A guide to the Children's Act for health professionals

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[4] The attached forms have been extracted from the Regulations to the Children's Act as promulgated in *Government Gazette* 33076 on 1 April 2010.

INTRODUCTION

On 1 April 2010 the Children's Act 38 of 2005 (as amended by the Children's Amendment Act 41 of 2007) came into full force. Regulations to the Act also came into effect on the same day. This short guide provides an overview of the provisions of the Act that are most relevant for health professionals.

The main objective of the Children's Act is to give effect to children's constitutional rights[5] to:

- family care, parental care or appropriate alternative care when removed from the family environment;
- social services;
- protection from maltreatment, neglect, abuse or degradation; and
- have their best interests considered to be of paramount importance in every matter concerning the child.

The Act gives effect to these and other constitutional rights mainly through the provision of a range of social services for children and families. These include:

- crèches and early childhood development programmes;
- prevention and early intervention programmes (including home-based care for families affected by chronic illnesses such as HIV/AIDS, parenting programmes, and child and family counselling);
- drop-in centres;
- protection services (identifying, reporting and supporting abused and vulnerable children);
- foster care and cluster foster care;
- adoption; and
- child and youth care centres (children's homes, schools of industry, places of safety and shelters for street children).

The Act says that the provincial Ministers of Social Development (Members of the Executive – MECs) must ensure that these services are provided for vulnerable children in need.

The Act also has sections aimed at giving effect to children's rights to participate in health treatment decisions. These sections set out new principles relating to the role of children, parents and health professionals in making decisions about health care services for children. Health professionals are also obliged by the law to report suspected cases of abuse and deliberate neglect.

This guide focuses on the sections of the Act that need to be applied by health professionals.

STATUS OF THE ACT

The Children's Bill was first tabled in Parliament in 2003. It covered a range of different services, some of which are the responsibility of national government (e.g. children's rights, adoptions, parenting rights, and courts), and some of which are the shared responsibility of both national and provincial governments (e.g. child and youth care centres, early childhood development programmes and protection services). Therefore the Children's Bill was split into two Bills.

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[5] The Constitution of the Republic of South Africa Act 108 of 1996.

The first one dealt with matters which national government is responsible for. Parliament passed this first Bill in December 2005. The President signed it into law in June 2006 and its official name and number is the **Children's Act 38 of 2005**. The President then published a proclamation in the *Government Gazette* for 44 sections of the Children's Act to come into force on 1 July 2007. This includes the majority of the sections regulating who can consent to health care services for children.

The second Bill (dealing with the service areas for which the provinces are responsible) was passed by Parliament in November 2007 and signed into law by the President in March 2008. It is called the **Children's Amendment Act 41 of 2007**.

The two Acts have now been consolidated into one Act called the **Children's Act 38 of 2005 (as amended by Act 41 of 2007)**.

On 1 April 2010, the whole Act (as amended) and a comprehensive set of regulations and forms came into full operation.

See www.ci.org.za for a copy of the Act and its Regulations.

LAWS REPEALED

The Children's Act is a comprehensive law on matters affecting children. It has repealed various laws affecting children including the:

- Child Care Act of 1983;
- Children's Act of 1960;
- Age of Majority Act of 1972;
- Children's Status Act of 1987;
- Guardianship Act of 1993;
- Natural Fathers of Children born out of Wedlock Act of 1997 and
- section 4 of the Prevention of Family Violence Act of 1993.

WHY DID SOUTH AFRICA NEED TO REFORM THE LAW REGULATING CONSENT TO HEALTH TREATMENT FOR CHILDREN?

The Child Care Act of 1983 provided that children above the age of 14 could consent to medical treatment and children above the age of 18 could consent to surgical operations. For medical treatment for children under 14 years, or surgery for children under 18 years, consent needed to be obtained from their biological parents or legal guardians. When it was not possible to obtain consent from parents or legal guardians, a report had to be sent by a social worker to the provincial Department of Social Development, who was authorised to give consent, or the court had to be approached. In cases of emergency (if treatment or surgery was necessary to preserve life or to avoid permanent disability) where the parent or guardian was not available, the medical superintendent of a hospital could give consent.

As a result of the HIV pandemic and urban migration, there are many children who are not cared for by their parents or legal guardians but by relatives, neighbours or other caregivers. The Child Care Act did not provide sufficient flexibility for these situations and as a result children's access to health care services was frustrated. The old law also failed to recognise explicitly and pro-actively promote the child's right to participate in decisions that affected his or

her health. Furthermore, HIV testing and confidentiality were not dealt with adequately in the Child Care Act. Research also showed that children were becoming sexually active at a younger age and that the age threshold of 14 years therefore needed to be lowered to ensure that children could access reproductive health care services. Academics also noted that research findings (national and comparative) did not support the high age of 18 as required by the Child Care Act for children to consent to surgery.

New law was therefore necessary to fully recognise the rights of the child to participate in decisions affecting them, clarify their right to privacy in respect of disclosure of HIV status, lower the age of consent to promote access to health care services, and allow caregivers (e.g. grannies and aunts) to consent to health treatment for young children in their care.

SECTIONS IN THE ACT

General principles and children's rights

Best interests of the child – sections 7 and 9[6]

The Act reinforces the constitutional principle that the best interests of a child are of paramount importance in every matter concerning the child. Section 9 says that in all matters concerning the care, protection and well-being of a child, the best interest standard must be applied. Section 7 contains a long list of the factors to be taken into consideration when deciding on the "best interests of the child". For health professionals having to assist children and caregivers with health treatment decisions, and to make judgement calls, the following factors are most pertinent:

"(a) the nature of the personal relationship between—
(i) the child and the parents, or any specific parent; and
(ii) the child and any other care-giver or person relevant in those circumstances; …
(g) the child's—
(i) age, maturity and stage of development;
(ii) gender;
(iii) background; and
(iv) any other relevant characteristics of the child;
(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
(i) any disability that a child may have;
(j) any chronic illness from which a child may suffer; …
(l) the need to protect the child from any physical or psychological harm that may be caused by—
(i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
(ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
(m) any family violence involving the child or a family member of the child; …"

[6] In force since 1 July 2007.

Child participation – section 10[7]

Section 10 states that:

> *"Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child* ***has the right to participate*** *in an appropriate way and views expressed by the child must be given due consideration."* [Emphasis added]

Therefore, even if a child needs his or her parent to consent on his/her behalf, the child still has the right to be involved in decision-making related to his/her health, especially if it is likely to significantly change, or to have an adverse effect on, the child's health. This means that the child should be given the necessary information in a child-friendly way to enable the child to express his or her opinion. The child's opinion must then be given "due consideration" in the decision-making process.

Access to information on health status and treatment – section 13[8]

Patients, including children, have a right to have sufficient information about their health to enable them to make an informed decision about treatment. Section 13(1) of the Act provides that every child has the right to:

> *"(a) have access to information on health promotion and prevention and treatment of ill-health and disease, sexuality and reproduction;*
> *(b) have access to information regarding his or her health status;*
> *(c) have access to information regarding the causes and treatment of his or her health status; ..."*

In addition, the information must be "*relevant and must be in a format accessible to children, giving due consideration to the needs of disabled children*" (s13(2)).

Right to confidentiality – section 13[9]

Section 13 provides that information on a child's health status or the health status of the child's parent, caregiver or family member must be kept confidential, except when maintaining such confidentiality is not in the best interests of the child.

If the health professional decides that it is in the child's best interests to breach confidentiality, s/he should talk to the child before breaching confidentiality and explain why doing so is in the child's best interests.

Children with disability or chronic illness – section 11[10]

Health professionals must give due consideration to providing special care (as and when appropriate) when dealing with children with a disability or chronic illness. The aim of section 11 is to ensure that these vulnerable children are treated with dignity, that their rights to participation are fully respected and to provide necessary support services to ensure that they

[7] In force since 1 July 2007.
[8] In force since 1 July 2007.
[9] In force since 1 July 2007.
[10] In force since 1 July 2007.

are not further discriminated against or neglected due to their chronic illness or disability. For example: A health facility should consider employing a sign reader if it serves many deaf children, providing information in Braille if treating blind children, and employing counsellors to provide psychological care for children (and their families) with chronic illnesses.

Social, cultural and religious practices – section 12[11]

Section 12 of the Act crystallises a child's right not to be subjected to social, cultural and religious practices that are detrimental to his or her well-being. Certain practices are banned (female genital mutilation and forced marriages) while others are limited to children over the age of 16 and regulated to prevent abuse (virginity testing and male circumcision for cultural reasons).

Genital mutilation or circumcision of girls

Section 12(3) prohibits genital mutilation or circumcision of girl children. Anyone who contravenes the prohibition is guilty of an offence and can be fined or imprisoned for 10 years or be given both a fine and a term of imprisonment (s305(1)(a) and (6)).

Virginity testing

Section 12(4) prohibits virginity testing of children under the age of 16 years. Anyone who contravenes the prohibition is guilty of an offence and can be fined or imprisoned for 10 years or be given both a fine and a term of imprisonment. (s305(1)(a) and (6)).

Virginity testing of children older than 16 may be performed but only under strict conditions that are specified in the Act and the Regulations:

- The child must first consent to the test – i.e. it must be the child's choice (and the child must sign Form 1[12]).
- The test may only be performed after the child has been counselled properly.
- The child's age must be verified.
- Each child should be tested individually and in private
- The test must be done in a hygienic manner (in particular, a separate pair of sterile surgical gloves must be used for each child).
- Only a female can test a girl child and only a male can test a boy child.
- The results of the test may not be disclosed without the child's consent.
- After the test, the child's body may not be marked in anyway (i.e. the outcome of the test must be kept confidential).

It is an offence not to comply with these requirements and a person is liable on conviction to a fine or to imprisonment for up to two years in some cases, or even up to 10 years in other cases, or to both a fine and imprisonment.

Circumcision of boys

Circumcision of male children under 16 years is prohibited, unless it is done for medical or religious reasons. Anyone who contravenes the prohibition is guilty of an offence and can be

[11] In force since 1 April 2010.
[12] The forms are attached at the end of this guide.

fined or imprisoned for 10 years or be given both a fine and a term of imprisonment. (s305(1)(a) and (6)).

The Act and Regulations set out the general requirements for conducting circumcisions on boy children:

- The circumcision can only be done by a medical practitioner or a person who has knowledge of the social or cultural practice or religious practice and who has been properly trained to perform circumcisions.
- The person performing the circumcision must:
  - Use sterile surgical gloves and dispose the gloves after each circumcision;
  - Dispose or sterilise instruments used after each circumcision;
  - Dispose instruments or human tissue in accordance with medical standards;
  - Ensure that there is no direct contact with blood or bodily fluid or foreign substance of the child, the practitioner or any other person;
- A boy child has the right to refuse circumcision (taking into consideration his age, maturity and stage of development).

For boy children 16 years and older, the following requirements must also be met:

- The boy must first consent to the circumcision – i.e. it must be the child's choice (the child must sign Form 2).
- The boy's parent or legal guardian must assist the child (they must also sign Form 2).
- The boy must receive proper counselling.
- The boy's age must be verified.

Age of majority – section 17[13]

Section 17 of the Act states that the age of majority is now 18 years, and not 21 years as was the case previously. The age of majority is the age at which a person is considered responsible and liable for actions or omissions under the law. For example: At 18 a person can give their own consent to be part of a clinical trial that constitutes non-therapeutic research, or sign a legally binding contract concerning payment for their health treatment. Persons under the age of 18 generally need their parents' consent to bind themselves legally.

[13] In force since 1 July 2007.

Consent to health services

The requirement of consent is central to the provisions about to be discussed. What is the meaning of 'consent'? Simply put, consent relates to the manifestation of a person's will.[14] Only valid consent is legally acceptable. For consent to be valid it must comply with four requirements:

- The consent must be given by a person capable in law to give consent. This means the person must have legal capacity to consent (for example the person has reached the required age of consent as specified in the law).
- Consent must be informed. This requires the patient to understand the information supplied and to comprehend the consequences of acting on the information.
- Consent must be clear, unequivocal and comprehensive. This means the patient and health provider must be absolutely clear about what is being consented to in the process before and after the treatment.
- Consent must be given freely. Consent must not be induced in any way.

Consent to medical treatment and surgical operations – section 129[15]

Consent by a child

Consent to medical treatment

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."* [Emphasis added]

Consent to surgical operations

A child may consent to the performance of a surgical operation on him or her, or on 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***
> *(c) the child is duly assisted by his or her parent or guardian."* [Emphasis added]

Children as young as 12 years may now consent to medical treatment and surgical operations for themselves or their own child/ren. However, the determining factor is not only the age of the child, but also the maturity and capacity of the child to understand the benefits, risks, social and other implications of the treatment or surgical operation.

Deciding on whether a child is mature enough to give consent requires that the child has full knowledge of the procedure, and understands the nature of the risk of the treatment or surgery (including the social or other consequences of the treatment or surgery). Different types of treatment require different levels of understanding and responsibility. For example, a 12-year-old child may be mature enough to understand the risks and benefits of receiving a plaster cast for a broken arm, but the same child may not be mature enough to understand the risks and benefits of undertaking long-term treatment for a chronic illness such as tuberculosis. In the case of medical treatment where the health professional concludes that a 12-year or older child

[14] *Christian Lawyers Association v Minister of Health and others (Reproductive Health Alliance as Amicus Curiae)* 2005 (1) SA 509 (T) at 516.
[15] In force since 1 April 2010.

is not mature enough to give consent, the health professional must involve the parent or guardian.

In the case of surgery for children over 12 who have sufficient maturity, the parents need to assist the child to reach a decision. If the parent refuses to assist the child and to sign the assent form, then the surgery cannot be performed unless ministerial or court-ordered consent is obtained to overrule the parent's refusal to assist.

According to the Regulations[16], the child consenting to his/her own surgery and the parent/ guardian who assist the child must do so in writing on form 34. This form must be completed by the person performing the operation or a representative of the institution at which such operation will be performed and signed by the child and the parent. When completing the form, the health professional performing the operation or the representative of the institution is required to indicate that s/he has explained to the child the nature, consequences, risks and benefits of the surgery, and that s/he is satisfied that the child is of sufficient maturity and has the mental capacity to understand the risks, benefits, social and other implications of the operation.

Currently, some health facilities allow receptionists and administrators to complete the consent forms. However, explaining the nature of the operation and assessing the maturity of a child and whether the child has the mental capacity to understand the risks, benefits, social and other implications of the operation is a task that should only be done by people with the necessary skills and training.

When it comes to surgery for a child whose parent is under 18 years of age (i.e. a child parent) the Act and Regulations require the child parent to be assisted by his or her parent or guardian (i.e. the grandparent of the child to be operated on). The child parent must consent and the grandparent must assent to the operation in writing on form 35.

As in previous legislation, there is no definition of 'medical treatment' or 'surgical operation' in the Act. Treatment would refer to non-invasive and innocuous procedures, and include vaccinations and psychological treatment. A 'surgical operation' generally refers to invasive surgical interventions.

It is important to know that consent by a child to a termination of her pregnancy (TOP) is not regulated by the Children's Act but by the Choice on Termination of Pregnancy Act 92 of 1996 (CTOP). Therefore, even though a TOP is 'medical treatment' or a 'surgical operation' (depending on the stage of the pregnancy), section 129 of the Children's Act does not apply.[17] Section 5 (read with the definition of a 'woman' in section 1) of the CTOP Act provides that a woman of any age can consent to a termination of her pregnancy and only her consent is required. This effectively means that there is no age threshold specified in the law in relation to children's legal capacity to consent to TOPs.

However, because "*[c]apacity to consent depends on the ability to form an intelligent will on the basis of an appreciation of the nature and consequences of the act consented to*" [18] the child needs to be able to give valid consent before a TOP can be performed. Health professionals will

[16] Regulation 48
[17] Section 129(1) of the Children's Act 38 of 2005 expressly excludes TOPs from the ambit of the Children's Act.
[18] Judge Mojapelo in *Christian Lawyers Association v Minister of Health and others (Reproductive Health Alliance as Amicus Curiae)* 2005 (1) SA 509 (T). pp 515-516.

need to individually assess each child's ability to give valid consent and make a judgement call on each case. The best interests of the child principle should guide this judgement call.

Note also that the reporting obligations in the Children's Act do still apply to TOPs – see the section below on reporting of abuse.

Consent by parents, and guardians

Consent to medical treatment
For children under 12, or children over 12 but without sufficient maturity to understand the risks and benefits of the treatment, the parents, guardian or caregiver need to consent on the child's behalf.

Consent to surgical operations
For children under 12, or children over 12 but without sufficient maturity to understand the risks and benefits of the surgery, the parents or guardian need to consent on the child's behalf.

Who is a parent?
When both parents have full parental rights, either parent may consent individually to medical treatment or surgery. However, where a decision could *"significantly change, or have an adverse effect on the child's ... health"* the person giving consent must take into consideration *"any views and wishes expressed by any co-holder of parental responsibilities and rights"*, e.g. the other parent (s31).

Biological mothers

The biological mother of a child, whether married or unmarried, has full parental responsibilities and rights.

However, if the biological mother is under 18 years, the guardian of the biological mother is also the guardian of the child (s19). Notwithstanding this section, a child may consent independently to the medical treatment of her child. However, in cases of an operation on such child, the under-18-year-old mother must be assisted by her own parent or guardian.

Biological fathers

The biological father of a child has full parental responsibilities and rights in respect of the child if he is married to the mother of the child or was married to the child's mother at the time of the child's conception, birth or anytime between conception and birth. However in the case of a divorced father (and mother) the court order will indicate which rules apply with respect to guardianship, care (new term for 'custody') and contact (new term for 'access') when it comes to the child.

For unmarried fathers the situation is slightly different. Under the old law, an unmarried father had no parental rights and responsibilities and he had to approach the High Court to be assigned parental rights and responsibilities. The Children's Act has now changed the law so that an unmarried father who is committed to caring for his children can have equal parental rights and responsibilities without having to approach the High Court.

Section 21 of the Act provides that the father acquires full parental responsibilities and rights under two distinct sets of circumstances:

He has full parental rights and responsibilities if he is living with the child's mother at the time of the child's birth in a permanent life-partnership.

Regardless of whether he has or has not lived with the mother, he can also acquire rights if the following three conditions are present:

- he consents to be identified as the father or applies to the court to be recognised as the child's father or pays damages in terms of customary law;
- he contributes or has attempted to contribute in good faith to the child's upbringing for a reasonable period; and
- he contributes or has attempted to contribute in good faith to the expenses in connection with the maintenance of the child for a reasonable period.

If there is a dispute as to whether any of these conditions exist then the matter must be referred for mediation to a family advocate, social worker, or social service professional. In cases where the unmarried farther does not acquire rights and responsibilities in terms of section 21 he can acquire such rights by entering into an agreement with the mother. The agreement must be registered with the family advocate and it must be made an order of the High Court.

Consent by caregivers with no formal parental responsibilities and rights *(e.g. grannies)*

Section 32[19] (read with section 129(3)) provides for a person with no formal parental responsibilities and rights to consent to any medical examination or treatment of the child if such consent cannot reasonably be obtained from the parent or guardian of the child. Such a person would include anyone who voluntarily cares for the child either indefinitely, temporarily or partially, including a caregiver. This clause is aimed at assisting the many children being cared for by relatives to access health care services more easily.

<u>Who is a caregiver?</u>
A *'care-giver'* is anyone who factually cares for a child, and includes:

- grannies, aunts and other relatives;
- a foster parent;
- the head of a child and youth care centre;
- a child and youth care worker supporting children in the community without care in the family; and
- a child (16 years and older) heading a household (child-headed household).

Consent by superintendent

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***
> *(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."*
> [Emphasis added]

[19] In force since 1 April 2010

Provision is made here to cover emergency situations where the treatment or surgery cannot be delayed to allow those who are legally authorised to consent to do so. For the purpose of this provision an emergency is determined by two factors: necessity and urgency. An example would be a child rape survivor (under 12 years) who is in need of post-exposure prophylaxis (PEP) to prevent transmission of HIV but whose parent cannot be found in time to give consent.

In an emergency situation where a child needs treatment or surgery and a parent refuses to consent, but the treatment/surgery is so urgent that it cannot be delayed to get ministerial or court-ordered consent to override the parent's refusal, then the superintendent or person in charge of the hospital can give the necessary consent.

Consent by Minister (Social Development)

The Minister (Social Development) may consent to the medical treatment, or surgical operation:

- If the parent or guardian of the child:
  "(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."
- If the child unreasonably refuses to give consent.

An application for ministerial consent must be made on Form 33.

When is it 'unreasonable' to withhold consent?

'Unreasonableness' would differ from case to case. An example would be where the parents of a severely burned child refuse to take him for medical treatment because they want to treat him with herbal remedies. Or where the parents of a child suffering from leukaemia refuse chemotherapy because of concerns that it would damage her immune system and cause other long-term problems, and they want to rather use alternative approaches including nutritional supplements, changing her diet and reducing her stress levels.

What happens when one parent consents and the other parent refuses to consent?

If both parents have parental rights and responsibilities in respect of the child, then only one of them need to consent unless a court order says otherwise. So for example, if the parents are divorced and custody and guardianship were awarded to the one parent while the other parent has visitation rights. In this case only the parent with custody and guardianship will have the responsibility to make decisions regarding medical treatment and surgery of the child. However the consenting parent will have to take into account the views of the parent who refuses to consent, but will not have to act in accordance with those views. If the non-consenting parent wants to prevent the treatment or surgery from taking place, s/he will have to get a court order to that effect.

What happens when a parent withholds consent on religious or cultural grounds?

No parent, guardian or caregiver of a child may refuse to assist a child or withhold consent by reason only of religious, cultural 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 (s129(10)).

An example that can be used is where parents who are Jehovah's Witnesses refuse a blood transfusion for a child. Another example would be where a child needs brain surgery, but the parent refuses to consent to the surgery because they believe the use of traditional medicine would be better. In these scenarios, if the parents cannot show that there is a medically accepted alternative to the blood transfusion or that the traditional medicine is medically accepted alternative to the conventional treatment, then their refusal to consent based solely on their religious beliefs will be regarded as unreasonable.

When can a child withhold consent?

The right to consent to treatment or surgery also includes the right to refuse treatment or surgery.

The Constitution protects children's right to bodily integrity which includes the right to make decisions about one's body, and the National Health Act 61 of 2003 obliges health professionals to inform health users (including child patients with the capacity to consent) about their right to refuse treatment.

A child of 12 or older who is mature enough to understand the risks and consequences of refusing can exercise the right to refuse health care. If the health professional or parent believes that the refusal is unreasonable, then the Minister can be approached to consent on behalf of the child.

A child under 12 does not have the capacity to consent; therefore s/he cannot withhold consent.

Consent by the court

Section 129(9) provides that the High Court or Children's Court may be approached for necessary relief if those authorised to consent to treatment or surgery refuse to or are unable to give such consent.

HIV testing of children – section 130[20]

A child may be tested for HIV if testing is in the best interests of the child and consent is given by the child or the child's parent or caregiver. According to the Department of Health's HIV Counselling and Testing (HCT) Policy Guidelines[21] *"an HIV test will be in the best interests of the neonate, infant or child if it is clear that the test will provide access to the continuum of care and promote a child's physical and emotional welfare"*.

The Act sets out the following rules regarding the child's capacity to consent to an HIV test:

- If the child is over 12 years then the child can give consent, without his or her parent's knowledge.
- If the child is under 12 years and sufficiently mature enough to understand the benefits, risks and social implications of the test, then the child can consent him or herself.
- If the child is under 12 and is not mature enough then the parent or caregiver must give consent on the child's behalf.

[20] In force since 1 July 2007.
[21] Department of Health (2010) *HIV Counselling and Testing (HCT) Policy Guidelines, March 2010*,Pretoria: DoH, p. 31.

The department's guidelines on HCT say:

> *"A child is considered to be sufficiently mature if they can demonstrate that they understand information on HIV testing and can act in accordance with that appreciation. In deciding whether a child is sufficiently mature factors that should be taken into account include:*
>
> - ***Age**: the older the child the more likely it is that they will have sufficient maturity;*
> - ***Knowledge**: children with knowledge of HIV and its implications are more likely to understand its consequences;*
> - ***Views**: children who are able to articulate their views on HIV testing and whether it is in their best interests are likely to meet the maturity requirements; and*
> - ***Personal circumstances:** an assessment of the child's personal situation and their motivations for HIV testing may help in assessing their maturity."*[22]

Other people who can give consent for a child under 12, who is not sufficiently mature to understand the benefits, risks and social implications of such a test, include:

- the provincial head of social development;
- a designated child protection organisation arranging the placement of the child (e.g. Child Welfare);
- the superintendent or person in charge of a hospital, if the child has no parent or caregiver and there is no designated child protection organisation arranging the placement of the child;
- a Children's Court, if consent is unreasonably withheld by the above, including the child; or the parent or caregiver of the child is incapable of giving consent.

A child may also be tested in the following circumstances:

- if during the course of a medical procedure, a health worker has had contact with any substance from the child's body that may transmit HIV, and there is a suspicion that the health worker may have contracted HIV due to contact; or
- if any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a court (for example if the child is accused of sexually assaulting another person and a compulsory HIV test under the Sexual Offences Act has been authorised by the court).

In certain circumstances the State is required to pay for a child's HIV test if the test is done for the purpose of placing the chid in foster care or adoption (s131).

Pre- and post-counselling for HIV testing – section 132[23]

Pre- and post-testing counselling must be provided to the child. The Act states that testing may only be done after proper counselling by an appropriately trained person. The HCT Policy Guidelines stipulate that *"where children are counselled and tested, staff should have*

[22] Department of Health (2010) *HIV Counselling and Testing (HCT) Policy Guidelines, March 2010*. Pretoria: DoH, pp 32-33.

[23] In force since 1 July 2007.

appropriate understanding or specific training in child development, communication with children, and appropriate counselling guidelines".[24]

The parent or caregiver must also be counselled if they have knowledge of the test or have consented on the child's behalf. The Department of Health has indicated that this obligation to do pre- and post-test counselling requires HIV-testing facilities that test children to:

- *"Be staffed with persons who should be able (through experience and/or training) to assess the developmental capacity of children to ensure that they are of sufficient maturity to understand the benefits, risks and social implications of such a test in terms of the Children's Act no. 38 of 2005 as amended (S132 (1) (a).*
- *Ensure that both pre- and post-test counselling is offered in every instance.*
- *Establish the child's maturity to understand the benefits, risks and social implications of the counselling before offering the child pre- or post-test counselling.*
- *Counsel children who are mature enough to understand the implications of the HIV test.*
- *Inform children who are not mature enough to understand the implications of the HIV test that their parents or care-givers need to be involved in the counselling process to assist them.*
- *Advise children with the maturity to undergo counselling on their own that they may voluntarily involve their parents or care-givers in the counselling process."*[25]

Confidentiality of information on HIV/AIDS status of children – section 133[26]

A child's right to choose whether or not to disclose his or her HIV status is rooted in the constitutional rights to privacy and physical integrity. Thus the State and its agents (like health professionals) are not allowed to unduly interfere in a child's right to choose whether or not to disclose. However the child' right to freedom of choice is not absolute and it can be limited, but the limitation must be reasonable and justifiable and in the child's best interest.

Section 133 provides that information on a child's HIV status must be kept confidential. Breaching confidentiality without consent is an offence with a penalty of a fine or imprisonment for up to 10 years (certain exceptions apply). This could create problems where a child under 12 years can consent to take an HIV test and the results are positive. A child under 12 cannot consent to treatment, but can refuse to disclose the results to the parent or guardian. In this case, the health professional should encourage the child to disclose to the parent, guardian or caregiver.

If all attempts to persuade the child to disclose his/her status to the parents or caregiver fail, the health professional has two options: either approach a court if the child is unreasonably withholding consent and disclosure is in the best interest of the child; or the superintendent of the hospital can consent to treatment if the need for the treatment is so urgent that it cannot be

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[24] Department of Health (2010) *HIV Counselling and Testing (HCT) Policy Guidelines, March 2010*. Pretoria: DoH, p. 73.
[25] Department of Health (2010) *HIV Counselling and Testing (HCT) Policy Guidelines, March 2010*. Pretoria: DoH, p. 32.
[26] In force since 1 July 2007.

deferred for the purpose of obtaining consent. There is no case law or definitive ruling on such a case and doctors are advised to approach such matters with extreme caution.

Access to contraceptives – section 134[27]

The National Contraception Policy Guidelines issued by the Department of Health regards preventing pregnancy and the transmission of sexually infections (STIs) as a critical part of child protection. In accordance with this policy, the Children's Act facilitates children's access to contraceptives. The objective is to prevent sexually active children from contracting STIs (including HIV) or falling pregnant.

Section 134 of the Act states that no person may refuse to sell condoms to a child over the age of 12 years; or to provide a child over the age of 12 years with condoms on request where such condoms are provided or distributed free of charge. A person who disregards these provisions is guilty of an offence and can be fined or imprisoned for 10 years or be given both a fine and a term of imprisonment.

Contraceptives other than condoms may be provided to a child on request from the child and without the consent of the parent or caregiver of the child if:

- the child is at least 12 years of age **and**
- proper medical advice is given to the child **and**
- 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.

Finally, a child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality. However, this is subject to section 110(1) of the Act which obliges health professionals to report cases of physical or sexual abuse, or deliberate neglect of a child to the Department of Social Development, a designated child protection organisation or the police (see the next section on reporting).

[27] In force since 1 July 2007.

Mandatory reporting of abuse and neglect

Mandatory reporting of abused or neglected child – section 110(1)[28]

The Children's Act expands the range of professionals that are legally obliged to report abuse of children, but limits what must be reported to:

- sexual abuse;
- physical abuse causing injury; and
- deliberate neglect.

Section 110 reads:

> *"(1) Any correctional official,* ***dentist, homeopath****, immigration official, labour inspector, legal practitioner,* ***medical practitioner, midwife****, minister of religion,* ***nurse, occupational therapist, physiotherapist, psychologist,*** *religious leader,* ***social service professional, social worker, speech therapist****, teacher,* ***traditional health practitioner****, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre <u>who on reasonable grounds concludes</u> that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation[29], the provincial department of social development or a police official."* [Emphasis and footnote added]

For example: A child is admitted to hospital with third degree burns on the palms of both hands. The parent says the child accidentally placed her hands on the hot plate of a stove. There is a reflex reaction when you touch something hot; normally a child will pull his/her hands away from a hot object before the damage is this severe. In this scenario it would be reasonable to conclude that the child's hands were held down, i.e. there was abuse. This should be reported for further investigation. The report should be made on form 22 and sent to one of the three agencies (a designated child protection organisation like Child Welfare, the Department of Social Development, or the police). Failure to report is an offence with a penalty of a fine or imprisonment for 10 years or both.

Once a report has been made to one of these three agencies, a social worker should investigate the case and make recommendations on the kind of support needed by the child and his or her family. If the child is in immediate danger, the social worker can ask the police to remove the perpetrator from the child's house or, alternatively, the child can be removed to a safe place.

The Children's Act requires government departments to work together to provide a holistic range of services. Due to the high level of demand for protection and prevention services it can take a long time before children receive the help they need from a social service professional. This is why it is a good idea for health care facilities to employ their own social workers or to network with the nearest office of the Social Development Department and local non-governmental organisations that provide child protection services.

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[28] In force since 1 April 2010.
[29] Child Welfare is an example of a "designated child protection organisation".

A child who undergoes a termination of pregnancy is entitled to confidentiality. However, if the health professional has reasonable grounds to conclude that the child is being sexually abused and wants to ensure that the child will receive support from a social worker, the health professional must make a report in terms of section 110(1) of the Children's Act (using form 22). If the child is under 16 and the health professional has knowledge that a sexual offence has been committed against the child, the health professional must make a report to a police official in terms of section 54 of the Sexual Offences Act.

Surrogate motherhood

Surrogate motherhood – Chapter 19 (ss292 – 303)[30]

Surrogacy was not regulated in South Africa until the Children's Act. The main principles of Chapter 19 are the following:

- A written agreement (signed by all parties and entered into in South Africa) must be confirmed by the High Court
- The commissioning parents must be unable to give birth to a child.
- At least one commissioning parent must be domiciled in South Africa.
- The surrogate mother, husband/partner must be domiciled in South Africa (at time of contract), but the court may dispense with this requirement.
- Consent to the agreement must be obtained from:
    - husband, wife or partner (permanent relationship) of commissioning parent; and
    - husband/partner of surrogate mother.
- The gametes of both commissioning parents must be used, unless that is not possible due to biological, medical or other valid reasons.
- The surrogate mother must be suitable to accept parenthood (altruistic purposes) and not use surrogacy as a source of income.
- The surrogate mother must have a living child of her own.
- Artificial insemination (AI) of the surrogate mother must take place after the agreement is signed and is valid for 18 months only. The agreement cannot be cancelled after AI takes place.
- The surrogate mother is obliged to hand over the child after the birth. She and her relatives have no rights to parenthood or contact with the child unless the agreement specifies such rights, and the child has no succession or maintenance rights against them.
- If there is no valid agreement, the child is deemed to be child of the woman that gave birth.
- If the agreement is terminated before or after the child is born, the surrogate mother has parental rights in respect of the child and the child has no succession or maintenance rights against the commissioning parents or their relatives.
- After the termination of a surrogacy contract, provision is made for compensation of expenses to the surrogate mother.
- Section 41 of the Act gives a child born as a result of surrogacy the right to access any medical information of his/her genetic parents and if the child is 18 he/she may access any other information about the genetic parents but the information disclosed must not reveal the identity of the surrogate mother.

For more information or queries please contact Prinslean Mahery on 021 – 689 5404 or prinslean.mahery@uct.ac.za.

[30] In force since 1 April 2010.

FORMS

FORM 1

CONSENT TO A VIRGINITY TEST BY A CHILD
(Regulation 3(1))
[SECTION 12(5) OF THE CHILDREN'S ACT 38 OF 2005]

Part 1: Particulars of child and of person performing virginity test
[Child to be aged 16 years or older]

Full name of child	
Date of Birth/ID number	
Residential address of child	
Telephone contact details:	
Cell phone number	
Age of child (16 or older)*	

* Proof of age to be attached

Particulars of person administering virginity test

Name	
ID No (where applicable)	
Residential Address	
Telephone contact details	
Cell phone number	

Part 2: Pre-test counseling, and acquisition of voluntary and informed consent

I confirm that the child to undergo the virginity test has received proper counseling about the risks, benefits and social implications of a virginity test.

I confirm that I have received sufficient proof that the child to undergo virginity test is 16 years or older.

I have explained to the child consenting to treatment the following in a language that is understandable to the child: -

- ❑ The nature of the virginity test and method to be followed
- ❑ Any risks associated with a virginity test
- ❑ The social implications of virginity test
- ❑ Any other implications or possible consequences of a virginity test
- ❑ The confidential nature of the results of a virginity test,
- ❑ The voluntary nature of the test

I have given the child an opportunity to ask questions relating to the above.

Signature of person performing the virginity test

Date: Place:

PLEASE SEE REVERSE HEREOF

REVERSE SIDE OF FORM 1

Part 3. Consent by child

I, …………………………………………………………………………………… (insert child's name)

- ❑ understand that a virginity test is going to be performed on me, and that I am voluntarily undergoing this test
- ❑ understand the risks and possible consequences of a virginity test that have been explained to me
- ❑ confirm that I have been given an opportunity to ask questions about a virginity test and the results of such a test
- ❑ consent to a virginity test but understand that I may at any time before the procedure withdraw my consent

I understand that the results of the virginity test will be confidential unless I give my consent for the results to be disclosed.

I believe that I have sufficient information to give this informed consent.

Signature of child

Date_____________________________

Place_____________________________

Signature of witness

Date__________________________

Place_________________________

FORM 2

CONSENT TO SOCIAL OR CULTURAL CIRCUMCISION
(Regulation 5)
[SECTION 12(9) OF THE CHILDREN'S ACT 38 OF 2005]

PART A: PARTICULARS OF CHILD

Full name of child	
Date of birth /ID number	
Residential address of child	
Telephone contact details	
Cell phone number	

PART B: MEDICAL PRACTITIONER OR PERSON ADMINISTERING CIRCUMCISION

Name	
Address of practice	
ID number	
HPCSA registration number (in the case of a medical practitioner)	
Telephone contact details	Phone : Fax : E-mail :
Cell phone number	
Medical diagnosis requiring circumcision	
Date of circumcision	

- I confirm that I have received sufficient proof that the child is 16 years or older.
- I confirm that appropriate conservative treatment has been used and a circumcision is medically Necessary (if administered by a medical practitioner).
- I confirm that appropriate anesthesia will be used (if administered by a medical practitioner).
- I have explained to the child the following:

- ❑ The nature of a circumcision.
- ❑ The different methods to perform a circumcision.
- ❑ The method to be followed
- ❑ Any risks associated with a circumcision
- ❑ Any complications associated with a circumcision
- ❑ Any other implications or possible consequences of a circumcision
- ❑ Other information (if any):____

____

I have given the child an opportunity to ask questions.

____
Signature of person administering circumcision/medical practitioner

Date:

PLEASE SEE REVERSE HEREOF

REVERSE SIDE OF FORM 2

PART C: CONSENT BY CHILD

I, ____(insert name)

- understand that a circumcision is going to be performed on me, and that I am voluntarily undergoing this surgical procedure.
- understand the nature and implications as well as any risks and possible consequences of a circumcision that have been explained to me.
- confirm that I have been given an opportunity to ask questions.
- consent to a circumcision but understand that I may at any time before the procedure withdraw my consent.
- confirm that I have been given the opportunity to refuse the circumcision in terms of section 12(10) of the Act.

____
Signature of child
Date:

____
Signature of witness
Date:

PART D: ASSISTANCE BY PARENT OR GUARDIAN

(TO BE COMPLETED IN THE CASE OF A MALE CHILD OVER 16 YEARS BUT UNDER 18 YEARS)

I, ____ (insert name) have assisted the child to consent to a circumcision and declare that the child is over the age of 16 years but under the age of 18 years and is, to the best of my knowledge, of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of a circumcision.

I confirm that the child has been given the opportunity to refuse the circumcision in terms of Section 12(10) of the Act.

____
Parent / guardian
Date:

FORM 3

CONSENT TO RELIGIOUS CIRCUMCISION
(Regulation 6)

[SECTION 12(8) OF THE CHILDREN'S ACT 38 OF 2005]

PART A: PARTICULARS OF CHILD

Full name of child	
Date of birth/ID number	
Residential address of child	
Postal address	
Telephone Contact details	Phone: Fax: E-mail:
Cell phone number	
Age of child	

PART B: MEDICAL PRACTITIONER OR PERSON ADMINISTERING CIRCUMCISION

Name	
ID number	
Address of practice	
HPCSA registration number (in the case of a medical practitioner)	
Contact details	Phone : Fax : E-mail :
Date of circumcision	

I have explained to the person consenting the following:

- ❑ The nature of a circumcision
- ❑ Any risks associated with a circumcision
- ❑ Any complications associated with a circumcision
- ❑ Any other implications or possible consequences of a circumcision
- ❑ Other information (if any):____

____

I have given the person giving consent an opportunity to ask questions.
I confirm that appropriate anesthesia will be used

____
Signature of * medical practitioner / person administering the circumcision

Date:

PLEASE SEE REVERSE HEREOF

REVERSE SIDE OF FORM 3

PART C: CONSENT BY PARENTS OR GUARDIAN WHERE CHILD IS UNDER THE AGE OF 16

We/I, ____

- understand that a religious circumcision is going to be performed.
- understand the nature and implications as well as any risks and possible consequences of a circumcision that have been explained to me/us.
- confirm that I/we have been given an opportunity to ask questions.
- consent to a religious circumcision but understand that I/we may at any time before the procedure withdraw my/our consent.

____
Parent / guardian
Date:

____
Signature of witness
Date:

FORM 22

REPORTING OF ABUSE OR DELIBERATE NEGLECT OF CHILD
(Regulation 33)
[SECTION 110 OF THE CHILDREN'S ACT 38 OF 2005]

REPORTING OF ABUSE TO PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT, DESIGNATED CHILD PROTECTION ORGANISATION OR POLICE OFFICIAL

NOTE:	**A SEPARATE FORM MUST BE COMPLETED FOR EACH CHILD**

TO: The Head of the Department

Pursuant to section 110 of the Children's Act, 2005, and for purposes of section 114(1)(*a*) of the Act, you are hereby advised that a child has been abused in a manner causing physical injury/ sexually abused/ deliberately neglected or is in need of care and protection.

Source of report (do not identify person)
□ Victim □ Relative □ Parent □ Neighbour/friend

□ Professional (specify) ....

□ Other (specify) ....

Date Reported to child protection organisation:	DD	MM	CCYY

1. CHILD: (COMPLETE PER CHILD)						
Surname			**Full name(s)**			
Gender:	M	F	**Date of Birth:**	DD	MM	CCYY
School Name:			**Grade:**		**Age / Estimated Age:**	
*** ID no:**			*** Passport no:**			
Contact no:						

2. CATEGORY OF CHILD IN NEED OF CARE AND PROTECTION		
□ Street child	**□ Child labour**	**□ Child trafficking**
□ Commercial sexual exploitation	**□ Exploited children**	**□ Child abduction**

3. OTHER INTERVENTION – CONTACT PERSON TRUSTED BY CHILD	
Surname:	**Name:**
Address:	**Telephone number:**
Other children interviewed: □ Yes □ No	**Number :**

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

4. ALLEGED ABUSER						
4.1) Surname				Full Name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID No:				Age:		
* Passport No:				* Drivers license:		
Also known as:				Relationship to child: ☐ Father ☐ Mother ☐ Grand father ☐ Grand mother ☐ Step father ☐ Step mother ☐ Foster father ☐ Foster mother ☐ Uncle ☐ Aunt ☐ Sibling ☐ Caregiver ☐ Professional: social worker/police officer/teacher/caregiver/priest/dr/ volunteer ☐ Other (specify)		
Street Address (include postal code):						
Postal Code:						

4.2) WHEREABOUTS OF ALLEGED PERPETRATOR:

☐ Section 153 (Request for removal by SAPS) ☐ Still in home

☐ In hospital (Name/Place...)

☐ In detention (Place...)

☐ Living somewhere else ☐ Whereabouts unknown ☐ Un-identified

5. PARENTS OF CHILD (If other than above)						
Surname: Father / Step-father				Full name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID no:				Age:		
Surname: Mother / Step-mother				Full name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID no:				Age:		
Also known as:				Names and ages of siblings or other children if helpful for tracking		
Street Address (include postal code):						Postal Code:

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

6. ABUSE											
Date of Incident:			Date unknown:	Episodic/ongoing from (date)			Reported to CPR:				
DD	MM	CCYY		DD	MM	CCYY	DD	MM	CCYY		

Place of incident:
☐ Child's home ☐ Field ☐ Tavern ☐ School ☐ Friend's place
☐ Partial Care ☐ ECD Centre ☐ Neighbour ☐ Child and youth care centre
☐ Other (specify) ☐ Foster home ☐ Temporary safe care

6.1) TYPE OF ABUSE (Tick only the one that indicates the key motive of intent)

Physical	Emotional	Sexual	Deliberate neglect

6.2) INDICATORS (Check any that apply)

PHYSICAL: ☐ Abrasions ☐ Bruises ☐ Burns/Scalding ☐ Fractures
☐ Other physical illness ☐ Cuts ☐ Welts ☐ Repeated injuries
☐ Fatal injury (date of death) ☐ Injury to internal organs ☐ Head injuries

☐ No visible injuries (elaborate)	☐ Poisoning (specify)	☐ Other Behavioural or physical (specify)

EMOTIONAL: ☐ Withdrawal ☐ Depression ☐ Self destructive aggressive behaviour
☐ Corruption through exposure to illegal activities ☐ Deprivation of affection
☐ Exposure to anti-social activities ☐ Exposure to family violence
☐ Parent or care giver negative mental condition ☐ Inappropriate and continued criticism
☐ Humiliation ☐ Isolation ☐ Threats ☐ Development Delays ☐ Oppression
☐ Rejection ☐ Accusations ☐ Anxiety ☐ Lack of cognitive stimulation
☐ Mental, emotional or developmental condition requiring treatment (specify)

SEXUAL: ☐ Contact abuse ☐ Rape ☐ Sodomy
☐ Masturbation ☐ Oral sex area ☐ Molestation
☐ Non contact abuse (flashing, peeping) ☐ Irritation, pain, injury to genital
☐ Other indicators of sexual molestation or exploitation (specify)

DELIBERATE NEGLECT: ☐ Malnutrition ☐ Medical ☐ Physical ☐ Educational
☐ Refusal to assume parental responsibility ☐ Neglectful supervision ☐ Abandonment

6.3) Indicate overall degree of Risk to child:
☐ Mild ☐ Moderate ☐ Severe ☐ Unknown

6.4) When applicable, tick the secondary type of abuse Multiple Abuse: ☐ Yes ☐ No

Sexual	Physical	Emotional	Deliberate Neglect

Brief explanation of occurrence(s) (including a statement describing frequency and duration)

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

7. MEDICAL INTERVENTION (*)		
Treated outside hospital: ☐ Yes ☐ No	Examined by: ☐ Doctor ☐ Reg. Nurse	Hospitalised: ☐ For assessment ☐ For treatment ☐ As place of safety
Where (name of Hospital)	Contact person	Telephone Number

8. CHILDREN'S COURT INTERVENTION (*)			
Removal of child to temporary safe care (Section 152): ☐ Yes ☐ No	Date		
	MM	DD	CCYY

9. SAPS: (ACTION RELATED TO ALLEGED ABUSER(S)) – (*)				
Reported to SAPS: ☐ Yes ☐ No	Charges laid: ☐ Yes ☐ No	Date		
		DD	MM	CCYY
CASE NR	Police Station	Telephone Nr		
Name of Police Officer	Rank of Police Officer			

10. CHILD KNOWN TO WELFARE ORGANISATION/ SOCIAL DEVELOPMENT?		
10.1) Child known to welfare?: ☐ Yes ☐ No		
Name of Organisation	Contact number	Reference number

11. DETAILS OF PERSON WHO REPORTS ALLEGED ABUSE (Refers to a profession, mandatory obliged to report child abuse)		
Name of informant	Employer	
Employer Address	Work Telephone Nr	Fax Number
Email Address		

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

CAPACITY Section 110 (1)	Caregiver	Correctional Official	Child and Youth Care Centre	Dentist	Doctor	Drop in Centre
	Homeopath	Labour Inspector	Legal Practitioner	Midwife	Member of staff – partial care facility	Medical Practitioner
	Minister of Religion	Nurse	Occupational Therapist	Psycho-logist	Police Official	Physio-therapist
	Religious leader		Social service professional		Social worker	
	Speech therapist		Shelter		Traditional leader	
	Teacher		Traditional health practitioner		Volunteer Worker – partial care facility	
	Other (specify)					

I declare that the particulars set out in the above mentioned statement are true and correct to the best of my knowledge.

Signature of person reporting alleged abuse: ___________________________________

Date:____

Official Stamp of Department / child protection organisation

FORM 33

APPLICATION FOR CONSENT TO MEDICAL TREATMENT OR SURGICAL OPERATION BY MINISTER

(Regulation 47)

[SECTION 129(7) OF THE CHILDREN'S ACT 38 OF 2005]

Part A: Details concerning the applicant, the child, the particulars of the person/institution providing medical treatment or performing the surgical operation and the parent/guardian assisting the child

Full name of child	
Date of Birth/ID number/passport no*	
Address of child	
Contact details	
Age of child	

*Please attach copy of birth certificate/ ID Number/ Passport where applicable

Applicant details

Full name of applicant	
Date of Birth/ID number/passport no*	
Address of child	
Contact details	
Relationship to child/official designation/other details explaining why applicant in this matter	

Particulars of person/hospital/clinic/surgery/other institution* providing medical treatment/performing surgical operation

Name	
Practice no/hospital/clinic/surgery/ staff position	
Address	
Contact details	
Nature of surgical operation	
Details of other institution performing surgical operation*	

*Please furnish details concerning the name and type of institution in the space provided

Part B: Details of medical treatment/surgical operation

Please provide detailed description of envisaged medical treatment or surgical operation and reason(s) why this treatment or operation is required:-
……
……
……
……
……

Part C: Motivation for seeking consent of the Minister

- ❑ Parent/guardian unreasonably refusing to give consent or to assist the child in giving consent

Motivation:………………………………………………………………………………………………………
……
……
……

………
…………………………..

- ❑ Parent/guardian incapable of giving consent or of assisting the child to give consent

Motivation:………
………
………
………
…………………………………………………………………………..

- ❑ Parent cannot readily be traced/ is deceased*

Steps taken to trace parents:……
………
………
…………………………………………………………………………………

* attach copy of parent's or guardian's death certificate

- ❑ Child unreasonably refusing to give consent

Motivation.………
………
………
………
……………………………………………………………………

Part D: Consent/ refusal of consent by Minister

- ❑ I ……………………………………………………………………………………(insert name) duly authorized, hereby give consent for the medical treatment to be given to/surgical operation to be performed upon (delete whichever is not applicable) ……………………………………………………………………………………..(insert child's name).

- ❑ I ……………………………………………………………………………………(insert name), duly authorized, do not consent to the medical treatment/ the performance on the surgical operation applied for.

Tick whichever is applicable

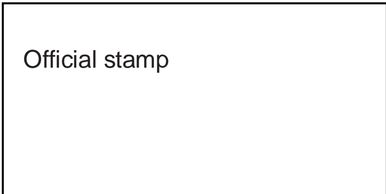
……………………………………………………..
Signature

……………………………………………………..
Full name

………………………………………………..
Designation

---.

Date


Official stamp

FORM 34

CONSENT TO SURGICAL OPERATION BY A CHILD

(Regulation 48)

[SECTION 129(3) OF THE CHILDREN'S ACT 38 OF 2005]

NB Child to be 12 years of age or older and of sufficient maturity and having the mental capacity to understand the benefits, risks and social implications of the surgical operation

Part A: Details concerning the child, the particulars of the person performing the surgical operation or institution where it is to be performed and the parent/guardian assisting the child

Full name of child	
Date of Birth/ID number/passport no	
Address of child	
Contact details	
Age of child (12 or older)	

Particulars of person/hospital/clinic/surgery/other institution* performing the surgical operation

Name	
Practice no/hospital/clinic/surgery/ staff position	
Address	
Contact details	
Nature of surgical operation	
Details of other institution performing surgical operation	

*Please furnish details concerning the name and type of institution in the space provided

Particular of parent(s) or guardian(s) assenting to surgical operation

Parent/Guardian 1

Full name of parent/guardian	
Date of Birth/ID number/passport no	
Address of parent	
Contact details	
Relationship to child	

Parent/guardian 2 (where necessary or desirable)

Full name of parent/guardian	
Date of Birth/ID number/passport no	
Address of parent	
Contact details	
Relationship to child	

Part B: Explanation of nature, consequences, risks and benefits of surgical operation

I ………………………………………………………………… (name of person seeking child's consent to perform a surgical operation confirm that I have explained to ……………………………………………………………………………(name of child consenting to surgical operation_ the following in a manner that is understandable to the child: -

- ❑ The nature of the problem requiring a surgical operation
- ❑ The most suitable surgical operation in my opinion

- ❑ Any risks associated with the surgical operation
- ❑ The benefits associated with surgical operation
- ❑ Any alternative forms of treatment
- ❑ The social implications of the treatment or surgical operation (if any)
- ❑ Any other implications or possible consequences of the surgical operation (specify in space provided below)

………
………
………
………………

I have given the child an opportunity to ask questions relating to the above.

I have satisfied myself that the child is 12 years or older and is of sufficient maturity and has the mental capacity to understand the risks, benefits, social and other implications of the surgical operation.

I have satisfied myself that……………………………………….…………… (insert name of parent(s)/guardian(s)) has duly assisted the child to give consent to the surgical operation.

Signature of person seeking consent to perform the surgical operation

……………………………………………………………………………………….
Name of person seeking consent to perform the surgical operation (write in full)

……………………………………………………………………………………….
Designation of person seeking consent to perform the surgical operation

Date:

Part C Consent of the child.

I, ……………………………………………………………………….………(insert child's name)
understand that the following surgical operation is going to be performed on me:

I……………………………………………………………………………….(insert child's name)
understand the risks and benefits and possible consequences of this surgical operation that have been explained to me, and I confirm that I have been given an opportunity to ask questions about my condition, alternative forms of treatment, and the risks of non-treatment, and possible consequences of the surgical operation.

I believe that I have sufficient information to give my informed consent, and do so freely.

Signature of child

……………………………………………………….
Name of Child (write in full)

Date………………………………………………….

I……………………………………………………………………………(insert name of parent(s) or guardian (s) assisting the child to consent to a surgical operation confirm that the child is 12 years or older and is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the following surgical operation……………………………………………(insert type of surgical operation, and that ……………………………………………………...(insert name of child) has been duly assisted by me to furnish consent.

Signature parent(s)/guardian(s)

…………………………………………………..
Full name of parent or guardian
………………………………………………….Date

FORM 35

CONSENT TO SURGICAL OPERATION OF A CHILD BY A PARENT

(Regulation 49)

[SECTION 129(3) OF THE CHILDREN'S ACT 38 OF 2005]

Part A: Details concerning the child, the parent aged under 18 years of the child upon whom the surgical operation is to be performed, the parent(s) or guardian of the child parent aged below 18 years, and the particulars of the person performing the surgical operation or institution where it is to be performed

Child upon whom surgical operation is to be performed

Full name of child	
Date of Birth/ID number/passport no	
Address of child	
Contact details	
Age of child (12 or older)	

Parent aged below 18 years giving consent ("child parent')

Full name of child parent	
Date of Birth/ID number/passport no	
Address of child	
Contact details	
Age of child parent	

Parent/Guardian assisting the child parent to give consent

Full name of parent/guardian	
Date of Birth/ID number/passport no	
Address of parent	
Contact details	
Relationship to child parent	

Particulars of person/hospital/clinic/surgery/other institution* performing surgical operation

Name	
Practice no/hospital/clinic/surgery/ staff position	
Address	
Contact details	
Nature of surgical operation	
Details of other institution performing surgical operation*	

Part B: Explanation of nature, consequences, risks and benefits of surgical operation

I ………………………………………………………………(name of person seeking consent to perform a surgical operation) confirm that I have explained to ………………………………………………………(name of child parent consenting to surgical operation) the following in a manner that is understandable to him /her: -

- ❑ The nature of the problem requiring a surgical operation
- ❑ The most suitable surgical operation in my opinion
- ❑ Any risks associated with the surgical operation
- ❑ The benefits associated with surgical operation
- ❑ Any alternative forms of treatment
- ❑ The social implications of the treatment or surgical operation (if any)
- ❑ Any other implications or possible consequences of the surgical operation (specify in space provided)
  ………
  ………
  ………

I have given the child parent an opportunity to ask questions relating to the above.

I have satisfied myself that the child parent is 12 years or older and is of sufficient maturity and has the mental capacity to understand the risks, benefits, social and other implications of the surgical operation upon ……………………………………………………………………(insert name of child upon whom surgical operation is to be performed).

I have satisfied myself that………………………………………….…………… (insert name of parent(s)/guardian(s)) has duly assisted the child giving consent to the surgical operation.

Signature of person seeking consent to perform the surgical operation

…………………………………………………………………………………….
Name of person seeking consent to perform the surgical operation (write in full)

…………………………………………………………………………………….
Designation of person seeking consent to perform the surgical operation

Date:

Part C Consent of the child parent.

I, …………………………………………………………………………………(insert name of child parent) understand that the following surgical operation is going to be performed (insert type of surgical operation):
……
……
…………
On ……………………………………………….(insert name of child upon whom surgical operation to be performed).

I understand the risks and benefits and possible consequences of this surgical operation that have been explained to me, and I confirm that I have been given an opportunity to ask questions about the health condition of my child, alternative forms of treatment, and the risks of non-treatment, and possible consequences of the surgical operation.

I believe that I have sufficient information to give my informed consent, and do so freely.

Signature of child parent

……………………………………………………
Name of child parent (write in full)

Date………………………………………………….

Part D Declaration of parent/guardian of child parent

I……………………………………………………………………………(insert name of parent(s) or guardian (s)) assisting the child parent to consent to a surgical operation) confirm that he / she is 12 years or older and is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the following surgical operation………………………………………………… ……(insert type of surgical operation), and that …………………………………………………….……..(insert name of child) has been duly assisted by me to furnish consent.

Signature parent(s)/guardian(s)

……………………………………………………..
Full name of parent or guardian

…………………………………………………….
Date