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Children's Institute, University of Cape Town

submission on the

Children's Amendment Bill [B13-2015]; and

Children's Second Amendment Bill [B14-2015]

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The Children's Institute welcomes the opportunity to comment on the Children's Amendment Bill [B13-2015] and the Children's Second Amendment Bill [B14-2015] (hereafter: Amendment Bill). The Children's Institute was established at the University of Cape Town in 2001. The mission of the Institute is to contribute to the development of laws, policies, programmes and service interventions for children in a way that will promote equity, realise children's rights and improve the conditions of all children in South Africa. The Children's Institute operates through research, advocacy, education and technical support. It has contributed significantly to a number of policy and legislative processes, and has participated in collaborations and networks with both government and civil society.

The Children's Institute has been working on challenges in the foster care system for over a decade. We have assisted the Department of Social Development (hereafter: Department) to analyse the available evidence and to find a comprehensive solution for the challenges in the foster care system. In 2011, we were commissioned by the Social Security Directorate in the Department to investigate the challenges in the foster care system and make recommendations for reform to improve children's access to social grants.¹

We wish to focus our submission on the amendment regarding foster care (sections 150(1)(a) of the Children's Act). It is our submission that the proposed amendment is not in the best interests of the approximately 1.5 million orphaned children in need of timeous and adequate social grants and thousands of abused, neglected and exploited children in desperate need of state protection and care services.

The rest of the submission deals with:

- Amendments to the National Child Protection Register (NCPR).
- The review of removal to temporary safe care.
- Remaining in alternative care beyond 18.
- The placement of child in the care of an unrelated foster parent without review.

If it pleases the Chair we would like to make a verbal presentation to the Portfolio Committee during the public hearings on both Bills.

¹ Community Agency for Social Enquiry and Children's Institute, University of Cape Town (2012) Comprehensive review of the provision of social assistance to children in family care, Cape Town: Children's Institute, University of Cape Town.

1. Definition of children in need of care and protection

Executive summary

The Amendment Bill proposes to replace the phrase “is without any visible means of support” with the phrase “does not ostensibly have the ability to support himself or herself” in section 150(1)(a) of the Children’s Act. The aim of this amendment is to give effect to existing case law and clarify that orphans are children in need of care and protection.

The proposed amendment to section 150(1)(a) of the Children’s Act fails to provide families caring for orphans with access to timely and adequate social grants. Instead, the amendment entrenches the use of the child protection system to administer foster child grant applications. Evidence shows that the child protection system is not coping with children requiring urgent protection falling through the cracks. Children who are reported with a suspicion of child abuse or neglect do not receive timely investigation placing them at risk of continued abuse and even death. At the same time, the system is unable to respond to the large number of orphans which is evidenced by the fact that the number of foster child grants in payment has been decreasing over the past years. Orphans and their families have to wait for several years for foster care placements and grants due to the shortage of social workers. The lack of human resources already undermines access to the grant and will certainly prevent the desired scale-up of foster child grants to those in need.

The financial impact of the proposed amendment is likely to be higher than the available resources. If the nearly 1 million maternally orphaned children who are not yet in receipt of the foster care grant successfully applied for the grant, the direct cost would be around R11 billion annually plus enormous costs for court personnel and social workers for the administration of the grant.

In addition to the lack of feasibility, the proposed amendment is legally flawed. First, the amendment is not legally necessary. The judgment in *Nono Cynthia Manana and Others v The Presiding Officer of the Children’s Court: District of Krugersdorp and Others* did not make a declaration of unconstitutionality regarding section 150(1)(a) of the Children’s Act. The judgment merely interpreted section 150(1)(a) of the Children’s Act. The Legislature is therefore under no obligation to change the clause. Second, the amendment is inconsistent with the Constitution, the objectives of the Children’s Act, and the objectives of the Social Assistance Act. The proposed amendment introduces a financial means test of orphans into section 150(1)(a) of the Children’s Act. This is a substantial and highly problematic change because it shifts the question of whether a child needs state care and protection to an inquiry into the financial situation of the child. Third, the wording of the amendment to section 150(1)(a) of the Children’s Act is ambiguous and will lead to a subjective and inconsistent application of the law. Given that the proposed amendment introduces a financial means test without providing an objective formula to conduct such a test, magistrates will have to make up their own criteria. As a result, some families caring for orphans will be able to obtain the foster child grant while others will be unable to do so.

While we agree that families taking care of orphaned children require access to social assistance, we submit that the proposed amendment to section 150(1)(a) of the Children’s Act is both inappropriate and ineffective in addressing the need for social protection. We

therefore urge the Portfolio Committee on Social Development to withdraw the proposed amendment to section 150(1)(a) of the Children's Act from the Amendment Bill. We make detailed recommendations on how to amend section 150 of the Children's Act in order to ensure that orphaned children and their families will have access to social protection (see Annexure A).

Proposed amendment to section 150(1)(a) of the Children's Act

According to the Amendment Bill, section 150(1)(a) of the Children's Act will read:

*"A child is in need of care and protection if such a child –
has been abandoned or orphaned and does not ostensibly have the ability to support himself or herself" (emphasis added).*

The Memorandum on the Objects of the Amendment Bill states that the purpose of the amendment of section 150(1)(a) of the Children's Act is to clarify that a child is in need of care and protection if the child "has been orphaned and does not have the ability to support himself or herself and such inability is readily evident, obvious or apparent" (see 3.8 of the Memorandum). This wording stems from the judgment in *SS v The Presiding Officer of the Children's Court: District of Krugersdorp and Others*.² The Memorandum further explains that "[t]he amendment herein seeks to give effect to the judgment in *Nono Cynthia Manana and Others v The Presiding Officer of the Children's Court: District of Krugersdorp and Others*".³ In light of the importance of these judgments for the proposed amendment to section 150(1)(a) of the Children's Act we provide a short summary of these judgments.

A brief summary of the relevant case law

In *SS v The Presiding Officer of the Children's Court: District of Krugersdorp and Others* (hereafter: *SS*) the court had to decide whether an orphan who was living with his aunt was in need of state care and protection and could be placed in foster care with his aunt. Related to this was the question of whether the aunt could receive a foster care grant for taking care of the child. The case was an appeal to the High Court against a decision by the Krugersdorp Children's Court.

The question of whether the child before the court was "without any visible means of support" and therefore needed to be placed into foster care took centre stage. To interpret the meaning of the phrase "without visible means of support" in section 150(1)(a) of the Children's Act, Judge Saldulker consulted the New Shorter Oxford English Dictionary on Historical Principles which uses "clearly or readily evident", "apparent" and "obvious" as synonyms for "visible" (*SS* para 31). Drawing on vagrancy statutes, Judge Saldulker argued

² *SS v The Presiding Officer of the Children's Court: District of Krugersdorp and Others* (A3056/11) [2012] (6) SA 45 (GSJ) (29 August 2012).

³ *Nono Cynthia Manana and Others v The Presiding Officer of the Children's Court: District of Krugersdorp and Others* (A3075/2011) [2013] ZA GPJHC 64 (12 April 2013).

that someone is “without any visible means of support” if they have “no ostensible ability to support themselves” (SS para 31). These are the words that now appear in the proposed amendment of section 150(1)(a) of the Children’s Act (and in the Memorandum of the Amendment Bill).

According to the High Court, the question of whether a child is “without visible means of support” is equivalent to the question of whether the child has the financial ability to support himself or herself. It appears that, in order to serve the best interest of the child principle, the High Court crafted an interpretation of the words “without any visible means of support” that would result in the orphaned child’s family getting the foster child grant.

In *Nono Cynthia Manana and Others v The Presiding Officer of the Children’s Court: District of Krugersdorp and Others* (hereafter: *Manana*) the High Court was examining two main questions:

1. Can a caregiver who owes a legal duty of care be appointed as a foster care parent?
2. Can a foster care grant be granted to the caregiver in this particular case?

More specifically, the court had to decide whether three orphaned children who were in the care of their grandmother could be placed in formal foster care with the grandmother in order for her to obtain foster child grants for the three orphans. Like the SS judgment, it was an appeal to the High Court against a decision by the Krugersdorp Children’s Court. In the *Manana* judgment, the High Court ruled that a caregiver who owes a legal duty of support may be appointed as a foster parent and is therefore entitled to apply for a foster care grant.

Although the High Court agreed with existing case law that “neither the Children’s Act nor the Social Assistance Act nor the relevant regulations require an examination of the foster care giver’s income” (*Manana* para 31), the court examined whether the grandmother had the financial means to support the three orphaned children.⁴ Drawing on the social worker’s report, the court balanced the income of the grandmother against her expenses. Due to the deficit in her finances, the High Court ruled that the children be placed in foster care with their grandmother and a foster care grant be paid to the grandmother for each of the three children.

In the SS and the *Manana* case, the High Court was concerned with the best interests of the children before the court and essentially had only two choices available to it – turn the appeal down and force the families to survive on the small child support grant (R300/child in 2013) or uphold the appeal so that the care givers could apply for the larger foster care grant (R800/child in 2013). Both cases aimed to further the best interests of the children in front of the court by placing the children into foster care with their relatives so that these families could obtain a foster care grant. The judgments are not *per se* objectionable because they served the best interest of the four children affected by these judgments. However, from a policy perspective, amending section 150(1)(a) of the Children’s Act to reflect the wording used in these judgments is contrary to the best interests of the 1.5 million orphaned children

⁴ According to the High Court this examination was necessary to establish whether orphaned children could enforce their claim against the grandmother who owed them a legal duty to support.

in need of timeous and adequate social grants and hundreds of thousands of abused, neglected and exploited children in desperate need of state protection services.

Is the amendment necessary?

The Memorandum to the Amendment Bill suggests that the proposed amendment of section 150(1)(a) of the Children's Act is required to comply with the *Manana* judgment. This is, however, not the case. Neither the *SS* nor the *Manana* judgment made a declaration of unconstitutionality or questioned the constitutionality of section 150(1)(a) of the Children's Act. Instead, the *SS* and the *Manana* judgment interpreted section 150(1)(a) of the Children's Act. Whereas the *SS* judgment provided an interpretation of the words "without any visible means of support", the *Manana* judgment examined whether the children before the court had an enforceable claim against their grandmother. Given that neither of the judgments made a declaration of unconstitutionality regarding section 150(1)(a) of the Children's Act, it is not legally necessary to change the wording of this clause. In fact, if the Legislature agrees with the interpretations provided for in the judgments, no legislative changes are required.

An amendment of section 150(1)(a) of the Children's Act would only be necessary if the Legislature disagreed with the interpretation of the provision by the High Court or if the Legislature is of the opinion that the current wording of section 150(1)(a) of the Children's Act is unclear or misleading. It is our submission that the current wording of section 150(1)(a) of the Children's Act is somewhat unclear. However, the proposed amendment is even more ambiguous and, as will be shown below, fails to address the current crisis in the foster care system.

The implications of the proposed amendment to section 150(1)(a) of the Children's Act

The proposed amendment to section 150(1)(a) of the Children's Act will lead to courts continuing to issue foster care orders in order to ensure that orphans living with extended family can access foster child grants. We submit that using the child protection system for poverty alleviation is inappropriate because it –

- Prevents orphans from accessing timeous and adequate social grants;
- Prevents abused, neglected and exploited children from accessing state protection services; and
- Worsens the current crisis in the child protection system.

The child protection system is currently in crisis. It fails to respond adequately to abused and neglected children. Cases where children are reported with a suspicion of child abuse or neglect do not receive timely investigation placing them at risk of continued abuse and even

death.⁵ Continuing the use of this system for the provision of social grants for orphans will come at the cost of blocking access to protective services for abused and neglected children. At the same time, the child protection system will be unable to adequately respond to the large number of orphans requiring social assistance.

The proposed amendment also ignores the order of the Constitutional Court in *Centre for Child Law v Minister of Social Development and Others 2011*, which requires the Department to design and implement 'a comprehensive solution' to address the crisis in the foster care system.⁶

Lack of human resources and finances for implementation

Acknowledging the crisis in the foster care system, the Constitutional Court required the Department to implement a 'comprehensive legal solution' by amending the Children's Act by 31 December 2014.⁷ It is therefore disappointing that the proposed amendment to section 150(1)(a) of the Children's Act is yet another missed opportunity to address the crisis in the foster care system.

There are currently over 500 000 children in the foster care system – the vast majority of them (around 90%) are orphans in the care of relatives.⁸ Since 2012, the number of foster care grants has been declining despite the large potential population of applicants. At the end of March 2012, 536 747 foster care grants were in payment. Consistent decreases over the next three years reduced this number to 499 774 at the end of March 2015 – the lowest figure since 2010⁹ despite the large number of orphans not in the foster care system. The 2011 court order effectively placed a moratorium on grants lapsing even when foster care orders had not been reviewed. In the absence of this court order, the number of foster care grants would have decreased much more rapidly: according to the Department's own estimates, 300 000 foster care placement orders were due to expire at the end of 2012, indicating that the majority of children in foster care are not receiving the required supervisory or supportive services from social workers.

According to the proposed amendment, foster care continues to be the preferred arrangement for orphans to access a social grant. A further 11 360 social workers would be needed just to manage the target of 1 million foster care placements for maternal orphans, if foster care is to be considered the care arrangement of choice for maternally orphaned children. This estimate is calculated by dividing the number of maternally orphaned children

⁵ Mathews S, Martin L, Scott C, Coetzee D and Lake L (2015) *"Every Child Counts": What are we learning from the Child Death Review Pilot? A research brief*. Cape Town: Children's Institute, University of Cape Town.

⁶ *Centre for Child Law v Minister of Social Development and Others* Case No: 21726/11, North Gauteng High Court, May 2011 [amended 8 June 2011] Para 4.

⁷ *Centre for Child Law v Minister of Social Development and Others* Case No: 21726/11, North Gauteng High Court, May 2011 [amended 8 June 2011] Para 4.

⁸ Note: It is not possible to determine orphan status from SOCPEN records. This estimate is derived from analysis of the General Household Survey 2014, by K Hall, Children's Institute, UCT.

⁹ South African Social Security Agency monthly SOCPEN reports, compiled by Children's Institute, UCT.

who are not receiving foster child grants by 60 which is according to the Department's own guidelines the maximum case load per social worker. These 11 360 social workers would not be available to provide child protection and generic welfare services to children and other members of the population. We submit that the Department will be unable to train and employ a further 11 360 social workers in the near future and will therefore be unable to scale-up access to the grant for the target of 1 million orphans.

The proposed amendment also fails to take into account the financial implications of rolling-out the foster care grant to another 500,000 to 1 million orphans under the age of 18 years. The range in the estimate refers to the minimum and maximum numbers, depending on whether or not a means test is applied. The estimated numbers also exclude orphans in the age group 18 to 21 years.¹⁰ It appears that the Department has not yet given a projection of the number of targeted beneficiaries implied by the proposed amendment, or the financial implications of the amendment. The costs would include the direct costs of the grant plus very high operational costs. The administration of foster child grants is very costly because it requires the continued involvement of social workers and court personnel. A social worker needs to examine the case and prepare a report. The case is subsequently referred to court which reviews the case and makes an order for a temporary foster care placement. The placement of the child needs to be supervised by a social worker on a regular basis. After two years, the foster care order lapses. To renew it, the order needs to be reviewed by the children's court. The administration of the foster care grant is therefore much more expensive than the administration of the child support grant which is administered by the South African Social Security Agency (SASSA).

Legal flaws of the proposed amendment

The proposed amendment to section 150(1)(a) of the Children's Act is furthermore legally flawed. By incorporating the wording of the High Court judgments into section 150(1)(a) of the Children's Act, the Amendment Bill introduces a financial means test into the inquiry of whether a child is in need of state care and protection. This is a substantial change to section 150(1)(a) of the Children's Act which is inconsistent with the objectives of the Children's Act and the objectives of the Social Assistance Act. The amendment will lead to subjective and therefore inconsistent interpretations of section 150(1)(a) of the Children's Act thereby undermining the constitutional right to equality (section 9 of the Constitution) and the best interest of the child principle (section 28(2) of the Constitution).

¹⁰ The foster child grant is available to children up to the age of 21 years if they are furthering their education.

The “need for care and protection” versus the “need for social assistance”

The purpose of section 150(1)(a) of the Children’s Act is to provide the children’s court with criteria that need to be considered to decide whether a child is in need of state care and protection. According to legal commentary, the phrase “child in need of care and protection” refers specifically to a child “who requires additional or alternative care and protection services imposed as a compulsory measure by the state”.¹¹ The purpose of section 150(1)(a) of the Children’s Act therefore is to establish whether a child is in need of mandatory state intervention. Such intervention can take various forms, for instance a care order (where appropriate family or parental care is lacking), supervision of a family by a social worker, therapeutic counselling for an abused child, etc.

Orphans living with family members do not lack care or protection, but the families taking orphaned children in often lack the financial means to adequately care for these children. The child support grant, which is available to many of these families, is insufficient to cover the needs of the child. This is, however, a systemic problem rooted in the current social grant system. The financial constraints of these families should not be addressed by incorporating eligibility criteria for a social grant into section 150(1)(a) of the Children’s Act because, as outlined above, the purpose of this clause is to ensure that children in need of state care and protection can access services such as alternative care arrangements, counselling by a social worker, etc. The conflation of the need for care and protection with the need for social assistance will entrench and probably increase the use of the child protection system for the administration of foster grants. This is worrying because the child protection system is already not coping with the work load added by foster care applications by orphaned children’s family members. As noted earlier, despite a major growth in the number of social workers, the number of foster child grants is currently decreasing and the crisis in the system is getting worse. While it takes around three days to process an application for a child support grant, foster parents wait up to three years to find out about their application for a foster child grant.

Using the child protection system for the administration of social grants is also problematic because abused and neglected children whose well-being and, at times, survival depends on the availability of state protection services are unable to access protection services if the system is clogged with the placement of orphans into foster care in order for them to access foster care grants. The child protection system was designed for the needs of approximately 50 000 neglected and abused children.¹² It is therefore unable to respond to the large number of orphans it is currently faced with.

Conflating the need for care with the need for social assistance also leads to the undesirable result that section 150(1)(a) of the Children’s Act is not applicable to children who *do* have the financial means to support themselves. By making the financial situation of the child the main criterion in the assessment of whether a child requires state care and protection, the amendment would lead to the (absurd) result that abandoned and orphaned children who

¹¹ Matthias, C and Zaal, N in: Davel, CJ & Skelton, AM (2007) *Commentary on the Children’s Act*. Cape Town: Juta, p 9-3.

¹² Hall K & Proudlock P (2011) *Orphaning and the Foster Child Grant: A return to the “care or cash” debate*. *Children Count brief*. Cape Town: Children’s Institute, University of Cape Town.

have the financial ability to support themselves *cannot* access state care and protection. For example, a five year-old orphan who receives an inheritance could not be placed in foster care anymore because she has the ability to support herself. Clearly, the financial situation of a child does not reflect a child's need for care. The decision about a child's need for care and protection should therefore not be dependent on the financial situation of the child.

Children's Act versus Social Assistance Act

Introducing a financial assessment into section 150(1)(a) of the Children's Act is systematically flawed because the social grant system is regulated by the Social Assistance Act 13 of 2004. The Social Assistance Act sets out the criteria for the different types of social grants such as the older person's grant, disability grant, child support grant, foster child grant, child dependency grant, etc. The amendment would introduce eligibility criteria for a grant into the Children's Act which is systematically incorrect. Section 150(1)(a) of the Children's Act was never intended to act as the eligibility criteria for accessing the foster care grant. It was intended to allow the court to consider the circumstances of the child and make a care order. The question of whether the family then qualifies for a grant is determined by the Social Assistance Act and its regulations.

The amendment would furthermore create an inconsistency between the Children's Act and the Social Assistance Act because the latter does not require a financial means test for a foster care grant. This grant is meant to provide assistance to people who take children into their homes in order to ensure that their family needs are not compromised. The grant also acknowledges that children who have been affected by abuse or neglect might have special needs and require more assistance than other children. The foster care grant should therefore be accessible to all foster parents.

Another problem with introducing a means test into section 150(1)(a) of the Children's Act is that neither the proposed wording of the clause nor the *Manana* judgment which it is based on provide a formula for conducting this means test. The court did not apply any objective income threshold or means test formula, as is standard practice in South Africa when means tests are applied to determine eligibility for social grants. The proposed wording of section 150(1)(a) of the Children's Act leaves the interpretation of the phrase "does not ostensibly have the ability to support himself or herself" up to the magistrate. Giving the magistrate discretion in this regard will result in inconsistent case law and will lead to unequal access to foster care grants. This undermines orphans' right to equality (section 9 of the Constitution).

Wording of the amendment

The amendment of section 150(1)(a) of the Children's Act will cause further implementation problems due to its vague and ambiguous wording. While it is first of all questionable whether any child actually has the ability to support himself or herself, the wording secondly places the onus on the child to show whether he or she has the ability to support himself or herself. In order to enable the social worker to determine whether the child "ostensibly" has

“the ability to support himself or herself” the child would have to provide the social worker with evidence regarding his or her financial situation or explain why he or she requires care. It is also unclear what kind of factors social workers should take into account when assessing whether the child has the ability to support himself or herself and what kind of documentation is required from the child.

The meaning of the term “ostensibly” is also equivocal. Given that “ostensibly” is not a legal term, it will likely be interpreted by magistrates on a case-by-case basis and hence lead to different standards being applied when assessing a child’s ability to support himself or herself.

Alternative amendment to section 150 of the Children’s Act

We propose an alternative amendment to section 150 of the Children’s Act (see Annexure A. for details) which was debated during the Child Care and Protection Forum in Johannesburg on 20 November 2013. We support this alternative amendment because it tackles the systematic challenges in the foster care system.

We submit that section 150 of the Children’s Act should be changed to divert orphaned children who are living safely with their family members away from the child protection system, to the South African Social Security Agency to apply for an ‘Extended Child Support Grant’. The proposed ‘Extended Child Support Grant’ would be a means-tested grant that would be targeted specifically at orphaned children living with family members. It would be a higher amount than the existing Child Support Grant.

We further propose an initial screening process for orphans living with family members to ensure that the few orphans who may not be safe with their families are provided with care and protection services by social workers. The proposed alternative amendment also aims to promote these families gaining access to social services that can be provided by a range of social service practitioners including child and youth care workers (in the Isibindi programme) and social auxiliary workers. This would not only ensure that the majority of orphans living in poverty with family members are able to access an adequate social grant quickly, but it would also free up social workers and courts to provide better protection and care services to abused, neglected and exploited children. This solution is therefore in the best interests of both groups of vulnerable children (orphans *and* abused children) and would promote the realisation of their rights. Our alternative amendment to section 150 of the Children’s Act has the support of the main civil society organisations working for and with children.

Recommendations:

We therefore recommend that the Portfolio Committee:

- a. Withdraw the amendment to section 150(1)(a) of the Children's Act from the Bill.
- b. Substitute it with the alternative amendment to section 150 of the Children's Act proposed in Annexure A. The alternative amendment proposed in Annexure A. should only come into operation once the 'Extended Child Support Grant' for family members caring for orphans is in place (see c. below).
- c. Amend the social assistance legal framework to create an accessible and adequate Extended Child Support Grant for family members caring for orphans.

Until the social assistance legal framework has been changed, the current version of section 150(1)(a) of the Children's Act should remain in place.

2. The National Child Protection Register

Section 120 of the Children's Act

Paragraph 3.4 of the memorandum on the objects of the Children's Amendment Bill states that Clause 2 seeks to amend section 120 to give effect to the judgment in the matter of **J v National Director of Public Prosecutions and Another [2014] ZACC 13**, to allow child offenders to make representations before their names are included in the Register in order to ensure that the Act does not unjustly limit the rights of child offenders. However, the Children's Institute contends that the amendments do not give full expression to the intention of the Court. In the *J* case the Constitutional Court found that:

- the National Register of Sex Offenders has a commendable and legitimate aim, to keep children and persons with disabilities safe in the places where they learn and grow (para 47);
- the automatic inclusion of child offenders names in the National Register of Sex Offenders results in an unacceptable limitation of the rights of child offenders;
- the vast majority of child offenders who commit sexual offences as children do not grow up to become adult sex offenders who prey on children (para 49);
- child offenders must be treated as individuals and that the problem with an automatic provision is that it does not allow a court to differentiate between children who really will grow up to pose a threat to others, and those that probably will not; and

- in order to determine that risk, an assessment is necessary.¹³

The Children's Institute is of the view that the proposed amendments to section 120(4A), comply with the Constitutional Court's order by allowing an opportunity for the child offender to make submissions to the Court as to why his or her details should not go on the register. However, the proposed provisions are problematic in the following ways:

- The provisions start from the idea that all child offenders should go on the register, unless they can show good cause as to why they should not be included.
- Although the law allows the child to make submissions saying why he or she should not go on the register, this places a heavy burden on the child.
- There is no provision for an assessment to be carried out before a decision is made to place a child on the register – this disregards what was said by the Constitutional Court regarding the importance of assessment.

When it comes to the deciding whether to include a child offender's name on the NCPR two sets of rights must be taken into consideration. Child offenders have a right to special protection within the criminal justice system this right is protected under international law¹⁴; African regional law¹⁵; and under the South African Constitution¹⁶. All children have the right to protection from abuse¹⁷; and the Constitution sections 12(1), and 28(1)(d). Additionally, the best interests of both the offender and other children must be considered.

Child offenders should not be included in the NCPR, unless there are substantial and compelling circumstances that would warrant such inclusion i.e. they pose a continued risk to other children. We suggest that the Children's Amendment Bill is aligned with the provisions in the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act 5 of 2015. Under the terms of the criminal law the prosecutor must make an application to the court for child's name to be added to the National Register of Sex Offenders. Thus, placement on the register is not automatic it is in the prosecutor's discretion, and will depend on the severity of the offence, the history of the offender, the circumstances surrounding the offence and such other factors as the prosecutor may take into consideration. If the same principles were applied in to the provisions in the Children's Amendment Bill the effect would be that if there is no application, the particulars of the child will not be included in the National Child Protection Register.

An assessment of the child is the best way to establish the likelihood of re-offending (against another child or mentally ill person). An application by the prosecutor for an order to include the child's particulars would be followed by an assessment by a probation officer. The court

¹³ *J v National Director of Public Prosecutions and Another 2014(2) SACR 1 (CC); 2014 (7) BCLR 764(CC).*

¹⁴ Office of the High Commissioner of Human Rights (1989) *Convention on the Rights of the Child. UN General Assembly Resolution 44/25.* Geneva: United Nations (UNCRC). Articles 37 and 40.

¹⁵ Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), (ACRWC). Article 17.

¹⁶ Sections 28(1)(g) and 35.

¹⁷ UNCRC articles 19, 23, and 34; the ACRWC articles 13, 16 and 27.

could then, consider the assessment report, and give the child offender an opportunity to make representations before deciding whether the child's particulars should be included in the Register. On another note, during the proceedings contemplated in section 120(1)(a) and (c) of the Children's Act it is unlikely that a child would have legal representation, thus, infringing the child's right under section 28(1)(c) of the Constitution. We believe that the best way to give effect to these rights is to exclude children completely from the provisions in sections 120(1) to (6) and to insert a new sub-clause stipulating how a criminal court should deal with a child offender.

Sections 122 and 128 of the Children's Act

The Children's Institute supports the principle of the amendment to section 122 of the principal Act, but has suggested an additional cross-reference that would be necessary if out recommended changes to section 120 are adopted. The Children's Institute also supports the proposed amendments to section 128.

Other concerns

Finally, we would also like to draw the attention of the Committee to our broader concerns with the National Child Protection Register. The Children's Institute's research clearly demonstrates that the child protection system is overburdened and uncoordinated¹⁸. The Children's Act needs harmonisation with other legislation in particular the Sexual Offences Act to strengthen the child protection system.

One example will suffice to highlight the lack of coordination within the child protection system. The Children's Act establishes the National Child Protection Register (NCPR). Part A of the NCPR is supposed to act as a surveillance system allowing social service professionals to monitor individual cases and providing macro level data to enable policy-makers and planners to target resources and services where they are most need. In 2010/11, the NCPR registered a total of 1,348 abuse (sexual, physical, and emotional) and neglect cases¹⁹. However, in the same year the police recorded over 51,000 sexual offences and physical assaults against children²⁰. The discrepancies between the national statistics suggest that police are not fulfilling their obligations under the Children's Act to report cases to the Department of Social Development. As a result children are not receiving adequate and appropriate protection services. This is in part due to the inconsistencies in the legislation in respect of the mandatory reporting of child abuse, inter-agency collaboration in

¹⁸ Proudlock P, Mathews S & Jamieson L (2014). Children's rights to be protected from violence: A review of South Africa's laws and policies. In: Proudlock P (ed). *South Africa's Progress in Realising Children Rights: A law review*. Cape Town: Children's Institute, UCT; Mathews S, Jamieson L, Lake L & Smith C (eds.). *South African Child Gauge 2014*. Cape Town: Children's Institute, UCT.

¹⁹ Department Women, Children and People with Disabilities (2013). *The United Nations Convention on the Rights of the Child. South Africa's Combined Second, Third and Fourth Periodic State Party Report to the United Nations Committee on the Rights of the Child. (Reporting period: January 1998 – April 2013)*. DWCPD: Pretoria. P101.

²⁰ South African Police Service (2012). *Crime Report 2010/2011*. South African Police Service: Pretoria.

response to reports of abuse and the establishment of two registers the National Register of Sex Offenders and the National Child Protection Register.

The harmonisation of the Children's Act, the Sexual Offences Act, and other legislation that together form the basis of the child protection system needs careful consideration and should be done in collaboration with other portfolios.

3. Removal of child to temporary safe care without a court order

Section 152 of the Children's Act

In January 2012 the Constitutional Court declared sections 151 and 152 of the Children's Act unconstitutional.²¹ The Court ordered that two new subsections be added stating that a judicial review is required when a child is removed from the care of his/her family and placed in temporary safe care. Regardless of whether the removal was done with or without a court order, the children's court must review the decision before the end of the next court day. Prior to this order, the parents or the child had to wait until the children's court hearing to contest the removal. The Act requires that a children's court inquiry must be held within 90 days of the removal, but in reality it can take much longer. Although, social workers have been obliged to follow the procedures outlined by the Court since 2012,²² the new subsections do not appear in the Act.

According to the memorandum on the objects of the Children's Second Amendment Bill the proposed changes to section 152 of the Children's Act are designed to give effect to the judgment in *C and Others v Department of Health and Social Development, Gauteng and Others 2012(2) South Africa 208(CC)*. For the most part the Amendment Bill aligns with the judgment and gives effect to the child's right to participate, and to the general principles of the Act to give the child's family a chance of expressing their views (if in the child's interest), and to avoid delaying action and decisions on the well-being of child.²³ The children's court review also allows an independent arbitrator to balance the child's rights to family care with the right to protection from abuse. However the Amendment Bill diverges from the court ruling in at least one significant way. If a police official removes a child the official is obliged to report the matter to a designated social worker. The designated social worker must then take the matter to the court for review. The wording in the Amendment Bill is not in line with the Constitutional Court ruling that set the social worker's deadline in relation to the receipt of the referral. Compelling the designated social worker to place the matter before the court before the end of the first court day following the placement of the child by the police official could leave the designated social worker little or no time to prepare for court.

²¹ *C and Others v Department of Health and Social Development, Gauteng, and Others*, 2012 (2) SA 208 (CC).

²² Department Social Development (2012) Children's Act (38/2005): Constitutional Court Judgment. *Government Gazette* 35246, Notice 301, 13 April 2012.

²³ See no. 39 above. Sections 6(3) and (4).

Recommendation:

Revert to the deadline set by the court by the substitution in subsection 152(3) for paragraph (b) of the following paragraph:

(b) refer the matter before the end of the first court day after the day of removal of the child to a designated social worker, [for investigation contemplated in section 155(2); and] who must ensure that –

(i) the matter is placed before the children’s court for review before the expiry of the next court day after the referral;

(ii) the child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children’s court, unless this is impracticable; and

(iii) the investigation contemplated in section 155(2) is conducted;

4. Remaining in alternative care beyond 18 years

Section 176 of the Children’s Act

The Children's Institute welcomes the amendment of section 176(2) of the Children's Act to allow a person acting on behalf of a child or young adult to make an application for that person to remain in alternative after the age of 18; and enable young people to stay in alternative care whilst completing their education, whatever form that education make take. However, young people also need help and support to manage the transition to living on their own if they are not in education²⁴. A young person should be permitted to stay in alternative care until such time as they have developed the skills to live independently. Section 191(3) of the Children's Act states that child and youth care centres may offer:

“(e) A programme to assist a person with the transition when leaving a child and youth care centre after reaching the age of 18.”

The young person should be permitted to remain in the child and youth care centres until such time as he or she has completed such a programme.

The Children's Institute welcomes the addition of the subsection setting the deadline for applications to remain in alternative care beyond 18, however, we believe that the provincial HSD should be able to accept a late application at any stage so long as the young person or

²⁴ Jamieson, L (2014) ‘Children’s rights to appropriate alternative care when removed from the family environment: A review of South Africa’s child and youth care centres’. In Proudlock P (ed) (2014) *South Africa’s progress in realising children’s rights: A Law Review*. Cape Town: Children's Institute, University of Cape Town & Save the Children South Africa.

someone acting on his or her behalf makes a good case as to why the application was submitted late.

Recommendations:

- a. Insert a new definition in section 1 of the Children's Act:

“**Independent living programme**’ means a programme referred to in section 191(3)(e);”

- b. Replace subsection 176(2)(b) of the Children's Act with the following:

“(b) the continued stay in that care is necessary to enable that person to complete his or her grade 12, higher education, further education [or] and training, vocational training, or to complete an independent living programme’.

- c. Insert new subsection 176(3) of the Children's Act:

“(3) An application contemplated in subsection (2) must be submitted before the end of the year in which the relevant child reaches 18 years, but a late application may be condoned upon good cause shown.”

5. The duration of foster care orders for children placed with unrelated foster parents

Section 186 of the Children's Act

The Amendment Bill proposes to delete the word “foster” in section 186(1) of the Children's Act.

Section 186(1) of the Children's Act deals with the extension of a foster care placement where a child has been in the care of a person other than a family member. In the current version, section 186(1) of the Children's Act states that after a child has been in formal foster care with the person for more than two years a children's court can order that –

- no further social worker supervision and social worker reports are required for the placement; and
- the placement subsists until the child turns 18 years.



The aim of section 186(1) of the Children's Act is to give courts discretion to grant a long-term foster care order where the courts are satisfied that the child is being well cared for and that the placement will create stability in the child's life. In the current version, the clause only applies to the extension of formal foster care placements, i.e. where a child has been formally placed in foster care with a non-family member and the child has been cared for by this person for more than two years. Giving the courts discretion to extend foster care placements until the child turns 18 years is appropriate in these instances because the placement has been scrutinised: the social worker investigated the case and made a report, and the court examined the case when making the initial foster care order. The placement was then supervised on an ongoing basis by the social worker. If there had been any problems with the placement affecting the well-being of the child, the court would be aware of these problems when deciding about an extension of the foster care placement.

By removing the word "foster" from section 186(1) of the Children's Act, the extension of foster care placements until the child turns 18 years would also apply to those instances where children have been cared for by non-family without a foster care placement having been made. Courts would therefore be able to grant long-term foster care placements for cases that have not been subject to scrutiny by the a social worker. The extension of the placement would simply be based on the fact that the child has been living with that person for more than two years. According to the proposed amendment, children could be placed in foster care for up to the age of 18 years without this placement reviewed by either a court or a social worker in the future. This casual approach to long-term foster care placements puts children living with non-relatives at risk for abuse, neglect and exploitation and is a violation of the child's right to review in the UNCRC.

Giving courts discretion to make long-term foster care placements with non-relatives without these placements ever having been examined clearly violates the right to review and the best interest of the child principle protected by the Constitution and the Children's Act.

Recommendation:

We therefore urge the Portfolio Committee to reject the proposed amendment to section 186(1) of the Children's Act.

For further information please contact Prof Shanaaz Mathews.

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Annexure A

Child in need of care and protection

150. (1) A child is in need of care and protection if[, **the**] such child-
- (a) has been abandoned or orphaned and is **[without any visible means of support]** not in the care of a family member as defined in paragraph (c) of the definition of family member in section 1;
 - (b) displays behaviour which cannot be controlled by the parent or care-giver;
 - (c) lives or works on the streets or begs for a living;
 - (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;
 - (e) has been exploited or lives in circumstances that expose the child to exploitation;
 - (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;
 - (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
 - (h) is in a state of physical or mental neglect; or
 - (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person **[under]** in whose **[control]** care the child is.

(2) A child found in the following circumstances may be a child in need of care and protection and must be referred for **[investigation]** initial screening by a **[designated social worker]** social service practitioner in the prescribed manner:

- (a) a child who is a victim of child labour; **[and]**
- (b) a child in a child-headed household; **[and]**
- (c) a child who has been abandoned or orphaned but is in the care of a family member as defined in paragraph (c) of the definition of family member in section 1.

(3) If after **[investigation]** initial screening **[a]** the social **[worker]** service practitioner finds that a child referred to in subsection (2) is not a child in need of care and protection as contemplated in subsection (1), **[the]** such social **[worker]** service practitioner must where necessary take measures to assist the child, including counselling, mediation, prevention and early intervention services which may include assistance to the family to apply for any appropriate social grants, family reconstruction and rehabilitation, behaviour modification,

problem solving, formalising parental responsibilities and rights in terms of section 22, 23 or 27, and referral to another suitably qualified person or organisation.

(4) If after initial screening the social service practitioner finds that a child referred to in subsection (2) is a child in need of care and protection as contemplated in subsection (1), the social service practitioner must refer the child for an investigation by a designated social worker in terms of section 155 (2).

Recommendations to amend the Children's Amendment Bill [B13 2015]

Section	Proposed alternative	Explanation
National Child Protection Register		
Section 2: Amendment of section 120 of Act 38 of 2005	<p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) A finding that a person <u>(A)</u> is unsuitable to work with children maybe made by–</p> <ul style="list-style-type: none"> (a) Children’s court; (b) Any other court if any criminal or civil proceedings in which that person is involved; or (c) Any forum established or recognised by law in any disciplinary proceedings concerning the conduct of that person relating to a child; <p><u>unless A was a child at the time of the commission of such offence or conduct.”</u></p>	<p>Child offenders have the right to be treated differently to adult offenders; and have right to legal representation that may not be available outside of a criminal court.</p>
	<p>(b) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) In criminal proceedings, subject to the provisions of subsection (7), a person must be [found] <u>deemed</u> unsuitable to work with children—</p> <ul style="list-style-type: none"> (a) on conviction of murder, [attempted murder, rape, indecent assault or] <u>any sexual offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act</u> 	<p>A child should never be deemed unsuitable to work with children. There must always be a finding by a court after the prosecution has proven that the child is a risk. By excluding children here it makes the distinction between how to treat adults and children clearer.</p>

	<p>No. 32 of 2007), assault with the intent to do grievous bodily harm, [with regard to a child] where a child is the victim of any such offence, or any attempt to commit any such offence, or possession of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996); or</p> <p>(b) if a court makes a finding and gives a direction in terms of section 77(6) or 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] an offence contemplated in paragraph (a).”</p>	
	<p>(c) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) Any person (A) who has been convicted of an offence contemplated in subsection (4)(a), whether committed in or outside the Republic during the five years preceding the commencement of this Chapter, is deemed unsuitable to work with children, unless A was a child at the time of the commission of such offence.”</p>	<p>A child should never be deemed unsuitable to work with children there should a finding by a court following an application by the prosecutor.</p>

	<p>(d) by the insertion after subsection (6) of the following subsection: <u>“(7) If a court has, in terms of this Act or any other law, convicted a person (A) of an offence referred to in subsection (4), and A was a child at the time of the commission of such offence, the court may not find the child unsuitable to work with children; unless –</u></p> <p><u>(a) the prosecutor has made an application to the court for such an order;</u></p> <p><u>(b) the court has considered a report by the probation officer referred to in section 71 of the Child Justice Act, 2008, which deals with the probability whether or not he or she will commit another offence against a child;</u></p> <p><u>(c) the child has been given the opportunity to make representations to the court as to why his or her particulars should not be included in the Register; and</u></p> <p><u>(d) the court is satisfied that substantial and compelling circumstances exist based upon such report and any other evidence, which justify the making of such an order.</u></p>	<p>The draft amendment envisages a situation where children are automatically added to the NCPR unless they persuade the court that they do not pose a risk. Our amendments would make the default position that children are not added to the NCPR unless the prosecutor proves that the child is a risk. This proposal would align the Children's Act with the Sexual Offences Act.</p>
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	<u>(e) In the event that a court finds that substantial and compelling circumstances exist which justify the making of an order, the court must enter such circumstances on the record of the proceedings.”; and</u>	
Section 3: Amendment of section 122 of Act 38 of 2005	Insert the following subsection after subsection (1): “ <u>1(A) The National Commissioner of the South African Police Service must in the prescribed manner, forward to the Director-General all the particulars of persons referred to in section 120(4), (5) and (7).”</u>	Consequential amendment if the changes to section 120 are adopted
Section 4: Amendment of section 128 of Act 38 of 2005		Applies only to children where a finding was made – the SOAA also requires children who are on the NRSO to make an application to the court to have their name removed, but removes the time restriction for children whose names were on the register prior to the commencement of the new provisions.
Foster care		
Section 5: Amendment of section 150 of Act 38 of 2005	150 (1) A child is in need of care and protection if [, the] <u>such</u> child-	The replacement of “the” with “such” in subsection 150(1) is a technical amendment.
	<u>(a) has been abandoned or orphaned and is [without any visible means of support] not in the care of a family member as</u>	This draft amendment introduces a legal assumption that abandoned and orphaned children who are in the care of a family member are not necessarily in the need of care and protection. While these

	<p><u>defined in paragraph (c) of the definition of family member in section 1;</u></p>	<p>children in the care of family members <i>may</i> be in need of care and protection (as recognised in subsection (2)(c)), this is not necessarily the case. The amendment takes cognisance of the fact that the care provided by family members is not per se inferior to parental care.</p> <p>The aim of the draft amendment is to divert orphaned children who are living safely with family members away from the child protection system to the South African Social Security Agency (SASSA) because many of them do not need care, but financial support in the form of a social grant. Orphaned children who are living safely with family members should therefore not require a foster care placement to access a social grant. To ensure timeous access to an adequate grant they should be given the opportunity to apply for an ‘Extended Child Support Grant’ via SASSA. The ‘Extended Child Support Grant’ is not envisioned as a new grant, but as a supplement/extension to the standard Child Support Grant. The extension would be available to a primary caregiver who is a family member caring for an orphaned child. In order to introduce an ‘Extended Child Support Grant’, the Social Assistance Act and its regulations need to be amended.</p>
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	<p>(i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person [under] <u>in</u> whose [control] <u>care</u> the child is.</p>	<p>Subsection (1)(i) replaces the words “under control” with the words “in care” to emphasise that children should be cared for, not controlled.</p>
	<p>(2) A child found in the following circumstances may be a child in need of care and protection and must be referred for [investigation] <u>initial screening</u> by a [designated social worker] <u>social service practitioner in the prescribed manner:</u></p>	<p>According to the draft amendment children who may be in need of care must be referred for "initial screening" by a social service practitioner rather than a full investigation. The details of the referral procedure and a description of the screening itself will be prescribed in the Regulations to the Children’s Act which need to be drafted by the Department of Social Development.</p> <p>The initial screening is undertaken by a social service practitioner thereby widening the group of professionals who can conduct the screening to include social workers, child and youth care workers (Isibindi programme) and social auxiliary workers.</p>
	<p>(a) a child who is a victim of child labour; [and] (b) a child in a child-headed household; [and]</p>	<p>The insertion of the word “and” is a technical change.</p>
	<p>(c) <u>a child who has been abandoned or orphaned but is in the care of a family member as defined in paragraph (c) of the definition of family member in section 1.</u></p>	<p>Subsection (2)(c) adds abandoned and orphaned children in the care of a family members as a third category of children who may be in</p>

		<p>need of care and protection. These children will be referred for initial screening to ensure that their safety and wellbeing is examined by a social service practitioner.</p>
	<p>(3) If after [investigation] <u>initial screening [a] the social [worker] service practitioner</u> finds that a child referred to in subsection (2) is not a child in need of care and protection as contemplated in subsection (1), [the] <u>such social [worker] service practitioner</u> must where necessary take measures to assist the child, including counselling, mediation, prevention and early intervention services <u>which may include assistance to the family to apply for any appropriate social grants, family reconstruction and rehabilitation, behaviour modification, problem solving, formalising parental responsibilities and rights in terms of section 22, 23 or 27, and referral to another suitably qualified person or organisation.</u></p>	<p>Subsection (3) aims to promote families who care for abandoned or orphaned children gaining access to the array of social services. By adding several social services to the list (assistance to apply for social grants, formalising parental responsibilities and rights in terms of section 22, 23 or 27), the amendment highlights the importance of these services. For consistency with subsection (2) the term “social worker” is replaced by “social service practitioner”.</p>
	<p><u>(4) If after initial screening the social service practitioner finds that a child referred to in subsection (2) is a child in need of care and protection as contemplated in subsection (1), the social service practitioner must refer the child for an investigation by a designated social worker in terms of section 155 (2).</u></p>	<p>Subsection (4) is a new subsection which provides for a referral mechanism. If the initial screening a child referred to in subsection (2) reveals that this child <i>is</i> in need of care and protection, this child <i>must</i> be referred to a designated social worker for a more comprehensive investigation. This subsection ensures that any child who is deemed to</p>

		require state care and protection will be seen by a specialist social worker in the child protection service.
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Recommendations to amend the Children's Second Amendment Bill [B14 2015]

Definitions		
Section 1: Amendment of section 1 of Act 38 of 2005	“‘Independent living programme’ means a programme referred to in section 191(3)(e);”	Provides a definition of independent living programme: necessary to support the proposed amendment of section 176 to allow children to remain in alternative care until they have been prepared to live independent.
Removal of child to temporary safe care without a court order		
Section 3: Amendment of section Section 152(3)(b) of Act 38 of 2005	<p>(b) refer the matter <u>before the end of the first court day after the day of removal of the child</u> to a designated social worker, [for investigation contemplated in section 155(2); and] <u>who must ensure that –</u></p> <p><u>(i) the matter is placed before the children’s court for review before the expiry of the next court day after the referral;</u></p> <p><u>(ii) the child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children’s court, unless this is impracticable; and</u></p> <p><u>(iii) the investigation contemplated in section 155(2) is conducted;</u></p>	If a police official removes a child they are obliged to report the matter to a designated social worker. The designated social worker must then take the matter to the court for review. The wording in the tabled bill is not in line with the ConCourt ruling that set the social worker’s deadline in relation to the receipt of the referral. Compelling the designated social worker to place the matter before the court before the end of the first court day following the placement could leave little or no time for preparation.
Remaining in alternative care beyond age of 18 years		

<p>Section 5: Amendment of section Section 176 of Act 38 of 2005</p>	<p>176(2) “(b) the continued stay in that care is necessary to enable that person to complete his or her <u>grade 12, higher education, further education [or] and training or vocational training, or to complete an independent living programme’</u></p> <p>176 “(3) <u>An application contemplated in subsection (2) must be submitted before the end of the year in which the relevant child reaches 18 years, but a late application may be condoned upon good cause shown.”</u></p>	<p>Young people need help and support to manage the transition to living on their own. A young person should be permitted to stay in alternative care until such time as they have developed the skills to live independently.</p> <p>The provincial HSD should be able to accept a late application at any stage upon good cause shown.</p>
Foster care		
<p>Section 6: Amendment of section Section 186(1) of Act 38 of 2005</p>	<p>Reject the proposed amendment</p>	<p>The proposed amendment would allow a court at the initial children's court inquiry to place a child in unrelated foster care until that child turns 18. Such an order would effectively mean that there would be no supervision by a designated social worker and no further social work reports. The only requirement would be a visit by a social service professional once every two years. This would violate the right to review and not serve the best interests of the child.</p>