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Resources Aimed at the Prevention of Child Abuse and Neglect

Comments on the Regulations to the Children's Act No. 38 of 2005 and the Children's Amendment Act No. 41 of 2007

1. Introduction

RAPCAN welcomes the opportunity to comment on the draft regulations, our recommendations focus specifically on the issue of behaviour management of children in a range of different settings and on the National Norms and Standards pertaining to prevention and early intervention.

2. Behaviour management in Child and Youth Care Centres, Partial Care Facilities, Drop in Centres and Early Childhood Development Facilities.

Regulations to the Child Care Act No. 74 of 1983 include detailed provisions relating to behaviour management practice and discipline of children in Children's Homes, Places of Care, Places of Safety, Schools of Industries and Shelters. Regulations 30A(1) and (2) *Additional requirements with which a place of care shall comply* (see annexure A) prohibit a wide range of inappropriate discipline including humiliation, ridicule and physical punishment of children in any of the above facilities.

The facilities referred to in the regulations to the Child Care Act translate, under the new definitions of the Children's Amendment Act into, Child and Youth Care Centres, Drop in Centres, Partial Care Facilities and Early Childhood Development programmes. It follows that provisions in the regulations to the Children's Act and Amendment Act, relating to these facilities and programmes, must offer the same level of protection to children as was provided for in regulations to previous legislation. The regulations and minimum norms and standards in their current form, fail to do this and thus must be amended.

2.1. Child and Youth Care Centres

Proposed regulation 85 comprehensively address behaviour management practices in Child and Youth Care Centres (CYCC), this includes the prohibition of all forms of inappropriate punishment and the promotion of positive discipline. In addition to regulation 85, regulation 83(1)(l) and (m) provide that children in CYCCs have the right to be free of physical punishment and degrading treatment and the right to positive disciplinary practices. RAPCAN supports the provisions of regulations 85 and 83(1)(l)(m).

2.2. Drop in Centres and Partial Care Facilities

We support the provisions set out in regulations relating to the Management of Partial Care Facilities (regulation 25(4)) and Drop In Centres (regulation 108(4)) in that physical

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punishment is prohibited, however these are insufficient as they fail to address humiliating and other forms of inappropriate punishment. This means that these regulations provide less protection to children than the protection that was provided under regulations to the Child Care Act which include protection from degrading treatment as well as from physical punishment.

Option one:

We recommend that the provisions of regulation 85(1) and (2) relating to behaviour management in CYCC be used to address behaviour management in regulation 25(4) relating to Partial Care Facilities and regulation 108(4) relating to Drop in Centres. These provisions comprehensively address the promotion of positive discipline and prohibit a wide range of negative discipline practices.

Regulation 85(1) could be amended as follows and along with 85(2) be inserted in full as regulation 25(4) and 108(4):

The manager of a ~~Child and Youth Care Centre~~ Drop in Centre/Partial Care Facility must promote the following approaches to positive discipline....

Option two:

Failing the above, we recommend that regulations 25(4)(a) and 108(4)(a) be amended to include humiliating and degrading punishment and treatment.

4(a) No physical, humiliating or degrading punishment may be imposed on a child in a partial care facility.

2.3. Early Childhood Development

The proposed regulations fail to directly address physical, humiliating and degrading treatment of children in ECD facilities, however the proposed National Norms and Standards for ECD include a reference to discipline in section (c) *Caring for children in a constructive manner and providing support and security* under point 3, providing that *Discipline must be effected 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.* We support this, however we are concerned that humiliating and degrading treatment is not directly prohibited.

Research indicates that younger children are at greater risk of physical and humiliating punishment than older children are. The current provisions of the Norms and Standards under the regulations are thus insufficient as they fail to ensure that children in ECD facilities are afforded the same level of protection that has previously been afforded under the regulations to the Child Care Act and they provide less protection to younger children than that afforded to older children under the South African Schools Act (1996) and the National Education Policy Act (1996)¹ which prohibits psychological abuse as well as physical punishment at educational institutions.

We recommend that regulation 32 providing for skills and training relating to ECD programmes include:

Knowledge on positive discipline methods that promote the development of constructive social behaviour.

Option 1

¹ Section 3(4)(n)

We recommend that the provisions of regulation 85(1) in relation to behaviour management in CYCCs be adapted and incorporated into the Norms and Standards relating to ECD under section (c) *Caring for children in a constructive manner and providing support and security* point 3 as follows:

~~The manager of the child and youth care centre~~ **ECD programmes must promote the following approaches to positive discipline....**

Furthermore regulation 85(2) which prohibits a range of behaviour management actions should be incorporated into the Norms and Standards for ECD as is.

Option 2

Failing the above, we recommend that the Norms and Standards section (c) *Caring for children in a constructive manner and providing support and security* point 3 be amended as follows:

Discipline must be effected in a humane way and promote integrity with due regard to the child's developmental stage and evolving capacities. Physical punishment by hitting, smacking, slapping, kicking or pinching children and all forms of humiliating and degrading punishment is prohibited.

3. Behaviour Management in Foster Care

Regulation 32(3) under the Child Care Act No. 74 of 1983 prohibits the use of a range of inappropriate forms of punishment by foster parents, including physical punishment, humiliation and ridicule. (See annexure B).

Proposed regulation 70(1)(h) relating to the responsibilities of foster parents includes a provision regarding the responsibility of a foster parent to "*guide the behaviour of such child in a humane manner and refrain from imposing any form of physical violence or punishment, or humiliating or degrading forms of discipline*". We support this provision as it does prohibit physical, humiliating and degrading discipline, however we believe that the phrasing should be strengthened.

Option 1

We recommend that the content of provisions relating to behaviour management in CYCCs contained in regulation 85(1) and (2) be used to address behaviour management by foster parents as these are clear regarding practices that are prohibited and also provide guidelines for appropriate discipline of children. This regulation could be amended as follows and incorporated into regulation 70.

~~The manager of the child and youth care centre~~ **Foster parents must promote a positive approach to discipline by the following approaches to positive discipline....**

Option 2

Failing the above, we recommend that regulation 70(1)(h) be amended as follows:

Guide the behaviour of such child in a humane manner; ~~and refrain from imposing any form of physical violence or punishment, or humiliating or degrading forms of discipline~~ is prohibited.

4. Discipline in National Norms and Standards

In addition to the inclusion of provisions in the regulations as discussed above we recommend that National Norms and Standards for CYCC, Drop in Centres and Partial Care Facilities include provisions relating to appropriate behaviour management of children.

5. National Norms and Standards for Prevention and Early Intervention

Overall, we support the proposed Norms and Standards for Prevention and Early Intervention, however RAPCAN we wish to make the following comments.

5.1. Incorporating child well-being

We recommend that in addition to programmes promoting child safety, the concept of well-being be recognised in and incorporated into these standards. This provides a broader basis on which to build prevention and early intervention programmes and recognises the importance of providing for children's well-being generally as well as promoting child safety.

We recommend that section (a) *Outreach services* point 3 be amended as follows:

Be aimed at the development of community-based services and facilities to promote safety and well being of children in communities.

We recommend that section (a) *Outreach services* point 12 be amended as follows:

Utilize community strengths and resources to promote ~~safe~~ neighbourhoods ~~for~~ that enable the safety and well-being of children.

5.2. Addressing risk factors

The standards can be strengthened to promote the targeting of programmes at the risk factors associated with child abuse and neglect

We recommend that (a) *Outreach services* point 9 be amended as follows:

Promote the identification of children at high risk of getting into the child care or criminal justice system; and create access to services that reduce these risks.

We recommend that (a) *Outreach services* point 11 be amended as follows:

Teach communities to recognise the signs of abuse and deliberate neglect of children, and the risk factors associated with abuse and neglect.

We recommend the following amendment to (b) *Education, information and promotion programmes* point 7.

Provide information ~~on~~ to enable the early identification of risk factors in children and families.

We recommend that the following point be added to (c) *Therapeutic programmes*:

17. be targeted at reducing risk factors for violence, abuse and neglect and increase the resilience of children, caregivers and other family members.

5.3. Promoting Children's Rights

We recommend that point 11 under (b) Education, information and promotion programmes include reference to children's rights and be amended as follows:

Promote values aimed at the realisation of children's rights and the protection of children in their communities.

5.4. Parenting Programmes

Building strong relationships between parents and children is an essential part of prevention and early intervention programmes, this includes a range of different aspects of parenting ranging from childhood development, communication with children, showing warmth and affection to providing discipline.

We recommend that the provision of parenting programmes be incorporated under section (b) *Education, information and promotion programmes* as follows:

Education, information and promotion programmes must -

Provide information to strengthen parenting skills and practices

We recommend that section (e) *Skills development programmes* be amended to incorporate parenting skills as follows.

Skills development programmes must -

Aimed at providing parenting skills to parents and families

Annexure A

Regulation 30A to the Child Care Act No. 74 of 1983 provides as follows:

- 1) Subject to the provisions of the Act and these regulations no place of care shall be registered or shall remain registered after 24 months unless the Director-General is satisfied that the following behaviour management practices are expressly forbidden:
 - a) Group punishment for individual behaviour;
 - b) threats of removal, or removal from the programme;
 - c) humiliation or ridicule;
 - d) physical punishment;
 - e) deprivation of basic rights and needs such as food and clothing;
 - f) deprivation of access to parents and family;
 - g) denial, outside of the child's specific development plan, of visits, telephone calls or correspondence with family and significant others;
 - h) isolation from service providers or other children admitted to the place of care, other than for the immediate safety of such children or such service providers only after all other possibilities have been exhausted and then under strict adherence to policy, procedure, monitoring and documentation;
 - i) restraint, other than for the immediate safety of the children or service providers and as an extreme measure. This measure is governed by specific policy and procedure, can only be undertaken by service providers trained in this measure, and must be thoroughly documented and monitored;
 - j) assignment of inappropriate or excessive exercise or work;
 - k) undue influence by service providers regarding their religious or personal beliefs including sexual orientation;
 - l) measures which demonstrate discrimination on the basis of cultural or linguistic heritage, gender, race, or sexual orientation;
 - m) verbal, emotional or physical harm;
 - n) punishment by another child; and
 - o) behaviour modification such as punishment or reward systems, of privilege systems, other than as a treatment or development technique within a documented individual treatment or development programme which is developed by a team including the child and monitored by an appropriately trained multi-disciplinary team.
- 2) All children in a place of care shall, where appropriate, have the right--
 - a) to know their rights and responsibilities;
 - b) to a plan and programme of care and development, which includes a plan for reunification, security and life-long relationships;
 - c) to participate in formulating their plan of care and development, to be informed about their plan, and to make changes to it;
 - d) to expect that their plan and programme is based on an appropriate and competent assessment of their developmental needs and strengths and, where possible, is in the context of their family and community environments;
 - e) to a regular review of their placement and care or development programme;
 - f) to be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in the places of care;
 - g) to be consulted and to express their views, according to their abilities, about significant decisions affecting them;

- h) to reasonable privacy and to possession of the personal belongings;
- i) to be informed of behaviour expected by service providers and of the consequences of not meeting the expectations of service providers;
- j) to care and intervention which respects their cultural, religious and linguistic heritage and the right to learn about and maintain this heritage;
- k) to regular contact with parents, family and friends unless a court order or their care or development programme indicates otherwise, or unless they choose otherwise;
- l) to the involvement of their family or significant others in their care or development programme, unless proved not to be in their best interests, and to return to live in their community in the shortest appropriate period of time;
- m) to be free from physical punishment;
- n) positive disciplinary measures appropriate to their level of maturity;
- o) to protection from all forms of emotional, physical, sexual and verbal abuse;
- p) to education appropriate to their level of maturity, their aptitude and their ability;
- q) to be informed that prohibited items in their possession may be removed and withheld;
- r) to respect and protection from exploitation and neglect;
- s) to opportunities of learning and opportunities which develop their capacity to demonstrate respect and care for others;
- t) to an interpreter if language or disability is a barrier to consulting with them on decisions affecting their custody or care and development; and
- u) to privacy during discussions with families and significant others, unless this can be shown not to be in the best interests of the child.

Annexure B

Regulation 32(3) to the Child Care Act No. 74 of 1983 provides the following

3) The following prohibited behaviour management practices shall not be used by any person in a children's home, place of safety, school of industries, shelter or by a foster parent:

- a) Group punishment for individual behaviour;
- b) threats of removal, or removal from the programme;
- c) humiliation or ridicule;
- d) physical punishment;
- e) deprivation of basic rights and needs such as food, clothing, shelter, bedding;
- f) deprivation of access to parents and family;
- g) denial, outside of the child's specific development programme, of visits, telephone calls or correspondence with family or significant others;
- h) isolation from service providers and other children admitted to the children's home, place of safety, school of industries, shelter or in the custody of a foster parent; other than for the immediate safety of such children or such service providers in the children's home, place of safety, school of industries shelter or in the custody of a foster parent, as the case may be, only after all other possibilities have been exhausted, and then under strict adherence to policy, procedure, monitoring and documentation;
- i) restraint, other than for the immediate safety of the children or service providers in the children's home, place of safety, school of industries or shelter, as the case may be, and only as an extreme measure: Provided that such a measure is governed by specific policy and procedure, can only be undertaken by service providers trained in this measure, and must be thoroughly documented and monitored;
- j) assignment of inappropriate or excessive exercise or work;
- k) undue influence by service providers regarding their religious or personal beliefs including sexual orientation;
- l) measures which demonstrate discrimination on the basis of cultural or linguistic heritage, gender, race, or sexual orientation;
- m) verbal, emotional or physical harm;
- n) punishment by another child; and
- o) behaviour modification such as punishment, reward systems, or privilege systems, other than as a treatment or development technique within a documented individual treatment or development programme which is developed by a team which the child is part of and monitored by an appropriately trained multi-disciplinary team.