

FACILITIES

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NOTE

In this publication, "Ministry" and "Minister" refer to the Ministry and Minister responsible for child protection, and "Guide" means this *Guide to the Child Care and Protection Act* (which is published in separate chapters).

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The Act provides for six different types of facilities which are used for the care of children: places of safety, children’s homes, child detention centres, shelters, places of care and early childhood development centres. In most cases, these facilities must be registered in terms of the Act. They must all comply with minimum standards set by the law and by the Ministry. They must all respect the rights of children and observe the principles of child participation. All facilities are subject to monitoring and inspection by the Ministry.

Organisation of this chapter of the *Guide*

This chapter discusses the establishment and general management of facilities. It will first explain the facilities covered by the Act. It will then present the requirements for running various types of facilities, before presenting information on registration. This ordering is based on the theory that people should have a good understanding of what is involved in operating a facility before seeking to register it.

The rules on transfer, leave of absence and discharge from alternative care in various facilities are discussed in Chapter 14 of this *Guide* on children in need of protective services.

Some rules and requirements apply *only* to specific kinds of facilities. You should pay close attention to the boxes in each section or subsection which indicate what facilities are covered by the requirements discussed there.

1. Six types of facilities

The Act provides for six different types of facilities. Three of these types are sometimes referred to collectively as “residential child care facilities”.

Residential child care facilities: Residential child care facilities (RCCFs) include places of safety, children’s homes and child detention centres.

Places of safety: A place of safety is a place used for the short-term, temporary reception and care of children, such as where a child at risk of abuse must be removed from the usual home immediately while the process to decide on a longer-term plan is underway.

Children’s homes: A children’s home is a group facility used to accommodate multiple children. The children in a children’s home are often organised into smaller groups, to create a more family-like environment.

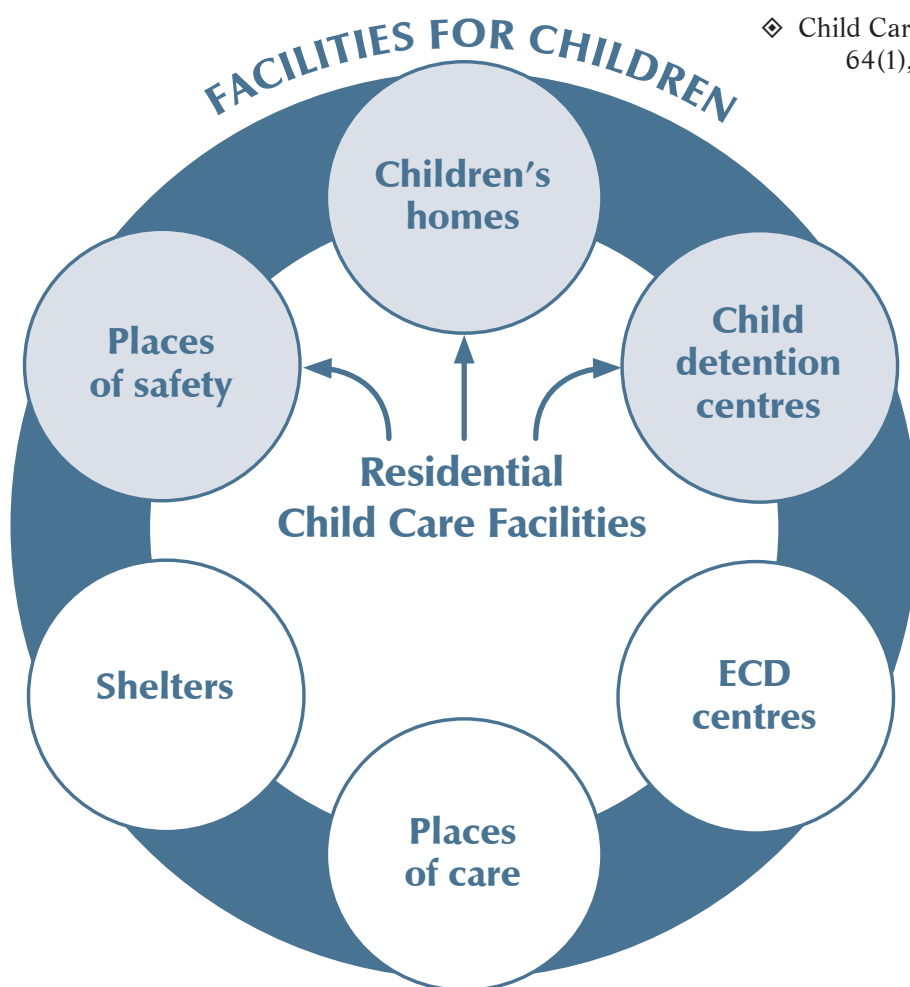
Child detention centres: A child detention centre is a secure facility designed to accommodate children in conflict with the law or children with serious behavioural or emotional problems. Such centres are similar to what used to be known as “reform schools” or “schools of industries”.

Shelters: Shelters are facilities which provide basic services and short-term accommodation for persons in crisis or children who need a safe place to stay on a temporary basis. For example, shelters can accommodate child or adult victims of abuse who need a safe place to stay. They can also accommodate other children who need a place to stay, such as children who have been living on the streets or children who have been trafficked. The situations which a shelter can cater for will be specified in its conditions of registration.

Places of care: Places of care are facilities used for the short-term care of more than six children on behalf of their parents or care-givers, in terms of a private arrangement between the place of care and the child’s parents or care-givers, with or without payment of a fee. This category includes crèches, day-care centres and day nurseries – as well as kindergartens and nursery schools (where these are not ECD centres). It also includes community hostels, but not schools, school hostels or medical facilities where children are being treated.

Early childhood development centres: ECD centres are facilities where children between birth and the age of formal schooling engage in a structured set of learning activities. ECD centres are registered by the Ministry responsible for child welfare, but the Ministry responsible for education must approve the learning activities in these facilities.

◇ Child Care and Protection Act, sections 1, 64(1), 65(1), 66(1), 67(1), 68(1), 69(1)



Places of safety, children’s homes and child detention centres are collectively referred to as Residential Child Care Facilities or RCCFs.

Shelters are intended only for temporary stays and often involve children staying together with a parent to escape domestic abuse.

Places of care and ECD centres are normally non-residential.

Convention on the Rights of the Child

Article 18(2) and (3):

- (2) For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall **ensure the development of institutions, facilities and services for the care of children.**
- (3) States Parties shall take all appropriate measures to **ensure that children of working parents have the right to benefit from child-care services and facilities** for which they are eligible.

African Charter on the Rights and Welfare of the Child

Article 20(2):

- (2) Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures:
 - (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;
 - (b) to assist parents and others responsible for the child in the performance of child-rearing and **ensure the development of institutions responsible for providing care of children;** and
 - (c) to **ensure that the children of working parents are provided with care services and facilities.**

2. Places of safety

A place of safety is a place used for short-term, temporary reception and care of children. It can be used for:

- ⑨ children who are removed from their usual homes for their own protection
- ⑨ children awaiting placement in terms of an order of the children's court
- ⑨ children held temporarily in terms of an order issued under the Criminal Procedure Act 51 of 1977
- ⑨ children who are awaiting a criminal trial or sentence.

A place of safety can also be used for any other purpose set by regulation.

◆ Child Care and Protection Act, section 64(1)

Relevant crimes

- ▷ murder
- ▷ rape
- ▷ indecent assault
- ▷ incest
- ▷ kidnapping
- ▷ any statutory sexual offence
- ▷ any offence relating to the manufacture, distribution or possession of pornography
- ▷ any offence relating to human trafficking
- ▷ abduction, excluding the wrongful removal or retention of a child by a parent with parental responsibilities
- ▷ assault with intent to cause grievous bodily harm

◆ Child Care and Protection Act, section 238(8)

2.1 What places may be places of safety?

The home of a person approved as a foster parent: The process for being approved as a foster parent is discussed in Chapter 15 of this *Guide*.

A private facility approved by the Minister: A private children's home, a private hospital or any other private facility which the Minister considers suitable may be approved as a place of safety, if the owner or the management of that facility is in agreement.

A private home approved by the Minister: A person can apply to have his or her home approved as a place of safety. The applicant must show that children will be cared for in a healthy, hygienic and safe environment in light of the standards of the surrounding community. The applicant must also show that there will be adequate food and sleeping places for the children to be accommodated. The applicant must be willing and suitable to provide care for children. The application cannot be approved if *any person residing in the home* has been convicted of any of the specified crimes (see the box on page 4).

A government school hostel approved by the Minister: A government school hostel may be approved as a place of safety, if the Minister responsible for education is in agreement.

Any appropriate State-owned building or place approved by the Minister: Any appropriate State facility can be approved as a place of safety if the government minister responsible for the facility is in agreement. For example, State-owned children's homes or places of detention might be approved as places of safety.

A **prison** or a **police cell** may **NOT** be used as a place of safety.

Procedure for approval of ANY place of safety: The Minister must issue a **letter of authorisation** whenever any place is approved for use as a place of safety. This letter must state the time period of approval. The Minister will determine when and how the approval must be renewed. The Minister may also set conditions for renewal.

New State-funded places of safety: The **Minister may also establish and maintain places of safety** using the government budget or money from the Children's Fund established under the Child Care and Protection Act. These places of safety may be of different types, in light of the needs of different children and the interests of community safety. This mechanism should be used to make sure that there are sufficient places of safety to meet the needs of children in Namibia.

◇ Child Care and Protection Act, section 64(2)-(6)

2.2 Rules about the placement of children in places of safety

A child must be placed in a place of safety **in the community or region where the child normally resides**, if this is practicable and consistent with the best interests of the child.

A child must be placed with a **foster parent** in preference over other types of places of safety, if this is consistent with the best interests of the child and the interests of community safety.

Where a place of safety accommodates multiple children, **children awaiting criminal trial or sentencing must be kept separately from other children.**

◇ Child Care and Protection Act, section 64(7)-(8)

3. Children's homes

A children's home is a group facility used to accommodate multiple children. The children in a children's home are often organised into smaller groups, to create a more family-like environment. A children's home can be used for:

- ⑨ children who have been abandoned or orphaned
- ⑨ children who cannot be placed in kinship care or foster care
- ⑨ children placed in the home in terms of an order under the Criminal Procedure Act 51 of 1977 (if the home provides a programme for the reception, development and secure care of such children)
- ⑨ children who are awaiting a criminal trial or sentence (if the home provides a programme for the reception, development and secure care of such children).

A children's home can also be used for any other purpose set by regulation.

◇ Child Care and Protection Act, section 68(1), (3)

3.1 What places may be children's homes?

Private children's homes: Private children's homes must be registered under the Act and operated in accordance with any conditions of registration. Unlike child detention centres, which must be run on a non-profit basis, children's homes may be run for profit.

Government children's homes: The Minister may establish and maintain children's homes using the government budget or money from the Children's Fund established under the Act. This mechanism should be used to make sure that there are sufficient children's homes to meet the needs of children in Namibia. Children's homes controlled or maintained by the government appear to be exempted from the registration requirement (see section 68(5)).

◇ Child Care and Protection Act, sections 68(4)-(5)

UN Guidelines for the Alternative Care of Children (2010)

Facilities providing residential care should be **small** and be **organized around the rights and needs of the child**, in a **setting as close as possible to a family or small group situation**. Their objective should generally be to provide **temporary care** and to contribute actively to the child's **family reintegration** or, if this is not possible, to secure his/her stable care in an **alternative family setting**...

◇ Paragraph 123

3.2 Rules about the placement of children in children's homes

Where possible, a child must be placed in a children's home **in the community or region where the child normally resides**.

As noted above, a child may be placed in a children's home **for purposes of awaiting a criminal trial or sentence**, or in terms of an **order issued under the Criminal Procedure Act 51 of 1977**, **ONLY IF** the children's home provides a **programme for the reception, development and secure care of children**.

◇ Child Care and Protection Act, section 68(2)-(3)

4. Child detention centres

A child detention centre is a secure facility designed to accommodate children in conflict with the law or children with serious behavioural or emotional problems. It is analogous to what used to be known in Namibia as “reform schools” or “schools of industries”.

A child detention centre can be used for the reception, care and training of:

- ⑨ children placed there in terms of an order under the Child Care and Protection Act
- ⑨ children transferred from another placement under the Child Care and Protection Act
- ⑨ children placed there in terms of an order under the Criminal Procedure Act 51 of 1977
- ⑨ children awaiting criminal trial or sentence
- ⑨ children with behavioural and emotional difficulties.

A child detention centre can also be used for any other purpose set by regulation.

◇ Child Care and Protection Act, section 69(1)

4.1 What places may be child detention centres?

Private child detention centres: A non-profit organisation may establish or operate a child detention centre, if the centre is registered in terms of the Act and operated in accordance with any conditions of registration. A private child detention centre must also comply with all applicable regulations.

Government child detention centres: The Minister may establish and maintain child detention centres using the government budget or money from the Children's Fund established under the Child Care and Protection Act. This mechanism should be used to make sure that there are sufficient child detention centres to meet the needs of children in Namibia. Child detention centres controlled or maintained by the government appear to be exempted from the registration requirement (see section 69(5)).

The Minister responsible for education must administer all matters relating to learning activities at child detention centres.

◇ Child Care and Protection Act, sections 69(2), (4) and (5)

4.2 Rules about the placement of children in child detention centres

Children in conflict with the law who are held in child detention centres are subject to certain rules contained in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child:

- ⑨ Involuntary detention of a young offender should be a measure of last resort and for the shortest appropriate period of time.
- ⑨ Children who are involuntarily detained must be held separately from adults.
- ⑨ No child may be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
- ⑨ Any detained child must be treated with respect for the child's dignity and in a manner that takes into account the child's age.
- ⑨ A child who is involuntarily detained has a right of access to legal assistance, and a right to maintain contact with family members.
- ⑨ The goal of detention of a young offender must be reformation, re-integration into his or her family and social rehabilitation.

Convention on the Rights of the Child

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

African Charter on the Rights and Welfare of the Child

Article 17: Administration of Juvenile Justice

- (1) Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.

- (2) States Parties to the present Charter shall in particular:
 - (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
 - (b) ensure that children are separated from adults in their place of detention or imprisonment;
 - (c) ensure that every child accused in infringing the penal law:
 - (i) shall be presumed innocent until duly recognized guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
 - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
 - (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
 - (d) prohibit the press and the public from trial.
- (3) The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
- (4) There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Other international standards

For more information on guidelines for the confinement of young offenders, see these documents on international standards:

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

[<www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>](http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf)

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty

[<www.un.org/documents/ga/res/45/a45r113.htm>](http://www.un.org/documents/ga/res/45/a45r113.htm)

5. Shelters

A shelter is a facility which provides **basic services and short-term accommodation for persons in crisis or children who have nowhere else to live**. A shelter can be used for:

- ⑨ abused adults and children
- ⑨ children living or working on the streets
- ⑨ children who voluntarily attend the facility but who are free to leave.

Any person may establish or operate a shelter if that shelter is registered under the Act and operated in accordance with any conditions of registration. The Act does not require that shelters be run on a non-profit basis.

Both government-operated shelters and shelters run by non-governmental organisations are eligible for government funding, if they are compliant with the requirements of this Act and its regulations.

◆ Child Care and Protection Act, section 67

6. Places of care

A place of care is a facility used for the **short-term care of more than six children on behalf of their parents or care-givers, in terms of a private arrangement between the place of care and the child's parent or care-giver**, with or without payment of a fee.

This category includes crèches, day care centres and day nurseries – as well as kindergartens and nursery schools (where these are not ECD centres). It also includes community hostels, but not schools, school hostels, or medical facilities where children are being treated.

Private places of care must be registered under the Act and operated in accordance with any conditions of registration. Places of care controlled or maintained by the government appear to be exempted from the registration requirement (see section 65(2)).

◇ Child Care and Protection Act, section 65

7. Early childhood development centres

An early childhood development (ECD) centre is a **facility where children between birth and the age of formal schooling engage in a structured set of learning activities**.

Any facility may be used as an ECD centre if it is registered under the Act and operated in accordance with any conditions of registration.

The Minister responsible for education must administer all matters relating to learning activities at ECD centres.

◇ Child Care and Protection Act, section 66

8. Constitution or other founding document

This rule applies to **children's homes** and **child detention centres**.

Any facility covered by this rule must operate according to a constitution or other founding document.

A children's home or a child detention centre might be set up as a voluntary association with a constitution. It might be set up as a trust with a deed of trust. It might be set up as a non-profit company with a memorandum of association.

The constitution or other founding document must cover the following issues:

- ⑨ the **name of the umbrella organisation operating the facility** (if any)
- ⑨ the **name and contact details of the facility**
- ⑨ the **objects** of the facility
- ⑨ the guiding **principles** of the facility (if any)
- ⑨ the **organisational structure** of the facility (including information about the appointment and structure of the management board)
- ⑨ **financial matters** (such as any rules about bank accounts, cheque-signing powers and audits)
- ⑨ **general administration** (such as information about administrative positions and duties)
- ⑨ the procedure for **amendment** of the constitution or founding document
- ⑨ **dispute resolution procedures**
- ⑨ **dissolution** of the facility (such as details about transfer of any residents of the facility and information about what will happen to its assets).

◇ Child Care and Protection Regulations, regulation 23(4)

9. Management and staff of facilities

Note that some of the rules about management and staff apply **ONLY** to certain types of facilities, as indicated in each subsection below. Some rules apply only to **PRIVATE** facilities and not to **GOVERNMENT** facilities, or vice versa.

9.1 Management boards

The rules on management boards apply only to **children's homes** and **child detention centres**.

Appointment of board members:

Any children's home and child detention centre must have a management board with a **minimum of five** and a **maximum of nine** members.

- ⑨ The **Minister** will appoint the members of a **GOVERNMENT** children's home or child detention centre.
- ⑨ The **holder of the certificate of registration** will appoint the members of a **PRIVATE** children's home or child detention centre.



Children's homes and child detention centres must have a management board with five to nine members.

◇ Child Care and Protection, section 71(1)-(2)



Regulation 14 of the Child Care and Protection Regulations

Regulation 14 of the Child Care and Protection Regulations is somewhat ambiguous on which provisions apply only to PRIVATE children's homes and child detention centres, and which to ALL such homes and centres.

Appointment of boards for children's homes and child detention centres

14. (1) The board of a privately operated children's home or child detention centre must be appointed by the holder of the certificate of registration under section 72(2)(b) of the Act by calling for application by interested persons to be appointed as members of the board.

(2) A call for application under subregulation (1) must be made in a local or national newspaper circulating in the area where the home or centre is situated and must be in the official language and may also be in such other languages as may be appropriate to the area where the home or centre is situated.

(3) The application must be made in writing and must be accompanied by curriculum vitae of the applicant.

- (4) Persons to be appointed as members of the board must include –
- (a) at least one person and not more than five persons from the community in which the home or centre is situated, including at least one person with the ability to monitor financial issues;
 - (b) one member from any health profession;
 - (c) a staff member of the children's home or child detention centre;
 - (d) one member representing the interests of the residents of the home or centre; and
 - (e) the manager of the home or centre.

(5) A person may not be appointed as a member of a board if such person has any conflict of interest that may hinder the performance of his or her functions as a member of the board.

(6) A member of a board must be appointed for a period of three years, but in order to allow for effective leadership transition, the holder of the certificate of registration may extend the term of office of any four members for a further period not exceeding three years.

(7) Every member of the board must be in possession of a police clearance certificate.

(8) A holder of a certificate of registration must, after having appointed the members of the board, furnish the Minister with a list of the names of the persons appointed as members of the board and indicate the capacity of each member appointed as contemplated in subregulation (4), within 14 days of appointment, and the Minister may request further information about the capacities of members.

(9) Unless a vacancy does not affect the minimum number of members required in terms of section 72(1) of the Act or substantially affect the efficient functioning of the board, the children's home or child detention centre, a vacancy on a board must be filled in accordance with this regulation and the person so appointed is appointed for the remainder of the unexpired portion of the term of office of the member who vacated the board.

- (10) A member of a board vacates his or her office, if the member -
 - (a) is convicted of an offence referred to in section 238(8) of the Act;
 - (b) contravenes subregulation (5); or
 - (c) resigns after giving at least 30 days written notice to the holder of the certificate of registration and chairperson of the board, or in the case of a chairperson, after giving at least 30 days written notice to the holder of the certificate of registration.

The information in this Chapter of the *Guide* is based on the following understanding of regulation 14:

Heading – covers **ALL** boards of children’s homes/child detention centres

Subregulation (1) – only **PRIVATE** boards (explicitly stated)

Subregulation (2) – only **PRIVATE** boards (follows on (1))

Subregulation (3) – only **PRIVATE** boards (follows on (1))

Subregulation (4) – **ALL** boards (general wording; also ties to section 72(3) of the Act, which applies to ALL boards, and correlates with section 72(1) of the Act, which concerns the numbers of board members for ALL boards)

Subregulation (5) – **ALL** boards (general wording and generality of principle)

Subregulation (6) – **ALL** boards (general wording and generality of principle; but refers to extension of term of office by “the holder of the certificate of registration” and not the Minister – so may in whole or in part apply only to boards of registered homes)

Subregulation (7) – **ALL** boards (ties to section 72(4) of the Act which applies to ALL boards)

Subregulation (8) – logical only for **PRIVATE** boards (as it requires reporting to the Minister, who is the appointing authority for the management boards of State facilities)

Subregulation (9) – **ALL** boards (general wording and generality of principle stated).

Qualifications of members of ANY board: The members of a management board must **represent all key stakeholders**, including the community where the facility is situated. The board members must include the following:

- ⑨ one to five **members of the community** where the facility is situated, including at least one person with the ability to monitor **financial issues**
- ⑨ one member from any **health profession**
- ⑨ one member whose role is to **represent the interests of the residents of the facility**
- ⑨ the **manager** of the children’s home or the child detention centre
- ⑨ one **member of staff**.

Persons appointed to the management board of **ANY** children’s home or child detention centre must have a **police clearance certificate** showing that they have not been convicted of certain serious crimes. **Police clearance certificates** are explained in detail in Chapter 27 of this *Guide*.

No one can be appointed to the management board of **ANY** children's home or child detention centre if they have a potential or existing **conflict of interest** that might hinder their role as a board member.

Procedure for appointing board members of PRIVATE facilities: In the case of **private** children's homes and child detention centres, a **call for applications from interested persons** must be advertised by the registration holder in a local or national newspaper circulating in the area where the facility is situated. This advertisement must be published in English, and may be published in other languages appropriate to the community where the facility is situated. Applications to serve as board members must be submitted in writing, along with a *curriculum vitae*. The registration holder must provide a list of the names and capacities of the board members to the Minister within 14 days of their appointment.

Relevant crimes

- murder
- rape
- indecent assault
- incest
- kidnapping
- any statutory sexual offence
- any offence relating to the manufacture, distribution or possession of pornography
- any offence relating to human trafficking
- abduction, excluding the wrongful removal or retention of a child by a parent with parental responsibilities
- assault with intent to cause grievous bodily harm

◆ Child Care and Protection Act, section 238(8)

Term of office for members of ANY board: The term of office for board members is normally **three years**, but the registration holder may extend the term of office of any four board members for a second three-year period to allow for smooth leadership transitions.

This requirement is contained in regulation 14(6). The general term of office seems to be applicable to all boards, but note that the possible extension of the term of office of some board members may be done by “the holder of the certificate of registration” (with no mention of the Minister) – so this option may apply only to the boards of registered facilities. (As discussed below, all private facilities must be registered, but State children's homes and child detention centres must register only if they are pre-existing facilities which were registered under the old law and seek to continue operating under the new law.)

Vacancies on ANY board: A member of a management board *must* vacate office if –

- ⑨ a **conflict of interest** develops.
- ⑨ he or she **commits an offence that is covered by the police clearance certificate**.

Board members can **resign** by means of at least **30 days' written notice provided to the registration holder** and, for board members other than the chairperson, also to the chairperson of the board.

Resignation is covered by regulation 14(10)(c). This regulation refers to notice of resignation being provided to the “holder of the certificate of registration”. The Minister is not mentioned in the provision, but where the Minister has appointed board members – which is the case for State children's homes and State child detention centres – notice of resignation would obviously need to be sent to the Minister as the appointing authority.

Any **vacancy** must be filled in the same way as new appointments are made. Board members who are appointed to fill vacancies will serve for the unexpired portion of the term of office in question.

The seat on the board can be left vacant if the vacancy does not bring the board below the minimum number of five members or substantially affect the efficient functioning of the board.

Functioning of ANY board: A management board must meet **at least once every three months**. A majority of members will constitute a **quorum**.

At its first meeting, the board must elect a **chairperson**, a **treasurer** and a **secretary**.

Decisions of the board must be made by **consensus** as far as possible, but if a matter must be put to a vote, the **majority** prevails.

In the case of a tie vote, the chairperson will have a casting vote.

Minutes must be taken at all meetings. The minutes must include a summary of the discussions and a record of all decisions taken. The minutes of the previous meeting must ordinarily be circulated together with an agenda at least two weeks before the next meeting – but the chairperson can make an exception to this rule where a meeting is called urgently.

The board may ask a **staff member** of the facility to attend a board meeting or to provide a report.

In line with the principle of **child participation**, the board may be addressed by any child who is resident at the children's home or the child detention centre – either at the request of the child or at the request of the board.

The board may otherwise decide on its own procedures.

Responsibilities of ANY board: A management board has the following responsibilities:

- ⑨ The board must make sure that all **board members understand the legal framework** which applies to the facility.
- ⑨ The board must make sure that all **board members perform their duties in good faith** and in the **best interests of the children** residing in the facility.
- ⑨ The board must provide **support and advice to the manager** of the facility and **evaluate the manager's performance**. It must make sure that it receives **written reports from the manager** every quarter. If the manager fails to provide these reports, the board may institute disciplinary proceedings against the manager.
- ⑨ The board must review, monitor and approve the **annual budget and business plan** for the facility. It must also make sure that the **assets of the facility** are maintained and protected.
- ⑨ The board must approve the **administrative and operational policy** of the facility.

◇ Child Care and Protection Act, section 72

◇ Child Care and Protection Regulations, regulations 14-15, 16(4)

9.2 Manager

These rules apply to **children's homes, child detention centres, shelters, places of care and ECD centres** – but some rules apply only to some of these facilities, as indicated below.

The manager of **ANY** children's home, child detention centre, shelter, place of care or ECD centre is responsible for the facility's **day-to-day operation**.

The manager of a **GOVERNMENT children's home, child detention centre or shelter** will be selected by the Minister. The required qualifications are:

- ⑨ **specialised knowledge of child and youth care work**
- ⑨ **proven leadership ability**
- ⑨ **evidence of management and administration skills**
- ⑨ **knowledge and experience of the programmes** that the facility will provide.

In **ANY children's home or a child detention centre**, where the law requires a management board, the **manager and the board must try to work together cooperatively**, in a spirit of openness and trust. The management board is responsible for the approval of **administrative and operational policy** of the facility.

◇ Child Care and Protection Regulation, regulation 16

Police clearance certificates for managers of ANY facility

The manager of any facility which provides care for children must have a **police clearance certificate** showing that he or she has not been convicted of certain serious crimes. Police clearance certificates are explained in detail in Chapter 27 of this *Guide*.

Relevant crimes

- ▷ murder
- ▷ rape
- ▷ indecent assault
- ▷ incest
- ▷ kidnapping
- ▷ any statutory sexual offence
- ▷ any offence relating to the manufacture, distribution or possession of pornography
- ▷ any offence relating to human trafficking
- ▷ abduction, excluding the wrongful removal or retention of a child by a parent with parental responsibilities
- ▷ assault with intent to cause grievous bodily harm

◇ Child Care and Protection Act, section 238(8)

UN Guidelines for the Alternative Care of Children (2010)

All agencies and facilities should have **written policy and practice statements**, consistent with the present Guidelines, setting out clearly their aims, policies, methods and the standards applied for the recruitment, monitoring, supervision and evaluation of qualified and suitable carers to ensure that those aims are met.

◇ Paragraph 106

9.3 Staff and volunteers

These rules apply to **children's homes, child detention centres, shelters, places of care and ECD centres**.

Note that these rules apply to **all persons who render services directly to children** at the facility, regardless of their employment capacity. This would include volunteers as well as paid staff, and it would cover part-time and full-time personnel.

ANY PERSON WHO WORKS DIRECTLY WITH CHILDREN AT THE FACILITY must have the following skills where these are relevant to the person's role:

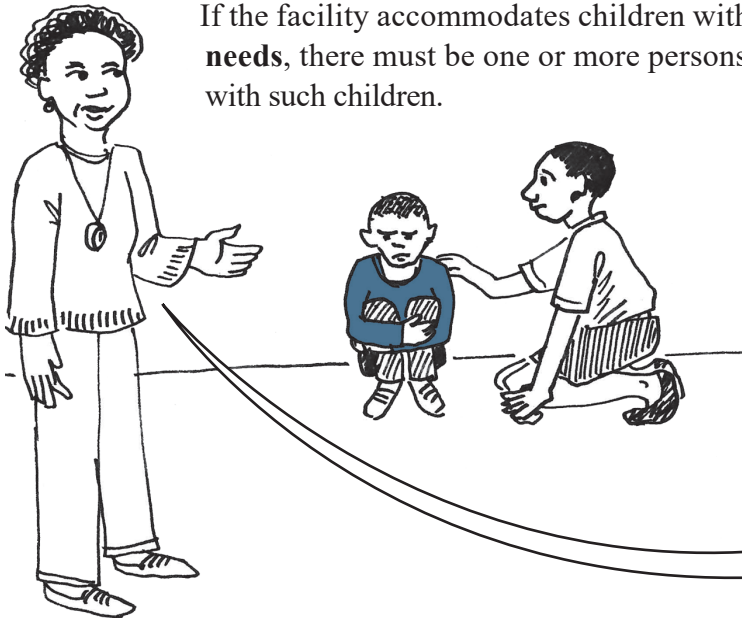
- ⑨ the ability to implement the **programmes run by the facility**
- ⑨ skills or training on the **identification of irregular and dysfunctional behaviour, developmental delays and physical disabilities** in a child
- ⑨ the ability to **identify, record and report on the progress and developmental needs** of children
- ⑨ the ability to **design and produce stimulating indoor and outdoor activities and routines** according to the developmental needs of the children at the facility
- ⑨ the ability to **stimulate, extend and promote all-round development** through appropriate adult-child, adult-adult and child-child interactions, in order to enhance children's emotional, cognitive, spiritual, physical and social development
- ⑨ the ability to provide **development programmes appropriate to the needs of children**, including (where relevant) children with disabilities, chronic illnesses or other special needs
- ⑨ any other skills or requirements set in **guidelines issued by the Ministry**.

ALL PERSONS "EMPLOYED OR ENGAGED" AT THE FACILITY (or persons who are about to become employed or engaged there) must provide the management of the facility with:

- ⑨ a certified copy of an **identity document**
- ⑨ **proof of relevant skills, qualifications or training**
- ⑨ a **police clearance certificate** showing that he or she has not been convicted of certain serious crimes. *Police clearance certificates are explained in detail in Chapter 27 of this Guide.*

ANY PERSON WHO WORKS DIRECTLY WITH CHILDREN AT THE FACILITY must be able to **communicate with the child in a language or manner of communication that the child understands**. Because it may not be practical to have staff who speak every relevant language, this requirement can be fulfilled through an **intermediary** who is able to communicate with such child – as long as that intermediary can be contacted anytime he or she is needed.

If the facility accommodates children with **special developmental or behavioural needs**, there must be one or more persons on staff with **specialised skills** in dealing with such children.



- ◇ Child Care and Protection Act, section 238
- ◇ Child Care and Protection Regulations, regulation 17

I think that Luke is ill. He is hearing-impaired, and the only teacher we have who knows sign language is on leave. But we arranged to have someone else who knows sign language to be on call for emergencies. I will call now and ask her to come over right away.

We have several children in our home with speech impediments, so we have hired a part-time speech therapist.



UN Guidelines for the Alternative Care of Children (2010)

All agencies and facilities should develop a **staff code of conduct**, consistent with the present Guidelines, that defines the **role of each professional and of the carers in particular** and includes **clear reporting procedures on allegations of misconduct by any team member**.

◇ Paragraph 107

“ [...] What message do we send to the children when we tell them that they are to be removed from their parents because they deserve better care, and then neglect wholly to provide that care? We betray them, and we teach them that neither the law nor State institutions can be trusted to protect them. ”

◇ *Centre for Child Law v MEC for Education, Gauteng & Others* 2008 (1) SA 223 (T), page 229

10. Minimum standards

The minimum standards apply to **ALL** facilities.



Safe urban play area

Safe rural play area

Physical standards: All of the different types of facilities covered by the Act must have these basic minimum requirements:

- ⑨ a **safe area** for the children to **play**
- ⑨ adequate **space** and **ventilation**
- ⑨ safe drinking **water**
- ⑨ hygienic and adequate **toilet facilities**
- ⑨ access to **refuse disposal services** or other adequate means of refuse disposal
- ⑨ a **hygienic area for the preparation of food** for the children
- ⑨ appropriate **first-aid supplies**.



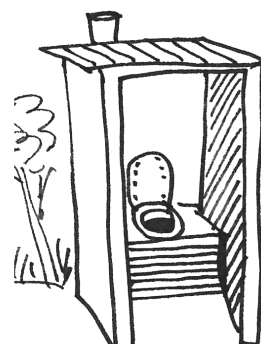
Indoor hygiene



Outdoor hygiene



Indoor sanitation



Outdoor sanitation

These minimum requirements must be applied in light of the standards of the surrounding community.

Separation of children in secure care from other children: Children in any facility who

are **not** subject to secure care must at all times be kept separate from children who are subject to secure care (such as children awaiting criminal trial or sentence, or children with severe behavioural problems). This applies to meal times, play times and while sleeping.

Child participation: Children who are accommodated at any facility must be provided with **relevant information** – such as information about why they are there and what rules apply.

This information should be appropriate to the child's age, maturity, stage of development and experience. (The Act and regulations do not state this expressly, but the information will not enable child participation if it is not appropriate to the child's level of understanding.)

The facility must also provide an opportunity for children accommodated at the facility to **express their views in all decision making processes affecting them**, and these views must be given **due consideration**. This process must be appropriate to the child's age, maturity, stage of development and experience.

Remember that the right of child participation includes the right to choose NOT to participate. Children must be given sufficient information about matters affecting them to enable them to make a decision on participation which is in their best interests.

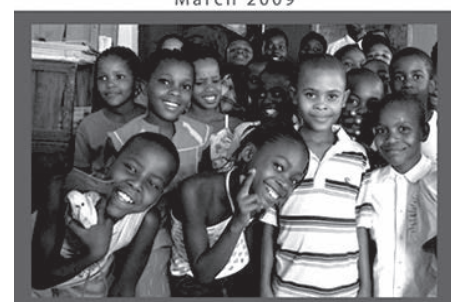
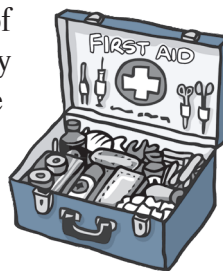
Principles of child participation

- (1) **Information about context:** Children must be informed of the circumstances under which they will be asked to express their views and the impact of their views on the issue at stake. They must also be informed about services that are potentially available to them.
- (2) **Protection against victimisation:** Children must be protected against being punished or victimised for expressing their views. A child who is invited to express an opinion should be informed of the protections which are in place.
- (3) **Information about outcome:** Children must be informed of any decision which affects them – whether or not they chose to participate in the process.
- (4) **Opportunity to complain:** Children must be given an opportunity to complain if they feel that their right to participate is not being respected. In practice, this means that children should be informed about who to talk to if they experience problems with the process, and asked if they have any concerns.
- (5) **Special measures to overcome barriers:** Some children may experience specific barriers in respect of participation – such as language barriers, disabilities or some form of discrimination. In such cases, there may be a need to take special measures to promote child participation.

◆ Child Care and Protection Act, section 4(3)

Additional minimum standards: The Minister may set **additional minimum standards** by regulation, after consultation with the Minister responsible for health and social services. The Ministry has set the following additional standards in this way:

- ⑨ All facilities must be in compliance with any applicable **building regulations**.
- ⑨ All facilities must be in compliance with any applicable **construction and safety requirements**. These might include, for instance, requirements imposed by the local authority on fire safety measures or procedures for how to exit the building in case of fire.
- ⑨ Where relevant, facilities must be ready to present for examination **all documents regarding ownership or leasing of the premises**, or other evidence of the right to occupy the premises.
- ⑨ All facilities must be in possession of a **first aid kit** that complies with any requirements issued for this purpose by the Ministry.
- ⑨ All facilities must comply with any **standards issued by the Ministry for that category of facility**.



In 2009, the Ministry of Gender Equality and Child Welfare published detailed guidelines for residential child care facilities and shelters. These guidelines cover (1) organisational issues; (2) management and staffing; (3) premises; (4) administration and finance; and (5) caring for children.

Grace period: The Minister may provide a grace period for compliance with the minimum standards in respect of facilities in rural areas or informal settlements. This grace period will be set by notice in the *Government Gazette*. This will enable the Ministry to assist existing facilities to come into compliance with the new minimum standards.

You will need to fence in your yard here to make a safe play area for the children. Perhaps one of the local companies will give you a discount on the fencing materials. This community really needs a day care centre. We can give you a month to make the area more secure if you undertake to have someone watching the children very closely while they are in the yard in the meantime.

- ◇ Child Care and Protection Act, sections 4 (child participation), 71
- ◇ Child Care and Protection Regulations, regulations 9, 17(6)



11. Rights of children and complaints procedure

11.1 Rights of children in residential child care facilities

The rights in this section apply to children in **residential child care facilities**, which are places of safety, children's homes and child detention centres.

Reasons for placement: The child has a **right to be informed promptly of the reason for his or her admission or detention**, in a language which the child understands.

Information to child's family and care-giver: The child has a **right for the people who are most closely connected to the child to be informed of where the child is, and of the reason for the child's admission or detention**. This applies to the child's her parent, guardian, next of kin or any other person who was caring for the child immediately prior to the admission of the child to the facility. This information must be communicated within 48 hours of the child's admission.

Contact with other persons: The child has a **right to communicate regularly with people who may be important to the child**. This applies to the child's parent(s), guardian, next of kin, social worker, probation officer, case manager, religious counsellor, health care professional, psychologist, legal practitioner, social auxiliary worker or community child care worker. This right applies **UNLESS** a court order says otherwise or the child chooses otherwise. The timing and frequency of visits by any of these persons can be reasonably regulated by the relevant social worker. The child has the right to privacy during meetings with any of these people **UNLESS** a court order says otherwise or the child chooses otherwise.

Basic necessities: The child has a right to adequate nutrition, clothing, nurturing and access to health care. The child also has a right to the same quality of care as other children in the facility, taking into account any special needs which the child may have.

Privacy and personal property: The child has a right to a reasonable degree of privacy, and the right to possession and protection of his or her personal belongings. The child has a right to be informed that prohibited items in his or her possession may be removed and withheld.



Nurture is just as important as nutrition. Babies need attention and affection for proper development.



Behavioural rules: The child has a right to be informed of the behaviour that is expected, the consequences of failure to behave properly, and the assistance that he or she can expect to receive in order to improve his or her behaviour.

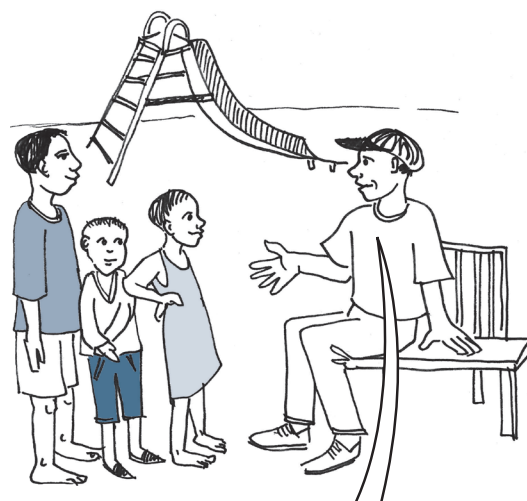
Respect for background and culture: The child has a right to care and intervention which respects, protects and promotes his or her cultural, religious, linguistic heritage, and the right to learn about and maintain this heritage.

Positive discipline: The child has a right to positive discipline appropriate to his or her level of development.

Educational opportunities: The child has a right to education, training or learning opportunities appropriate to his or her level of maturity, aptitude and ability.

Respect and protection: The child has a right to respect and a right to protection from exploitation and neglect.

Respect for others: The child has a right to opportunities for developing his or her capacity to demonstrate respect and care for others.



Support for special needs: The child has a **right to access to an interpreter or other necessary support** to overcome issues of language or disability which obstruct consultation with the child on decisions affecting the child's custody, care or development.

Community connections: The child has a **right of access to community activities and structures** UNLESS a court order indicates otherwise.

Information about complaints procedure: The child has a **right be informed of the procedure for making complaints** of any nature, upon admission and at any time during his or her stay.

All of these rights should be applied in light of the child's age, maturity and stage of development. For example, it would not be possible to inform an infant of the reasons for that infant's admission to a children's home. But an appropriate explanation could be given to even a very young toddler. As another example, prohibited items might vary with age; young children might not be allowed to keep sharp scissors in their possession, but this might be permitted for older children.

- ◆ Child Care and Protection Act, section 4 (child participation)
- ◆ Child Care and Protection Regulations, regulation 10(1)

11.2 Rights of children in non-residential child care facilities

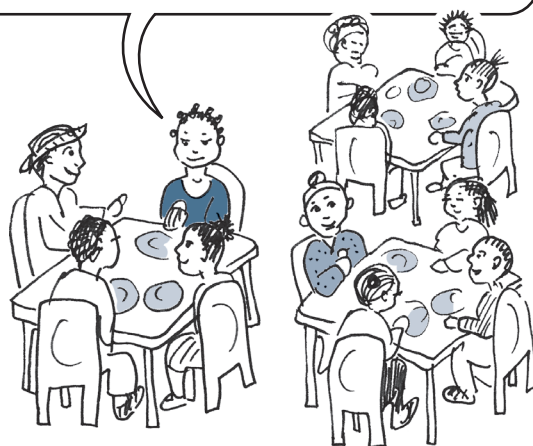
The rights in this section apply to children in **shelters, places of care** and **ECD centres**. Note that children in these facilities are there because of voluntary arrangements rather than because of court orders. These facilities are normally not residential – with the exception of shelters which provide short-term accommodation on an emergency basis.

Basic necessities: The child has a **right to adequate nutrition, nurturing and access to health care** – in light of what is appropriate to the period of care and the age of the child in question. The child also has a **right to the same quality of care as other children in the facility**, taking into account the child's age and any special needs which the child may have.

Child participation: The child has a **right to be consulted about significant decisions affecting that child**, and to **express his or her views** according to his or her abilities.

Privacy and personal property: The child has a **right to a reasonable degree of privacy**, and the **right to possession and protection of his or her personal belongings**. The child has a **right to be informed that prohibited items in his or her possession may be removed and withheld**.

A young child who is staying in a place of care all day should have lunch plus something to drink and a small snack in the morning and the afternoon. It is hard for children to behave well if they are hungry



Behavioural rules: The child has a **right to be informed** of the behaviour that is expected, the consequences of failure to behave properly, and the assistance that he or she can expect to receive in order to improve his or her behaviour.

Respect for background and culture: The child has a **right to care and intervention** which respects, protects and promotes his or her cultural, religious, linguistic heritage, and the right to learn about and maintain this heritage.

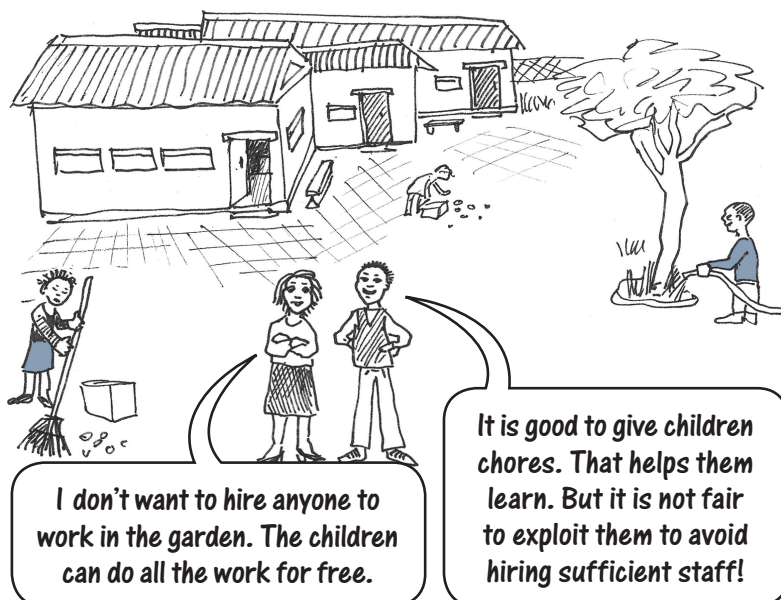
Positive discipline: The child has a **right to positive discipline** appropriate to his or her level of development.

Educational opportunities: The child has a **right to education, training or learning opportunities** appropriate to his or her level of maturity, aptitude and ability in light of the period of time that the child spends at the facility.

Respect and protection: The child has a **right to respect** and a **right to protection** from exploitation and neglect.

Information about complaints procedure: The child has a **right to be informed** of the procedure for making complaints of any nature, when the child first arrives at the facility and at any time after that.

◆ Child Care and Protection Regulations, regulation 10(2)



11.3 Positive discipline

Children in ALL facilities have a right to positive discipline.

Corporal punishment prohibited

No one may use corporal punishment on a child in any registered facility.

This applies regardless of whether the child is in the facility in terms of a court order or is present voluntarily.

◆ Child Care and Protection Act, section 228(3)
 ◆ Child Care and Protection Regulations, regulation 12(2)(d)



What is “positive discipline”?

Children in **ANY** facility have a right to positive discipline. Positive discipline is discipline which helps children learn how to behave well so that they learn lessons for the future, instead of just making them obey for the moment out of fear. These rules on positive discipline are not directly applicable to a private home or a hospital which is serving as a place of safety, although positive discipline should be encouraged in all contexts.

What to do

- ✓ Make sure that **children are provided with the skills and support** that enable constructive and effective social behaviour.
- ✓ **Lead by example.** Make sure that staff model good behaviour in their attitudes and interactions with the children.
- ✓ Make sure that the **children feel respected and physically, emotionally and socially safe** when being disciplined.
- ✓ Put in place **programmes and effective role modelling** that encourages children to practise positive behaviour.

I was playing too roughly because I got too excited. Auntie Pam has given me a time-out to help me calm down.



What NOT to do

The following forms of discipline are NOT allowed:

- ✗ **group punishment** for individual behaviour
- ✗ **threats of removal**, or removal from a developmental or therapeutic programme
- ✗ **humiliation or ridicule**
- ✗ **corporal punishment**
- ✗ **depriving a child of basic rights or needs**, such as food and clothing
- ✗ **depriving a child of access to family members or other persons**
- ✗ **denial of visits, telephone calls or correspondence with family members or guardians** which would otherwise be permitted
- ✗ **isolation**, except for the temporary removal of a child from a specific environment or activity for a brief period of time as a form of positive discipline, provided that the child is not left completely alone during such period
- ✗ **bodily restraint**, except where it is necessary to restrict a child's movements by means of one or more persons holding the child for a brief period of time in an emergency situation in order to prevent the child from harming or endangering himself or herself or other persons
- ✗ discipline by means of **exercise or chores which are harmful or age-inappropriate** to the child
- ✗ **verbal abuse**
- ✗ **any action that is likely to harm the child emotionally or physically**
- ✗ **punishment by another child**
- ✗ discipline which demonstrates **discrimination on the basis of cultural or linguistic heritage, sex, race, religion or HIV status**
- ✗ **undue influence by service providers to impose their personal beliefs** (such as personal attitudes about gender stereotypes or sexual orientation).

Auntie Rose had to hold me for a minute when I was angry, because I started hitting some of my friends with a stick. I am glad she stopped me before I hurt anyone.



Auntie Lucy started to take away my doll because she thinks that dolls are only for girls. Then Meme Jacky reminded her that boys and girls can both play with dolls!



◆ Child Care and Protection Regulations, regulation 12

11.4 Complaints procedure

These rules apply to **ANY** facility with the **EXCEPTION** of a private home or a hospital which is serving as a place of safety. However, care-givers in all contexts should be encouraged to listen to children who have a problem or a concern.

Each facility must have a written complaints procedure. In the case of a **children's home** or a **child detention centre**, this procedure must be approved by the management board.

Every complaints procedure must follow these standards:

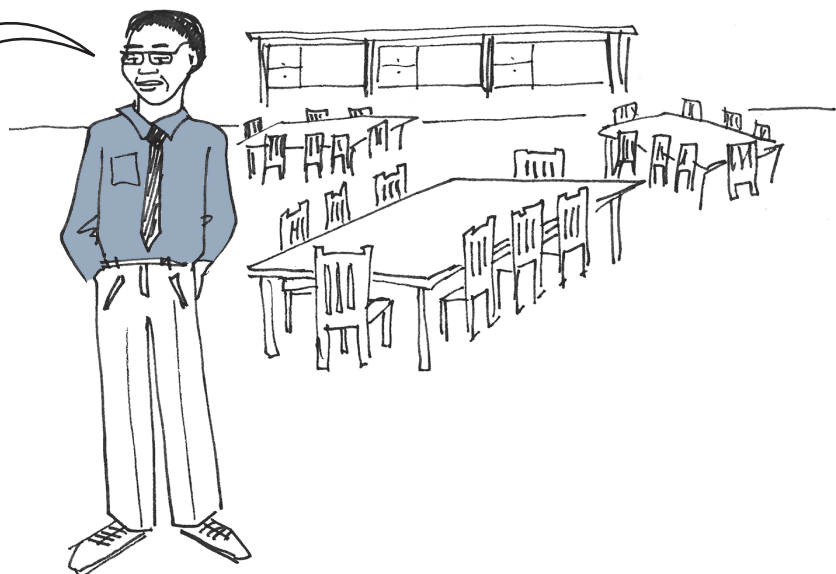
- ⑨ The complaints procedure must be appropriate to the age and stage of development of the children at the facility.
- ⑨ The complaints procedure must allow children to complain about particular incidents or staff members.
- ⑨ The complaints procedure must be accessible to the children.
- ⑨ The complaints procedure must be structured a manner that does not cause conflict.
- ⑨ The complaints procedure must encourage restorative justice interventions, where appropriate.
- ⑨ The complaints procedure must be fair to persons who are alleged to have done something wrong.

A child must be informed of the complaints procedure at the time of admission to the facility. (This rule must be implemented in light of the child's age, maturity and stage of development.)

- ◆ Child Care and Protection Act, section 4 (child participation)
- ◆ Child Care and Protection Regulations, regulation 11

Restorative justice is an approach to justice that deals with wrongful behaviour by having the victim and the offender find a solution that makes them both feel satisfied. Victims play an active role in this process. Offenders must take responsibility for their actions, to redeem themselves in their own eyes and in the eyes of the community. Restorative justice must also make the community feel that balance has been restored.

Several of the children complained about the food. I am so glad that I paid attention to what they said – we discovered that our catering company was cheating us! Now the children are getting proper meals.



12. Records and reports

12.1 Record-keeping

The record-keeping duties apply to **children's homes, child detention centres, shelters, places of care and ECD centres**. They do NOT apply to places of safety.

Files on each child: All facilities must keep a separate file for each child. The file must contain the following information:

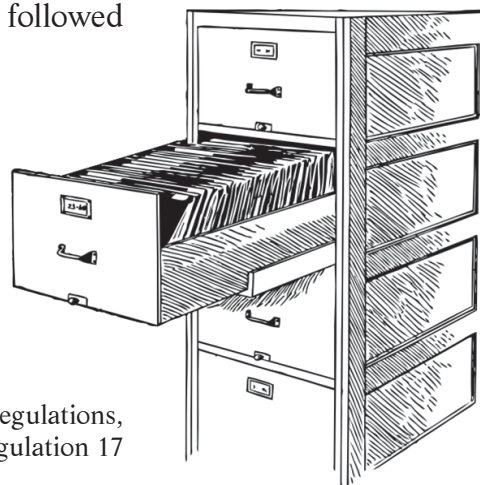
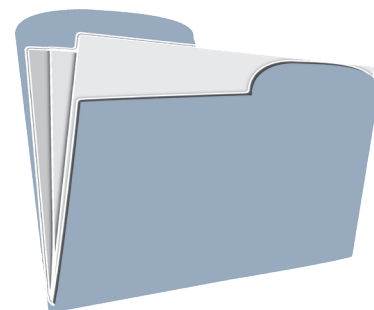
- ⑨ the **full name** of every child
- ⑨ the **date of admission** of the child
- ⑨ the **date when the child's residence or attendance at the facility ends**
- ⑨ all **documents** relating to the child **received at the time of admission**
- ⑨ all **documents** relating to the child, including **correspondence**, copies of any relevant **medical reports** and any **reports relating to the achievements and skills of the child**
- ⑨ **reports about the development of the child** by persons who provide programmes at the facility – particularly information on any **concerns about the child's behaviour or development**
- ⑨ **reports on any significant injuries** observed at the time of admission or during the child's time at the facility – including **any observations which may relate to possible abuse of the child**
- ⑨ where relevant, **written consent from a parent, guardian or care-giver of a child authorising medication** for a child
- ⑨ copies of any **complaint** made by the child in terms of the complaints procedure, together with a record of any follow-up or action taken in respect of the complaint
- ⑨ **information on any serious disciplinary problems**, together with a record of any action taken.

Storage of files: The facility must store the information on each child in a **secure** manner and keep it for the specified time period after the child is no longer at the facility:

- ⑨ **children's home or child detention centre: 10 years**, followed by transfer to the Ministry for archiving
- ⑨ **shelter, place of care or ECD centre: 2 years**

Access to records in file: The manager of the facility must control **access** to the files. Access must be allowed **ONLY IF** the person requesting access can show that the access it is in the best interests of the child covered by the records.

◇ Child Care and Protection Regulations, regulation 17



12.2 Incident reports

The duty to make incident reports applies to ALL facilities.

Staff members have a duty to report certain incidents to the manager of the facility **within 24 hours** of the time that the incident is discovered or reported, or as soon the staff member comes on duty – whichever is sooner. The incidents which are covered by this rule are as follows:

- ✱ the **removal or attempted removal of a child** from the facility or programme by an unauthorised person
- ✱ any **accident or illness of a child** which requires **medical attention**
- ✱ any **irregular or dysfunctional behaviour** on the part of a child
- ✱ any **health problem** experienced by the child
- ✱ any **allegations of physical, psychological, emotional, sexual or verbal abuse** of a child
- ⑨ **absence of a child from the facility without permission, or disappearance** of a child
- ⑨ interventions by members of the **police**
- ⑨ the **death or injury** of a child
- ⑨ any **substance abuse or drug dealing by a child** in the care of the facility, regardless whether this takes place on or off the premises
- ⑨ a **child, staff member or any other person being under the influence of alcohol** at the facility
- ⑨ any **criminal charge or conviction of a staff member, volunteer or other person** involved with the facility
- ⑨ any **substance abuse or drug dealing by a staff member or any other person present on the premises**
- ⑨ a **strike by staff members** of the facility
- ⑨ any **physical altercation** involving staff member or other adults at the facility
- ⑨ any other **unusual circumstances** that are likely to affect the safety or well-being of any child at the facility.

A manager who receives a report of any such incident which involves or directly affects a child must immediately **notify the child's parent, guardian or care-giver** (if any) of the date, time and nature of the incident, and the steps taken. There is no prescribed procedure for this notice.

✧ Child Care and Protection Regulations, regulation 13

A **private home** or **private or public hospital** serving as a **place of safety** has a duty to report *only the incidents indicated in the list above with a star (★)*.

The incident reports should go to

- ⑨ the person in charge of the hospital
- ⑨ the social worker who is monitoring the case

OR

- ⑨ the Executive Director of the Ministry responsible for child welfare.

The person who receives the incident report must immediately notify the child's parent, guardian or care-giver (if any) of the date, time and nature of the incident, and the steps taken.

◆ Child Care and Protection Regulations, regulation 13(4)(a)

TECHNICAL NOTE: Regulation 13(4)(a) refers to “a person or social worker in charge” of a private home or hospital. This does not make sense as it stands, and was probably intended to refer to the person in charge of the hospital or the social worker who is monitoring the case (at least in respect of a private home).

Death of a child in the care of a registered facility

There are additional reporting duties in a case where –

- ⑨ a **child dies on the premises** of a registered facility
- ⑨ a **child dies from injuries received at a registered facility** (such as where an injured child dies later in hospital) or
- ⑨ a **child dies while in foster care or in the care of any residential child care facility** in terms of a court order or a written directive from the Minister. This duty applies regardless of where the death takes place – for example, the death might have taken place while the child was travelling, or after a child with an illness was taken to hospital.

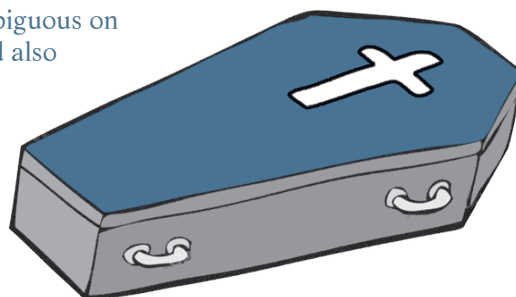
In these cases, the management of the facility must immediately **report the matter to a member of the police and to the relevant social worker** (if any).

The **police must immediately notify the child's parent, guardian or family** and carry out an **investigation into the cause of the child's death**.

◆ Child Care and Protection Act, section 86

TECHNICAL NOTE: Section 86(a) refers to a “place of care” but clearly must have been intended to refer to a “place of safety” as there is no authority in the Act for a court order or a Ministerial directive placing a child in a “place of care”. Section 86(b), in contrast, applies to any facility registered under the Act.

TECHNICAL NOTE: Section 86 of the Act is somewhat ambiguous on whether a social worker who is notified of the death of a child also bears a duty to notify and investigate – but since there will not be a social worker involved in every such case, the more logical reading would place the duty on the police, who must be notified in every instance. If a social worker is involved, the social worker and the police could liaise on their respective roles.



12.3 Annual reports

The duty to make annual reports to the Ministry applies to **children's homes, child detention centres and shelters**.

The facilities covered by this rule must submit an annual report to the Ministry with the following information:

- ⑨ the number, age and sex of children accommodated at the facility
- ⑨ if the facility is a **PRIVATE** one, its financial position
- ⑨ any other information specified by regulation.

◇ Child Care and Protection Act, section 76

13. Administering medication to a child in a facility

The rules on consent to administer medication to a child apply to **children's homes, child detention centres, shelters, places of care and ECD centres**. They do NOT apply to places of safety.

If a child at a facility requires **medication which is supplied by the parent, guardian or care-giver**, that person must give the facility **written consent** to administer the medicine to the child. The consent must be **co-signed** by the person at the facility who is responsible for administering the medication. A **witness** must be present when the medication is administered.

This rule applies only if parental powers in respect of the child have NOT been transferred to the facility. For example, any time that a child is placed in alternative care by means of a court order, the parental powers of custody or control over that child are transferred to the management of the residential child care facility for the duration of the placement – meaning that the facility can make decisions about the day-to-day care of the child in the same way as a parent.



◇ Child Care and Protection Act, section 149

◇ Child Care and Protection Regulations, regulation 19

Can a person in charge of a child at a registered facility take reasonable steps to safeguard the child's health?

- (1) **If the child is in alternative care at a residential child care facility by virtue of a court order**, then the management of that facility has the same reasonable powers as a parent in this regard – because parental powers relating to the child's day-to-day care are automatically transferred to the facility for the duration of the court-ordered placement. In this situation, the Act explicitly authorises a residential child care facility:
- ⌚ to obtain basic medical intervention for the child if reasonable grounds exist to believe that the child requires such intervention
 - AND
 - ⌚ to ensure that the child obtains a surgical operation if there are reasonable grounds to believe that the child needs the operation urgently and delaying it to consult with the child's parent would prejudice the child's health or welfare.
- (2) **In other situations, where the child is NOT present at a residential child care facility because of a court order**, the best approach is to discuss health care issues with the child's parent or guardian or care-giver at the time of admission. However, whether or not health issues are discussed in detail, the facility has the power and duty to act "*in loco parentis*" ("in the place of a parent") while the child is there. "*In loco parentis*" is a common law doctrine which gives people or organizations implied parental responsibilities when the parent or caregiver places the child into the care or control of a person or an institution, in a situation where the parent is not on hand to provide direct supervision. For example, educators act "*in loco parentis*" for children while they are at school. The doctrine can also be applied to anyone who assumes the care of a child in the absence of the person who has parental authority – including residential child care facilities, places of care and even babysitters. **This principle requires the person *in loco parentis* to show the same care and supervision as a reasonable and prudent parent would.** This would mean that a registered facility should, for example, apply first aid or administer an over-the-counter medication to a child in instances where this is what a reasonable and prudent parent would do.



◇ Child Care and Protection Act, section 149
◇ *Black's Law Dictionary* (6th edition, 1990), page 787

14. Registration

UN Guidelines for the Alternative Care of Children (2010)

States should ensure that all entities and individuals engaged in the provision of alternative care for children receive due authorization to do so from a competent authority and are subject to regular monitoring and review by the latter in keeping with the present Guidelines. To this end, these authorities should develop appropriate criteria for assessing the professional and ethical fitness of care providers and for their accreditation, monitoring and supervision.

◆ Paragraph 55

14.1 What facilities must be registered?

The rules on which facilities must register are complicated, particularly in respect of (a) the differing rules for **State versus private facilities** and (b) the differing rules **for new facilities versus facilities already in existence when the Act came into force** on 30 January 2019.

In general, **all PRIVATE facilities, pre-existing and new, must register in terms of the Act.**

With respect to **STATE** facilities:

- ⑨ **pre-existing State facilities must generally be registered** under the Act
- ⑨ **some categories of new State facilities are NOT required to register.**

Places of safety are not “registered”. Instead, they receive a “letter of authorisation” from the Minister when they are approved for use as places of safety. This process is described in section 2.1 of this chapter.

◆ Child Care and Protection Act, section 64(4) and (5)

ECD centres were not covered by any law before the Child Care and Protection Act came into force, so they are all “new” in the eyes of the law.

◆ Child Care and Protection Act, section 66(2)
(requires registration of all ECD centres)

The rules are presented in more detail in the chart on the next page.

“ Unregistered facilities pose grave dangers to children using those facilities and strict action is required against facilities operating illegally. However, an immediate order to shut down is not always necessary. [...]”

[The relevant law] follows the approach to first assist facilities to meet the registration requirements so that they can continue to provide the services where there is a need for these services. An order to close down is thus not a measure of first resort [...] unless the well-being of the children requires immediate shutdown. ”

◆ Prinslean Mahery, “Partial care” in CJ Davel and AM Skelton (eds), *Commentary on the Children’s Act*, Juta, 2007, updated in 2010, page 5-18 (discussing similar notices of enforcement under the South African Children’s Act 38 of 2005 for the South African equivalent of Namibia’s “places of care”)

| Registration requirements | | |
|---------------------------|--|---|
| Type of facility | Private facility: registration required? | State facility: registration required? |
| Place of safety | All places of safety must be <i>approved</i> by the Minister. This process is different from registration. | |
| Children's home | <p>yes for new children's homes (section 68(5)(a))</p> <p>yes for children's homes existing when Act came into force must register within one year of commencement of Act to continue operating section 70(2)</p> | <p>yes only for children's homes existing when Act came into force must register within one year of commencement of Act to continue operating section 70(1)</p> |
| Child detention centre | <p>yes for new children's homes (section 68(5)(a))</p> <p>yes for children's homes existing when Act came into force must register within one year of commencement of Act to continue operating section 70(2)</p> | <p>yes only for child detention centres existing when Act came into force (previously known as "schools of industries" or "reform schools") must register within one year of commencement of Act to continue operating section 70(1)</p> <p>Although the transitional provisions cover schools of industries and reform schools, no such facilities were actually operational in Namibia when the Act came into force.</p> |
| Shelter | <p>yes for new shelters section 67(3)(a)</p> <p>yes for existing shelters, if registered under any law when Act came into force must register within one year of commencement of Act to continue operating section 67(4)</p> | <p>yes for new shelters, if the State is covered by the reference to "a person" section 67(3)(a); see Technical Note below</p> <p>yes for existing shelters, if registered under any law when Act came into force must register within one year of commencement of Act to continue operating section 67(4)</p> |
| Place of care | <p>yes for new places of care (section 68(2)(a))</p> <p>yes for places of care existing when Act came into force must register within one year of commencement of Act to continue operating section 70(2)</p> | <p>yes only for places of care existing when Act came into force must register within one year of commencement of Act to continue operating section 70(1)</p> |
| ECD centre | <p>yes for new ECD centres ECD centres did not formally exist prior to the Child Care and Protection Act section 66(2)(a)</p> | <p>yes for new ECD centres ECD centres did not formally exist prior to the Child Care and Protection Act section 66(2)(a)</p> |



Registration Requirements for State Facilities

Existing State facilities

The Act states:

“Existing State-operated places of safety, places of care, children’s homes, schools of industries or reform schools which were established in terms of the Children’s Act must be registered under this Act as places of safety, places of care, children’s homes or child detention centres, respectively, within one year from the date of commencement of this Part.” (section 70(1))

Shelters were not covered by the Children’s Act, but they may have been registered under other laws, such as local authority regulations. Any shelter which was previously registered under any law must be re-registered under the Act.

Pre-existing **ECD centres** are not mentioned because there was no provision for registration of these facilities under any previous law.

New State facilities

The Act states:

“A person or an organisation who or which intends to register a place of care, early childhood development centre, shelter, children’s home or a child detention centre must make an application, in the prescribed form and manner, to the Minister.” (section 73(1))

However, **new State-operated children’s homes, child detention centres and places of care** are specifically **exempted** from the registration requirement.

◆ See sections 68(5)(a), 69(5)(a) and 65(2)(a):
“A facility, other than one maintained and controlled by the State, may only be used as a ... if it is registered ...”

The wording of the provision on the registration of shelters, in contrast, applies only to **State-operated shelters** if the term “person” encompasses the State. The term “person” can apply to individuals or to legal entities which are understood to have “legal personality”, such as companies. Case law has held that the State is a juristic person, although this may in some instances depend on the statutory context. Thus – given that other types of State-operated facilities which are exempted from registration are exempted in very clear wording – it seems likely that the statute’s intention was to require new State-operated shelters to register.

◆ See section 67 (3)(a):
“A person may establish or operate a shelter if the shelter is registered ...”

It is clear that all **new State-operated ECD centres** must be registered.

◆ See section 66(2)(a):
“A facility may only be used as an early childhood development centre if it is registered as such...”

The distinction in the treatment of old and new State facilities may stem from the fact that existing institutions were established prior to independence under a different legal regime

premised on a different set of values – while the current State government is bound to act in terms of the Namibian Constitution.

Evidence that “the State” is “a person”

A 1964 South African case found that the Union of South Africa was constituted as a State having juristic personality, and capable of suing and being sued, in terms of the South Africa Act of 1909. The Court explained (at page 548A-B):

“It was not envisaged that the State as such should be the juristic person that enters into contracts or was to be cited in legal proceedings, even though it could be said that such contracts were entered into on behalf of the State or that the legal proceedings were brought or defended on behalf of the State. If I may venture to suggest a reason for what may be considered an anomaly by those seeking to draw analogies with ordinary trading corporations it is because the State has many facets, executive, legislative and judicial, and accordingly where rights and duties arise similar to those of the ordinary juristic person, natural or otherwise, it is expedient that the Government, i.e. the executive power, should be considered as the embodiment of the State's position in such regard. In other spheres such as for example in relation to the law of treason the Government was in practice also identified with the State [...].”

The Court went on to hold that the Republic of South Africa succeeded the Union of South Africa as a juristic person in terms of the Republic of South Africa Constitution Act 31 of 1961.

♦ *Die Regering van die Republiek van Suid-Afrika v Santam Versekeringsmaatskappy Bpk* 1964 (1) SA 546 (W)

In 2009, the South African Supreme Court of Appeal was called upon to interpret the meaning of the term “the State” in a particular statute. It noted: “The State as a concept does not have a universal meaning. Its precise meaning always depends on the context within which it is used.” (at paragraph 11). In considering the question, the Court also noted that “the State” is referred to in two other places in the same statute aside from the provision in question (which concerned prescription). The statute at issue included a provision which said: “This Act shall bind the State” – a statement which was necessary because of the rule existing at that time that the State is not bound by its own laws. The Court commented that “[t]he reference here must be to the State as a governing entity with legal personality”.

♦ *Holeni v Land & Agricultural Development Bank of South Africa* 2009 (4) SA 437 (SCA)

In Namibia, a footnote in a 2006 High Court case takes a similar approach, saying that “[i]t is not inconsistent with the Constitution to recognise that the State... because it possesses legal personality has, through its government departments, inherent power to conclude contracts”. The Court stated that any other approach would “paralyse the State machinery and result in administrative atrophy of unimaginable proportions”.

♦ *Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance* 2006 (1) NR 275 (HC), footnote 10, citing *Die Regering van die Republiek van Suid-Afrika v Santam Versekeringsmaatskappy Bpk* 1964 (1) SA 546 (W)

It is also noteworthy on this question that a 2011 Namibian statute refers to “any natural or juristic person, except the State”.

♦ Employment Services Act 8 of 2011, section 1, definition of “private employment agency”

14.2 Initial application for registration

A person or an organisation seeking registration of a facility must make an **application** to the Minister. The Minister may require the applicant –

- ⑨ to demonstrate that there is a **reasonable need** for the facility
- ⑨ to provide information about the facility's past and present **financial position**
- ⑨ to provide **other relevant information**.

The application for registration must be made on the appropriate **forms** which are appended to the Child Care and Protection Regulations:

- ⑨ **children's home or child detention centre: Form 3A**
- ⑨ **shelter, place of care or ECD centre: Form 4A.**

The Ministry can arrange for a social worker or some other person to assist the applicant to complete the form and put together the accompanying documentation.

The Minister may arrange for an **inspection** of the facility to decide on its suitability for registration.

If the Minister directs that an inspection must take place, the person carrying out the inspection must complete the inspection and the inspection report within 60 days from the Minister's direction. The report must be sent the Minister by hand, courier, post or email, within 14 days of its completion.

In the case of **children's homes** and **child detention centres**, the Ministry must place a newspaper advertisement within 30 days of receiving the application, inviting **public input**.

This newspaper advert must be published in a newspaper widely circulating in the area where the home or centre is or will be situated. It must be in English, and it may also be in any other languages appropriate to the area. It must list a specific contact person to whom the public should direct any comments, within 21 days of the publication of the advert.

In the case of **any facility** applying for registration, the Minister must register the facility if the Minister believes that it will be **managed and operated in the best interests of the children** who will be accommodated there.

If the application is granted, the Minister will provide the facility with a **certificate of registration** on the appropriate form:

- ⑨ **children's home or child detention centre: Form 3B**
- ⑨ **shelter, place of care or ECD centre: Form 4B.**

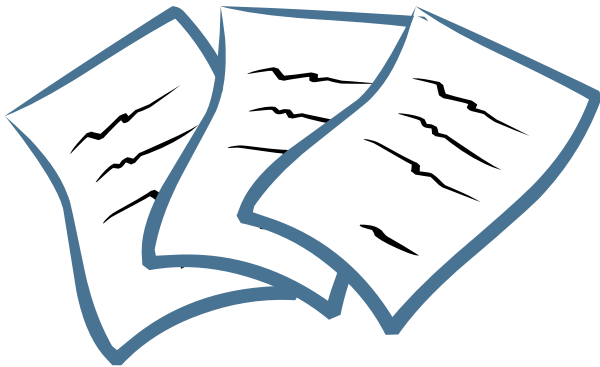
The Minister may impose any **conditions of registration** that promote the best interests of children.

If the application is refused, the Minister must furnish the applicant with **written notice of the refusal, with reasons**, by hand, courier or registered post.

A certificate of registration is **valid for five years**.

◇ Child Care and Protection Act, sections 73-74

◇ Child Care and Protection Regulations, regulations 23-24, Forms 3A-3B, Forms 4A-4B

| DOCUMENTS TO SUBMIT WITH APPLICATION | |
|---|---|
| Children's home or child detention centre | Shelter, place of care or ECD centre |
| constitution or other founding document | constitution or other founding document |
| health certificate (if relevant) This might be issued by the local authority or by the Ministry responsible for health. This is to confirm compliance with applicable health requirements. | health certificate (if relevant) This might be issued by the local authority or by the Ministry responsible for health. This is to confirm compliance with applicable health requirements. |
| building plans (if required by the Ministry) This can be a certified copy of approved building plans, or a copy of building plans submitted for approval if the process is not yet final. | building plans (if required by the Ministry) This can be a certified copy of approved building plans, or a copy of building plans submitted for approval if the process is not yet final. |
| specimen weekly programme of activities | description of programmes and services to be offered This description must cover their aims and objectives as well as their contents. |
| job descriptions and duty sheets of staff members This information will be assessed to see if the facility has the capacity to carry out its intended functions and programmes. | description of applicant's qualifications, skills and experience This must focus on the applicant's competence in the type of care to be provided at the facility. |
| inventory list of furniture, appliances and other major items | inventory list of furniture, appliances and other major items |
| financial statements These must describe the funds available to operate the facility. | financial statements These must describe the funds available to operate the facility. |
| emergency evacuation plan This plan will show how the premises will be evacuated in case of fire, flood, bomb threats or other emergency. | emergency evacuation plan This plan will show how the premises will be evacuated in case of fire, flood, bomb threats or other emergency. |
| police clearance certificates These must be provided for management board members, every staff member and any other person who will work directly with children. | police clearance certificates These must be provided for the manager, every staff member and any other person who will have direct access to the children at the facility. |
| needs assessment This assessment must include evidence of consultation with relevant stakeholders, and of the need for the facility in question in the area in question. | business plan This plan must contain information about the business hours of the facility, the fee structure (if applicable), the day care plan and the staff composition. |
| house rules | existing registration document if applicable |
| specimen weekly menus The purpose of this requirement is to ensure that children at the facility receive a balanced diet. |  |
| documentation of relevant qualifications, skills and experience This must focus on the applicant's competence in the type of care to be provided at the facility. | |
| any additional approvals required by the relevant local authority | |
| existing registration document if applicable | |

14.3 Application for renewal

A registration holder must apply for renewal of the certificate of registration **at least three months before the date when the current registration expires.**

The **procedure for renewal of registration** is essentially the same as for an initial application for registration.

The **Minister must renew** the certificate if satisfied that the facility concerned **continues to comply with the requirements for registration.**

- ◇ Child Care and Protection Act, sections 74(3)
- ◇ Child Care and Protection Regulations, regulations 23-24

14.4 Amendment of registration

A **registration holder may apply for amendment** of the conditions of registration. For example, this might be necessary if there is some change of staffing, a move to new premises or some change in the services to be offered.

The **Minister may also amend** a certificate of registration on his or her own initiative, to add or withdraw conditions if this is appropriate to promote or protect the best interests of children.

The **registration holder has a duty to report any changes which affect the conditions of registration or the requirements that applied at the time of the application for registration.** In such a case, the registration holder must apply to the Minister in writing for an amendment of the certificate of registration within 30 days of becoming aware of the change of circumstances.

- ◇ Child Care and Protection Act, section 74(2) and (4)
- ◇ Child Care and Protection Regulations, regulations 23(13), 24(9)

14.5 Cancellation of registration

The Minister may **cancel** a certificate of registration if the facility is not complying with this Act or any other law or with a condition of registration, or for any other reasonable cause.

The Minister must send a **written notice** to the facility which clearly states the reasons for the proposed cancellation, and the date on which the cancellation will take effect.

The proposed date of cancellation must be at least three months after the date of the notice, unless the Minister and the person operating or managing the registered facility agree to an earlier date.

The registration holder must have an **opportunity to make representations to the Minister** opposing the proposed cancellation. The Minister must consider this information before deciding whether or not to cancel the registration.

If the registration of a children's home or child detention centre is cancelled, every child placed in that facility must be **transferred** before the facility can be closed.

◇ Child Care and Protection Act, sections 79, 81(2)



14.6 Voluntary closure of a facility

The holder of a certificate of registration may close the facility by giving **written notice to the Minister** and **surrendering the registration certificate**.

If a children's home or child detention centre is going to be voluntarily closed, every child placed in that facility must be **transferred**.

◇ Child Care and Protection Act, sections 74(3), 80, 81(2)

Publication of list of registered facilities

The Minister must publish an annual notice in the *Government Gazette* listing **registrations** of facilities, **renewals** of registrations and **cancellations** of registration.

◇ Child Care and Protection Act, section 74(5)

15. Inspections

In addition to the inspection which takes **prior to registration or the renewal of registration**, the Ministry must arrange for a social worker to inspect a registered facility **once a year**, *without any advance notice to the facility*.

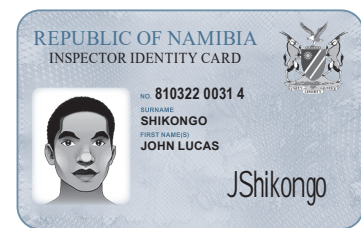


Registered or unregistered facilities can also be inspected at any time. These *ad hoc* inspections can be authorised by the Minister, by a local authority or by a regional council. The person doing the inspection can –

- ⑨ inspect the facility and its management
- ⑨ observe or interview any child in the facility
- ⑨ arrange for a child to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist
- ⑨ observe any programme being conducted by or at the facility.

Anyone who is inspecting a facility should have an **identity card** issued by the Minister, the local authority or the regional council. They can be asked to produce this card before conducting the inspection. This identity card is valid for five years, and can be renewed.

The identity card must include the **full name** of the holder, along with a **photograph**. It must also include the **name and signature of the person who issued the identity card**, a **statement that the holder of the card is authorised to conduct inspections** under the Act, and the **dates of issue and expiry** of the identity card.



A person authorised to conduct an inspection has the **power** to –

- ⑨ determine whether the facility complies with the minimum standards
- ⑨ determine whether the facility complies with any requirements of the Act or any other law
- ⑨ investigate anything which may constitute a crime, a breach of any provision of the Act or a violation of a condition of registration
- ⑨ record information by any method, including taking photographs or making videos
- ⑨ exercise any other power prescribed by regulation.

The person doing the inspection must provide a **receipt for any item that is removed** during the inspection, and **return the item** in question unless it must be kept as evidence.

For the purpose of this investigation, the inspector may require a person to **disclose information** orally or in writing, either alone or in the presence of a witness.

The inspector may also **inspect any relevant record or document**, and or **question any person about such records or documents**. The inspector can also **require a person to produce or deliver any relevant record or document**, make **copies** of relevant records or documents, or **remove them** to make copies or extracts.

The inspector may also **question a person about any article or substance** that might have been used for the purpose of wrongdoing, and **remove that article or substance**.

The person doing the investigation must **submit a report to the Minister, local authority or regional council which authorised the inspection**.

The person authorised to carry out the inspection must complete the inspection and the inspection report within 60 days from the authorisation. The report must be sent to the appropriate recipient by hand, courier, post or email, within 14 days of its completion.

It is a **crime** to hinder or interfere with an inspection, or to refuse to cooperate. It is also a crime to falsely pretend to be a person authorised to conduct an inspection. The penalty for these crimes is a fine of up to N\$4 000 or imprisonment for up to one year, or both.

- ◇ Child Care and Protection Act, section 77
- ◇ Child Care and Protection Regulations, regulations 25-26

Searches of residences

If the facility being inspected is used as a residence, any search of it will require a search warrant – UNLESS the owner or the occupier of the residence has consented to the search, or UNLESS the person authorised to conduct the inspection reasonably believes that a search warrant would be granted by the court, but that the delay involved in getting the warrant would defeat the object of the search. For example, this could apply to private homes used as places of safety, or to portions of children's homes or child detention centres where staff or children live, in contrast to the offices or administration blocks of such facilities.

- ◇ Child Care and Protection Act, section 77(3)

An inspection may lead to a notice of enforcement.

16. Notices of enforcement

Unregistered facilities can be closed down, or given time to meet the requirements for registration. The Minister can issue a written notice of enforcement to an unregistered facility. This notice may order the facility to stop operating, or it may give the facility a specified time period to apply for registration. The notice must contain reasons for the instructions it contains.

The Minister may also issue a notice of enforcement to a registered facility which is not complying with its conditions of registration, giving it a time period to remedy the problem.

A facility which has received a notice of enforcement may **continue operating** during the time period allowed by the notice for remedying the problem. An unregistered facility may also continue to operate while its application for registration is being considered.

It is a **crime** to fail to comply with a notice of enforcement. The penalty is a fine of N\$100/day for each day on which the facility continues to operate in violation of the rules.

- ◇ Child Care and Protection Act, section 78

17. Eligibility for State funding

Registered government facilities or registered private facilities run by non-profit organisations are eligible for funding from the national budget or the Children's Fund as long as they are complying with the Act and all applicable standards.

Such funding can be used for:

- ⑨ upgrading or equipping the facility
- ⑨ training of staff or volunteers
- ⑨ programmes for children at the facility
- ⑨ other expenses reasonably related to the facility and its purposes.

Facilities which are eligible for State funding may also receive **donations in kind** from the State, such as equipment, toys and food supplements for the children.

◇ Child Care and Protection Act, section 75

18. Appeal and review

A person (including a child) or an organisation who is unhappy with a decision relating to a facility may **appeal to the children's court**, by completing **Form 2**, which is appended to the Child Care and Protection Regulations. The completed form must be given to the clerk of the children's court within 30 days after the person making the appeal learned of the decision in question.

The appeal must be filed with the children's court in the district where the decision was taken or (for decisions about a facility) in the district where the facility is located.

The **children's court must decide on the appeal within 90 days** of receiving it. A person or organisation who is not satisfied with the outcome of the appeal can request a **High Court review** of the decision of the children's court.

◇ Child Care and Protection Act, section 85

◇ Child Care and Protection Regulations, regulation 21

19. Transitional provisions

There are transitional provisions for both **private** and **State facilities**. This applies to places of safety, children's homes, schools of industries and reform schools, places of care and shelters which were already in existence when the Child Care and Protection Act came into force.

If any such facility was established under the previous Children's Act 33 of 1960 or any other law and was **still operating when the Child Care and Protection Act came into force**, it will be treated as a facility which was established, registered or approved under the new law. All existing facilities must be **re-registered within one year** from the date that the Act came into force (30 January 2019) if they want to continue operating.

Shelters were not covered by the Children's Act 33 of 1960, but they may have been registered under other laws, such as local authority regulations. Any shelter which was previously registered under any law must be re-registered under the Act.

There are no transitional provisions for **ECD centres** because there was no provision for registration of these facilities under any previous law.

Although the transitional provisions cover **schools of industries** and **reform schools**, no such facilities were actually operational in Namibia when the Act came into force.

◇ Child Care and Protection Act, sections 64(9), 65(3), 67(4), 68(6), 69(6), 70

Grace period for complying with minimum standards

As noted above, the Minister may provide a **grace period** for compliance with the minimum standards discussed in section 10 above in respect of facilities in **rural areas** or in **informal settlements**. This grace period will be set by **notice in the *Government Gazette***. This will enable the Ministry to assist existing facilities to come into compliance with the new minimum standards.

◆ Child Care and Protection Act, section 71(6)



Transitional Provisions

Section 68(6) of the Child Care and Protection Act provides that certain children's homes established before the date of commencement of the Act will be regarded as children's homes established and maintained in accordance with the Act.

Section 68(6)(a) refers to children's homes established under section 41(3)(a) of the Children's Act 33 of 1960. However, that section was repealed by the South African Educational Services Act 41 of 1967 before the Children's Act was made applicable to "South West Africa". This cross-reference was probably intended to refer to section 39(3)(a) of the Children's Act 33 of 1960, which covered the establishment of State children's homes.

Section 68(6)(b) also refers to children's homes established under section 42 of the Children's Act 33 of 1960. This section covers the registration of private children's homes.

20. Delegation to local and regional councils

The Minister has the power to make a written agreement with a local authority council or a regional council to delegate some or all of the **functions relating to registration, inspection and enforcement** to the council. Before taking this step, the Minister must be satisfied that the council in question has the capacity to perform the functions concerned. The council may in turn then delegate these functions in writing to its staff members. Any of these delegations can be withdrawn at any time.

Any of these delegations are subject to any **limitations, conditions and directions** imposed by the Minister. The Minister also retains the power to confirm, vary or revoke any decision taken by means of a delegated function, but must of course respect the rights of persons affected by the decision.

A person who is unhappy with a decision of a local authority or regional council with delegated authority must have a right to appeal to an appeal body designated by that council.

◆ Child Care and Protection Act, section 90

The **placement of individual children in facilities** under the Child Care and Protection Act and the Criminal Procedure Act is discussed in the Chapter 14 of this *Guide* on children in need of protective services. That chapter covers **leaves of absence, transfers and discharges**.

21. Residential child care facility grants

There is more detailed information about grants in Chapter 27 of this *Guide* on grants.

21.1 Eligibility for grants

Residential child care facilities (approved places of safety, registered children's homes and child detention centres) are eligible for grants for children placed in the facility by a court order. Such grants are generally payable as long as the child remains in the facility in terms of a court order.

An application for a residential child care facility grant must be accompanied by certified copies of the relevant court orders, and the approval or registration of the facility.

In addition, a residential child care facility can apply for a child disability grant for a child who is eligible for such a grant.

- ✦ Child Care and Protection Act, section 241 (child disability grant), 244 (residential child care facility grant)
- ✦ Child Care and Protection Regulations, regulations 108 (residential child care facility grant), 109 (child disability grant), 114(1)(d) (duration of grants)

21.2 Misuse of grants

It is a crime for someone to receive a residential child care facility grant under false pretenses. It is also a crime NOT to use a residential child care facility grant or a child disability grant for the benefit of the child. The penalty for either offence is a fine of up to N\$4 000 or imprisonment for up to 12 months, or both. The person who wrongfully received the grant money or used it for an improper purpose might also have to repay the money to the government.

- ✦ Child Care and Protection Act, sections 249-250

21.3 Automatic fee exemptions

A child who has been placed in a residential child care facility is entitled to –

- ⑨ free basic education in State schools, including automatic exemption from contributions to any School Development Fund
- ⑨ subsidised school uniforms, shoes and stationary
- ⑨ free basic health care
- ⑨ exemption from payment of any fees when applying for official documents from any organ of state.

- ✦ Child Care and Protection Act, section 246