**SUMMARY OF PUBLIC SUBMISSIONS**

**CHILD JUSTICE AMENDMENT BILL, 2018 [B32-2018]**

| **PROVISION IN QUESTION** | **NAME OF COMMENTATOR** | **SUBMISSION/RECOMMENDATION** | **RESPONSE** |
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| **Clause 1** | **Centre for Child Law**  **NICRO** | The Centre supports clause 1 as it caters for children taken care by or living with other children.  NICRO acknowledges the reality that there are many children living on their own and in child headed households, but does not support the principle that children should be taking responsibility for other children at the level that is required of adults. | The Act has always provided for “any member of a child’s family, including a sibling who is 16 years or older, or care-giver”.  The amendment only relates to correcting the phrase used in the definition since “adult” is a person over 18 years and not “16 years old” person.  The role of an appropriate person in the Act is to provide support to the child who is alleged to have committed an offence and it is in the interest of the child that he or she receives this kind of support. |
| **Clause 7** | **Centre for Child Law**  **NICRO** | While the Centre appreciates the efforts made to raise the minimum age of criminal capacity from the current level of 10 years, the Centre is of the view that the minimum age of criminal capacity should be raised to 14 years.  The United Nations Committee on the Rights of a Child notes that the minimum age of 14 years will contribute “to a system which deals with children in conflict with the law without resorting to judicial proceedings, providing that the child’s human rights and legal safeguards are fully respected.  The Centre submits further that setting the minimum age of criminal capacity at 14 years would make the use of the rebuttable presumption that the child lacks criminal capacity, unnecessary. The United Nations Committee on the Rights of the Child is of the view that the use of two ages is confusing, and leaves much to the discretion of the court and could cause discriminatory practices.  The retention of the presumption means that the evaluation of criminal capacity would still have to be done, and this is an expensive and time consuming process, and use of scarce skills for purposes of “checking” if a child is of normal development.  NICRO notes that the African Commission on Human and People’s Rights and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, states that the age of criminal responsibility should not be fixed below 15 years of age.  NICRO supports the provision for another review in 5 years as provided clause 5 of the Bill. | As indicated in the Report the Department is fully aware of the United Nations Committee on the Rights of a Child and African Commission on Human and People’s Rights and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, but despite this the Report recommended that the age be capped, at this stage, at 12 years and not higher because it may be too big a leap to raise the minimum age from 10 to 14 years without tangible evidence of the effectiveness, availability and adequacy of the support and programmes offered currently to the under 10 year olds in conflict with the law in terms of section 9 of the Act.  In addition, the Bill provides for a further review of the minimum age of criminal capacity after 5 years in order to ensure that criminal capacity is raised progressively to cater for the development of the relevant programmes. |
| **Clause 15** | **Centre for Child Law** | The Centre supports clause 15 of the Bill as it removes the requirement to prove criminal capacity and states that the prosecutor must consider whether the child will benefit from diversion. The Centre proposes an additional provision here to allow more protection for the child, along the following lines:  “Where the prosecutor is of the view that the child is unlikely to benefit from diversion, or is diversion is for any other reason not appropriate, he or she may refer to the child to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act.”. | The Department has no objection but suggests that a similar provision should be inserted in clause 17. |
| Clause 20 | **Centre for Child Law** | Same proposal as in clause 15 | The Department has no objection. |
| **General**  (The Competency of trained clinical social workers in conduction criminal capacity assessments) | **NICRO** | NICRO is concerned that probation officers, who are actually qualified social workers, are not qualified to express a view on criminal capacity. NICRO submits that it has clinical social workers who have been doing criminal capacity assessment for years, and that clinical social workers with a Master’s degree in clinical social work should be added as a group of professionals suitable to conduct criminal capacity assessments.  NICRO further submits that criminologists (MA degree) with a social work or child psychology background and a minimum of 5 years’ experience in working with children must also be added.  NICRO also submits that the evaluation of criminal capacity must be holistic and must be done by a multi – disciplinary team. | The Bill does not deal with the categories competent to conduct the evaluation of criminal capacity of a child. The comment is therefore outside the ambit of the Bill.  This is regulated by section 97(3) of the Act which empowers the Minister, by Notice in the *Gazette*, to determine persons or categories or classes of persons competent to conduct the evaluation of criminal capacity in terms of section 11 of the Act.  The Minister has recently determined these categories after extensive consultation with the public and the relevant stakeholders. The Notice was revised in December 2017, and currently includes psychiatrists, clinical, educational and counseling psychologists. |