

A Guide to the Children's Act for Child and Youth Care Workers: Part One

By Prinslean Mahery and Lucy Jamieson

The Children's Act is one of the longest of South Africa's laws! It has 22 chapters and over 300 sections, covering children's rights, parental rights and responsibilities, children's court inquiries, children in need of care and protection, child and youth care centres, foster-care, child headed households, abduction, trafficking and much more. The Act is accompanied by a comprehensive set of Regulations and some 67 prescribed Forms. It came into force on 01 April 2010, and now that the Children's Act is in operation child and youth care workers need to be aware of all the provisions in the Act that apply to them. This article is the first of a series explaining how the Act relates to child and youth care workers, it gives an overview of the main provisions that relate to child and youth care workers. The articles that follow in the series will explain the provisions in more detail. For an overview of the whole Act see the article by Paula Proudlock and Lucy Jamieson in the March/ April edition of this journal.

How does the Act affect child and youth care workers?

Child and youth care workers play a major role in ensuring that children are provided services that they are constitutionally entitled to. The Act directs the work of child and youth care workers and gives recognition of the importance of the services they provide. In the Act there is guidance as to what a child and youth care worker can do if

he/she discovers a child that might be in need of care and protection. There are provisions which set out when a child and youth care worker can consent to the medical treatment of a child to whom they are providing services to and provisions on the reporting obligations placed on child and youth care workers when a child is found to have been abused or neglected. There are also detailed sections in the Act and the Regulations on the kind of services that can be provided at child and youth care centres and how such centres can be registered in terms of the Act.

The Act includes a range of new definitions to assist in interpreting, understanding and applying the provisions of the Act. These definitions can be grouped into four categories: definitions relating to the child; definitions relating to adults; definitions relating to services; and definitions relating to concepts. The table on page 17 gives a quick outline of the categories and the definitions that fall into those categories.

The General Principles of the Act

In the Act there are a set of general principles meant to guide decisions, actions or proceedings relating to children. The general principles assist those who are responsible for implementing the provisions of the Act to interpret and apply those provisions correctly and effectively. Some of the general principles are very familiar to

child and youth care workers because these are principles that must be applied when working with children. For example, the principle of ensuring that the best interest of the child is given high priority in any matter affecting the child. Another familiar principle is that which requires that the child who is able to participate in actions and decisions affecting his/her situation should have the opportunity to participate and to express views – and also to have those views and opinions taken into account. The Act also introduces other general principles for the benefit of all children, such as the principle of ensuring that the needs of children with disabilities or children suffering with chronic illnesses are recognized in all decisions or actions affecting such children. This general principle ensures that these vulnerable children are treated with dignity; that their rights to participation are fully respected; and ensures that they are not further discriminated against or neglected due to their chronic illness or disability. These are principles that child and youth care workers should apply in all instances when working with children and families.

Children found in need of care and protection

A range of children are considered to be in need of care and protection, such as children living, working or begging on the streets, or children who are exposed to circumstances that could be physically,

mentally or socially harmful to them. A child in a child headed household is not automatically considered to be a child in need of care and protection and further investigations from a designated social worker must determine whether children living in such circumstances are children in need of care and protection. When a child and youth care worker comes across a child considered in need of care and protection in the Act he/she cannot remove that child to a place of safety without a court order. If the matter is brought to the attention of a children's court commissioner the commissioner could authorize the child and youth care worker to remove the child through a court order. According to the Act it is only a designated social worker or a police official that can remove a child without a court order in emergency cases. The detailed procedures involving children in need of care and protection and the orders that a children's court can make involving child and youth care workers are set out in the Act.

Child and youth care centres

According to the Act a child and youth care centre is a facility that provides residential care for more than six children outside the child's family environment and in accordance with a residential programme suitable for the children in the facility. Government children's homes, places of safety, secure care facilities, schools of industry or reformatory schools are all now regarded as child and youth care centres and privately registered children's homes and shelters are also now called child and youth care centres. To register a child and youth care centre an application must be made to the provincial head of social development on a form required by the Act. The provincial head of social development then has six months to consider the application and make a decision about accepting or rejecting the application.

Table	
Category	What is defined
Definitions relating to a child	<ul style="list-style-type: none"> • A child headed household • A street child • A child in need of care and protection
Definitions relating to adults	<ul style="list-style-type: none"> • A care-giver • A social service professional • A designated social worker
Definitions relating to services	<ul style="list-style-type: none"> • Temporary safe care • Secure Care • Cluster foster care • Cluster foster care scheme • Designated child protection • services • Designated child protection organisation • Mentoring scheme for child headed household • Prevention and early intervention programmes • A child and youth care centre • A drop-in centre
Definitions relating to concepts	<ul style="list-style-type: none"> • The terms 'care' and 'contact' • The concept of parental responsibilities and rights • The terms 'abuse'; 'sexual abuse' and 'neglect'

One of the factors taken into account when an application is made to register or renew registration of a child and youth care centre is whether the applicant is a fit and proper person. This requirement of being fit and proper person comes out in many provisions of the Act. All staff managing, assisting or volunteering at a child and youth care centre must be considered fit and proper persons. While there is no definition of a 'fit and proper person' the Act is clear that a person is not considered to be a 'fit and proper' person if his/her name appears on part B of the National Child Protection Register.

Alternative care

The chapters on child and youth care centres and alternative care in the Act must be read together to obtain a broader understanding of the rules regarding child and youth care centres and the children who receive services at those centres. If a court has made an order that a child should be placed in a child and youth care centre, that child is regarded as being in alternative care

and strict rules apply as to when that child can take a leave of absence away from the centre, what happens when the child absconds from the centre and when such a child can be discharged from alternative care. Thus there is a difference between children who attend a child and youth care centre voluntarily or because they are referred to the centre by a parent or caregiver to receive services and a child that has been placed at the centre through a court order.

The role of the child and youth care worker regarding the health of children:

As caregivers

One of the new definitions in the Act is that of 'care-giver'. The Act says that a care-giver is anyone other than a parent or guardian who factually cares for a child and includes the head of a child and youth care centre where the child was placed, or a child and youth care worker supporting children without care in the community. One of

the responsibilities that a care-giver has relates to consenting to the medical treatment of the children they are caring for. The Act does not make allowance for a care-giver to consent to the surgical operation of a child. If a child who has no parent or guardian needs surgery, consent will have to be obtained from the Minister of Social Development or from the courts.

When can a care-giver consent to the treatment of the child?

According to the Act a child can consent to his or her own medical treatment or the treatment of his/her own child if the child is 12 years or older and is mature enough to understand the risks, benefits and consequences of consenting to the treatment. If the child is younger than 12 or older than 12, but not mature enough to consent to the treatment then the care-giver can give the required consent on behalf of the child.

When can a care-giver consent to an HIV test for the child and to the disclosure of a child's HIV positive status?

A child who is 12 years of age or younger than 12 and mature enough to consent can consent to an HIV test by themselves. There is a general rule in the Act that no one may disclose the fact that a child is HIV positive unless the required consent is obtained. Such consent can be obtained from the child if the child is 12 years of age or younger than 12 and mature enough to consent to the disclosure of his/her HIV status. If the child is not sufficiently mature enough to understand the benefits, risks and social implications of the HIV test or the disclosure of his/her HIV positive status, then the care-giver can give the required consent on behalf of the child.

Can a care-giver refuse to consent to the treatment of a child?

Generally the care-giver has to act in the best interest of the child and has a duty to ensure that the child receives treatment when that is needed. As part of the responsibility to make decisions on behalf of a child, the care-giver can also decide to not accept a proposed treatment (perhaps to get a second opinion) if they think that the proposed treatment will not be in the child's best interest. However, the Act makes it clear that a care-giver cannot refuse to consent to the medical treatment of a child based solely on religious or other belief, unless they can show that the alternative choice of treatment is medically accepted. Care-givers must also be aware that should they refuse treatment for any unfounded reasons, the child or someone else acting in the interest of the child can approach the Minister of Social Development or the courts for a decision to overrule that refusal.

Where can child and youth care workers get copies of the Act, Regulations and Forms?

Copies of the Act and the regulations can be found on the Children's Institute website.

The Children's Act:

http://www.ci.org.za/depts/ci/pubs/pdf/lawreform/billsacts/consolidated_childrens_act_1april2010.pdf

The regulations and forms are list separately

http://www.ci.org.za/index.php?option=com_content&view=article

[&id=492&Itemid=184](http://www.ci.org.za/index.php?option=com_content&view=article&id=492&Itemid=184)

Child friendly materials:

http://www.unicef.org/southafrica/resources_2549.html

This article is based on extracts from the Guide to the Children's Act for Child and Youth Care Workers. The Guide should be published before the end of the year, and will assist child and youth care workers to get to grips with all that the Act expects and demands of them. If you have any queries about the Act please call Prinslean Mahery at the UCT Children's Institute. ■

