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CHAPTER 7

PROTECTION OF CHILDREN

Part 2

National Child Protection Register

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Keeping of National Child Protection Register

111. (1) The Director-General must keep and maintain a register to be called the National Child Protection Register.

(2) The National Child Protection Register consists of a Part A and a Part B.

Confidentiality of National Child Protection Register

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112. (1) All Parts of the Register must be kept confidential and information in the Register may be accessed and disclosed only as provided for in this Act.

(2) The Director-General must take adequate steps—

(a) to protect the information in the Register; and

(b) if the Register is kept in electronic format, to secure the Register from unauthorised intrusion.

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Part A of Register

Purpose of Part A of Register

113. The purpose of Part A of the Register is—

(a) to have a record of abuse or deliberate neglect inflicted on specific children; 20

(b) to have a record of the circumstances surrounding the abuse or deliberate neglect inflicted on the children referred to in paragraph (a);

(c) to use the information in the Register in order to protect these children from further abuse or neglect;

(d) to monitor cases and services to such children; 25

(e) to share information between professionals that are part of the child protection team;

(f) to determine patterns and trends of abuse or deliberate neglect of children; and

(g) to use the information in the Register for planning and budgetary purposes to prevent the abuse and deliberate neglect of children and protect children on a national, provincial and municipal level. 30

Contents of Part A of Register

114. (1) Part A of the Register must be a record of—

(a) all reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act; 35

(b) all convictions of all persons on charges involving the abuse or deliberate neglect of a child; and

(c) all findings by a children's court that a child is in need of care and protection because of abuse or deliberate neglect of the child.

(2) Part A of the Register must reflect— 40

(a) in the case of reported incidents referred to in subsection (1)(a)—

(i) the full names, surname, physical address and identification number of the child;

(ii) the age and gender of the child;

(iii) whether the child has a disability and if so, the nature of the disability; 45

(iv) whether the child has a chronic illness and if so, the nature of the chronic illness;

(v) the nature and a brief account of the incident, including the place and date of the incident;

- (vi) the full names, surname, physical address and identification number of the parents or care-giver of the child; and
- (vii) the name and physical address of the institution, child and youth care centre, partial care facility or shelter or drop-in centre, if the incident occurred at such a place; 5
- (b) in the case of a conviction referred to in subsection (1) (b)—
 - (i) the full names, surname, physical address and identification number of the child;
 - (ii) the age and gender of the child;
 - (iii) whether the child has a disability and if so, the nature of the disability; 10
 - (iv) whether the child has a chronic illness and if so, the nature of the chronic illness;
 - (v) the full names, surname, physical address, identification number and occupation of the convicted person;
 - (vi) the nature and a brief account of the charge and conviction, including the place and date of the incident of which the person was charged; and 15
 - (vii) details of the relationship between the convicted person and the child;
- (c) in the case of a finding by a children's court referred to in subsection (1)(c)—
 - (i) the full names, surname, physical address and identification number of the child; 20
 - (ii) the age and gender of the child;
 - (iii) whether the child has a disability and if so, the nature of the disability;
 - (iv) whether the child has a chronic illness and if so, the nature of the chronic illness;
 - (v) a brief summary of the court's reasons for finding the child to be in need of care and protection; 25
 - (vi) information on the outcome of the court's finding on the child;
 - (vii) the full names, surname, physical address and identification number of the parents or care-giver of the child; and
 - (viii) a brief summary of the services rendered to the child found to be in need of care; and 30
- (d) any other prescribed information.

Access to Part A of Register

115. Only the Director-General and officials of the Department designated by the Director-General have access to Part A of the Register, but the Director-General may, on such conditions as the Director-General may determine, allow access to— 35

- (a) a provincial head of social development, or an official of a provincial department of social development designated by the head of that department, for the purpose of performing his or her functions in terms of this Act; 40
- (b) designated child protection organisations;
- (c) a member of the unit of the South African Police Service tasked with child protection; or
- (d) any other person for the purpose of conducting research on child abuse or deliberate neglect or related issues on condition that the full names, surname, physical address and identification number of the child must be excluded. 45

Disclosure of information in Part A of Register

116. (1) No person may disclose any information in Part A of the Register except—

- (a) for the purpose of protecting the interests, safety or well-being of a specific child;
- (b) within the scope of that person's powers and duties in terms of this Act or any other legislation; 50
- (c) for the purpose of facilitating an investigation by the South African Police Service following a criminal charge involving abuse or deliberate neglect of a specific child;
- (d) to a person referred to in section 117 on written request by such person; or 55
- (e) when ordered by a court to do so.

(2) The general rule with regard to the disclosure of information in Part A of the Register is that it must be in the best interests of the child, unless the information is disclosed following an inquiry in terms of section 117.

Inquiries on information in Part A of Register

117. (1) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part A of Register, and if so, the reasons why his or her name was entered in the Register.

(2) Inquiries in terms of subsection (1) must be directed in the prescribed format to the Director-General on a confidential basis. 5

(3) The Director-General must respond to such inquiries in writing within 21 working days and indicate whether the relevant person's name is in Part A of the Register.

Part B of Register

Purpose of Part B of Register

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118. The purpose of Part B of the Register is to have a record of persons who are unsuitable to work with children and to use the information in the Register in order to protect children in general against abuse from these persons.

Contents of Part B of Register

119. Part B of the Register must be a record of persons found in terms of section 120 to be unsuitable to work with children, and must reflect— 15

(a) the full names, surname, last known physical address and identification number of the person;

(b) the fingerprints of the person, if available;

(c) a photograph of the person, if available; 20

(d) a brief summary of the reasons why the person was found to be unsuitable to work with children;

(e) in the case of a person convicted of an offence against a child, particulars of the offence of which he or she has been convicted, the sentence imposed, the date of conviction and the case number; and 25

(f) such other prescribed information.

Finding persons unsuitable to work with children

120. (1) A finding that a person is unsuitable to work with children may be made by—

(a) a children's court;

(b) any other court in any criminal or civil proceedings in which that person is involved; or 30

(c) any forum established or recognised by law in any disciplinary proceedings concerning the conduct of that person relating to a child.

(2) A finding in terms of subsection (1) may be made by a court or a forum contemplated in subsection (1) of its own volition or on application by— 35

(a) an organ of state involved in the implementation of this Act;

(b) a prosecutor, if the finding is sought in criminal proceedings; or

(c) a person having a sufficient interest in the protection of children.

(3) Evidence as to whether a person is unsuitable to work with children may be heard by the court or forum either in the course of or at the end of its proceedings. 40

(4) In criminal proceedings, a person must be found unsuitable to work with children—

(a) on conviction of murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child; or

(b) if a court makes a finding and gives a direction in terms of section 77(6) or 45

78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was by

reason of mental illness or mental defect not criminally responsible for the act which constituted murder, attempted murder, rape, indecent assault or assault

with the intent to do grievous bodily harm with regard to a child. 50

(5) Any person who has been convicted of murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child during the five years preceding the commencement of this Chapter, is deemed to have been found unsuitable to work with children. 55

(6) A finding in terms of subsection (1)(b) that a person is unsuitable to work with children is not dependent upon a finding of guilty or innocent in the criminal trial of that person.

Disputes concerning findings

121. The person in respect of whom a finding in terms of section 120 has been made may— 5
- (a) appeal against the finding to a higher court, if the finding was made by a court, or
 - (b) have the finding reviewed by a court, if the finding was made by a forum contemplated in section 120(1)(c). 10

Findings to be reported to Director-General

122. (1) The registrar of the relevant court, or the relevant administrative forum, or, if the finding was made on application in terms of section 120(2), the person who brought the application, must notify the Director-General in writing—
- (a) of any finding in terms of section 120 that a person is unsuitable to work with children; and 15
 - (b) of any appeal or review lodged by the affected person.
- (2) The Director-General must enter the name of a person found unsuitable to work with children as contemplated in section 120 in Part B of the Register regardless of whether appeal proceedings have been instituted or not. 20
- (3) If, after appeal or review proceedings have been concluded, a finding in terms of section 120 that a person is unsuitable to work with children is reversed, the Director-General must forthwith remove the name of the person from the Register.

Consequences of entry of name in Part B of Register

123. (1) No person whose name appears in Part B of the Register may— 25
- (a) manage or operate, or participate or assist in managing or operating, an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre, a cluster foster care scheme, a school, club or association providing services to children;
 - (b) work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre, a school, club or association providing services to children, or in implementing a cluster foster care scheme, either as an employee, volunteer or in any other capacity; 30
 - (c) be permitted to become the foster parent or adoptive parent of a child; 35
 - (d) work in any unit of the South African Police Service tasked with child protection;
 - (e) be employed in terms of the Public Service Act in a position where that person works with or has access to children;
 - (f) be employed in terms of the Municipal Systems Act in a position where that person works with or has access to children; or 40
 - (g) work in any other form of employment or activity as may be prescribed.
- (2) No person managing or operating or who participates or assists in managing or operating an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school may allow a person whose name appears in Part B of the Register to work with or have access to children at the centre, facility, shelter or school, either as an employee, volunteer or in any other capacity. 45
- (3) No designated child protection organisation may allow a person whose name appears in Part B of the Register to work with or have access to children on its behalf, either as an employee, volunteer or in any other capacity. 50
- (4) The South African Police Service may not allow a person whose name appears in Part B of the Register to work in a unit of the Service tasked with child protection.
- (5) The head of a state department may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children. 55

(6) The municipal council of a municipality may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children.

Disclosure of entry of name in Part B of Register

124. (1) If the name of a person is entered in Part B of the Register and that person— 5
- (a) works with or has access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school either as an employee, volunteer or in any other capacity, that person must disclose that fact to the person who manages or operates the institution, centre, facility, shelter or school; 10
 - (b) works with or has access to children on behalf of a designated child protection organisation either as an employee, volunteer or in any other capacity, that person must disclose that fact to the organisation;
 - (c) works in a unit of the South African Police Service tasked with child protection, that person must disclose that fact to the South African Police Service; 15
 - (d) is employed in terms of the Public Service Act in a position where he or she works with or has access to children, that person must disclose that fact to the head of the state department in which he or she is employed; or
 - (e) is employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, that person must disclose that fact to the municipal council of the municipality concerned. 20
- (2) A person contemplated in subsection (1) who fails to disclose the fact that his or her name is entered in Part B of the Register is guilty of misconduct and his or her services may be terminated as a result thereof. 25

Access to Part B of Register

125. (1) Only the following persons have access to Part B of the Register:
- (a) the Director-General;
 - (b) officials in the Department designated by the Director-General;
 - (c) a provincial head of social development; 30
 - (d) officials in the provincial department of social development designated by the provincial head of social development; and
 - (e) the manager or person in control of a designated child protection organisation dealing with foster care and adoption.
- (2) The Director-General may, on such conditions as the Director-General may determine, allow officials of a provincial education department designated by the head of that department access to Part B of the Register for the purpose of implementing section 123 in relation to schools under the jurisdiction of that department. 35

Establishment of information in Part B of Register

126. (1) Before a person is allowed— 40
- (a) to work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or school, the person managing or operating the institution, centre, facility, shelter or school must establish whether or not that person's name appears in Part B of the Register; 45
 - (b) to work with or have access to children on behalf of a designated child protection organisation, the organisation must establish whether or not that person's name appears in Part B of the Register;
 - (c) to work in a unit of the South African Police Service tasked with child protection, the Service must establish whether or not that person's name appears in Part B of the Register; 50
 - (d) to be employed in terms of the Public Service Act in a position where he or she works with or has access to children, the head of the state department in which he or she is to be employed must establish whether or not that person's name appears in Part B of the Register; or 55
 - (e) to be employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, the municipal council of that

(c) the Municipal Council of every municipality shall determine whether the name of any person employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children appears in Part B of the Register.

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(3) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part B of the Register, and if so, the reasons why his or her name was entered in the Register.

(4) Inquiries in terms of subsection (1), (2) or (3) must be directed in writing to the Director-General on a confidential basis.

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(5) In the event of an inquiry made to the Director-General in terms of—

(a) subsection (1), the Director-General must respond in writing within 21 working days by indicating whether the person's name appears in Part B of the Register or not,

(c) subsection (3), the Director-General must respond in writing within 21 **Disclosure of names in Part B of Register prohibited**

other law;

128. (1) A person whose name appears in Part B of the Register may in terms of subsection (2) apply for the removal of his or her name and any information relating to that person from the Register.

(2) Application for the removal of a name and particulars from the Register may be

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(a) to any court, including a children's court;

(b) to the Director-General, if the entry was made in error; or

(c) to the High Court if the Director-General refuses an application in terms of paragraph (b).

(3) An application in terms of subsection (1) to remove a person's name and particulars from Part B of the Register on the ground that the affected person has been rehabilitated, may only be made after at least five years have lapsed since the entry was made and after considering the prescribed criteria. 5

(4) The name and particulars of a person convicted more than once of an offence with regard to a child may not be removed from Part B of the Register.

Part 3

Protective measures relating to health of children 10

Consent to medical treatment and surgical operation

129. (1) Subject to section 5(2) of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), a child may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given in terms of either subsection (2), (3), (4), (5), (6) or (7). 15

(2) A child may consent to his or her own medical treatment or to the medical treatment of his or her child if—

- (a) the child is over the age of 12 years; and
- (b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment. 20

(3) A child may consent to the performance of a surgical operation on him or her or his or her child if—

- (a) the child is over the age of 12 years; and
- (b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and 25
- (c) the child is duly assisted by his or her parent or guardian.

(4) The parent, guardian or care-giver of a child may, subject to section 31, consent to the medical treatment of the child if the child is—

- (a) under the age of 12 years; or
- (b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the treatment. 30

(5) The parent or guardian of a child may, subject to section 31, consent to a surgical operation on the child if the child is—

- (a) under the age of 12 years; or
- (b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the operation. 35

(6) The superintendent of a hospital or the person in charge of the hospital in the absence of the superintendent may consent to the medical treatment of or a surgical operation on a child if—

- (a) the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and 40
- (b) the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required.

(7) The Minister may consent to the medical treatment of or surgical operation on a child if the parent or guardian of the child— 45

- (a) unreasonably refuses to give consent or to assist the child in giving consent;
- (b) is incapable of giving consent or of assisting the child in giving consent;
- (c) cannot readily be traced; or
- (d) is deceased.

(8) The Minister may consent to the medical treatment of or surgical operation on a child if the child unreasonably refuses to give consent. 50

(9) A High Court or children's court may consent to the medical treatment of or a surgical operation on a child in all instances where another person that may give consent in terms of this section refuses or is unable to give such consent

(10) No parent, guardian or care-giver of a child may refuse to assist a child in terms of subsection (3) or withhold consent in terms of subsections (4) and (5) by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned. 55

- to understand the benefits, risks and social implications of such a test; 25
- (e) the superintendent or person in charge of a hospital, if—
- (i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and
 - (ii) the child has no parent or care-giver and there is no designated child withheld; or

HIV-testing for foster care or adoption purposes

131. If HIV-testing of a child is done for foster care or adoption purposes, the state must pay the cost of such tests where circumstances permit.

Confidentiality of information on HIV/AIDS status of children

133. (1) No person may disclose the fact that a child is HIV-positive without consent given in terms of subsection (2), except—

- (a) within the scope of that person's powers and duties in terms of this Act or any other law; 55
- (b) when necessary for the purpose of carrying out the provisions of this Act;

- (c) for the purpose of legal proceedings; or
- (d) in terms of an order of a court.
- (2) Consent to disclose the fact that a child is HIV-positive may be given by —
 - (a) the child, if the child is—
 - (i) 12 years of age or older; or 5
 - (ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
 - (b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; 10
 - (c) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
 - (d) the superintendent or person in charge of a hospital, if—
 - (i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; and 15
 - (ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or
 - (e) a children's court, if —
 - (i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best interests of the child; or 20
 - (ii) the child or the parent or care-giver of the child is incapable of giving consent.

Access to contraceptives 25

134. (1) No person may refuse—
- (a) to sell condoms to a child over the age of 12 years; or
 - (b) to provide a child over the age of 12 years with condoms on request where such condoms are provided or distributed free of charge.
- (2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or care-giver of the child if— 30
- (a) the child is at least 12 years of age;
 - (b) proper medical advice is given to the child; and
 - (c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child. 35
- (3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 105.

Regulations 40

142. The Minister may make regulations in terms of section 306—

- (g) prescribing the manner and format in which the National Child Protection Register must be established and maintained;
- (h) prescribing criteria for finding persons unsuitable to work with children; 45
- (i) prescribing the procedure to be followed and the time periods to be adhered to when reporting a finding that a person is unsuitable to work with children to the Director-General;
- (j) prescribing criteria for the assessment of applications for the removal of names of persons from Part B of the National Child Protection Register; and 50
- (k) prescribing any other matter necessary to facilitate the implementation of this Chapter.
