

CENTRE FOR CHILD LAW SUBMISSIONS  
ON  
THE CHILDREN'S AMENDMENT BILL, 2020

CONTRIBUTORS:

Karabo Ozah - [karabo.ozah@up.ac.za](mailto:karabo.ozah@up.ac.za)

Isabel Magaya - [Isabel.magaya@up.ac.za](mailto:Isabel.magaya@up.ac.za)

Zita Hansungule - [zita.hansungule@up.ac.za](mailto:zita.hansungule@up.ac.za)

Lithalethemba Stwayi - [litha.stwayi@up.ac.za](mailto:litha.stwayi@up.ac.za)

Centre for Child Law - 012 420 4502 / [centreforchildlaw@up.ac.za](mailto:centreforchildlaw@up.ac.za)



CENTRE FOR  
**CHILD LAW**

FACULTY OF LAW, UNIVERSITY OF PRETORIA

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## 1. ABOUT THE CENTRE FOR CHILD LAW

The Centre for Child Law (the Centre) is a public interest litigation organisation registered with the Legal Practice Counsel. The Centre contributes towards the establishment and promotion of the best interests of children in South African law, policy and practice through litigation, advocacy, research and education.

## 2. THE CENTRE'S SUBMISSIONS

The Centre has, during its 21 years of existence, carried out litigation, advocacy and research activities to strengthen the care and protection system and ensure that the rights and wellbeing of children that come into contact with the system are protected. The Centre's work as resulted in legislation having to be amended and/or ensuring that the manner in which government duty bearers implement the law is improved to affirm children's rights. The Centre was involved in litigation that has clarified the following issues:

- Developing a comprehensive legal solution to the foster care crisis and obtaining court orders to ensure that children do not lose access to the foster child grant.
- What process should be followed immediately an emergency removal of a child from parents/caregivers has been effected by social workers or police officials.
- Whether foreign children fall under the protections of the Children's Act.
- Whether the defence of reasonable chastisement in relation to children is constitutional.
- Surrogacy and assisted reproductive technology's impact on the rights and wellbeing of children

The Centre has produced publications on:

- The registration of child and youth care centres (Children at the Centre: A guide to the registration of child and youth care centres).
- The trafficking and smuggling of children (Child Trafficking in South Africa: Exploring the Myths and Realities).
- The rights of children with disabilities (Advocacy Brief: Advancing the Rights and Wellbeing of Children with Disabilities).

This experience places the Centre in good standing – in terms of experience and knowledge – make meaningful submissions to the Children's Amendment Bill, 2020 with the aim of ensuring its contents and resultant implementation are aligned with children's constitutionally and internationally mandates rights and freedoms.

The Centre makes submissions on various issues that it has found – through its experience with working either directly with children or organisations that provide services to children – have impacted children's lived realities negatively. The Centre's submissions focus on how the functioning of the care and protection system can be improved.

## 3. ORAL SUBMISSIONS

The Centre requests the opportunity to make oral submissions to the Portfolio Committee on Social Development.





### DEFINITIONS AND GENERAL PRINCIPLES

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
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Section 1 – <b>Definitions</b>			
<b>Abandoned child</b>	Not supported.	We recommend that subsection (c) of the August 2019 version should be utilised. It stated the following <u>“in respect of whom the whereabouts of the parents are unknown”</u> .	<p>We note that current subsection (c) seems to place the onus on the child in the sentence “who has no knowledge as to the whereabouts of the parent, guardian or caregiver”. This is an onerous burden to place on a child.</p> <p>If the section reverts to the August version we will support it as this definition will be used in relation to children abandoned with relatives (the majority of abandoned children), on their own, or with strangers. Please note that the GHS (2017) and NIDS wave 4 figures indicate that 75000 children had the status of being ‘abandoned’.</p>



			<p>The definition of abandoned will be used mostly with regards to s150(1) to ascertain whether a child is in need of care and protection. If found to be abandoned then the child can be placed in foster care and the caregiver can access the FCG, or be adopted or placed in a CYCC.</p> <p>The definition will also be used in s150(2) to ascertain whether a child who has been abandoned and who is living with relatives should be screened for risk.</p>
<b>Adoption Services</b>	Supported		<p>The inclusion of “guardian” ensures that all those who have parental responsibilities and rights in relation to the child are supported in the process of consenting to an adoption.</p>



<b>After-care</b>	Supported		
<b>Care</b>	Partially Supported	<p>Amend the definition of 'care' to read as follows:</p> <p>(g) Guiding the behaviour of the child in a humane manner <u>using positive parenting and non-violent disciplinary methods.</u></p>	<p>Provision removes potential factual disputes in relation to what is suitable or not in relation to a place to live for a child.</p> <p>This amendment clarifies that the duty of care includes guiding behaviour, but highlighting that must be done without resorting to violence of any form.</p>
<b>Commissioning parent(s)</b>	New proposal	"Intending parent(s)	<p>We propose that the work "commissioning" be deleted and substituted with "intending". This will also require that in Chapter 19 every place where "commissioning" appears it is substituted with "intending". International surrogacy practice makes use of "intending parent(s) a this is a provision that is aligned with the fact that those who enter surrogacy agreements intend to be parents of the child to be born as a result of a surrogate motherhood agreement. Furthermore, the use of "commissioning" denotes a commercial</p>



			transaction which has the effect of commercialising the surrogate motherhood agreement process.
<b>Corporal Punishment</b>	New proposal	<p>DSD could consider including a definition, and we recommend the definitions used by the CRC committee in its General Comments no 8 and no 11.</p> <p>Corporal punishment or physical punishment means any punishment in which force or action is used and intended to cause some degree of pain or harm. It involves, but is not limited to hitting children in any environment or context, including in a home setting, with the hand or instruments such as a whip, stick, belt, shoe or wooden spoon. It can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion.</p>	A definition is required to give effect to the changes proposed to section 12(11) – the proposed definition is based on the definition used in General Comment No. 8 by the United Nations Convention on the Rights of the Child. It also reflects South Africa’s Child Care And Protection Policy October 2019, as approved by Cabinet.



<b>Clerk of the court</b>	Supported		
<b>Cluster foster care scheme</b>	Supported		The proposed amendment clarifies that a cluster foster care scheme must be managed by a designated child protection organisation, It is very important for the protection of children as a registration as an Non-profit organisation is not sufficient.
<b>Disability</b>	New proposal	The term disability must be defined or explained using the accepted definitions in the White Paper on the Rights of Persons with Disabilities and in the UN Convention on the Rights of Persons with Disabilities (UNCRPD).	Promote clarity and certainty.
<b>Early childhood development centre</b>	Supported		We support the current amendment on the condition that this is aligned with the drive to ensure that Grade R is included in the DBE schooling system. This should not have the effect of excluding children accessing Grade R through DSD.
<b>Early childhood development services</b>	Supported		We support the current amendment on the condition that this is aligned with the drive to ensure that Grade R is included in the DBE schooling system. This should not have the effect of excluding



			children accessing Grade R through DSD.
<b>Family counsellor</b>	Supported		
<b>Genital mutilation</b>	Supported		The substitution of the current definition with the proposed new one will ensure that we are aligned with the international law definition of genital mutilation which is broader and aims to provide better protection.
<b>Inclusion</b> <b>Inclusive programmes</b>	New proposal	Inclusion  “A process that assists in overcoming all barriers which limit the presence, participation and achievement of all children, including but not limited to barriers experienced by children with disabilities, through which all children receive the necessary support to enable them to participate on an equal basis”	The Bill presents an opportunity, through its incorporation and application of the practices of inclusion and inclusive programmes, to ensure that the Children’s Act enable inclusivity and creates an inclusive system in which all children are protected on an equal basis.  However, the Bill makes use of the words ‘inclusion’ and ‘inclusive programmes’ without defining these terms.  It is important that these terms are defined to promote clarity and certainty



		Inclusive programmes “A programme in which all children are supported so that they can optimally participate and benefit”	and to incorporate and aspects of diversity.
<b>Orphan</b>	Supported.		A child whose mother has died and whose father’s identity or whereabouts is not known, is in the same situation as a child whose father has died.
<b>Separated migrant children</b>	Not supported  Delete words in bold within square brackets, as shown.	“Separated migrant child’ means a child <b>[who is not a citizen of the Republic and]</b> who has been separated from both parents or from previous legal or customary care-giver/s, but not necessarily from other adult family members, including a child accompanied by an adult family member.”	The definition in the United Nations Convention on the Rights of the Child does not include the word “citizen”.



<p><b>Unaccompanied migrant child</b></p>	<p>Not supported</p>	<p>“Unaccompanied migrant child’ means a child <b>[who is not a citizen of the Republic and]</b> who has been separated from both parents or other adult family members and is not being cared for by an adult who, by law or custom, is responsible for doing so”.</p>	<p>The definition in the United Nations Convention on the Rights of the Child does not include the word “citizen”.</p>
<p><b>Sexual abuse</b></p>	<p>Supported</p>		<p>This definition is broad enough to cover sexual abuse as defined in the Sexual Offences Act 32 of 2007</p>



<p>Section 6 – General Principles</p> <p>Section 6(2)(d)</p>	<p>Supported</p>		<p>Any discrimination against a child should be prohibited.</p>
<p>Section 6(2)(f)</p>	<p>Supported</p>		<p>The proposed amendment makes the obligation to accommodate the needs of children with disabilities very clear.</p>



<p>Section 6 – General Principles</p> <p>6A Children’s privacy and Clause 35 deleting section 74</p>	<p>Not supported</p>	<p>Proposal A: Do not delete section 74</p> <p><u>and</u></p> <p>Delete proposed s6A.</p> <p><b>OR</b></p> <p>Delete section 74</p> <p><u>and</u></p> <p>Delete 6A in its entirety and replace it with the version that appeared in the July 2018 version of the Children’s Amendment Bill (at clause 4, inserting a new section in its place), as follows:</p> <p><u>(1) No person may, without the permission of a court, in any manner publish any information, including any image, or picture which reveals or may reveal the name or identity of a child who is or was a party or a witness in the proceedings of any court or who is or was subject to an order of any court: Provided that a person may waive, in writing, the protection of his or her privacy as</u></p>	<p>We are extremely concerned to see that section 74 is deleted in its entirety and that the new clause in section 6A does not provide for the protection of privacy of children in children’s court proceedings. We assume that this is simply an oversight. There are two routes to solving this problem, and DSD must take one of these, because to leave the Bill as it is will leave the identity of children in the children’s court unprotected.</p> <p>NB! The current Bill has removed the protection of privacy for children in children’s court proceedings. The July 2018 version of the Bill also removed section 74, but section 6C in that Bill covered the protection of all children, appearing in all courts. This current version of the Bill does not do so, thus leaving children in children’s courts unprotected. The simplest way to solve this is to delete 6A</p> <p><b>AND</b></p> <p>Not delete s74</p> <p>Alternatively, if DSD wants to try to protect the rights of all children appearing in all courts, then the wording of the July 2018 version of the Bill, clause 6C must be used.</p>
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		<p><u>contemplated in this section upon reaching the age of 18 years.”.</u></p> <p><u>(2) Notwithstanding subsection (1) a designated social worker conducting an investigation for the purposes of finding that a child may be in need of care and protection or that such child may be made available for adoption publish information for identification of the child including images or pictures of the child in the prescribed manner, for the purpose of tracing the child’s parent(s) or family.”.</u></p>	
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Section 7 - addition	Supported		
<b>Section 8 – Application</b>  <b>“This Act applies to every child in the Republic of South Africa</b>	Supported		The amendment will ensure that unaccompanied, separated children have access to care and protection without any discrimination.
<b>Section 11 – Children with disabilities and chronic illnesses</b>	New proposal	Holistic reform of the Bill to facilitate inclusivity in the care and protection system.	The Bill fails to facilitate the holistic reform needed to ensure that inclusivity is built into the system and design of the frameworks put in place to protect



			<p>children. Instead, the current proposed amendments simply pepper words such as “disability” and “inclusion” throughout, but without at the same time enabling comprehensive amendments to Children’s Act. The Bill, like the Children’s Act itself, has not been drafted through the lens of mainstreaming disability and with the explicit intention of creating a truly inclusive piece of legislation.</p> <p>For example, the current amendments fail to cross-refer to section 11 of the Children’s Act, which deals specifically with children with disabilities, and section 11 itself has not been modified or expanded by the Bill. In section 11 of the Children’s Act, which deals with factors to be considered in any matter concerning a child with a disability, the decision-making rights of the child and the right of children to be heard, have not been included, for instance. Without holistic reform, the ad hoc amendments in the Bill, on their own will not achieve effective inclusivity.</p>
Section 12- age of consent to marriage	Not supported	Section 12(2) must be amended to provide that minimum age of consent to marriage is 18 years without exception.	The age of consent to marriage needs to be harmonised under customary and common law, The current provisions under both the aforementioned laws allow for marriage for persons below the age of 18 years. This is not in line with



		<p>The Marriage Act and the Recognition of Customary Marriages Act must be amended in so far as they provide for age of consent to marriage that is below 18 years.</p> <p>The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception</p>	<p>the African Charter on the Rights and Welfare of the Child which provides in article 21(2) that child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years The purpose of this provision is to protect girls in particular against child marriage. We are aware of recent convictions of persons who abducted young girls through the customary law practice of Ukuthwala and subsequently married them off against their will. The fact that our law does not have an absolute minimum age of consent is problematic. The Children’s Act is the law aimed at protecting children and if this provision is supported then the Marriage Act and the Customary Marriages Act can be amended to ensure that they are aligned.</p>
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Section 12 - New proposal on corporal punishment	New proposal	<p>Add the following definition:</p> <p>Section 12(11) No child may be subject to corporal punishment or be punished in a cruel, inhuman and degrading manner.</p>	<ul style="list-style-type: none"> <li>• SOUTH AFRICA'S CHILD CARE AND PROTECTION POLICY August 2018 as approved by Cabinet states "The Children's Act will have to be revised to prohibit corporal punishment and any other form of cruel, inhuman or degrading treatment or punishment." P 122.</li> <li>• Important to have explicit reference to corporal punishment – the most common form of cruel punishment – to make it absolutely clear that corporal punishment by parents/caregivers is prohibited</li> <li>• If no explicit mention of corporal punishment, the provision will be interpreted inconsistently with some courts arguing that 'cruel, inhuman or degrading' punishment includes corporal punishment while other courts will say the opposite.</li> <li>• Even 'moderate' corporal punishment violates children's rights and evidence shows that it increases</li> </ul>



		<p>children’s risk to experience more severe forms of physical abuse. The Constitutional Court found in FORSA vs Minister of Social Development and Others that the defence of reasonable chastisement violates sections 12(1)(c) – which provides that everyone has a right to freedom and security of the person, which included to be free from all forms of violence from either public or private sources and 28(2) of the Constitution.</p> <p>Parents/caregivers should be referred to prevention and early intervention programmes so that they can get parenting support to develop non-violent discipline. These programmes are outlined in section 144 of the Children’s Act.</p> <ul style="list-style-type: none"> <li>• DSD is responsible for protecting children from violence and assisting those children who have experienced violence. A prohibition of corporal punishment and other cruel, inhuman and degrading punishment in</li> </ul>
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			<p>itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to change behaviour.</p> <ul style="list-style-type: none"><li>•</li></ul> <p>In general, criminalisation of parents for using corporal punishment should be considered a last resort. There may however be instances in which it is necessary to prosecute parents/caregivers. Where corporal punishment and other degrading punishment constitutes physical abuse according to section 110(1) of the Children's Act, social workers must follow the process outlined in section 110(8) of the Children's Act and must report the possible commission of an offence to the police.</p>
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Section 13 – Information on health Care  To change disabled children to “children with disabilities”	Supported		
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## PARENTAL RESPONSIBILITIES AND RIGHTS

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 19 - Parental responsibilities and rights of mothers	Supported		
Section 21 - Parental responsibilities and rights of unmarried fathers	Partially supported		Section 21(1)(b) Removing the adjectives that require value judgments will make the section more accessible to parents and facilitate a more consistent interpretation by the courts.
Section 21(1)(a)	Supported		
Section 21(1)(b)	Supported		Section 21(1A) The Act needs to cater for the situation whether the mother has abandoned the family or she has died. This insertion would enable an unmarried father to apply for a certificate from the family advocate to recognise his section 21 rights. This process is likely to be more accessible than a court process.
Section 21(1A)	Support with an additional sub-section	<b>Section 21(1A)</b> Insert the underlined sub-section.  “(1A) A family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically	



		<p>acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b) on application from—</p> <p>(a) the mother and biological father jointly;</p> <p>(b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or</p> <p>(c) the biological father, if—</p> <p>(i) in terms of subsection (3), he referred the matter for mediation and the mother, after receiving such notice of mediation, unreasonably refused to attend the mediation, <u>or</u></p> <p><u>(ii) the mother's whereabouts are not known or she is deceased;</u></p> <p>and</p> <p><u>(iii) the biological father has shown to the satisfaction of the family advocate that he has automatically acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b).";</u></p> <p>Do not delete this subsection</p>	<p>This amendment will make mediation more accessible.</p> <p>The motivation behind deleting this section is not explained in the memorandum.</p> <p><u>Clarity is needed</u> on whether the intention is not to allow parents to take</p>
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Section 21(3)(a)	Supported		the mediation on review to a court? Or is the amendment technical as it is being assumed that this sub-section is not necessary because section 45 covers the question as to whether a mediation can be reviewed by the Court. If this is so will practitioners, parents or caregivers understand this?
Section 21(3)(b)	Not supported		
Section 22 - Parental responsibilities and rights agreements	Supported		
Section 23 - Assignment of contact and care to interested person by order of court	Supported		
Section 24 – Assignment of guardianship by court order	New proposal	Insert underlined words:  “(1) Any person having an interest in the care, well-being and development of a child may apply to the High Court <u>or the children’s court</u> for an order granting guardianship of the child to the applicant.”	Children’s Courts are more accessible and well versed in family law and child care matters, and is an expert on adoption – which has wider implications than guardianship applications. Making guardianship applications accessible at the Children’s Court will increase access to justice for the majority of people and enable caregivers to administer and protect the pensions inherited by the children in their care. Many of these pensions go unclaimed due to there being no-one representing the child’s interest. Reserving
Section 24(1)			



Section 24(3)	New proposal	<p>Insert underlined words:</p> <p>“In the event of a person applying for guardianship of a child that already has a guardian, the applicant <u>must indicate whether he or she is applying for co-guardianship with the existing guardian</u> or submit reasons as to why the child’s existing guardian is not suitable to have guardianship in respect of the child.”</p>	<p>guardianship for the High Court exclusively would only be in the interests of the more wealthy who have the necessary resources to use the High Court processes.</p> <p>In terms of section 30(1) of the Act, more than one person can hold Parental Responsibilities and rights – including guardianship – with respect to one child. There is therefore no reason to require a person applying for guardianship to have to prove that the existing guardian is not suitable, unless they are applying for sole guardianship.</p>
Section 25 - Certain applications regarded as intercountry adoption	Not supported	<p><b>Applications by non-South African citizens for guardianship of a child</b></p> <p><b>25. (1) [When] <u>Subject to section 45(4), when an application is made in terms of section 24 by a non-South African citizen for guardianship of a child, the application [must be regarded as], if heard in the High Court, must be referred to a children’s court having jurisdiction to be dealt with as an</u></b></p>	<p>We make the proposed amendments to this section light of our submissions in relation to section 24.</p> <p>We propose a new heading that to section 25 which better describes its content, see in the left column. We also suggest the inclusion of the words <u>unless such court, including the children’s court if the application for guardianship had been lodged in such court, finds that exceptional circumstances warrant the application for guardianship to be granted.</u></p>



		<p><u>application for an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 16 of this Act, unless such court, including the children's court if the application for guardianship had been lodged in such court, finds that exceptional circumstances warrant the application for guardianship to be granted.</u></p> <p><u>(2) The Central Authority of the Republic contemplated in section 257 (1)(a) must be cited as a respondent in the event of an application referred to in subsection (1).</u></p>	<p>This is in line with the Constitutional Court judgment in <i>AD v DW</i>, where Sachs J said that the High Court's would have jurisdiction to make guardianship orders brought by non-citizens in exceptional circumstances</p>
Section 28 - Termination, extension, suspension or restriction of parental responsibilities and rights	Supported		
Section 29 - Court proceedings	Supported		
Section 30 – Co-holders of parental responsibilities and rights	Supported		
Section 34 - Formalities	Supported		
Section 35 – Refusal of access or refusal to exercise parental responsibilities and rights	Partially supported	<p>Section 35 should be amended to stated it only be used as a last resort after remedies in terms of the Act have been exhausted, i.e the party seeking relief has already attempted</p>	<p>This provides protection for children in cases where the life of a child or care-giver is in danger when a child refuses to see the parent.</p>



		mediation or already has a court order	
Section 40 - Rights of child conceived by artificial fertilisation	Supported		
Section 41A - Regulations	Supported		Aligns the requirements with the existing jurisprudence in relation to the requirements that a surrogate motherhood agreement must meet.



## CHILDREN'S COURTS

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 44 - Geographical area of Jurisdiction of children's courts and transfer of matter from one Children's Court to another.	Partially Supported	Proposed provision:  “(3) A matter may, on request by a party or a person affected by the matter, be transferred from a children's court to another children's court having jurisdiction if it would be in the best interest of the child.”	The proposed provision does not indicate who can initiate such a transfer of the matter. Furthermore, the provision reads as if the matter can be transferred from a children's court to another court i.e a regional or high court. Our proposed wording makes the section neat and clear that the transfer of the matter is between two children's courts.
Section 45 - Matters the children's courts may adjudicate	Partially supported in relation to insertion of 45(1)(jA)	The amendment to enable the Children's Court to have jurisdiction in relation to guardianship should not be limited to orphaned and abandoned children only. The section should provide for all matters in relation to guardianship. There should be a holistic approach to parental responsibilities and rights and the splitting of the jurisdiction is creating problems on the ground and has no real rational.	The amendment to section 45, as proposed by the current Bill, is in conflict with the Care and Protection Policy 4.4.2.2. The problems with the clause include the fact that the new definition of orphan requires that both parents are dead. As many grandmothers or aunts are caring for children even where the father of the child is still alive, these applications will not be able to be dealt with through the children's court, thereby obliterating the actual benefits that the amendments were meant to achieve.



		<p>We propose that subsection (bA) be deleted and replaced with one of the two formulations:</p> <p>Proposal A:</p> <p>(bA) guardianship</p> <p>Proposal B:</p> <p>Another possible formulation is:</p> <p>(bA) guardianship where the application is brought by the child's biological father or other relative of the child.</p>	<p>The first of our two proposed wordings best aligns with 4.4.2.2. which simply states that 'Guardianship applications may be launched in the children's court or High Court'.</p> <p>The second proposal is made as a compromise. If DSD for some reason wishes to limit those who may bring such applications, then it can be limited to unmarried fathers and other relatives of the child.</p>
<p>Section 45-Matters the children's courts may adjudicate</p>	<p>Supported in relation to section 45(1)(bA) &amp; 45(3A) and (3B)</p>		<p>We strongly support these proposals as it means that guardianship orders can be granted either by the High Court or the Children's Court. It also means that one can go to either court for the amendment of the order for guardianship.</p> <p>This amendment must be read with our proposed amendment to section 24(1) so as to ensure that there is no contradiction.</p>



Section 46 - Orders children's court may make- the insertion of subsection 1(cA)	Supported		
Section 49 - Lay Forum Hearings-	Supported		
Section 52 - Rules and court proceedings	Supported		
Section 57 - Compulsory attendance of persons involved in proceedings	Supported		
Section 62 - Professional reports ordered by courts	Supported		
Section 63 - Evidence	Supported		
Section 66 - Protection of court case records	Not supported		The reference to 6A is not supported subject to our submissions on 6A.
Section 74 - Publication of information relating to proceedings	Not supported		Please see submissions in relation to section 6A.



## PARTIAL CARE, EARLY CHILDHOOD DEVELOPMENT, PROTECTION OF CHILDREN, PREVENTION AND EARLY INTERVENTION

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 75 - Regulations	<b>Supported</b>	(jA) the responsibility for defraying costs relating to investigations and reports contemplated in section 62.	Not sure who is paying for it now
Section 76 - Partial care	<b>Supported</b>	76(1) insertion of the word “guardian” and “full-time”	
Section 77 - Strategy concerning partial care  77(3)	Not Supported	77(1)(A) The Minister must monitor the implementation of the strategy	The rationale for the proposal is that while the Act is monitored as a whole, where a separate strategy for partial care must be developed, it should also be monitored. Therefore there is a need for an express provision that provides for monitoring.
Section 78 - Provision of partial care	Not Supported	78(1) The MEC for social development “must”, ... 78(3) a partial care facility only qualifies for funding ... if such [owner, manager or provider] facility complies with the prescribed national norms and standards. 78(3A) A partial care facility registered with conditions... 78(5) the funding for infrastructure of partial care facilities does not apply to private homes of registered non-profit organisations, private homes in general, business properties or	The rationale for the proposal is that the “may” does not give enough priority to partial care programmes. This is too strict, in that there may be facilities that already have children, that will require the assistance of DSD, in order to comply. The current legislation makes it clear that the provincial heads of social development has the power to assist non-compliant facilities if there has been a cancellation of registration and in the process of considering an application. That is, a facility does not already have to be registered in order for assistance to be provided. This Bill



		properties not owned by a non-profit organisation.	eradicates the power the Department has in assisting Facilities in become compliant. What is a partial care facility “registered with conditions”; what will the conditions be; why is it not conditional registration. This is too wide an exclusion, that means to exclude partial care facilities in densely populated areas such as townships, where the partial care facility is created in someone’s house, due to the need/demand. In such a case that person will never be assisted with infrastructure funding.
Section 79 - National norms and standards for partial care	Supported		
Section 81 - Application for registration and renewal of registration	Supported		
Section 82 - Consideration of application	Supported	82(5) The HOD may assist the owner or manager of a partial care facility <u>where registration with conditions is granted</u> , to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed	
Section 83 – Conditions relating to registration	Not Supported	Conditions relating to Registration 83. The registration or renewal of registration of a partial care facility may be granted on such conditions as the provincial head of social	There is no longer a mechanism for ‘conditional registration’. It has been written out through the rewording of this section.



		development may determine, including— (a) conditions specifying the type of partial care that may or must be provided in terms of the registration; (b) the period for compliance with the conditions referred to in paragraph (a); and (c) any other matter that may be prescribed.	The section refers to ‘the registration or renewal of registration’ as well as ‘conditions specifying the type of partial care’ – not thing to do with conditional registration.
Section 85 - Notice of enforcement	Partially Supported	85(5) “the owner, manager or organisation operating a partial care facility... must immediately after receiving such instruction or order notify the parent of the affected child.”	Onus is put on the parent and not DSD to find an alternative centre. even though DSD has a list of partial care facilities that comply with DSD standards. Provision must be made for DSD to provide support to the parent in order to serve the interests of the children affected by the closure. Nothing is mentioned as to what assistance the parents get in identifying other facilities for their children, by DSD.
Section 86 –appeal against and review of certain decisions	New Proposal	86 (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 60 days with the MEC for social development, who must decide the appeal within <b>[90]</b> <u>60</u> days of receipt thereof.	The time-frames should be shortened from 90 days to 60 days for both the lodging of the appeal and the consideration thereof.



Section 87 - Record and inspection of and provision for partial care facility	Supported		
Section 88 - Assignment of functions to municipality	Supported		
Section 90 - Regulations	Supported		
Section 91(1) - Early childhood development	<b>Not Supported</b>	<p>We recommend a deletion of the following words which appear in section 91(1) of the Bill:</p> <p>“...in the case of a child with developmental difficulties and disabilities, until the year before the child enters school.”</p>	<p>We are concerned about the inclusion of the following words which appear at the end of section 91(1):</p> <p><i>“...in the case of a child with developmental difficulties and disabilities, until the year before the child enters school.”</i></p> <p>The above words are an unnecessary addition as they create a situation where a number of children with disabilities are kept in Early Childhood Development centres for a long time despite being of school going age (Section 5(4)(a)(ii) of the South African Schools Act). This will undoubtedly delay these children from entering the schooling system, and when they eventually do, they will do so when they are much older.</p> <p>The proposed words will also give public schools an excuse not to admit children with disabilities and reasonably</p>



			accommodate them as required by various legislation and policies, including the Policy on Screening, Identification, Assessment and Support (SIAS Policy).
Section 92 - Strategy concerning ECD  Section 92(2)(a)	Supported	As suggested above in the Definitions and General Comments submissions, we recommend that a broad definition for “inclusive programmes” be included in the Bill.	We welcome the addition of the following words in section 92(2)(a) of the Bill,  “...with specific mention of inclusive programmes”.  However, it is not clear what is meant by “inclusive programmes”.
Section 93 - Provision of ECD programmes	Not supported	93(3A) A conditionally registered early childhood development programme may qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards.  93(4) The MEC for social development may prioritise and fund early childhood development programmes	The “may” makes it discretionary. This proposed amendment 93(4) de-prioritises funding to poor communities. The current law states that ECD programmes to poor communities “must” be prioritised. This is a regressive proposal and we reject it.
Section 94 - National norms and standards for ECD programmes	Supported		
Section 96 - Application for registration and renewal of registration	New proposal	96(4) The proposal is that the 90 day period be reduced to 60 days	90 days is unnecessarily long and does not give priority to the nature of the services to young children.



Section 98 - Conditional registration	Not Supported	<p><b>[Conditional Registration Conditions for registration of ECD programme.]</b></p> <p>98 the registration or renewal of registration of an ECD programme may be granted on such conditions as the provincial head of social development may determine, including <b>[conditions]</b></p> <p>(a) Conditions specifying the type of ECD programme that may or must be provided in terms of the registration.</p> <p>(b) <b>[stating the period for which the conditional registration will remain valid]</b> <u>the period for compliance;</u> and</p> <p>(c) <b>[providing for]</b> any other matters that may be prescribed.</p>	This section seeks to do away with 'conditional registration' by firstly changing the heading and secondly it seeks to make the process more stringent and removes its obligation to assist ECD organisations that require additional help in order to comply with the norms and standards. It is eradicating the ability to have conditional registration.
Section 100 - Notice of enforcement	New proposal	100(c)(i) ...and immediately notify the parent of an affected child.	In addition to the ECD centre notifying the parents immediately, DSD must assist, they have a list of available partial care facilities. The DSD has a duty to ensure that children's access to ECD is not interrupted.
Section 102 - Assignment of functions to municipality	Not Supported & new proposal	<p>102(1) "... perform the functions concerned and has the necessary early childhood expertise."</p> <p>102(6) change from 90 days to 60 days.</p>	The reason advanced for the proposal is that it is not acceptable to leave the responsibility of managing early childhood development programmes and services in the hands of a municipality where none of its staff have



			ever dealt with such programmes and services before. Early childhood development programmes and services are specialised priority services and the entity responsible should have some expertise in the field.
Section 103 – Regulations Insertion of sections 103A, 103B, 103C, 103D, 103E, 103F, 103G, 103H, 103I, 103J, 103K, 103L and 103M in Act 38 of 2005.	Not Supported	103C; 103D; 103E; 103F  Early childhood development centre to be registered  103C. (1) Any person, Department, municipality, provincial head of social development or organisation may establish or operate an early childhood development centre provided that the early childhood development centre— (a) is registered with the provincial government of the province where the centre is situated; (b) is managed and maintained in accordance with any conditions subject to which the centre is registered; and (c) complies with the prescribed national norms and standards contemplated in section 103B and such other requirements as may be prescribed. (2) The Minister may exempt any person or organisation or any category of person or	Under the Bill, a facility which provides ECD programmes for more than six children from birth to school-going age will be considered as both a partial care facility and an ECD centre. Such an ECD programme provider may be required to comply with three separate registration requirements (i.e. registration as partial care facility, registration as an ECD centre and registration of its ECD programmes). This cannot be the intention of the legislature.  <ul style="list-style-type: none"> <li>• Sections 103D and 103E make reference to 'conditional registration' but section 103F does not include that, it only refers to the 'conditions of registration'</li> <li>• Conditional registration is not defined anywhere, and has been written out of the Act under section 83. Where the process of conditional registration used to be clearly defined.</li> <li>• The removal of conditional registration, in this manner,</li> </ul>



		<p>organisation from the requirement to register on such conditions as may be prescribed. (3) Early childhood development centres operated or managed by a national or provincial department or by a municipality must comply with subsection (1).</p> <p>(4) As from the date on which this section takes effect, any partial care facility registered or deemed to be registered in terms of this Act and which provides an early childhood development programme, must be regarded as having been registered in terms of this section as an early childhood development centre.</p> <p>(5) A partial care facility referred to in subsection (4) is regarded as a registered early childhood development centre for a period of five years from the date on which that subsection takes effect, unless its registration is cancelled in terms of section 103G before the expiry of that period.</p> <p><b>Application for registration and renewal of registration of early childhood development centre</b>  <b>103D.</b> (1) An application for registration or <b>conditional registration</b> of</p>	<p>illustrates wish of the legislature to remove the idea of 'conditional registration' meaning that organisations that partially comply will not be able to get the assistance that they need from the Department to be fully compliant, because no mechanism exists to facilitate that.</p> <ul style="list-style-type: none"> <li>• The is a hard line of compliance, with its new set requirements. Anything deviating from that, will not qualify.</li> <li>• This inconsistency caused by the use of 'conditional registration' and 'conditions of registration'</li> <li>• The use of conditional registration for the purposes of progressive realisation of norms and standards or relevant requirements should be made clear.</li> </ul>
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		<p>an early childhood development centre or for the reinstatement or renewal of registration must—</p> <ul style="list-style-type: none"><li>(a) be lodged with the provincial head of social development for the province where the centre is situated in accordance with a prescribed procedure;</li><li>(b) contain the prescribed particulars; and</li><li>(c) be accompanied by—<ul style="list-style-type: none"><li>(i) a report by a social service practitioner on the viability of the application; and</li><li>(ii) any documents that may be prescribed.</li></ul></li></ul> <p>(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.</p> <p>(3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.</p> <p>(4) The provincial head of social development must renew the registration of an early childhood development centre before the</p>	
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		<p>expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).</p> <p><b>Consideration of application</b></p> <p><b>103E.</b> (1) The provincial head of social development must—</p> <p>(a) within six months of receiving the application, consider an application for registration or <b>conditional registration</b> or for the renewal of registration and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions;</p> <p>(b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the prescribed form if the application is granted; and</p> <p>(c) state in the certificate of registration the period for which the registration will remain valid.</p> <p><b>Conditions for registration of early childhood development centre</b></p> <p><b>103F.</b> (1) The registration or renewal of registration of an early</p>	
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		<p>childhood development centre may be granted on such conditions as the provincial head of social development may determine, including—</p> <p>(a) conditions specifying the type of early childhood development services that may or must be provided in terms of the registration;</p> <p>(d) the period for compliance; and</p> <p>(e) any other matters that may be prescribed</p>	
Section 104 - Strategy concerning child protection	Not Supported/ new submission	104(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development, the South African Police Service, South African Local Government Association and the local government” ...	We need to involve local government as they are the ones that deliver services to the people.
Section 105 - Provision of designated child protection services	Not Supported  Supported 105(6)	105(4) designated child protection services social workers (social work practitioners) in the service of a child and youth care centre and a municipality to be exempted from (b) (v) and (vi) because the basic function of a social worker at a child and youth care centre is to be responsible for the care of the child through the implementation of	It is recommended that the wording of section 105 be clarified to reflect that service providers may offer some but so not have to offer all of these services, and that organisations offering prevention and early intervention services are not necessarily required to register a child protection organisations. Clarity must be sought with the Department concerning the



		<p>appropriate programmes for the child and his or her family and not to do other 'statutory work'.</p> <p>105(5)(d), designated social workers in the employ of a child and youth care centre or a municipality should be empowered to intervene appropriately, but NOT to remove children – this is the role of designated social workers NOT in the employ of a child and youth care centre or municipality</p> <p>105(6) the Department must develop and conduct a quality assurance process for the evaluation of child protection services as prescribed.</p>	<p>registration of child and youth care centres also child protection organisations (and the impact on social workers employed there) as well as social workers employed at municipalities.</p>
<p>Section 106 - National norms and standards for child protection</p>	<p>Partially Supported</p>	<p>The definition of “rehabilitation services” must be amended to refer to “<i>rehabilitation and habilitation services</i>” and included in the definitions section of the Bill.</p> <p>Rehabilitation and habilitation must be defined to include a broad range of therapeutic interventions, including, but not limited to, physiotherapy, occupational therapy and speech therapy.</p>	<p>We welcome the inclusion of a reference to the specific needs of children with disabilities, but the use of the term “rehabilitation services” is not clear.</p> <p>Our understanding is that rehabilitation, and habilitation services more particularly, refer to the right of persons with disabilities to access a full range of services in the community to allow for maximum independence and participation. It is however unclear what</p>



			the drafters of the Bill mean by “rehabilitation services.”
Section 107 - Designation of child protection organisation	PartiallySupported	107(1A) the provincial head of department may, on receipt of a written application designate any organisation that complies with the prescribed criteria as child protection organization to perform all or any specific designated child protection services in the relevant province.	Why is this included when section 107(1) already states something included the provincial head of department. Why do you need two separate paragraphs – saying the same thing – aside from the removal of [in the relevant province].
Section 109 - Withdrawal of designation	We support the amendment and propose and additional amendment to section 109(2).	<u>“The Director-General or MEC for social development must conduct quality assurance in the prescribed manner on a regular basis, in order to make sure that a child protection organisation adheres to provisions and conditions of this Act.”</u>	Quality assurance should happen as a regular and ongoing process. Not only before the withdrawal of a designation.
Section 110- Reporting of abused or neglected child and child in need of care and protection	Partially Supported	Regulation 33(2) provides for a separate Form (23) for the purposes of reporting child abuse and neglect to the Director General for recoding in Part A of the Register, as opposed to Form 22 which is the recoding of the Report of the abuse. Both are detailed. It is submitted that (depending on the decision on whether Form 22 is to remain unaltered, Form 23 be merged into Form 22 so that only one Form has to be filled in.	It is proposed that the Form in current form (Form 22) is long and confusing for people other than professionals. It is noted that in practice not all people mentioned in section 110 fill Form 22 in and that there is a need for a simple form to be filled in by a reporter, and that Form 22 be then reserved for the social worker and police official. There must then also be some form of acknowledgement of the simpler form, and an assurance given to the reporter that the information will be kept confidential.



Section 111- Keeping of the National Child Protection Register	Supported		
Section 114- Contents of Part A of the register	Supported		
Section 117 - Inquiries on information in Part A of the register	Supported  Section 117A supported		
Part B of the Register: General	NB. We do not support the Part B of the Register	We want to propose, in general, that Part B of the Register be removed in its entirety. In its place, there should be a section that requires all employers to check the SAPS criminal record of all persons who will work with children. If they have a relevant record, they may not be employed.  This our over-riding proposal. We comment below on specific provisions regarding Part B, in case our overarching proposal is not accepted.	The Register is ineffective, expensive and is unlikely to ever be fully achieved. A much simpler method is already available to us in the Criminal Records kept by SAPS where are far more comprehensive (not just sexual offences).
Section 119 - Contents of Part B of the register	Supported		The proposed Amendment to section 119 is in line with the Constitutional Court's ruling in <b>J v NDPP</b> . Although that case was about the Sexual Offences Register, the Child Protection



			Registers was mentioned in a footnote. The court was of the view that child offenders should not be included on such registers, and certainly not as the 'default' position.
Section 120 – Finding persons unsuitable to work with children	New Proposal	<p>It is proposed that section 120(4)(a) and (5) be expanded to include all the new sexual offences provided for in the Criminal Law Sexual Offences Amendment Act, with the exception of those provided for in section 15 and 16. Section 120(4) should spell out clear that persons convicted of the specified offences must be deemed unsuitable to work with children.</p> <p>It is also proposed via a private members bill currently before Parliament that 'attempts' be added to the list of offences, and that domestic violence and emotional abuse also be added.</p> <p>It is proposed that section 120 be amended to include persons convicted in foreign places of safety.</p> <p><i>“Any person who in a foreign jurisdiction has been convicted of any offence equivalent to the commission of a sexual offence against a child; or who in any foreign jurisdiction has been dealt with in a manner</i></p>	<p>Should these new crimes not be included, people may be found to be suitable to work with children, even though would pose a real danger to them.</p> <p>It is supported that the offences be aligned with the Sexual Offences Act and that attempted offences in relation to all mentioned offences be added. However, domestic violence and emotional abuse are not criminal offences <i>eo nomine</i> and their inclusion could raise constitutional issues related to a lack of clarity of definition (especially emotional abuse which is not covered by assault or assault with intent to commit grievous bodily harm as some forms of domestic violence are).</p>



		<i>equivalent to a direction given in terms of section 77(6) or 78(6) of the Criminal Procedure Act 51 of 1977; or whose particulars appear on an official register in any foreign jurisdiction pursuant to a conviction of a sexual offences against a child or as a result of an order equivalent to a direct given in terms of section 77(6) or 78(8) of the criminal procedure Act 51 of 1977 whether committed before or after commencement of the Act.”</i>	
Section 122 - Findings to be reported to the Director – General Registrar of the National Child Protection Register	Supported		
Section 123 - Consequences of entry of name in Part B of register	Partially Supported	It is proposed that such a person not be permitted to work in any health profession or in education.	<p>The differentiation between the blanket ban on working with children in any capacity- as provided for in sections 123(2); 123(3) and 123(5)- and section 123(4) is not justified. Considering the role of the South African Police Services in the general protection of members of the community – including children- a person who is on Part B of the register should be employed by the South African Police Service in any capacity- period.</p> <ul style="list-style-type: none"> <li>• The word ‘shelter’ should remain, many children find themselves in shelters. And may experience great</li> </ul>



			harm in these shelters if the employees are not checked against the register.
Section 124 - Disclosure of entry of name in Part B of register	Supported		
Section 125- Access to Part B of register	Supported		
Section 126- Establishment of information in Part B of register	supported		
Section 127- Disclosure of names in Part B of register prohibited	Supported		
Section 128 - Removal of name from register	Supported		The application goes to the Registrar of the National Child Protection register and no longer to the DG. It makes sense.
Section 129	Supported		
Section 129- Consent to medical treatment and surgical operation	Proposal	<p>The proposal that was in the August 2020 draft of the Third Amendment Bill in relation to section 129(3) must be re-inserted.</p> <p>It is important to recognise the rights of “child-parents” to consent to their own medical treatment and that of their own children in line with the requirements set out in section 129(3) in so far as age, maturity and mental capacity is concerned. An approach that does not allow totally ignores the individual rights of “child-</p>	There is also a need to include a definition of “child-parent”.



		parents” and the autonomy already recognised in the very section.	
Section 131 - HIV testing for foster care Medical testing for children in need of care and protection or adoption	Partially Supported		A Form should be developed to facilitate the referral of a prospective adoptive or foster child for HIV- or medical testing. A Form might make it more official and remove some of the barriers in practice being experienced by social work staff.
Section 135- Child headed household	Supported		
Section 141 - Child labour and exploitation of children	Supported		
Section 142- Regulations	Supported		
Section 144 - Purposes of prevention and early intervention programmes	Supported and new proposal	<p>Section 144(2)(a) should be amended to include the words “but are not limited to” after the word “include”.</p> <p>Section 144(2)(b) should be amended by adding the words “ and their children” after “for themselves”.</p>	<ul style="list-style-type: none"> <li>• The reason advanced for the proposal is that section 144(2) is not an exhaustive list of prevention and early intervention programmes and there needs to be scope for other programmes.</li> <li>• This will emphasise the fact that the services are delivered to the families for the benefit of children</li> </ul>



		<p>Add the following sub-clause, section 144(4):</p> <p><b>(4)</b> The Department in partnership with relevant stakeholders, must take all reasonable steps, to ensure that -</p> <p><b>a)</b> education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and</p> <p><b>b)</b> programmes promoting positive discipline at home and in alternative care are available across the Republic.</p>	<p>DSD is responsible for protecting children from violence and assisting those children who have experienced violence.</p> <p>A prohibition of corporal punishment and other cruel, inhuman and degrading punishment in itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to support behaviour change.</p> <p>The proposed subsection 144(4)(a) will ensure that DSD budgets for and undertakes education and awareness-raising programmes. These should not only focus on the prohibition of corporal punishment, but also include information on positive discipline to inform parents caregivers about non-violent discipline.</p> <p>The proposed subsection 144(4)(b) emphasises that all role-players need to understand what their role is in ensuring positive discipline. The Department therefore needs to equip all relevant government and civil society role-players in promoting positive discipline in the home and</p>
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			alternative care. Given the high levels of violence in society, role-players need to understand the rationale behind the prohibition and their role in promoting the prohibition.
Section 145 - Strategy for securing prevention and early intervention programmes	Supported	145(3) ...to make [the necessary] such information as may be prescribed available	<ul style="list-style-type: none"> <li>This is a vague statement. The 'necessary' information was more encompassing,</li> </ul>



## CARE AND PROTECTION, FOSTER CARE AND CHILD AND YOUTH CARE CENTRES

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 150 - Child in need of care and protection	Partially Supported	<p>Section 150(1)(a)</p> <p>“A child who has been abandoned or orphaned and <u>is not in the care of a family member as defined in section 1</u>”</p>	<p>We support the intent of this amendment because it is aimed at making it clear that relatives caring for orphaned or abandoned children will no longer have to get a foster care court order before they can access an adequate social grant. This is necessary because it has been proven that the foster care system is not effective in reaching the majority of orphans in need, and the attempts at doing so have consumed social worker time, reducing their time to respond to cases of serious abuse.</p> <p>However, we are concerned that DSD’s proposal is too broad and will result in DSD and the children’s court requiring social workers to find absent parents and or distant family and place children informally with that absent parent or distant family with no supervision or support. This is not in children’s best interests as it does not take into account the importance of an existing ‘attachment’ for the child’s psychological development. If a new caregiver is found that the child has no existing bond with, then its important</p>



			<p>that the child is placed into the child care and protection system for at least 2 years so that their placement is supervised and supported.</p> <p>We also recommend that the words 'suitable and able' be removed because they are unnecessary. The Act already covers situations where a child's caregiver is not suitable or able to care for the child in the other sub-sections in s150(1).</p>
<p>Section 155 - Decision of question whether child is in need of care and protection</p>	<p>This section should be amended</p>	<p>155(1) – “[<b>A children’s court must decide the question of whether</b>] <u>Upon notification or referral to the children’s court of a child who is the subject of proceedings in terms of section 47, 151, 152 or 154, a children’s court must open a court file in the prescribed manner and</u> must decide the question of whether is in need of care and protection.”</p> <p><b>Section 155(2):</b></p> <p>155(2) – “[<b>Before the child is brought before the children’s court,</b>] <u>A designated social worker must investigate the matter and within 90 days from the date of referral</u> compile a report in the prescribed manner on whether the child is in need of care and protection.”</p>	<p>The majority of the problems in respect of removed children should have been cured by the judgment in <b><i>C and Others v MEC for Social Development, Gauteng and Others</i></b>. It is now clearly mandatory that there must be a hearing at the children’s court on the next court day when a child is removed. However, section 155(2) still states: “Before the child is brought before the children’s court, a designated social worker must investigate the matter and within 90 days compile a report...” This was not cured by the abovementioned judgment. There is therefore still confusion in respect of removed children. In respect of children not removed but the subject of investigation to determine whether they are in need of care and protection, there is no clear procedure to open a children’s court file</p>



			in the act or regulations. This could be resolved through amendment to sections 155(1) and 155(2) to make it clear the court must open a file/enquiry.
Section 156- Orders when child is found to be in need of care and protection  s156(1) (cA)	Supported with additional amendment recommended  Partially supported	Section 46: “(1) A children’s court may make the following orders: <u>(aA) an order confirming or granting parental responsibilities and rights in terms of s23 and 24 to a family member caring for a child”</u>	This new sub-section will provide the option to the court to place the child in the care of a family member only if the court has found a child to be in need of care and protection. This is important to formalise the practice of placing abused or neglected children in the care of family members, while the social services practitioners are attempting to provide services to the ‘reform’ the biological parent.  Note however that if the child has for example been orphaned or abandoned and is in the care of a family member, the child will not be found to be in need of care and protection by the court, and a s156(1) (cA) ‘placement’ order cannot be made. [See s156(4)]. We therefore recommend an amendment to s46 to make it clear that the court can confirm or grant parental responsibilities and rights to family members.



Section 156 (1)(e)(ii)		Proposed amendment to section 156(1)(e)(ii) be reversed.	This amendment seems unnecessary. The internal organisational structure and decision making procedures of a cluster foster scheme may be regulated by the scheme as long as it is within the prescripts of the Act and Regulations. The choice of placement of a child with a specific foster parent, who is part of a cluster foster scheme, can be regulated internally by the scheme. Placing the child with a specific foster parent would also be contrary to the concept of cluster foster care which allows transfer of children between foster parents without having to return to court or requesting an administrative transfer by a social worker. If a court order identifies a specific foster parent, the transfer would have to be effected through the process described in section 171 or by court order, the organisation cannot do it independently. Regulation 69(5) does require that the cluster foster scheme consider the factors set out in section 171 when transferring a child from one foster parent to another, but it does not have to be processed through DSD or the children's court.
Section 157- Court orders to be aimed at securing stability in child's life	Partially supported	157(3) – “A <b>[very young]</b> <u>child who is three years or younger</u> who	This proposed amendment aligns with what is already in the Act describing such age group, see section 135(2)(c).



		has been orphaned or abandoned...”	
Section 159 - Duration and extension of orders Section 159(2A)	Partially Supported - More information in needed from DSD as to why this amendment is needed and how it will further children’s best interests	“(2A) <u>For three years from the date of commencement of this Act, in relation to orphaned or abandoned children in foster care with family members,</u> a court may extend an order that has lapsed or make an interim <u>extension of an order</u> for a period not exceeding six months, on good cause shown.”	<p>In practice the first part of the Department’s proposed insertion would mean that alternative care court orders that have expired can be brought to the court for extension after they have expired. This will affect the 23 000 children in child and youth care centres, an unknown number of children in temporary safe care and 350 000 children in foster care.</p> <p>This amendment can only be necessary if social workers are unable to prepare the extension in time. Which indicates the law is being ‘stretched’ to compensate for a lack of implementation capacity and/or lack of a comprehensive legal solution aimed at reducing the foster care case load.</p> <p>Will this amendment be necessary if the comprehensive legal solution is in place and there is less demand for foster care? If foster care case loads are reduced, there should be no reason for delays in reviewing and extending alternative care orders and therefore no need for this new s159(2A).</p>



<p>Section 159(2B)</p>	<p>Insertion of new proposed section</p>	<p><u>“(2B) Notwithstanding the amendment to section 150(1)(a), an order placing an orphaned or abandoned child in foster care with a family member in terms of section 156 before or on the date of this Amendment Act, may be</u></p>	<p>Note also that this provision will not prevent SASSA from stopping payment of the FCG on the day the foster care order expires. It only ensures that the FCG will later be re-instated and back payed when the extension order is finally submitted to SASSA. FCGs will therefore still lapse for a period of time. This provision is therefore not aimed at ensuring the child continues to receive the FCG uninterrupted.</p> <p>We therefore propose that this clause be restricted to cases of orphaned and abandoned children in the care of family members and that it be structured as a time bound transitional clause to be used only in exceptional cases due to the current high backlog.</p> <p>Once this bill becomes an Act, approximately 300 000 orphaned or abandoned children who are already in foster care with family members are at risk of losing their foster care orders and consequently their foster care grants. This is because when their case comes back to the court for review in terms of s159, the children’s court will review their case against the criteria specified in s150(1) (a). Because s150 (1) (a) is being amended to exclude new</p>
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		<p><u>extended by the court in terms of section 159(2) or section 186(2)."</u></p>	<p>applications for foster care by family members caring for orphaned or abandoned children, it could be interpreted by magistrates to mean that existing foster care placements of orphans with family members must be terminated. This needs to be explicitly prevented, as it will constitute regressive action for the families already in receipt of the foster care grant.</p>
<p>Section 167 - Alternative care</p>	<p>Amendment to section 167(1)(b) is not supported</p>	<p>It is unclear what the reason is for the removal of the reference to section 29 or Chapter 10 of the Child Justice Act. This amendment has serious implications for the placement of child offenders in child and youth care centres. The provisions that relate to how children who have been found guilty of criminal offence are dealt with in CYCCs are very important and appear in this chapter on Alternative Care. The removal of the aforementioned bits means that there is no mechanism to deal with these children in so far as their programmes and possibilities for early release are concerned.</p>	



	<p>Amendment to section 167(2) Supported</p> <p>Proposal in relation to section 167(3)</p>	<p>Section should be amended by the inclusion of a new subsection (c) which states that any reference to 'person' in this subsection does not include a person who is related to the child or a person with whom the child has a close relationship, provided that, in such cases, a designated social worker has assessed the prospective temporary caregiver as being a suitable person to care for the child on a temporary basis.</p> <p>With regard to temporary safe care approvals being required in every case, a possible solution is to amend section 167(3)(a) to say 'and such approval is valid for the period set out in the prescribed form'.</p>	<p><b>Proposed section 167(3)</b> currently does not differentiate or have different rules for individuals, especially those who are the child's relatives or close family friend. The current law sometimes causes children to be placed in temporary safe care facilities that have already complied with all the conditions, rather than with a suitable grandmother or aunt, simply because it is difficult to comply with the regulations pertaining to individuals on an emergency basis, which will often be the situation.</p> <p>There is a further concern that the requirement that temporary safe care be approved by the HOD is being interpreted by some children's courts as requiring a fresh approval for every placement. This is impractical, particularly for child and youth care centres and individual place of safety placements that are regularly used.</p>
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Section 170 - Child absconding from alternative care	Supported		
Section 178-Serious injury, abuse or death of a child in alternative care	Supported		
Section 179 – Regulations	Supported		
Section 181- Purposes of foster care	Supported		
Section 183 - Cluster foster care	Supported		
Section 185 - Number of children to be placed in foster care per household	Supported		
Section 186 - Duration of foster care placement	Partially Supported		<p>These small amendments are aimed at encouraging social workers and courts to make long term foster care placements or extensions for children in the care of family members, especially in the case of orphaned or abandoned children. This is aimed at reducing the need for review of these placements. If effective, these amendments may be helpful in reducing the backlog during the transition period of the next five years. However there is no guarantee that these small changes will persuade social workers or courts to move away from two yearly reviews as each social worker and courts are entitled to exercise their discretion and the default and common practice is two year placements and two yearly reviews into s159(1) &amp; (2).</p> <p>Once there are no more orphaned or abandoned children in the care of family</p>



			members in the foster care system, the rationale for these clauses may become redundant.
Section 188 - Responsibilities and rights of foster parents	Partially Supported	<p>We recommend that the reference to disability be deleted.</p> <p>We also recommend that the General Regulations Regarding Children (GNR.261 of 1 April 2010) be revised to reflect the fact that the reference to “stage of development” is sufficient to give due consideration to the views of all children including children with disabilities</p>	<p>We are concerned about the inclusion of “disability” as one of the factors to be taken into account by parents when considering the views and wishes expressed by the child. The mere fact that a child has a disability should not impact the extent to which their views and wishes are taken into account.</p> <p>More particularly, disability is a broad term and does not in and of itself affect a child’s ability to express their views and wishes. Accordingly, disability ought not to be a factor which is taken into account when considering a child’s views and wishes.</p> <p>Insofar as a disability may have an effect on cognitive ability, the reference to “stage of development” is sufficient to give due consideration to this. It is not necessary to single out disability as a factor which influences the extent to which the wishes and views of a child are given due consideration.</p>
Section 191 - Child and youth care centres	Supported		



Section 192 - Strategy to ensure sufficient provision of CYCCs	Supported		
Section 193 - Provision for CYCCs	Supported		
Section 194 - National norms and standards for CYCCs	Supported	We recommend that a definition for “rehabilitation services” be provided in the definition section of the Bill.	We welcome the proposed amendment to include access to rehabilitation services for children with disabilities. However, as stated above, it is unclear what is meant by rehabilitation services.
Section 197 - Establishment of CYCCs	Supported		
Section 199 - Application for registration or renewal of registration	Supported		
Section 200 – Consideration of application	Supported		
Section 201 - Conditional registration	Not Supported		<ul style="list-style-type: none"> <li>• The removal of conditional registration, in this manner, illustrates wish of the legislature to remove the idea of ‘conditional registration’ meaning that organisations that partially comply will not be able to get the assistance that they need from the Department to be fully compliant, because no mechanism exists to facilitate that.</li> <li>• There is a hard line of compliance, with its new set requirements. Anything deviating from that, will not qualify.</li> <li>• This inconsistency caused by the use of ‘conditional registration’ and ‘conditions of registration’</li> <li>• The use of conditional registration for the purposes of progressive</li> </ul>



			realisation of norms and standards or relevant requirements should be made clear.
Section 205 - Voluntary closure of CYCC	Supported		
Section 208 - Management board	Supported		
Section 209 - Manager and staff of CYCC	Supported		
Section 211 - Quality assurance process	Supported		



## DROP IN CENTRES

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 213 Drop-In Centres	Supported		
Section 214 Strategy concerning drop-in centres	Supported		
Section 215 Provision of drop-in centres	Supported		
Section 218 Application for registration & renewal	Not Supported	<p>We do not support the deletion of the words 'conditional registration'.</p> <p>We propose that the wording be retained in the Bill.</p>	<ul style="list-style-type: none"> <li>• The removal of conditional registration, in this manner, illustrates wish of the legislature to remove the idea of 'conditional registration' meaning that organisations that partially comply will not be able to get the assistance that they need from the Department to be fully compliant, because no mechanism exists to facilitate that.</li> <li>• There is a hard line of compliance, with its new set requirements. Anything deviating from that, will not qualify.</li> <li>• This inconsistency caused by the use of 'conditional registration' and 'conditions of registration'</li> </ul>



Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
			<ul style="list-style-type: none"> <li>The use of conditional registration for the purposes of progressive realisation of norms and standards or relevant requirements should be made clear.</li> </ul>
Section 219 Consideration of application	Not Supported	<p>The words 'financially' should be included so that s.219(5) reads as follows:</p> <p><b>(5)</b> Notwithstanding the provisions of section 215 (3) a provincial head of social development may assist the person or organisation operating a drop-in centre <u>financially, through conditional registration or otherwise,</u> to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.</p>	Amending the provision in this way will enable much needed access to assistance for drop-in centres.
Section 220 Conditional registration	Supported		
Section 224 Record and inspection of drop-in centres	Supported		
Section 225 Assignment of functions to Municipalities	Supported		



Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 226 Serious injury and death at a drop-in centre.	Supported		



## ADOPTION, INTER-COUNTRY ADOPTION, CHILD ABDUCTION, SURROGACY AND ENFORCEMENT

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 232 - Register on adoptable children and prospective adoptive parents	Supported		The provision clarifies the purpose of RACAP and the process of removal of adoptable children and adoptive parents from RACAP.
Section 233 - Consent to adoption	Supported		The provision recognises the autonomy and evolving capacities of the child-parent and the need to respect their views as to whether their child should be given for adoption or not. This is a welcome amendment as the current provision left the decision to the parent of the parent-child and there was no clear obligation to ensure that the parent-child decision is respected.
Section 234 - Post adoption agreements	Supported		The expansion of persons with whom a post-adoption agreement can be concluded is welcome. The current provision excluded other family members i.e grandparents who may wasn't to conclude a pos-adoption agreement when their grand-children are being adopted.
Section 236 - When consent is not required	Supported		



<p>Section 239 (1)(b) and 250(1) – social worker responsible for adoption</p>	<p>Comment</p>	<p>It is important that any reference to who may provide adoption services in the Children’s Act, should be aligned with the definition provided in the Act.</p> <p>The proposed amendments create confusion since they do not consistently refer to an adoption social worker: <b><i>The proposed amendment to section 239(1) (b) proposes that the section replaces reference to an adoption social worker with “a social worker responsible for adoptions”.</i></b></p> <p>The definition of adoption social worker in the Children’s Act is comprehensive and inclusive of social workers in private practise, DCPO’s and social workers in the employ of the Department, <i>this amendment proposes that adoption social worker as defined by the Children’s Act be substituted by a social worker responsible for adoption.</i></p> <p>This creates confusion on who may render adoption services as defined by the Children’s Act. The definition does not refer to a social worker rendering adoption services and the amendment should be aligned with the definition, therefore referring consistently to <i>an adoption social worker.</i></p> <p><b><i>The proposed amendment to section 250 of the Children’s Act which deals</i></b></p>
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			<p><i>with persons allowed to render adoption services seeks to insert a subsection (1)(e): “A social worker employed by the Department or a Provincial Department of social development who provides adoption services”.</i></p> <p>This amendment aims to include adoption social workers employed by the Department of Social Development who are currently excluded from this provision. According to the Children’s Second Amendment Act (18 of 2016) Social Workers in the employment of DSD who have a speciality in adoption services and are registered in terms of the Social Services Professions Act, 1978 (Act No.110 of 1978) may render adoption services.</p> <p>The proposed amendment refers to a social worker rendering adoption services. In order to be consistent and to avoid confusion, it should refer to an <b>adoption social worker</b> employed by the Department as per the definition in the Act.</p>
Section 239 (1)(d)- Application for adoption order	Supported		The amendment aligns with the intention of the section and makes it clear what



			the Department of Social Development's role is in relation to the adoption process.
Section 243 - Rescission of adoption order	Supported		
Section 248 - Access to adoption register	Supported		
Section 249 - No consideration in respect of adoption	Not Supported	The section must be reinserted.	<p>The deletion of the provision creates the impression that the persons who had been listed are now not allowed to charge fees for services they offer in relation to adoption. The provisions already makes it clear that the only consideration persons can receive is for their professional services and such consideration is regulated by the relevant regulations that apply to the respective professions.</p> <p>The problem with the proposal is that it could effectively open the door for unscrupulous individuals to profit from adoption. The Children's Act, at present, expressly provides that "no person may ... give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child ...". There is, accordingly, an absolute prohibition subject to the listed exceptions. If a person contravenes this section, they may be held criminally</p>



			responsible and if convicted subject to a fine and/or imprisonment (section 305 of the Children’s Act). The provision thus dissuades people who do not fall within the exception from becoming involved in adoption, and thereby limits the possibility of exploitation; without it, however, the proverbial flood gates are open.
Section 251- Accreditation to provide adoption service	Supported		
Section 252 – Advertising	Supported		
Section 253 – Regulations	Supported		
Section 258 - Performance of functions	Supported		
Section 259(4) - Accreditation to provide intercountry adoption service	Not supported	Section 259(4) must be reinserted.	The deletion of the provision creates the impression that the persons who had been listed are now not allowed to charge fees for services they offer in relation to adoption. The provisions already make it clear that the only consideration persons can receive is for their professional services and such consideration is regulated by the relevant regulations that apply to the respective professions.



Section 260 - Entering into adoption working agreement	Supported		
Section 261 - Adoption of child from republic by a person in convention country	Supported		
Section 262 - Adoption of child from republic by a person in non-convention country	Supported		
Section 263 - Issue of adoption compliance certificate	Supported		
Section 264 - Adoption of child from convention country by person in Republic	Supported		
Section 265 - Adoption of child from non-convention country by person in Republic	Supported		
Section 266 - Recognition of intercountry adoption of child from convention country	Supported		
Section 268 - Recognition of intercountry adoption of child from non-convention country	Supported		





	The insertion of subsection (dA) is supported		This is in line with recent case law on surrogate motherhood agreements and will ensure that when parties approach the court with their applications- such applications will be compliant with the requirements and reduce the risk of applications not being confirmed.
Section 297 - Effect of surrogate motherhood agreement on status of child	Supported		
Section 299- Effect of termination of surrogate motherhood agreement	New proposal	Extensive relook at the section is necessary.	<p>Section 299 needs to be revised to consider the fact that as it is it, where the surrogate agreement is terminated, puts the husband of the surrogate mother before the commissioning father- who may be the biological father of the child.</p> <p>The section follows section 298 and thus we assume that it only refers to where the surrogate mother is also the egg donor, but this needs to be made clear as the consequences of such termination</p>



			cuts across the rights of the commissioning parents.
Section 303A - Prohibition of certain acts	Supported		
Section 304	Supported		
Section 305 – Offences	Comment	Section 6A (Which we do not support) is added to the list and 74 is taken out, however section 6C is not inserted.	<p>We supported 6C- which is closer to 74 and that should be the section that is added to the list of offences.</p> <p>If section 74 is retained then the reference to this section must be reinserted.</p>



Section 306 – Regulations	Supported subject to our comments on specific sections that need to be addressed first before they are added to the regulations list.		
Section 312	Supported		

