**SUMMARY OF PUBLIC SUBMISSIONS**

**CHILD JUSTICE AMENDMENT BILL**

**[B32B-2018]**

The Bill was advertised for comments on electronic platforms from 5 February 2019 to 1 March 2019. Two submissions were received from the Centre for Child Law and Mr Marius Redelinghuys. The majority of the comments have already been incorporated into the bill during the PC Justice deliberations.

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

| **PROVISION IN QUESTION** | **NAME OF COMMENTATOR** | **SUBMISSION/RECOMMENDATION** | **RESPONSE** |
| --- | --- | --- | --- |
|  **Clause 7** | **Centre for Child Law** | 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.  | Department responded as follows during the PC deliberations on this aspect: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.”. | Amendment was effected in PC Justice amendments to the bill. |
| **Clause 20** | **Centre for Child Law** | Same proposal as in clause 15  | Amendment was effected in PC Justice amendments to the bill. |
| **Clause 7****Section 10(1)(a)** | **Marius Redelinghuys** | I am broadly supportive of the above-mentioned A/B, but oppose and accordingly request that the committee reconsider the deletion of “cognitive ability” from section 10(1)(a) from the principal Act. | “cognitive ability” was deleted from the Bill during the PC Justice deliberations. |