

National Association of Child Care Workers

Submission on the Draft Regulations to the Children's Act 38 of 2005

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Chapter 15 - Child and Youth Care Centres (Sections 191 – 212 of the Act)

General comments

1. Absent in the Regulations is the issue of regulation of **developmental care**. The Regulations do not refer to the developmental milieu or climate as is clearly articulated in the current Minimum Standards and given scant mention in the current Norms and Standards, yet absent from the Regulations under review.
2. Further to the above is the issue of therapeutic programs and the lack of a definition in the Regulations or even the articulation thereof. Therapeutic programs are not mentioned in the Norms and Standards either and the articulation of such programs is particularly important in lifespace work.
3. The NACCW reiterates that the pre-admission process is not mentioned or considered in the Regulations. Each child has the right to pre-admission where possible to assist with the integration process from home to residential care. Pre-admission allows for the selection of a facility for the child in consultation with the child where possible. Pre-admission needs to be considered in the costing of residential care.
4. The Children's Act promotes the concept that different social service professionals are essential for the implementation of the Act. However, the regulations fail to convey this seminal concept by repeatedly referring specifically to 'social workers' where the particular skills and capabilities of social workers are obviously not uniquely required. This will therefore confuse perceptions about situations in which social work services are essential. It is thus suggested that this be rectified by making the following changes which do not represent change in the content of the regulations, but enhance the clarity of the regulations. The NACCW recommends that 'social workers' be reconsidered in the following clauses:

Chapter 3

15. Parenting plans prepared with the assistance of a family advocate, social workers or psychologist, or after mediation by a social workers or other suitably qualified person.
 - **Comment:** The NACCW recommends the inclusion of social service professional which will read: "by a social worker or social service professional or other suitably qualified person"

PARENTING PLANS

15. Parenting plans prepared with the assistance of a family advocate, social worker or psychologist, or after mediation by a social worker or any other suitably qualified person
 - **Comment:** The NACCW recommends that 'social service professional' be included in this clause.

- (1) A statement by a family advocate, social worker or psychologist to the effect that a parenting plan was prepared with the assistance of such family advocate, social worker or psychologist, as contemplated in section 33(5)(a) of the Act, must be completed in writing in a form substantially corresponding with Form 11.
- **Comment: The NACCW recommends that ‘social service professional’ be included in this clause.**
- (2) A family advocate who confirms that a parenting plan which was prepared without the assistance of a family advocate, social worker or psychologist, complies with the best interests of the child or children concerned, may do so in writing in a form substantially corresponding with Form 11.
- **Comment: The NACCW recommends that ‘social service professional’ be included in this clause.**
- (3) A statement by a social worker or other suitably qualified person to the effect that a parenting plan was prepared after mediation by such social worker or other suitably qualified person, as contemplated in section 33(5)(b) of the Act, must be completed in writing in a form substantially corresponding with Form 12.
- **Comment: The NACCW recommends that ‘social service professional’ be included in this clause.**

CHAPTER 7

36. Criteria to be met by child protection organisations
- (3) An application to be designated as a child protection organisation must be accompanied by the following documents or certified copies thereof –
- (c) social workers’ certificates of registration .
- **Comment: The NACCW recommends that a further two points be added, namely d) copies of child and youth care worker certificates of registration and; e) registration of other social service professionals.**

CHAPTER 8

45. Inquiries on information in Part A of Register
- (2) If the person making the inquiry in terms of subregulation (1) is a child below the age of 12 years, such child must be assisted in making the inquiry by his or her parent, guardian or care-giver or by a or by a designated social worker, unless it is demonstrated to the satisfaction of the Director-General that the child is of sufficient maturity to make the inquiry on his or her own.
- **Comment: Recommend to add a social service professional to the list of persons assisting the child. The clause should read: If the person making the inquiry in terms of subregulation (1) is a child below the age of 12 years, such child must be assisted in making the inquiry by his or her parent, guardian or care-giver, or a social service professional or designated social worker, unless it is demonstrated to the satisfaction of the Director-General that the child is of sufficient maturity to make the inquiry on his or her own.**

CHAPTER 10

56. Duties of supervising adult in relation to child-headed households
- (e) assist with the health care requirements of any member of such household, including the supervision of the taking of medicine and assistance to members with disabilities;
 - **Comment:** The regulations should specify that the supervision of medicine should include in particular mention the compliance of taking ARV medication. Assistance to members with disabilities should be a separate point from medication as the context of poverty and HIV infection and the separate needs to children with disabilities must be recognised.
 - (f) assist the members of such household with legal documentation when required;
 - **Comment:** In addition to the above clause, a separate clause should be added that specifies that supervising adults must apply for social security such as applicable grants.
 - (h) in consultation with a social worker, attempt to reconnect the members of such household with their parents or relatives;
 - **Comment:** The NACCW recommends that 'social service professional' be included in this clause.
 - (j) ensure proper provision of resources for such household's basic needs;
 - **Comment:** This clause does not highlight or make mention in particular the provision of food security as essential basic need provision.
 - **Comment:** Missing in 56 – duties of supervising adult in relation to child-headed households are 3 further points that the NACCW recommends to add and would be clauses (n), (o) and (p). There is the need to articulate a duty of providing emotional support to the sibling heading the household - to support them cope with their responsibilities separate of the support to the family as a whole. In addition siblings heading households need a strong social network to counter possible isolation within the community. Clause (o) should specify that the supervising adult be available to the child when the child requires services such as before school, after school, evenings, weekends, public holidays and school holidays. Supervising adults can not only be available during 'working hours'. Clause (p) should state that supervising adults must report incidents (reportable incidents) such as death and abuse. This is a duty that must be articulated.

CHAPTER 13

- (1) A child in alternative care –
- (e) who is to be discharged from alternative care in terms of section 175 of the Act, must be accompanied by a social worker or escort, who must be a suitably qualified or experienced person employed by the provincial department of social development or by an accredited child protection organisation.
- **Comment:** NACCW recommends the inclusion of a 'social services professional' or 'designated' escort. This clause will read: "who is to be discharged from alternative care in terms of section 175 of the Act, must be accompanied by a social worker or a social services professional or a designated escort, who must be a suitably qualified or experienced person employed by the provincial department of social development or by an accredited child protection organisation."

- (2) The travel arrangements for the child and the social worker or escort must be made by the provincial department of social development, unless the child is to be transferred to his or her own family or to an alternative family.
- **Comment: NACCW recommends the inclusion of a 'social services professional' or 'designated' escort.**

CHAPTER 14
PART I
FOSTER CARE

70. Responsibilities of foster parents

- (d) co-operate with a designated child protection agency or designated social worker towards the eventual re-unification of such child with his or her biological parents or family members, as the case may be, where this is indicated in the permanency plan;
- (e) co-operate with a designated child protection agency or designated social worker in any review of the possible extension of the foster care order;
- (f) permit a designated child protection agency or designated social worker to have access to his or her home and to the child concerned, for the purposes of monitoring of the foster care placement, provision of reunification services, review of the foster care order or for any other matter relevant to the foster care placement;
- (2) (a) A foster parent must notify the designated social worker or designated child protection organisation, as the case may be, of any change of address.
- (b) A foster parent may not designate the day to day care of a foster child to any other person without notifying the designated social worker or designated child protection organisation.
- (c) A foster parent must notify the designated social worker or designated child protection organisation, as the case may be, within 14 days, of any material changes in his or her living circumstances, or his or her family's living circumstances, which are likely to have a material effect on the foster placement.
- (8) A foster parent has the right to be informed by the designated social worker or the designated child protection organisation, as the case may be, of any fact or occurrence that may substantially affect the foster placement of the child in his or her care.
- **Comment: In all the above clauses the NACCW recommends that the term social worker be amended to include a 'social service professional'. In view of the human resource crisis affecting the number of social workers available nationally it is critical and necessary that social service professionals are engaged fully in relation to foster care. The social worker would deal with the court processes as required by statutory law.**

75. Foster care plans

- (1) A foster care plan is a document recording the respective rights and responsibilities of the foster parent or parents, the biological parent or parents, family members or other persons having an interest in the well-being of the foster child, and the role and responsibilities of the designated social worker or designated child protection organisation or management of a cluster foster care scheme.
- (2) The respective responsibilities and rights of foster parents and biological parents, family members or other persons having an interest in the well-being

and development of the foster child, designated social workers or designated child protection organisation, or management of a cluster foster care scheme may be recorded in a foster care plan in a form that substantially corresponds with Form 44.

- (4) A foster care plan may contain details relating to –
 - (a) the personal identification particulars of the parent or parents or guardian or guardians, the foster parent or parents, the foster child or children and the designated social worker or designated child protection organisation; and
 - (vii) the proposed supervision services and monitoring of the foster care placement to be undertaken by the designated social worker or designated child protection organisation.
- **Comment: The NACCW recommends social service professional be included with social workers in this clause.**

PART II

CLUSTER FOSTER CARE

- (2) The application for registration of a cluster foster care scheme must be accompanied by –
 - (j) details concerning the employment of a social worker or workers registered with the Council for Social Services Professions or particulars of the formal agreement with a designated child protection organisation to provide such child protection services as may be required;
- **Comment: The NACCW recommends social service professional be included in this clause.**

ANNEXURE A: NATIONAL NORMS AND STANDARDS

(Sections 79; 94; 106; 147; 194 and 216 of the Act)

C. NATIONAL NORMS AND STANDARDS FOR CHILD PROTECTION

- (a) Therapeutic programmes must –
 - 10. make provision for the involvement of the child, his or her family and significant other persons during therapy;
 - 11. ensure that recipients are provided with the name and contact number of the case manager or social worker;
 - **Comment: Include “and any other social service professional relevant to the therapeutic program.”**
- (b) After care services must –
 - 5. ensure that recipients are provided with the name and contact number of the case manager or social worker;
 - **Comment: Include “and any other social service professional relevant to the after care services.”**
- (c) Integration into alternative care services must –
 - 9. ensure that recipients are provided with the name and contact number of the case manager or social worker;
 - **Comment: Include “and any other social service professional relevant to the integration into alternative care services.”**
- (vii) Monitoring and supervision
 - 1. Children living in child-headed households must be encouraged to report any change in living arrangements to a designated social worker, or a mentor appointed in terms of section 136(3)(a) of the Act or other suitable adult.
 - **Comment: Include a designated social service professional.**

Specific Comments

Reg 83 (c) “in the case of a child who is receiving a secure care programme pursuant to section 191(2)(g) or 191(2)(i)(i) of the Act, to be detained only as a measure of last resort and for the shortest appropriate period of time”

- **Comment: The measure should not be seen as a last resort, but rather must be in the best interests of the child.**

Reg 83 (k) “undue influence by service providers regarding their religious or personal beliefs including sexual orientation or cross-gendered identity;”

- **Comment: Political beliefs should be added.**

Reg 86 (1) “The incidents listed in subregulation (3) must be reported to the manager and the management board of the centre as soon as possible but by not later than one hour after the incident is discovered or reported.”

- **Comment: It is not necessary or practical to report incidents to the management board on a daily basis. Incidents can be brought to the board’s attention at their regular meetings.**

Reg 86 (3b) “any situation in which restraint, isolation, or prohibited behaviour management measures is used”

- **Comment: Restraint and isolation are completely different concepts to that of prohibited behaviour management and need to be treated as such by being separated into different clauses.**

Reg 87

- **Comment: This section is too abbreviated and needs to be elaborated further. It also contains no requirement on the child and youth care centres to take action on the matter of the complaint – only prescribes that there are complaints procedures.**

Reg 87 (2) “Each child and youth care centre must have a written complaints procedure, approved by the centre’s management board,”

- **Comment: This must include a representative from the children’s forum. The NACCW recommends this to read: “approved by the centre’s management board and a representative from the children’s forum.”**

Reg 92 (4) After point (d) we recommend that a child protection plan be added as one of the required documents in the business plan.

Reg 95 (b) “social workers must have the necessary qualifications, be registered with the South African Council for Social Service Professions, and must have knowledge or experience in the context of residential care and the design of programmes for residential care”

- **Comment: Social workers should also have access to consultation if and when required.**

Reg 97 (f & g) “subject to paragraph (g), the board is appointed for a period of three years and in order to allow for effective leadership transition, the provincial head of social development may extend the period of membership of the four members directly appointed by him or her, for a second three year period”

- **Comment: Three years is too long a period for suitable people to realistically commit to. The NACCW recommends the period be changed to two years. This regulation also does not make provision for a second term by the Minister other than for the members the Minister directly appoints.**

Reg 98 (g) “the board must receive regular reports by the manager of the child and youth care centre who, together with a social worker and a nominated child and youth care worker, must attend all board meetings”

- **Comment: A representative of the children’s forum should also attend all board meetings. There may be instances where meetings should be held where the social work, child and youth care and children’s representatives should not be included, and it is suggested that this read “routinely attend board meetings except in instances where matters confidential to the management team are tabled.”**

Reg 104 (2) “The developmental quality assurance process must be repeated periodically, at intervals of not more than four years from the date of commencement of the previous developmental quality assurance process.”

- **Comment: A 4 year interval is too long. At maximum a centre must undergo a DQA every 3 years once it has been established. Boards should be allowed to call for DQA’s at any time.**

Reg 104 (12) “The report and the organisational development plan referred to in subregulation (9)(c) must be completed and presented by members of the team to the management and staff members of the child and youth care centre, in person, within 21 days of the assessment visit.”

- **Comment: This is thoroughly inappropriate, as the DQA team should work with the organisation in developing this organisational development plan.**

Norms and Standards: Child and Youth Care Centres

Standard (a) 4 Norms and standards for size of facilities and ratios of staff to children.

- **Comment: The standard stipulates one social worker to 60 children. Smaller centres will not necessarily be able to employ a social worker to fulfil this standard. This standard only makes provision for psychologists and social workers who have recognised degrees. The NACCW advocates that child and youth care workers who are have a degree and are professionally registered feature significantly in residential care settings in order to minimise the human resource capacity issues facing residential care facilities.**

Standard (a) 5

- **Comment: This standard is meaningless, as it provides no ceiling whatsoever to the number of children in a secure care facility. Additionally, residential units of 60 are unacceptably large, and this standard does not limit the number of children to be managed in secure care on any one campus – allowing for the possibility of warehousing children under the guise of ‘secure care’. It is suggested that the size of residential units should be limited to 20, and any campus should not accommodate more than 100. As the standard stands, it makes a mockery of the concept of secure care.**
- **Further, there should be an inclusion of a standard requiring the physical structure of the building to be containing of young people without being prison-like.**

Standard (a) 12

- **Comment:** Given that these centres are entitled Child and Youth Care Centres, implying that 'care' is their central undertaking, the one point included on the matter is insufficient. It is suggested that the minimum standard in this regard in the current regulations be re-visited to provide a more appropriate and comprehensive standard.

CHAPTER 14 – Foster Care

(Sections 180 – 190 of the Act)

PART II - CLUSTER FOSTER CARE

- **Comment:** The submissions by the Children's Institute and Johannesburg Child Welfare Society on cluster foster care are fully endorsed and supported by the NACCW.