resources, as opposed to a lack of suitable care” (Meintjes et al, 2007).

It is precisely this knowledge that has led to more careful regulation and support of Child and Youth Care Centres in the new Act. Furthermore, if institutional care is inadequately supported by government, unregulated and excluded from the system of training and development available to registered and regulated centres, these detrimental effects can be exacerbated.

In order to avoid some CFC schemes operating to the detriment of children, it is crucial that the regulations to the Act limit the size of CFC settings, both in terms of the number of children accommodated with a single caregiver, as well as the number of caregivers/‘household units’ per site.

Regulation	Proposed Amendment	Additional discussion/motivation
<p>Regulation 78(x) and (y) and (z)</p>	<p>Insert sub-sections into this regulation to clarify the limit on the numbers of children per active member and the limit on the number of active members per physical address.</p> <p>(x) A scheme may not accommodate more than 6 children with an active member.</p> <p>(y) A scheme must have regard to s185(1) of the Act which prescribes that a couple is considered to be one active member and the scheme may not therefore accommodate more than 6 children with a couple.</p> <p>(z) A scheme must limit the number of active members per physical address to no</p>	<p>Sub-section (z) is aimed at ensuring that CFC schemes do not operate as mini children’s homes. If there is a limit on the number of households that can be established on one property/physical address, this prevents CFC schemes developing into mini ‘cottage-style’ children’s homes.</p>

	more than 3 active members	
Regulation 76(2)d	<p>The application for registration of a cluster foster care scheme must be accompanied by –</p> <p>....</p> <p>(d) details of the number of children that the scheme proposes to support in cluster foster care, the number of active members that is proposed to provide foster care to such children, and the proposed number of children to be accommodated with each active member, allocation of children to active members of the organisation who will be assigned responsibility for the foster care of such children, and the proposed number of active members per physical address.</p>	Consequential amendments will need to be made to this regulation to ensure that regulation 78(x)(y) and (z) can be adequately monitored.
Regulation 77(1) (b) and (c)	<p>A nonprofit organisation managing or operating a registered cluster foster care scheme must annually submit a report to the provincial department of social development concerning the schemes under its management or operation, detailing in respect of each such scheme –</p> <p>(a) an annual financial report of income received and expenditure incurred;</p> <p>(b) the number of children placed in cluster foster care over the annual period, the duration of their placement in cluster foster care, if applicable, the number of children allocated per active member, the number of active members of the organisation providing foster care, and the number of active members</p>	Consequential amendments will need to be made to this regulation to ensure that regulation 78(x)(y) and (z) can be adequately monitored.

	per physical address.	
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Employment of active members assigned responsibility for the foster care of a child

The Children's Act (as amended by the Amendment Act) defines active members of cluster foster care schemes assigned responsibility for the foster care of a child **as foster parents** (s. 1 in the Act and s3(h) in the Amendment Act).

Given this, it is not legally possible to allow for cluster foster care schemes to **employ** active members without fundamentally changing the nature of care that foster parents are intended to provide. Employment introduces a relationship between the scheme and the active member which trumps the relationship between the active member and the child.

Allowing for employment shifts the nature of care from "parental or family care" towards care of a more institutional nature as it constitutes the care giving as a job, altering the nature of the relationship between the foster parent and foster child. This is not in the best interests of the child as it undermines the continuity of care that foster care is envisaged to provide through providing children with a consistent parental figure in a family environment. There is vast literature on the negative impacts on children of care in institutional settings (see above), and thus the literature recommends that care in institutions should always be temporary and short-term and that children should ultimately be placed in a family environment. Research conducted by the Children's Institute on institutional care highlighted how tensions between the best interests of the child and the rights of employees occurred when organisations used foster care legislation to employ foster parents to care for children in a group care setting (Meintjes et al, 2007). There was conflict between the role of a foster parent as envisaged by legislation (responsible for children 24 hours/ day, 7 days a week) and that of an employee (who cannot be legally employed to work those hours). This resulted in children being cared for in practice by shift-working care workers (some of whom were legally foster parents) rather than the one foster parent in whose care they had been placed. In other words, what was supposed to be a family environment came to operate like an institution (Meintjes et al, 2007). The danger is that vulnerable children are placed in what is meant to be a family environment, but ultimately receive a more institutional care environment with all of the associated problems for children, and with the added disadvantage that the care does not fall under the protective umbrella of the child and youth care centre regulations.

The Children's Act no 38 of 2005 in s.9 states that "in all matters concerning the care, protection and well-being of a child the standards that the child's best interest is of paramount importance, must be applied". The best interest standard includes "the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment" (s. 7(1)(k)). Given these requirements, and the way in which employment of carers undermines the family nature of foster care and thus the child's best interests, the

appropriateness of the employment of active members in cluster foster care schemes is questionable.

It is understandable that the scheme may need a form of “contract” with the active member to ensure that the active member abides by the rules of the scheme. However an employment contract is not appropriate in a foster care setting. As an alternative, the court order or s171 transfer order could include a condition that the foster parent/active member must belong to the scheme, participate in its programmes, and adhere to the rules of the scheme. The court order or transfer order then becomes the “contract” that binds the foster parent into the scheme and enables the scheme to monitor and support that foster parent.

In order to address these issues, the following amendments should be made to the regulations.

Regulation	Proposed Amendment	Additional discussion/motivation
Regulation 76(2)(g)	<p>details concerning the manner in which active members will be recruited to assume responsibility for the foster care of children in a cluster foster care scheme, including, but not limited to, the criteria for selection of such members, the voluntary or paid nature of their involvement in the scheme, the conditions of their employment, where applicable, and the period for which they are recruited</p>	
Regulation 77(x)	<p>An organization managing or operating a registered cluster foster care scheme may not –</p> <p>(a) Employ active members to be foster parents or conclude contracts with active members which resemble employment contracts. The nature of the relationship between the scheme and the active members should be one of association and stipulated as a condition for the benefit and best interests of the child, in the court order or</p>	

	transfer order into s171.	
Regulation 80(1)(x)	<p>Insert a sub-section after Regulation 80(1) (e)</p> <p>80(1) A cluster foster care scheme must promote the best interests of the children in cluster foster care by -</p> <p>(x) assisting the active members of the 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;</p>	<p>This addition ensures that foster parents who need to have an increased income (in addition to the foster care grant) get the necessary support to access income generation projects and skills development programmes. It is preferable to the scheme paying a salary as it fosters independence and sustainability for the foster parent and their family, rather than generating dependence on the scheme for an income. In this way, it avoids setting up perverse incentives to foster children.</p>
Form 45	<p>(B) Supporting documents</p> <p>The following supporting documents must accompany the application:</p> <ul style="list-style-type: none"> • Details of the proposed management of the scheme, including financial management, and the manner in which foster parents will be recruited, the voluntary or paid nature of their involvement in the scheme, and where appropriate, the conditions of their employment 	

Rights and responsibilities of foster parents within cluster foster care schemes

The Children's Amendment Act (as Amended) defines active members of cluster foster care schemes assigned responsibility for the foster care of a child, as foster parents (s 1 of the Act and s3(h) of the Amendment Act). Given this, the responsibilities (regulation 70) and rights (regulation 71) of foster parents outlined in regulations apply to all foster parents including those who are active members of cluster foster care schemes. Regulation 70 and 71 are comprehensive in outlining these rights and responsibilities and we support their retention as is.

In order to ensure that there is no confusion between part I of Chapter 14 of the Regulations (Foster Care) and part II of Chapter 14 of the Regulations (Cluster Foster Care), in particular to ensure clarity that regulations 70 and 71 apply to the active members, the following amendments are suggested.

Reg	Proposed Amendment	Additional discussion/motivation
79(c)	The written plan, agreement or articles of association referred to in regulation 78(3) may include details as to – (c) the independent decision-making functions and capacities roles and responsibilities of active members of the organisation to whom responsibility for foster care of the child has been assigned, relative to the cluster foster care scheme or nonprofit organisation managing or operating the scheme, as the case may be, and in accordance with regulations 70 and 71 ; and ...	This would provide clarity within the scheme as to the expectations that the scheme has of the active members and the active members of the scheme without infringing on the rights and responsibilities assigned to foster parents by the regulations.
Form 44	Part B of the form must have a space for the details of both the foster parent, and the cluster foster care scheme	As the foster parent will always have responsibilities regarding the child, there needs to be space for these to be outlined separately from the responsibilities of the cluster foster care scheme.

The payment of foster child grants, and the funding of cluster foster care schemes

In addition to children's placement in the care of a related or unrelated foster parent, the Children's Act (as amended) also allows for the placement of children in the foster care of a registered cluster foster care scheme (s.180(3)(c)). However, the Act and its

regulations cannot make provision for the payment of the foster child grant (FCG) to the scheme, as the provisions for the payment of grants are contained in the Social Assistance Act no 13 of 2004 and its regulations (February 2005). The Social Assistance Act no 13 of 2004 is explicit in its stipulation that the foster child grant be paid to a foster parent (s. 8).

The draft regulations to the Children’s Amendment Act however contains provisions which clearly envisage that the Foster Child Grant might be paid to the scheme, and which may result in less than the full amount of the FCG reaching the active member. See in particular regulation 78(2) in which CFC schemes are required to keep financial records “of all social assistance grants ... received for the support of the foster children placed in such scheme”; and regulation 78(8), in which schemes are required to “ensure that any social assistance grant ... received by it to support a child ... is used *to the fullest extent possible* for the maintenance and upbringing of the child or children in respect of whom those grants have been received” (emphasis own)

In this regard, the Children’s Act, Amendment Act and regulations are clearly at odds with the Social Assistance Act and regulations.

It is our opinion that for a range of reasons it would be inappropriate for the CFC scheme to receive FCGs on behalf of its active members. In the first instance, as outlined above, active members of CFC schemes are by definition foster parents, and as such are entitled to all the related rights and responsibilities, including to directly receive the FCG for the foster children in their care (see regulations 70 & 71). In addition, the possibility (arising from regulation 78(8)) for part of FCG allocations to be utilized in the provision of organisational services is of concern: children placed in foster care are wards of the state: in the light of this fact, it would be inappropriate to dilute the FCG allocated to them by law through their use in supporting CFC schemes as a whole.

We therefore recommend that the regulations be clarified to ensure that there is no confusion with regards to active members/ foster parents receiving FCGs directly, and that funding for the provision of programmes, support and services by CFC Schemes and their managing organization be provided for through more appropriate funding channels.

Regulation	Proposed Amendment	Additional discussion/motivation
Regulation 80(3)	The MEC for social development of a province may must, out of funds allocated for this purpose, provide financial support to cluster foster care schemes in such province, to enable them to fulfill the duties under 80(1).	Sections 146(1) and 193(1) of the Children’s Act (as amended) requires that the MEC for social development must provide and fund prevention, early intervention programmes as well as child and youth care centres for that province.

		<p>There is no justifiable reason for the discrepancy in provisions resulting in the exclusion of cluster foster care schemes from similar funding.</p>
<p>Regulation 78(8)</p>	<p>A cluster foster care scheme must ensure that monitor how any social assistance grant or other grants received by it active members assigned responsibility for the foster care of a child to support a child or children in the foster care scheme is or are utilised to the fullest extent possible for the maintenance and upbringing of the child or children in respect of whom those grants have been received.</p>	<p>Regulation 70(1)(a) outlines that it is the responsibility of the foster parent to “ensure that any state grant or financial contribution from such child’s biological parent or parents is used towards the upbringing of the child and applied in his or her best interests”. The cluster foster care scheme should therefore support the foster parents in this responsibility through monitoring.</p> <p>Regulation 71(6) outlines that “A foster parent has the right to financial support in respect of the foster child in his or her care in accordance with the provisions of the Social Assistance Act, 2004 (Act No.13 of 2004).” In order not to contradict this provision, the foster parent who is an active member of a cluster foster care scheme should receive the grant and be supported in utilising it appropriately.</p>

Continuity of care for children

One of the benefits of foster care over care in child and youth care centres is that it provides improved continuity of care for children in the form of a consistent parental figure. In order to ensure that care in a cluster foster care scheme retains this positive attribute, the following amendments (in addition to those relating to employment of active members) are suggested:

Regulation	Proposed Amendment	Additional discussion/motivation
Regulation 77(1)	<p>(1) A nonprofit organisation managing or operating a registered cluster foster care scheme must annually submit a report to the provincial department of social development concerning the schemes under its management or operation, detailing in respect of each such scheme –</p> <p>(a) an annual financial report of income received and expenditure incurred;</p> <p>(b) the number of children placed in cluster foster care over the annual period, the duration of their placement in cluster foster care, if applicable, and the number of active members of the organisation providing foster care to whom responsibility for the foster care of the children in the scheme have been assigned, and details concerning any transfer of children between active members;</p>	<p>This would enable the provincial department to monitor the continuity of care provided by a cluster foster care scheme.</p>
Regulation 77(x)	<p>An organization managing or operating a cluster foster care scheme must ensure that the transfer of children between foster parents who are active members of the scheme is carried out in accordance with the procedure for transfers stipulated in s171.</p> <p>In the alternative: An organization managing or operating a cluster foster care scheme must ensure that the transfer of children between foster parents who are active members of the scheme is</p>	<p>The transfer of children in other forms of alternative care is provided for in s.171 of the Amendment Act. However as children would not have to be transferred out of the scheme in order to be transferred between active members, they would not be protected by this clause. This provision in the regulations would therefore ensure some</p>

	carried out by a designated social service professional.	protection for children from unnecessary or excessive transfer of care.
Form 50	<p>(B) Supporting documents</p> <ul style="list-style-type: none"> ○ Please attach financial report for the year detailing income received and expenditure incurred ○ Please attach description of number of children placed in the foster care scheme, the duration of their placement, the number of active members providing foster care, details concerning any transfer of children between active members, and manner in which cluster foster care scheme operates, details of child protection services rendered to children in the scheme 	This would enable the provincial department to monitor the continuity of care provided by a cluster foster care scheme.

Programmes, services and support

For all other service areas (e.g. prevention and early intervention services) the Children's Act (as amended) outlines possible programmes and services. In order to give direction to and assist organisations operating cluster foster care schemes in the same way as the Act gives direction to organizations providing other services to children, the regulations should include a list of both necessary and potential programmes and services.

Regulation	Proposed Amendment	Additional discussion/motivation
Regulation 80(1)xxx	<p>A cluster foster care scheme must promote the best interests of the children in cluster foster care by providing programmes, services or support which – ...</p> <p>(a) providing support, mentoring, supervision and advice to active members of the organisation to whom responsibility for foster care of the child or children in the cluster foster care scheme has been assigned;</p>	

	<p>(x) develop appropriate parenting skills and the capacity of active members of the organisation to safeguard the well-being of their children, including the promotion of positive, non-violent forms of discipline;</p> <p>(x) prevent the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures to meet children's needs on the part of active members of the organisation ;</p> <p>(b) assisting the active members of the organisation to whom responsibility for foster care of children has been assigned to ensure that the children in cluster foster care benefit from educational services; including early childhood development services</p> <p>(c) assisting the active members of the organisation to whom responsibility for foster care of children has been assigned to ensure that the children in cluster foster care benefit from available health services;</p> <p>(d) assisting the active members of the organisation to fulfill the needs of any children in cluster foster care with special needs, chronic illness, or a disability, including by providing psychological, rehabilitation and therapeutic programmes for children with such needs;</p> <p>(e) assisting the active members of the organisation to fulfill the social, cultural and religious needs of the children in cluster foster care;</p> <p>(f) ensuring that a care plan is compiled in respect of the child in cluster foster care, as soon as possible, but not later than seven days after the child's placement in the cluster foster care scheme; and</p> <p>(x) assist the active members of</p>	
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	<p>the organisation to obtain the basic necessities of life themselves, including by providing access to income-generation projects and skills development programmes as appropriate</p> <p>(x) assists a young person with the transition when leaving cluster foster care after reaching the age of 18;</p> <p>(g) assisting the active members of the organisation to generally ensure that the rights of children in cluster foster care are respected, protected, promoted and fulfilled;</p> <p>and</p> <p>(x) involve active members of the organisation, as well as the children in cluster foster care, in identifying and seeking solutions to their problems</p>	
Regulation 78(10)	A cluster foster care scheme must provide the necessary programmes, services and support as set out in 80(1) to enable foster parents who are active members of the scheme to provide suitable care for the children for whom they have been assigned responsibility.	Consequential amendment of this regulation is necessary in order to give adequate effect to regulation 80(1)(x)

Chapter 15: Child and youth care centres

Reg 83(1) (e)

We welcome the inclusion of the words “according to reasonable community standards” in regulation 83(1)(e). It reflects an understanding that child and youth care centre needs to provide care (nurturing, accommodation and food) that is similar to the care provided to children in the surrounding community. For some centres in our research, the higher requirements of the existing regulations and norms and standards are inappropriate as they require equipment and standards way above those that exist for children in the surrounding community, thereby making it impossible for the centre to qualify for registration.

Reg 83(1)

An additional sub-clause in regulation 83(1) is recommended in order to encourage homes to facilitate children’s involvement in community activities

and thus help keep them integrated in community life. One of the primary criticisms of residential care by the international child welfare sector is that it isolates children from community thereby hampering their integration back into life outside the institution. The Children's Institute study found that where children were involved in activities happening outside in the community rather than in separate activities happening within the confines of the institution or limited to children from the institution, the home and the children were more embedded in their local community (Meintjes et al, 2007).

Suggested wording for the sub-clause to be inserted:

(x) to have access to community activities and structures unless a court order or their care or development programme indicates otherwise.

Reg 84(1) and (f)(i) of the National Norms and Stds

Regulation 84(1) and (f)(i) of the Norms and Standards for Child and Youth Care Centres require that for centres providing care for children with disabilities and chronic illnesses, and for babies - the Department must stipulate the number of health care workers to be employed on the registration certificate. It is not clear if this now imposes an obligation on such centres to employ health care workers (i.e. nurses) or if it leaves this decision in the discretion of the Head of Social Development (or the official delegated to make the registration decision and complete the certificate). Either way it presents a challenge due to the lack of availability of health care workers particularly in rural areas.

Recent research by the CI into residential care found a high proportion of HIV-positive children in the centres in the study (16% compared to 1.9% in the general child population) (Meintjes et al., 2007). This means that many children's homes would be caring for children with chronic illnesses. Availability of health workers (especially in rural areas) as well as access to sufficient funds to offer competitive salaries means that employing health workers would be very difficult for many centres currently caring for HIV infected children.

What homes do need is a plan around how health care will be provided in these cases, including training of caregivers in basic childhood illnesses and in the administering of medication and establishing arrangements with health facilities, community doctors and nurses. The national Department of Social Development has recently developed a programme focused on managing HIV and AIDS in homes (NICDAM, 2006). The guidelines outline a range of best practices for homes providing care in the context of a burgeoning HIV epidemic. Regulations could require that centres have access to these guidelines and that they implement them. A number of homes in the study conducted by the Children's Institute demonstrated how with adequate training and support, actually employing health workers was unnecessary for centres caring for HIV-positive children (Meintjes et al., 2007). As the regulations currently stand they are likely to encourage homes to transfer HIV-positive children to specialist homes. This is not only unnecessary and therefore discriminatory, but also fuels stigma around the disease.

Similarly for homes caring for babies, what is needed is adequate training of caregivers around basic childhood illnesses and child development, including signs of developmental delay. Requiring a plan for how this will be achieved, rather than the employment of health workers would be more appropriate.

Reg 92 and Forms 53 and 54

Regulation 92 on the application for the registration of a child and youth care centre does not deal adequately with conditional registration (as provided for in s199 and 201 of the principal Act). The registration application form (Form 53) and certificate (Form 54) also do not provide for conditional registration as an option. This is strange given that the registration application forms and the registration certificates for all the other service areas (e.g. ECD) do provide for conditional registration as an option. During portfolio committee debates the intention of including conditional registration here was to ensure that organizations who do not meet all the criteria for non-conditional registration could be conditionally registered during which time the department can assist them to meet the requirements. This is particularly important given the large number of unregistered children's homes that currently exist. These homes, especially the ones located in poor and rural areas where professional support services are scarce are not likely to be able to meet the full registration requirements in the short to medium term. The mechanism of conditional registration will allow for them to be conditionally registered, to access government funding and to be pro-actively supported by the Department to meet the norms and standards over time.

A form which allows the applicant to indicate that conditional registration is being applied for and a similar data field on the certificate would go a long way to ensuring that this original intention is not lost. Furthermore, in order to facilitate pro-active support from the Department to the centre (especially those emerging from communities in need and those in rural areas), the registration certificate should contain a section where the Department can specify the support that will be provided by the Department to the centre to assist the centre to meet the conditions and the norms and standards. See also section 200(5)¹⁰ of the Act which provides authority for such a section to be added at the end of the form.

Suggested amendment Reg 92:

- (1) An application for the registration, **conditional registration** or renewal of registration of a child and youth care centre.....

Suggested amendment form 53:

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

¹⁰ Sec 200(5)a provincial head of social development may assist the person or organisation operating a child and youth care centre to comply with the prescribed national norms and standards....., and such other requirements as may be prescribed.

This is an application for:

- **Registration in terms of s199**
- **Conditional registration in terms of s201**
- **Renewal of registration in terms of s....**

Suggested amendment Form 54:

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

It is hereby certified that:

The following child and youth care centre has been registered in terms of s200 of the Act

The following child and youth care centre has been conditionally registered in terms of s201 of the Act

Suggested section insert at end of the form:

The Department of Social Development will provide the following assistance to the centre to assist the centre to comply with the conditions of registration and the national norms and standards:

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Reg 94

Suggested amendment:

(1) On granting an application referred to in regulation 92(1) the provincial head of social development must issue to the applicant a certificate of registration, **conditional registration** or renewal of registration in a form that substantially corresponds with Form 54.

Reg 95

Regulation 95(a) requires all child and youth care workers to be registered with the South African Council for Social Service Professionals. This is in keeping with the definition of “social service professional” in s1 of the Act. However, it needs to be recognised that the Council currently does not provide for the registration of child and youth care workers. Currently therefore there are no child and youth care workers who will meet regulation 95. This situation (Council’s reluctance to recognise child and youth care workers as a separate profession) needs to be remedied urgently so that child and youth care workers can register with the Council.

Regulation 95 should also stipulate what qualification is needed for psychologists employed by child and youth care centres. Consideration also needs to be given to the creative use of the many psychology honors graduates who cannot practice as psychologists but who could be put to good use in child and youth care centres under the supervision of experienced psychologists or senior child and youth care workers (a clinical masters is required before psychology graduates are allowed to practice but only a small percentage of honours graduates are accepted into the clinical Masters programmes leaving a large number of post-graduates without a career path).

Reg 104

The DQA process is clearly envisaged as a supportive, capacity development tool that will assist centres to continually improve their ability to meet the norms and standards and not as a punitive tool. In keeping with this spirit we suggest an insertion into 104(5) (d).

Suggested amendment:

(6) The purposes of a developmental quality assurance process are to –

(d) monitor the adherence to the minimum norms and standards pertaining to child and youth care centres as set out in Annexure A, and to take decisive and appropriate action, **including through the provision of material and professional support**, where departures from the norms, standards and law occur;

Annexure A: Norms and Standards

The staff to child ratios do not take into account the severe skills shortage in this sector or the tremendous funding constraints faced by centres. For example they require social workers and psychologists to be employed at certain centres without a caveat that these posts will need to be funded separately by the Department of Social Development.

The onerous requirements set out in these regulations do not sufficiently take account of the different contexts in which child and youth care centres operate, and that not all homes are set-up by large established NGOs, but may develop organically out of a local community response to children in

need. In order to ensure an equitable provision of services across provinces and across rural and urban areas within provinces, it is important to bear in mind the implications of these regulations for those trying to offer services in the more remote, un-serviced and resource-poor areas of the country.

Standard (a)(4)

This standard stipulates that every child and youth care centre must employ at least one social worker and that the specified ratio is one social worker to 60 children. This standard is unrealistic and inappropriate for a number of reasons.

(1) Small centres catering for only a few children

Most centres cater for significantly less than 60 children, and indeed the literature encourages smaller centres. According to the Act a child and youth care centre can cater for as few as 7 children (s191). Given the current funding structure for homes (centres currently receive per capita grants from the state), as well as the shortage of social workers nationally, employing a social worker will not be possible for small centres. The implications of this standard are that the only centres that will be able to legally exist are large institutions - which incidentally are heavily criticised in the local and international literature on residential care for children. It would be more realistic and appropriate to require smaller centres (e.g. those catering for 20 or less children) to outline their plan for access to social work services rather than oblige them to employ a social worker.

(2) Larger centres catering for many children

Even the larger centres will struggle to meet the prescribed norm of 1 social worker per 60 children. Kids Haven, a centre for children on the street in Gauteng accommodates 180 children currently. If they are to meet this standard, they need to employ 3 social workers. However, they do not receive adequate funding from government to meet this norm. Furthermore the shortage of social workers and the current disparity in salary packages between NPO and government posts will make it very difficult for these NPO posts to be recruited and filled.

Suggested amendment:

Every child and youth care centre must employ at least one social worker and the specified ratio is one social worker to 60 children, **subject to the following exemptions:**

(i) Centres accommodating less than 60 children may be exempted from having to employ a social worker if they furnish a motivation for the exemption and a plan detailing how they will ensure access to social work services for the children in their care.

(ii) Centres accommodating more than 60 children but less than 180 children may be exempted from having to employ more than one social worker if they furnish a motivation for the exemption

and a plan detailing how they will ensure access to social work services for the children in their care.

Suggested alternative amendment:

The staff of a home should be engaged in numbers which are at least sufficient to enable the home to meet the aims and objectives of the programmes they are running – both in terms of adequate supervision and the types of activities needed. For example, a residential care programme aiming to assist young people in transitioning out of care and to foster independence would need far fewer staff than for young people where more intensive therapeutic work is being undertaken (for example children with substance abuse challenges). Each type of residential care programme is therefore likely to have its own optimal staff to child ratios and also to require different categories of social service professionals and para-professionals. Rather than providing actual staff to child ratios in the regulations, ratios should be determined based on the needs of the children in the home and the task assigned to the home on an individual centre basis. This could then be set out on the registration certificate.

Standard a(6)

This standard requires centres registered to provide programmes for children with behavioural, psychological or emotional difficulties to employ at least one psychologist, and the specified ratio is one psychologist to 60 children.

The same challenges outlined above in relation to the social worker/child ratio also apply to the psychologist/child ratio. In addition, the services performed by psychologists can in many instances be better provided by experienced child and youth care workers who have over the many years of working in the daily life space of troubled children gained the necessary understanding and experience to serve the needs of these children. Children living on the street are the classic example of a child who responds well to the intervention of a child and youth care worker. A quote from staff at Kids Haven a centre providing accommodation and services to 180 children from the street illustrates this issue well:

“We have found in working with problematic children that the average psychologist does not understand them at all, and relies on the child and youth care worker who knows the child well to provide all the information needed. They also do not understand just how severely trauma, neglect and abuse affect the child's functioning. For example, when street children are given educational assessments by psychologists they test poorly and are referred to special education. Their potential is never seen, and they don't fit in because they function at a higher level than their peers, and the situation is usually complicated by conduct disorders. At Kids Haven many issues are resolved in our bridging programme, run by child and youth care workers. With a sense of belonging, improved self esteem, a little structure

*and discipline, basic literacy and numeracy enabling them to jump a few standards they missed, one starts to see their potential coming through".*¹¹

This standard is not going to be able to be met by many centres due to the scarcity and high cost of psychologists. Furthermore, as illustrated by the quote above, child and youth care workers can provide this service and many times have more experience and skills than psychologists. The regulations should tap into the valuable resource and skills of child and youth care workers especially for troubled children.

Kids Haven suggests that having access to a part-time psychologist who is committed and has experience with working with difficult children would be more realistic. A further suggestion is that a cluster of centres can all share the services of one psychologist rather than require each centre to have its own psychologist (The model used for school health doctors is a comparative example that could be followed).

Suggested amendment:

A child and youth care centre registered to provide a programme for children with behavioural, psychological or emotional difficulties, or for children placed under the Criminal Procedure Act, 1977 (Act No. 51 of 1977), must employ at least one psychologist or **senior child and youth care worker with experience and skills in providing assistance to this category of children**, the specified ratio is one psychologist or **senior child and youth care worker with experience and skills in providing assistance to this category of children**, to 60 children, **subject to the following exemptions:**

(i) Centres accommodating less than 60 children may be exempted from having to employ a psychologist if they furnish a motivation for the exemption and a plan detailing how they will ensure access to appropriate psychological support for the children in their care.

(ii) Centres accommodating more than 60 children but less than 180 children may be exempted from having to employ more than one psychologist, if they furnish a motivation for the exemption and a plan detailing how they will ensure access to appropriate psychological support for the children in their care.

¹¹ E-mail correspondence from Moira Simpson from Kids Haven 8 August 2008

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