

Monday, March 8, 2021

## **RE: SA Childcare Association member enquiry**



# **CAN SANDPITS BE OPENED?**

## **CURRENT APPLICABLE "COVID" DIRECTIONS APPLICABLE TO ECDs**

As of date of writing the applicable Directions are the Department of Social Development's Directions of 11 September 2020 (the "11 September Directions")

The 11 September Directions contain a section withdrawing the previous Directions of 10 July 2020. This means that all the directions of 10 July have been withdrawn. Only the Directions of 9 May and 2 July and 11 September 2020 remain. The Directions of 9 May 2020 and 2 July 2020 are not relevant for the operation of an ECD, apart from the direction that subsidies will continue to be paid. Unless a direction appears in one of these three sets of Directions, they are of no force and effect.

### Sandpits and the Standard Operating Procedures

A reference to standard operating procedures is found in Annexure A to the 11 September Directions.

The document requires a declaration confirming compliance with health, safety and social distancing measures set out in:

- Directions issued by Minister of Social Development
- The Department of Social Development's Standard Operating Procedures and Guidelines
- Regulations made in terms of section 27 (2) of the Disaster Management Act (DMA)

It is a common misconception that the reference to standard operating procedures and guidelines in this form incorporates the contents of a DSD circular of 21 June 2020 by way of vague reference. The circular of 21 July 2020 contained what is commonly known as the "SOPs". However, the circular of 21 June 2020 is not specifically referenced in the 11 September Directions. In any event it is merely a circular which has not been "Gazetted" and therefore has not been validly promulgated. The circular was published on DSD's website last year but circulars on websites have no legal substance. The circular has since been removed from the website. The Department of Social Development's counsel in High Court proceedings confirmed that the 11 September Directions do not include these standard operating procedures.

Therefore previous restrictions on sandpits are not in force. You may open your sandpits. You will not see anything in the Gazette saying, "you may open your sandpit" because the Directions which prohibited this have been withdrawn. Therefore there is no need to give permission for their opening.

Lastly, what is required to be confirmed is compliance with *health, safety and social distancing measures*. Nothing else. There is nothing in place that indicates that opening and using sandpits contravenes any such measures.

There is no need to declare compliance with, for example, an undertaking to register within 6 months, participation in the Vangasali campaign or any other element which is not a health, safety or social distancing measure and that has been "Gazetted".

The Children's Act remains the only relevant legislation governing registration of an early childhood development programme and/or partial care facility. You do not need to make an undertaking to register within six months in order to operate.



**ELISABETH VAN WYK**