



Keeping an eye on non-profit

NPOs and Volunteers

Extract from **Practical Legal Guide for South African Volunteers**

By Ricardo Wyngaard

ABOUT NPO LEGAL ISSUES:

This is an electronic newsletter published by: **RICARDO WYNGAARD ATTORNEYS** which is aimed at updating the non-profit sector on relevant legal issues.

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NPOs and Volunteers.

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RICARDO WYNGAARD ATTORNEYS is a law practice that specialises in rendering advice and assistance on non-profit law and governance.

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Many organisations in South Africa are focused on providing care to children. The provisions of the Children's Act of 2005 are of significant importance when making use of the services of volunteers in caring for children. Section 9 of the Children's Act provides that; "In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied."

The child's interest is therefore of paramount importance. Section 28(2) of the Constitution provides that; "A child's best interests are of paramount importance in every matter concerning the child." This would include matters affecting volunteers involved with providing care to children. For example, section 7 of the Children's Act provides that the nature of the personal relationship between the child and any other caregiver or person is a relevant factor in determining the best interests of a child.

The Constitutional Court in the matter of *S v M* 2008 (3) SA 232 (CC) made the following statement when it interpreted the best interests of the child principle: "A truly principled child-centred approach requires a close and individualised examination of the precise real-life situation of the particular child involved. To apply a pre-determined formula for the sake of certainty, irrespective of the circumstances, would in fact be contrary to the best interests of the child concerned."

This means that in every situation, an organisation should consider what is in the best interest of the child. This includes a situation where volunteers are responsible for the care of children. The *best interests of the child*-principle determines the standard according to which services should be rendered to children. The Children's Act makes provision for the registration of various kinds of child care facilities aimed at taking care of the needs of children.

The Act determines the standards that should be adhered to at such facilities as well as who would be excluded from working with children at such facilities. The facilities include partial care facilities, drop-in centres and child and youth care centres. For example, the abuse or injury of a child as a partial care facility must immediately be reported to the provincial head of social development by the person operating the partial care facility or an employee thereof.

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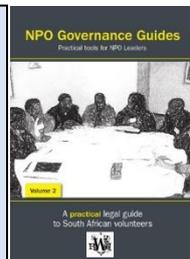
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Section 110 of the Children's Act provides that: "Any correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, 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 who on reasonable grounds concludes 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, the provincial department of social development or a police official."

This duty applies directly to the volunteer.

Section 97(3) of the Children's Act provides that: "A person unsuitable to work with children is not a fit and proper person to provide or assist in the provision of early childhood development programmes." This section is repeated with all child care facilities. Although the Children's Act does not define who is a 'fit and proper' person, it makes provision of for the establishment and maintenance of a Child Protection Register. This register must be checked when making use of the services of volunteers in the context of assisting with children.

In some cases, this obligation extends further to volunteers serving on the board of the organisation. For example, section 208(4) dealing with the child and youth care centres, provides that; "No person unsuitable to work with children may be appointed or continue to serve as a member of a management board." A child care facility may be deregistered if an unsuitable person has been appointed to work as volunteer with children at that facility. For example, section 203(1)(e) empowers the provincial head of social development to cancel the registration of a child and youth care centre by written notice to the registration holder if; "a person who is not a fit and proper person to assist in operating a child and youth care centre is employed at or involved in activities at the centre."

Conclusion

Communities continue to benefit from the goodwill of many volunteers who unselfishly dedicate their time, skills and energy in support of the spirit of Ubuntu. Volunteer services are often rendered under the management of non-profit organisations working in communities. The services of volunteers hold enormous value to non-profits and their beneficiaries. However, volunteers also come with responsibilities that non-profit organisations must be aware of and manage.

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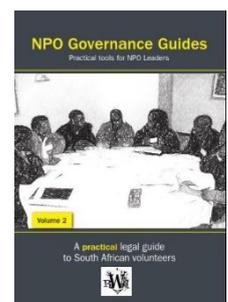
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