

**ANNEXURE A**

**DSD RESPONSES TO THE SUBMISSIONS MADE ON THE CHILDREN’S AMENDMENT BILL MATRIX**

**Purpose**

The purpose of this document is to provide DSD responses on:

* Submissions made at national public hearings on the Children’s Amendment Bill
* Provincial public hearings on the Children’s Amendment Bill.
* Service delivery issues raised during public hearings.

| **Clause/organisation** | **PUBLIC COMMENTS AND PROPOSED AMENDMENTS** | **EXPLANATION FOR PROPOSED AMENDMENTS** | **RECOMMENDATIONS** | **DSD RESPONSE** | **ARTICULATION IN LAW (RETAIN, AMEND NEW CLAUSE)** |
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| **Clause 1** seeks to amend section 1 of the principal Act by substituting and  inserting new definitions i.e. ‘‘early childhood development centre’’; ‘‘family  counsellor’’, ‘‘inter-country adoption’’, ‘‘regional court’’, ‘‘separated migrant  child’’ and ‘‘unaccompanied minor child’’. This will align the principal Act  with current family and child law practice. | Section 1(b)(a): CoRMSA believe that the Act must be consistent in using the three parties (a parent, care-giver and legal guardian) concerned on the affairs for effective practical application of this Act. |  | **Amendment of the definition of 'adoption service' to include**  *(a)* counselling of the parent, caregiver or guardian of the child and, where applicable, the child; | Agree This proposal is supported because some children are cared for by a caregiver who might want to adopt a child. | counselling of the parent, caregiver or guardian of the child and, where applicable, the child; |
|  | Mr Van Niekerk submits that the definition of caregiver ought to be redefined, and a distinction must be drawn between a care-giver¬ who has legal or statutory duties towards a child (e.g. foster parent, grandparent) and one who has no legal or statutory duties towards a child (e.g. a person finding a child new born child in a dustbin and then caring for the child by assisting the child). |  | * Define ‘care-giver’   means any person, other than a parent or guardian, who factually cares for a child and who has a legal duty in respect of the child, including –  (*A) a grandparent or an adult sibling or half-sibling; (b) a foster parent; (c) a person who cares for a child with the implied or express consent of a parent or guardian of the child; (d) a person who cares for a child whilst the child is in temporary safe care; (e) the person at the head of a child and youth care centre where a child has been placed; (f) the person at the head of a shelter; (g) a child and youth care worker who cares for a child who is without appropriate family care in the community; and (h) any other person that has parental responsibilities and rights in respect of the child.*   * *‘Incidental care-giver’* means any person, other than a parent, guardian or defined care-giver, who factually cares for a child on a temporary basis only’. * Should the submission of different definitions for different care-givers be agreed with, then the following (on the right) consequential amendments will have to be made:   The term ‘care-giver’ should be replaced with reference to a defined caregiver as well as an incidental care-giver in the following sections:  Section 1 (definition of commercial sexual exploitation), 7(1)(a)(ii), 7(1)(c), 7(1)(d)(ii), 11(1)(d), 13(1)(d), 32(1) and 305(3).  The term ‘care-giver ‘should be replaced with reference to defined care-giver only in the following sections:  46(1)(d), 46(1)(e), 46(1)(f), 46(1)(g), 46(1)(h)(iii), 58(d), 60(1)(c)(iv), 62(1)(d), 76, 89(2)(a), 114(2)(a)(vi), 114(2)(c)(viii), 129(4), 129(10), 130(2)(b), 130(2)(e)(ii), 130(2)(f)(ii), 132(1)(b), 132(2)(b), 133(2)(b), 133(2)(d)(ii), 133(2)(e)(ii), 134(2), 135(2), 137(1)(a), 137(1)(c), 144(1)(b), 144(1)(c), 144(3), 145(1), 148(1)(a), 148(3), 149, 150(1)(b), 150(1)(g), 150(1)(i), 151(2A)(b), 151(7)(a), 152(2)(a), 152(2)(d)(ii), 152(3)(a), 152(3)(b)(ii), 156(e), 156(e)(iv), 157(1), 157(1)(b)(i), 157(1)(b)(ii), 157(1)(b)(iii), 159(2)(d), 171(3)(a), 171(4)(b), 175(3), 176(2)(a) and 226(2)(a). | Agree with the proposed amendment of the definition of caregiver.  DSD proposes a definition of a Care Giver as follows: “A person assigned care of a child within a registered Cluster Foster Care Scheme.”  Agree with the new proposed definition of an informal or incidental caregiver; however current literature refers to “informal caregiver” | New insertion in clause 1. The department supports the  New definition of informal caregiver “ a person who provides care to a child informally. If Parliamentary Committee is in agreement same may be added.  To include definition of caregiver within a cluster foster care scheme |
|  | Section 1(b)(h): CoRMSA  The organisation submits that the Department of Social Development district offices are easily accessible and are seen as the direct point of reference to many designated child protection organisations as compared to the provincial department. At the district level, it is where social workers or social service managers and coordinators seat. Therefore, their involvement can enhance the effective application of this Act. |  | * Section 1(b)(h): include: “*Department of Social Development District Office*” for the sub-section to read: by the substitution for the definition of ‘‘cluster foster care scheme’’ of the following definition: ‘‘ ‘*cluster foster care scheme’* means a scheme providing for the reception of children in foster care, managed and operated by a designated child protection organisation, department of social development district office or the provincial department of social development and registered by the provincial head of social development for this purpose;’’. | Disagree  The Act makes reference to the Department/ provincial department of social development. Although some of the services are provided at a district, regional, service point or local level, the Act does not make reference to those levels of service delivery. | Retain the clause |
|  | Section 1(b)(v): The South African Council for Social Service Professions (SACSSP/ Council) requires and compels all social service practitioners to renew their practice certificate annually for them to officially practice within the profession. It is for this reason that CoRMSA submits to the Department to include **“*valid registration certificate*”.** CoRMSA would like to argue that it may not be a secret that there may be many social service practitioners with certificate that are not valid on different grounds, either they did not pay the annual affiliation fees, or no longer practising in the sector or qualifications were obtained fraudulently. To avoid all unnecessary challenges, the SACSSP/Council practice certificate must be valid. |  | * Section 1(b)(v): subsection (v) be reviewed to include “*valid registration certificate*” to read: ‘*social service practitioner’* means any person registered and with valid registration certificate in a social service profession or occupation with the South African Council of Social Service Professions as contemplated in the Social Service Professions Act, 1978 (Act No. 110 of 1978), to practise and render a service within the social service sector;’’. | Proposal not supported. The definition is aligned with the South African Council for Social Service Practitioners Bill.  Agree | Retain the clause |
|  | CoRMSA submits that “*domestic partner*” be defined or explained and included on section 1. In our South African set-up or social settings domestic partner may mean or have different interpretation as guided by our cultural beliefs. To avoid this confusing and contradicting in interpreting and applying this Act, this must be defined or explained. |  | F | Proposal not supported. The definition is provided for in the Domestic Partnership Act | *Retain the Clause* |
|  | Clause 1 (q) – orphan  *Stellcare Stellenbosch & District family services, Children in Distress (CINDI), Children’s Institute*  *Stellcare Stellenbosch & District family services,* submits that the definition of orphan should be kept as it is in the Principal Act.  However, the Children’s Institute and CINDI submit that some social workers and magistrates have interpreted the current definition narrowly/incorrectly to exclude many maternal orphans who are living with relatives and their father’s whereabouts are unknown. They thus support the proposed amendment in the Bill. |  |  | Disagree with Stellcare. The definition in the principal Act is amended to accommodate maternal and paternal orphans.  Agree with CINDI | *Retain the clause* |
|  | Clause 1(c) – abandoned child (to be read with section 150 (1)(a) in the context of a child in need of care and protection)  *Children’s Institute, Professor Ann Skelton, Give a Child a Family, Catholic Institute of Education, Justice Desk, National Adoption Coalition of SA (NACSA), Centre For Child Law, Mr Jaco Van Niekerk*  Children’s Institute, Give a Child a Family and the Centre for Child Law question the insertion of section 1(c) in the definition of an abandoned child. The insertion reads as, “(c) *has no knowledge as to the whereabouts of the parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities*;”  The Children’s Institute raises that the rationale for including sub-section (c) in the definition is not provided in the memorandum to the Bill. It is therefore not clear what challenge it is aimed at addressing or how it will further improve care and protection for children. It points out that the current practice is for social workers to publish an advert in the local newspaper with a photo of the child and a request for anyone who knows the child to come forward. However, these adverts are costly and ineffective in tracing parents, especially parents who do not want to be found. Furthermore, finding parents who have abandoned their children will not render the children no longer abandoned, especially if the parent is not willing to be a parent  The Centre for Child Law argues that current subsection 1 (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. It is submitted that if the section reverts to the August version, it can be supported as this definition will be used in relation to children abandoned with relatives (the majority of abandoned children), on their own, or with strangers. It was reported that the General Household Survey (2017) and the National Income Dynamics Study (NIDS) wave 4 figures indicate that 75 000 children had the status of being ‘abandoned’. It was further submitted that the definition of abandoned will be used mostly with regards to section 150(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. 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. |  | The stakeholders recommend clarification of the intent behind this amendment and also to elaborate on who the “relevant authorities” are and how they will be resourced and capacitated to investigate and find missing parents.  Professor Skelton recommends that the wording of subsection 1(c) be worded as follows, “has parents or guardians who cannot be traced by relevant authorities”  The Justice Desk notes the insertion to the definition as it covers children who are especially vulnerable to abuse, sexual exploitation and even human trafficking. It however, submits that the Bill in its current form fails to provide a mechanism through which the investigation and resolution of such situations, can be reached, by applying the best interest of the child principle. There is a significant number of children that will fit into this definition, who are born in particular to foreign national parents. The other percentage of children will be children born to both or one of the parents being South African. This results in children in need of assistance being criminalised and not receiving any measure of help.  The organisation recommends that the Department of Home Affairs must, in conjunction with the Department of Justice and Correctional Services and other departments delivering social services work on finding policy and legislative solutions to the challenge of children are victims to abuse, sexual exploitation and even human trafficking. | Agree with Centre for Child Law and Prof Skelton’s recommendations | *Amend the clause as follows:*  *has no knowledge as to the whereabouts of the parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities.*  *“(2) A child found in the following circumstances may be [a child in need of care and protection] at risk and [must] may be referred for [investigation] initial screening by a social service practitioner in the prescribed manner:* |
|  | **Care – Section 1(d)**  the definition of care  ***Professor Ann Skelton, Children’s Institute, Jelly Beanz, Mr Jaco Van Niekerk***  Professor Skelton, Children’s Institute and Jelly Beanz submit that the current definition is too vague.  Mr Van Niekerk submits that The removal of suitable from paragraph (a) of the definition of care will unnecessarily detract from the circumspect approach to be followed in putting the best interests of the child forward. It would be contrary to the best interests of the child to provide the child with a place to live as opposed to a suitable place to live. The qualification of within available means earlier in paragraph (a) of the definition of care, is sufficiently elastic to adjust to the circumstances. In any event, paragraph (a)(ii) of the definition of ‘care’, provides an override by reference to living conditions that are conducive to the child’s health, well-being and development. |  | Prof Skelton and Children’s Institute recommend for the insertion of section 1(g) to read, “Guiding the behaviour of the child in a humane manner using positive parenting and non-violent disciplinary methods.” | Disagree with the proposal to retain the wording “**suitable** place to live” in the definition of care. Measurement of suitability is subjective and may result in different interpretation. | *Retain the deletion of suitable* |
|  | **Definition Care-giver – Section 1 of the Act**  ***Mr Jaco Van Niekerk***  Mr Van Niekerk raises a concern that the head of a shelter is removed from the definition of care-giver. He submits that it appears that the Bill seeks to remove all references to shelter from the Children’s Act. It is important to note that section 32 has reference to a ‘care-giver’. Should a ‘head of a shelter’ be removed from the definition of a ‘care-giver’, it would result in the expected care and protection afforded to a child whilst being in the care of a person not holding parental responsibilities and rights, thereby exposing the child and making the child more vulnerable. |  |  | Disagree  Reference to “shelters” has been replaced by a comprehensive term “child and youth care centres. | *Retain* |
|  | **Insertion of definition of ‘family counsellor’**  ***Mr Jaco Van Niekerk[[1]](#footnote-2)***  Mr Van Niekerk submits that the only place where this definition is to be used is in section 63. Section 63 relates to the evidence to be given by a professional person, as specified. The evidence to be given by a person referred to in section 63, may follow after a children’s court has ordered a (specified) professional to investigate.  Section 62 ought also to refer to ‘family counsellor’ as one of the persons that the court may order to carry out an investigation. |  |  | A new definition of a “family counsellor” is included in the definitions. Although it is used in few clauses in the Bill, if not defined, it might be misinterpreted. | *Retain definition.* |
|  | **Insertion of definition for inter-country adoption**  ***Mr Jaco Van Niekerk***  Mr Van Niekerk submits that the Act differentiates between two types of adoptions: one referred to colloquially as ‘national’ adoptions, dealt with in Chapter 15, and the other inter-country adoptions, dealt with in Chapter 16. The intended definition is, on the face of it, without any difficulties, as it appears to be aligned with The Hague Convention. However, it is submitted that the definition not be inserted and that no other attempt to substitute a definition be made, for the following reasons:   1. Adoption, in its broad sense, is defined in section 228 which, by definition, would include inter-country adoptions. 2. The purpose of inter-country adoptions, dealt with in chapter 16, is dealt with in section 254 in detail. 3. Interpreting this definition of inter-country adoption, it follows that for an adoption to qualify as an inter-country adoption, the adoptive child must be habitually resident in one country whereas the adoptive parent has to be habitually resident in a different country. 4. Therefor if there is a scenario that does not fall within this definition, it accordingly does not qualify as an inter-country adoption and consequentially must be considered as a ‘national’ adoption. 5. There are various types of scenarios for adoption which cannot comfortably be classified as either a ‘national’ adoption or an inter-country adoption, e.g. a child is habitually resident in the Republic and the prospective adoptive parents are non-South African citizens, but who are habitually resident in the Republic. According to the definition of ‘inter-country adoption’ this example will have to be classified as a ‘national’ adoption. 6. However, the considerations enunciated in Article 5 of The Hague Convention on Inter-Country Adoption, and re-iterated in Article 17 thereof, will accordingly then be overlooked with disastrous consequences in that the Article 5(c) mandates that an adoption shall take place only if the authorities of the receiving state (the state of the foreign adoptive parents in the example) have determined that the child is or will be authorised to enter and reside permanently in that state. 7. The importance of Article 5 should become abundantly clear when due consideration is given to the provisions of Article 17 (i.e. the compliance certificate referred to in sections 266 and 268, issued by the Central Authority) in that Article 17(d) makes compliance with Article 5 a pre-condition for the issuing the said compliance certificate. 8. Furthermore, it was clearly not the legislatures intention to have matters of this nature be dealt with as ‘national’ adoptions if due consideration is given to the following provisions in the Act:    1. section 25 of the Act that prohibits the attaining of guardianship by a non-South African citizen by specifically directing it to be dealt with as an intercountry-adoption in terms of Chapter 16 of the Act; and    2. section 232(4)(b) of the Act, read with General Regulation 98, whereby the registration on RACAP for an adoptive parent is limited to citizens and permanent residents. 9. Whereas section 25 of the Act elevates the acquisition of guardianship (guardianship being but one of the four elements of parental responsibilities and rights) by a non-citizen to the level of a mandatory inter-country adoption, which requires compliance with The Hague Convention, then it goes without saying that an adoption, which confers full parental responsibilities and rights, must be given a similar, if not more elevated consideration. |  |  | Supported, there is no need to define inter-country adoption as the definition of adoption covers both national and intercountry adoption. | *Remove the definition of intercountry adoption* |
|  | **Adoption service – clause 1(b)**  ***Mr Jaco Van Niekerk***  Mr Van Niekerk agrees with the inclusion of ‘*or guardian’*. He however, submits that a further alternative of a ‘defined care-giver, insofar as it may be applicable’ ought to be included in the list of persons to be counselled. Mr Van Niekerk states that paragraph (d) of the definition of adoption service include the information to be gathered by the Clerk of the Court (section 237(3)) and a social worker (section 237(4)). However, section 250 prohibits anyone, other than the persons listed in section 250, to render ‘adoption services’. The clerk of the court and a social worker (as opposed to adoption social worker) are not listed as persons who may render ‘adoption services ‘in terms of section 250. This creates an anomaly in that the clerk of the court and a social worker (as opposed to an adoption social worker) may, by definition of ‘adoption services’ render such, but the clerk of the court and a social worker (as opposed to adoption social worker) is also prohibited from rendering ‘adoption services’. It is submitted that paragraph (d) be amended to exclude section 237(3). Consequentially, section 237(4) ought to be amended by substituting ‘social worker’ with ‘adoption social worker’. |  |  | Supported, there is no need to define inter-country adoption as the definition of adoption covers both national and intercountry adoption. | *Remove the definition of intercountry adoption* |
|  | Section 1 in relation to section 129 – definition of “child parents” **Centre for Child Law**  There is also a need to include a definition of “child-parent”. |  |  | Agree | *New definition*  *A child who is a parent* |
|  | Clause 1(x) - temporary safe care *Stellcare Stellenbosch & District family services* |  | The organisation recommends that the definition adds “*hospital or medical facility*.” | Agree  “hospital or medical facility.” To be included | ‘‘ **‘temporary safe care’ [, in relation to a child,]** means care of a child  in an approved and registered child and youth care centre**[, shelter or**  **private home or any other place,]** or in the care of an approved person,  including a place as contemplated in section 167(3) where the child can  safely be accommodated pending a decision or court order concerning  the placement of the child, but excludes care of a child in a *hospital, medical facility*.prison or police cell;’’; |
|  | Clause 1(t) - Separated migrant child ***Legal Aid South Africa, Centre for Child Law***  The organisation supports the inclusion of the definition of a separated migrant child. It submits that This definition is required in order to assist the court in dealing with the practical issues  The Centre for Child Law does not support the definition. It states that the definition in the United Nations Convention on the Rights of the Child does not include the word “citizen”. |  | * Delete words in bold within square brackets, as shown:   “*Separated migrant child’ means a child [****who is not a citizen of the Republic and****] 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.”* | Supported  The new definition of separated migrant child will be retained and reviewed to replace the words ”who is not a citizen of the republic” to “who is from a foreign country” to enable foreign children in RSA to receive services. The UNCRC recommendation to include the category | *Amend the clause* |
|  | Clause 1(y) – unaccompanied migrant child ***Centre for Child Law***  The organisation does not also support the definition because the definition in the United Nations Convention on the Rights of the Child does not include the word “citizen”. |  | * Delete words in bold within square brackets, as shown:   *“Unaccompanied migrant child’ means a child [****who is not a citizen of the Republic and****] 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”.* | Same as above |  |
|  | New proposal - Commissioning parents and surrogate motherhood agreement ***Professor Ann Skelton, Centre for Child Law***  Professor Skelton makes a proposal that the word “commissioning” be replaced with “intending”, which is used internationally. She argues that surrogacy is altruistic in South African Law, but commissioning sounds commercial. Pertaining to surrogate motherhood agreement, Professor Skelton submits that this agreement focuses on the mother instead of the child.  The Centre for Child Law explains that 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 transaction which has the effect of commercialising the surrogate motherhood agreement process |  | The stakeholders recommend that the definition to read:   * ***‘[commissioning****] intending parent’ means a person who enters into a surrogacy****[te motherhood****] agreement”.* This will also require that in Chapter 19 every place where “*commissioning*” appears it is substituted with “*intending”.* * Remove reference to motherhood and call it the ‘surrogacy agreement’. This should be applied throughout the Act where ‘surrogate motherhood agreement’ appears. However, when referring to the surrogate mother per se, so definition of surrogate mother does not require amendment. | Agree to align with international terminology |  |
|  | Centre for Child Law ***Definition of disability***  The organisation recommends that 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). |  |  | Agree |  |
|  | *Mamelani*  *Definition of after care*  The organisation argues that the definition for after care is vague and does not stipulate the person responsible for providing these services, although in some way it places responsibility of such a service on Child and Youth Care Centres even though the CYCC’s are often not well placed in terms of location, staffing and resources to provide aftercare services. The role of the designated social worker is not mentioned. |  | * 1. Section 1 of the Children's Act, 2005—   *(c) by the substitution for the definition of "after-care" of the following definition:*  *"****'after-care'*** *means the supportive service provided by a social worker [****or****]; a* ***social service professional****] auxiliary worker or an adoption social worker, to monitor progress with regard to the child's developmental adjustment as part of—*  *(a) family preservation or reunification services;*  *(b) adoption or placement in alternative care; or*  *(c) discharge from alternative care;"* | Agree that the **definition** is unclear. It is proposed that the department amends the definition aligning it to the national child care and protection policy (pg81- 82)  Agree that the definition may pose implementation challenges relating to the designated professionals to undertake this responsivity. The definition is to revised to cover all the responsible practitioners.  Disagree with the view expressed about the implied role of Child and Youth Care Centres emanating from the proposed definition.  The department notes the statement made about the location, staffing and resources to provide aftercare services. The definition does not imply that Child and Youth Care Centres must undertake this responsibility as the CYCCs are not obligated to provide after care services. |  |
|  | Interpretation (section 1 in the Principal Act) – adoption social worker ***The South African Association for Social Workers in Private Practice (SAASWIPP)*** |  | **'adoption social worker'** means-  (a) a social worker in private practice-  (i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); and  (ii) who is accredited in terms of section 251 to provide adoption services;  (b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services, who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); or  (c) a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978). | The proposed amendment is already covered in the Children Second Amendment Act, Act 18 of 2016 |  |
|  | “rehabilitation services” – section 194 ***Centre for Child Law,* *Equal Education Law Centre***  The organisations recommend that the definition of “rehabilitation services” be included in the definition section of the Bill. 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. |  |  | Agree with the inclusion of a new definition of rehabilitation and habilitation |  |
| **Clause 2** seeks to amend section 6 and introduces the concept of *accessible*  *and inclusive environment* to promote and protect the interests of children  with disabilities. | Inclusion and inclusive programmes ***Centre for Child Law***, **Equal *Education Law Centre***  The organisations submit that 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 enables 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 and to incorporate and aspects of diversity. |  | * The organisations propose the definition of *“inclusion*” as follows, “*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”.* * It is also proposed that the definition of *“inclusive programmes*” to be as follows, *“A programme in which all children are supported so that they can optimally participate and benefit”* | DSD supports the inclusion of the two new definitions. | *To include new definitions* |
| **Clause 4** seeks to amend section 7 by making reference to ‘‘*any special needs*  *that a child may have*’’. The intention is to create an additional set criteria,  whenever any provision in the Act requires the best interests of the child test to be applied the child’s special needs must be taken into consideration. | Clause 4 amending section 7 ***Scalabrini***  The amendment seeks to make reference to “*any special needs that a child may have*” so as to create an additional set criterion, whenever any provision in the Act requires the best interests of the child test to be applied. |  | The organisation recommends for the inclusion of a further provision in the section 7 of the Principal Act, stipulating that the best interests of the child standard is universally applicable to all children, regardless of nationality, and the needs of the child in terms of documentation in respect of unaccompanied or separated migrant children. | The recommendation is supported. There is a need for a thorough assessment to be conducted so as to understand the support needs of a child and therefore provide appropriate support to a child.  To ensure inclusivity of all children irrespective of their nationality and needs. |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any marriage of a child. | Clause 6– child marriage ***Women’s Legal Centre*** |  | The organisation recommends that the Bill should explicitly state that the minimum allowable age of a person to enter marriage is 18 years, regardless of the sex of the person. | Agree |  |
| **Clause 10** seeks to—  *(a)* amend section 21 by providing clarification regarding a father who is not married to the mother and who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;  *(b)* further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;  *(c)* further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a  certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;  *(d)* align the current terminology or definitions i.e. social service practitioner;  *(e)* further delete subsection (3)*(b)* which provides that any party to the mediation may have the outcome of the mediation reviewed by a court. | | | | |  |
| **South African National Civic Organisation (SANCO)** | SANCO supports amendments to section 21 because it believes that family care should be enhanced under the facilitation of Social Service Professionals where the child participation is concerned. It makes reference to the 1995 Supreme Court of Appeal’s judgement that put an end the debate that a natural father of a child born out of wedlock does not have inherit right of access to the child. It ruled that access can be granted to the father if it is in the best interest of the child. The Court further invited the legislator to decide whether or not it agrees with the Courts decision. The legislator responded with the Natural Fathers of Children Born out of Wedlock Act 86 of 1997, which came effect on 4 September 1998.  Phalani Development Centre & SANCO firmly believe that more Education and Awareness Campaigns needs to be conducted for the unmarried fathers about their parental responsibilities and rights, and not just as financial contributions. |  | The paternal side and maternal side should be fully aware and aligned to their parental acts at counselling phase which should be introduced where parents are provided and also can inquire at any time. A HOTLINE should be introduced at the Maintenance courts or Family Advocate offices. | Agree  maternal and paternal family sides of a child should be treated equally. |  |
| **Childline South Africa** | **Childline South Africa**  The organisation recognizes the importance of fathers and actively supports and promotes the importance of father’s participation in the care of their children. Childline advocates for and provides mediation processes when parents find it difficult to agree on parental rights and children’s lives. |  |  | Agree  Mediation in matters pertaining to care and contact should be promoted when parents find it difficult to agree on parental rights and children’s lives. Psychosocial support should be provided in high-conflict cases. |  |
| **We’re Fathers, We’re Parents** | **We’re Fathers, We’re Parents**  The organisation raises a concern with regard to section 21 of the Act against section 9(3) of the Constitution. It points out that Section 21 attempts to promote a greater level of formal equality between married and unmarried parents, provided that certain requirements are met. However irrespective of the increased recognition that unmarried fathers being important and the role that they can play, the common law position remains unchanged, and this raises inequality in the Act. The organisation states that section 9(3) of the Constitution specifically provides that the state may not unfairly discriminate directly or indirectly against anyone based on gender, race, sex, marital status or birth. **The argument of the organisation is therefore that acquisition of parental rights and responsibilities infringes the right to equality in that it infringes marital status, gender and sex even though all this is subject to limitation clause in section 36 of the Constitution**. However, the organisation argues that it would seem as though the limitation of parental rights to equality is currently justified by the child’s overriding right to parental care.  The organisation further submits that section 21(1)(b)(ii) and (iii) does not give the definition or express meaning of **permanent life partnership.** In a traditional sense it refers to parties living together and not being married. It argues that the word permanent is open to interpretation and can mean that the relationship is either stable or everlasting. It points out that no time period is used to define the word permanent hence it is difficult to define the relationship.  The organisation also draws a distinction between the best interest of the child as defined socially and legally. It points that socially the best interest of the child primarily (90%) is the responsibility of the mother as maternal preferences is still prevalent. However, legally best interests of the child is the responsibility of both parents. Therefore, the right of a child is compromised when a father has to qualify and meet certain requirements to attain parental rights and responsibilities.  It further states that in cases where one parent, particularly a mother, is deceased and kinship is applied it automatically dismisses the rights of the unmarried father even though he had fulfilled the requirements of section 21 of the Children’s Act while the mother was still alive. Legally speaking, the organisation then argues that there is a distortion between the Department of Social Development and the Department of Justice and Correctional Services.  High court has been defined as the final arbiter in children’s cases. The legal costs are extravagant and not all parents can afford to litigate at high court.  Currently matters of children take as long as 10 years, which cannot be interpreted as justice |  | The organisation makes the following recommendations:   * Section 21 must be addressed so that there is no married and unmarried father, and all children are treated the same (equality clause). Automatic acquisition of primary residency of the child in the event of the passing of the mother must be applied. * The Department of Home Affairs Birth Registry must be update and be enforced so that mother should include fathers’ details. * The Department of Health must be forced to have fathers be included in registration of birth from hospital to the Department of Home Affairs. * The limitation of family advocate in terms of non-enforcement should be changed to enforcement as they are vested with central authority and extradition authority in the Children’s Act. They are vested with recommendations and mediation therefore; they must be given more power to enforce parenting plan. | Do not agree with the fusion of the sections dealing with mothers, married fathers and unmarried fathers. It will not be administratively possible to deal with the sections in one place.  The different sections were packaged separately because they serve different purposes.  Section 18 outlines what PRR are and the subsequent sections 19, 20 and 21 deal with the respective PRR of mothers, married fathers and unmarried fathers. The way in which unmarried fathers and married fathers exercise PRR is not the same. Unmarried fathers who comply with the conditions in section 21 automatically acquire PRR and where there is a dispute, they have to be dealt with in terms of section 21 (3).  (a) we retain section 21 by providing clarification regarding a father who is not married to the mother and, who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;  (b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;  (c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;  (d) align the current terminology or definitions i.e. social service practitioner;  (e) further delete subsection (3) (b) which provides that any party to the mediation may have the outcome of the mediation reviewed by a court. | *We retain the clause in the Bill based on our response.* |
| **Commission for Gender Equality** | **Commission for Gender Equality** The Commissions argues that the rights of unmarried fathers have had negative unintended consequence in practice, among is unnecessary distinction between married biological fathers and unmarried biological fathers who must first meet legislated requirements. It also raises a concern that of the potential amendment of section 21 which it submits it will inadvertently contribute to the growing crisis of statelessness. It states that the Department of Home Affairs does not recognise the family relationship between a child and their father, who is not married to their mother and so refuses to allow an unmarried father to register the birth of his child. The child might be denied right to their birth certificate and constitutional right to a nationality from birth.  It however, welcomes section 21(1)(a) & (b). It also welcomes the addition of subsection (1A) to reduce the need to approach court for acquisition of parental rights and responsibilities by unmarried biological fathers. It takes note of deletion of subsection (3)(b) from section 21. In light of by section 45(1)(c) it questions that it is unclear why deletion is suggested. |  | The organisation makes the following recommendations:   * Unmarried biological fathers who fall outside the limited provisions in the Children Act that allows for automatic acquisition of parental rights and responsibilities must enforce their section 21 rights in a court which can prove impractical and prohibitively expensive barrier for a large unmarried fathers in South Africa. * Replace the word “and” between subparagraphs (ii) and (iii) of section 21(1)(b), with “or”. This will clarify that the requirements in (i) –(iii) should each be considered independently and that each case should be determined on its own unique facts. * Introduce an additional sub-section into 1A which specifically addresses cases where a mother’s whereabouts are unknown, or she is deceased. | Agree  Replacing the word ‘and’ with ‘or’ reduces the compliance burden on unmarried fathers to satisfy all the conditions for acquisition of PRR.  Agree  This new insertion of a provision that allows a biological father who satisfies S21 conditions to acquire PRR in the event of the death or disappearance of the mother would address the perceived. issue of automatic maternal preference. | (c) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagrap: ‘‘(ii) contributes or has attempted [in good faith] to contribute to the child’s upbringing [for a reasonable period]; **or [and]**;  Amend the clause |
| **Child Welfare Society** | **Child Welfare Society**  The organisation submits that the Act needs to cater for the situation where 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 s21 rights as a father. This process is likely to be more accessible than a court process. |  | The organisation makes the following recommendation :   * Insert section 21 (1A) add sub-section (as underlined) to read as follows:   *‘‘(1A) A family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection:*  *(1)(a) or (1)(b) on application from—*  *(a) the mother and biological father jointly;*  *(b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or*  *(c) the biological father, if—*  *(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, or*  *(ii) the mother’s whereabouts are not known or she is deceased; and*  *(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).’’* | Agree  (a) amend section 21 by providing clarification regarding a father who is not married to the mother and, who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;  (b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;  (c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;  (d) align the current terminology or definitions i.e. social service practitioner;  (e) further delete subsection (3) (b) which provides that any party to the mediation may have the outcome of the mediation reviewed by a court. | *Adopt the proposed amendment.*  *(****ii) the mother’s whereabouts are not known or she is deceased; and*** |
| **National House of Traditional Leaders** | **National House of Traditional Leaders**  The House view that as long child is born, the unmarried father should have parental responsibilities and rights over the child, even if he was not living together with the biological mother at the time of the child’s conception and birth. According to customs and tradition, the father of the child should identify himself as the child’s father or pay damages. |  | The House makes the following recommendations:   * The requirement of having lived together should be done away with. * Clause 21(3) (a) to be amended to insert mediation by traditional leaders as well. Traditionally, if there is a dispute between the biological father and mother of a child, both families should meet and resolve the dispute, and if the dispute cannot be resolved, its then referred to the traditional court. | Agree  If the word “and” between section 21 (b) (ii) and (iii) will address the concern. It will not be compulsory for the father to stay or have stayed with the mother to acquire PRR  Parties should have an option to approach a traditional leader with a view to mediate disputes relating to exercise of PRR especially in rural areas where access to the Office of the Family Advocate or social workers is a concern.  Subsection (3) refers to a suitably qualified person to mediate. A traditional leader may be one of the suitably qualified. The regulations will prescribe how the section and new insertion will be applied.  (a) amend section 21 by providing clarification regarding a father who is not married to the mother and, who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;  (b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;  (c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;  (d) align the current terminology or definitions i.e. social service practitioner;  (e) further delete subsection (3) (b) which provides that any party to the mediation may have the outcome of the mediation reviewed by a court. | Amend the clause.  (c) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagrap: ‘‘(ii) contributes or has attempted [in good faith] to contribute to the child’s upbringing [for a reasonable period]; **or [and]**;  Consider Customary Law provision |
| **Prof De Kock** | **Prof De Kock**  proposes inputs with regard to Section 21(3)(a) wherein the amendment intends to replace social worker with social service practitioner. Changing professional to practitioner can make matters worse. Social service practitioner means allowing any social auxiliary worker, a person in the child and youth care field to mediate. |  | Professor makes the following recommendation:   * Section 21(3)(a) be amended by replacing social service practitioner with social service professional. | Proposal not supported. However, the terminology is not yet being used but is being proposed in the Social Service Practitioners Bill which is still to be tabled before Parliament. The Department wanted to avoid coming back and amending the Bill once the Social Service Practitioners Bill is enacted. will only harmonise the terminology once the Social Service Practitioners Bill is passed into law.  (a) amend section 21 by providing clarification regarding a father who is not married to the mother and, who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;  (b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;  (c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;  (d) align the current terminology or definitions i.e. social service practitioner;  (e) further delete subsection (3) (b) which provides that any party to the mediation may have the outcome of the mediation reviewed by a court.  The concern regarding the confusion of roles resulting from the change of the terminology is not an issue in the Principal Act and in the Bill because specific responsibilities are assigned to the respective professionals. | *We retain the clause in its current form in the Bill.* |
| **Dear South Africa** | **Dear South Africa**  Dear South Africa conducted an online public participation project on the Bill. It received a total of 2 146 comments and compiled a report on the findings.. Comments responded to two questions identified by Dear SA – do you support the proposed CAB? What is your top concern? Responses were categorized into, “Yes I do”, “Not Fully” and “I do not” comments. Those who supported the Bill were 1 181 (55.03%) in total. Those who did not fully support the Bill were 596 (27.77%) and who did not support: 369 (17.19%)  Comments mainly focused on parental responsibilities, children’s rights and protection. Even though respondents either responded as supporting, not fully supporting or do not support, reasons given are more or less similar.  Respondents made various submissions in relation to the rights of unmarried fathers. They included the following:   * fathers or both parents should have equal access to children, * unmarried fathers should be given access to their children, * the legal system should not be biased to mothers, it should also protect the rights of fathers, * fathers should have access to their children only when they pay child support thus visitation and financial support should go hand in hand.   Amendments were supported in that they provide fathers with a better chance of maintaining their parental responsibilities. |  | Respondents made the following recommendations:   * The Bill should include all fathers, not only unmarried fathers. * Instead of adding father rights outside marriage - the common law act should be updated to include the new draft suggestions with regards to children being recognized in the common law union of the biological parents. * Mothers and fathers should be afforded equal rights, however other respondents indicated that the parent left with a child or children regardless of gender should have unwavering legal support. | DSD proposes amendment of section 21 by providing clarification regarding a father who is not married to the mother and, who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child.  The purpose of this clause is not to unfairly discriminate unmarried mothers but to bring unmarried fathers at equal footing with married fathers. This is because unmarried fathers do not have the equal amount of access to their children as the married fathers. This therefore, is intended to ensure that there is realisation of a right not to be unfairly discriminated on the basis of marital status. The unmarried mothers are not being unfairly discriminated but the understanding is that unmarried mothers are already automatically having access to their children. | *We retain the clause.* |
| **Sonke Gender Justice** | **Sonke Gender Justice**  The organisation argues that one challenge with the insertion of subsection 1A into section 21 of the Act, is that the proposed certificate process does not cater for the situation where the mother has abandoned the family or she has died. Expanding the certificate process to cover these circumstances would enable an unmarried father to apply for a certificate from the family advocate to recognise his s21 rights as a father.  With regard to changes to the mediation process, the organisation notes that the Bill seeks to delete subsection (3)(b) from section 21. This subsection states that any party to the mediation referred to in section 21(3) may have the outcome of the mediation reviewed by a court. It however, points out that the memorandum of the Bill does not explain why this sub-section is being deleted. This leaves it up to speculation. It could be because it is unnecessary to state that mediation can be reviewed by a court because this is obvious or already covered by s45 (1) (c) or 45 (4). Or is the intention of the deletion it to prevent court review of the mediation.  Pertaining to birth registration, the organisation explains that the Births and Deaths Registration Act 51 of 1992 deals with the registration of births and deaths. Section 10 refers specifically to the notice of birth of a child born out of wedlock. It states that the notice shall be given under the surname of the mother, or at the joint request of the mother and the father if he acknowledges in writing that he is the father of the child, under the surname of the father. The organisation argues that this section prevents unmarried fathers from registering their children’s births in circumstances where the mother is undocumented, deceased or has abandoned the family. Unmarried fathers in such situations are often left in limbo with no parental responsibilities and rights and are not able to apply for their child’s birth certificates in cases where the child is undocumented. In practice, the unmarried fathers are referred by Home Affairs to social workers for assistance with the application for the birth certificate as Home Affairs considers these children to be ‘orphaned or ‘abandoned’ and in need of a Children’s Court Order with regard to section 156 of the Act. The social workers often are unable to assist the fathers due to lack of capacity and refer the unmarried fathers to Legal Aid for assistance with applications for guardianship to the High Court, however Legal Aid processes take very long. |  | The organisation makes the following recommendations:   * It is important to make it clear that a father can approach the children’s court for a s21(1A) certificate if he is unable to access the family advocate’s office due to distance, costs or service delivery delays at that office. * Section 24(1) should be amended to provide this clarity and that the proposed amendment to section 45(1) be changed to remove the restriction to cases of abandonment or orphaning. * The requirement in section 24(3) that an unmarried father must prove why the mother of the child is not suitable to be the child’s guardian should be removed. Guardianship can be held by more than one person and is typically held by both parents. | Agree  The father should have a choice to approach the OFA or the relevant court (which may include the children’s Court) to issue a certificate confirming that the biological father has automatic prr.  Agree  Section 24(3) in its current form does not accommodate a scenario where a child can have more than one guardian. A person applying for guardianship of a child who already has a guardian should prove unsuitability of the other guardian. Section 24(3) should be harmonised with 27, which provides that a child can have more than one guardian.  (a) amend section 21 by providing clarification regarding a father who is not married to the mother and, who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;  (b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;  (c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;  (d) align the current terminology or definitions i.e. social service practitioner;  (e) further delete subsection (3) (b) which provides that any party to the mediation may have the outcome of the mediation reviewed by a court. | *It must be understood that this is a new insertion which does not form part of the clauses of the Bill. If the Portfolio Committee agrees that we take care of the new proposals that do not form part of the original Bill.* |
| **Mr Solomon Mondlane** | **Mr Solomon Mondlane** |  | Mr Mondlane’s inputs on the Bill are mainly in the format of recommendations. He makes the following recommendations:  (a) The Children's Act must re-define the term, "In the best interest of a child."  (b) The Act must make it clear that a child is born by two parents and needs both parents, married or not married, employed or not employed. It should be a 50/50 shared parenting.  (c) Allegations and/ or accusations brought by couples during divorce or separation must be investigated by the South African Police Service (SAPS), not Social Workers.  (d)Social Workers must operate within the law and not be biased.  (e) Grandparents/relatives from both the maternal and paternal side should be treated equally.  (f) In case of the death of one parent, the child must automatically remain with the other parents unless that parent is found to have abused the child. This must apply to both married and Un-married couples.  (g) Anyone blocking a parent from having access to his/her child should serve a 6 months’ jail term.  (h) Anyone creating false statements against one parent should be fined or serve a jail term of 5 years.  (i) The parents' voices should always be equally considered second and relatives and grandparents from both families of the couple should always equally be considered third.  (j) Social Workers should always consider the facts.  (k) Children matters should be prioritized; thus they belong to the High court.  (l) Social Workers, Lawyers and Psychologists must be thoroughly scanned before they work on children cases. | (a) Proposal not supported. Section 7 of the Act sufficiently caters for the best interest of the child.in an event where there is a challenge with regard to understanding of the term, the courts are always able to assist and give direction in the sense that all the circumstances are usually taken into account and then arrive at a conclusion that this is in the best interest of the child or not. The term is not a matter that can be easily defined in any legislation as it varies from case to case.  (b) this is not always possible and cannot be made a matter of law as in this Bill. This is based on the fact that some parents may not be fit and proper parents.  (c) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (d) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (e) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (f) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (g) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (h) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (i) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (j) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (k) Proposal noted. However, this part does not form part of the Bill and will be addressed at a later stage when dealing with matters that do not affect the proposed amendments.  (l) Proposal noted. The Act in Section 126 already provides for screening. | *We retain the clauses of the Bill.* |
| **Ms Colly Matjila** | **Ms Colly Matjila** |  | Ms Matjila also made the following recommendations:  (a) There should be compulsory mediation courses for parents to raise awareness of the harm done to the children if they are used as a weapon against the other parent.  Workshops need to be provided to all mothers who deny fathers “contact-with-the-child” after a relationship break-up where the importance of father-involvement on children’s lives is strongly emphasized.  Workshops should be conducted where grandparents and significant others could be trained on the importance of father-to-child contact matters in contemporary society.  Cultural beliefs or ideologies be incorporated with the legal system to avoid contradictions, especially when dealing with contact-with-the-child and relationship break-up matters. | (a) The recommendations are valid. The Department is already providing programmes on mediation. | *We retain the clause in the Bill.* |
| **Give a Child a Family** | **Give a Child a Family**  The organisation supports the amendment as it clarifies the parental responsibilities of unmarried fathers where the biological parents are not married. The father will automatically be able to fulfil his joint parental responsibilities and rights in respect of the child. The organisation raises concerns regarding fathers that do not take up their responsibility. It has come to its notice that some fathers do not want to pay maintenance because their children receive the child support grant. |  |  | Proposal noted. The issue of maintenance is addressed in the Maintenance Act and the matter is not part of this Bill. | *We retain clause 10 as it is in the Bill.* |
| **Mr Gary da Silva - Fathers 4 Justice South Africa** | **Mr Gary da Silva - Fathers 4 Justice South Africa**  The organisation states that given the high rates of domestic abuse in South Africa, the abuse of the protection orders with false allegations has been used with the sole purpose to destroy the relationship, sever and alienate the child or children from the other parent. This places an unnecessary and unjust burden on the judicial system within South Africa. As a result, Father 4 Justice South Africa, holds the following view:   * Protection orders are issued with the sole purpose to destroy sever and alienate the relationship between the father and the child. * Mediation is used as an instrument to delay finalizing contact with the child. It is also used as an information gathering exercise with the sole purpose to further frustrate the father’s right of contact, care, guardianship and maintenance. * Psychological, forensic, drug and alcohol analysis are meant to discredit the father, for example, the psychological and forensic reports that favours the father is usually ignored and dismissed. * The police are absolutely unwilling to arrest mothers for contempt of orders of court * Family advocates offices are, understaffed, underfunded, overwhelmed with unnecessary caseload and insufficient time and staff to deal with cases that are in dire need of intervention. |  | The organisation makes the following recommendations:   * The child must automatically have continued daily, physical, emotional, psychological, contact, care, guardianship and maintenance with and by both biological parents always. * Any parent, parents, person or entity that attempts in part or in whole to deny the child its automatic inherent right to contact, care, guardianship and maintenance with and by both biological parents always, must be automatically be charged with child abuse under the domestic violence act. * That the automatic standard of shared 50/50 contact, care guardianship and maintenance become the de facto standard and that anything less than this is completely unacceptable. * **That Parenting and maintenance plans must be made specific in relation to**: * Contact – the child must share an equal amount of time with both parents in a given day week, month, and year * Care - both parents are automatically responsible for sharing the care of the child * Guardianship – automatically shared maintenance * **Maintenance must be within the financial means of the parents**: * The maintenance must be age related i.e. a chid of 15 years has more financial needs than that of a one-month old baby * As we now demand 50% shared contact and maintenance payments for items such as rent, clothing and food no longer apply as each parent will be responsible for this when the child is visiting them * **The following items will be included in maintenance:** * Medical aid * School fees including uniform, stationery, excursions etc. * Extra mural activities * Religious observance * Unscheduled family events i.e. births, birthdays, marriages and deaths – the child MUST be able to attend these important events * **Both parents must have access to the child’s development at school:** * Automatic mutual decision making as to what school, crèche or play school the child attends * Access to teachers, the headmaster/mistress, and admin staff * Both parents must be consulted in respect of the child’s progress or lack thereof * Sports days, plays and other related activities * Both Parents days and parent meetings * Both parents must automatically receive individual school or progress reports and * The parent wishing to relocate must relocate without the children and if the children do relocate the parent staying behind must give their express written consent * That there is a normalisation of maintenance and that the maintenance due is the automatic responsibility of BOTH parents. * Parental alienation syndrome (PAS) must be handled as child abuse and any parent engaging in PAS as well as their lawyer, advocate, psychologist, social welfare officer and mediator must be automatically criminally charged. * The removal of children to another town, city, province or country without the express written consent of the other parent must be deemed as kidnapping and handled under the criminal procedures act as such. * Unless evidence, which is quantifiable, defined and provable beyond reasonable doubt in a court of law is provided to a magistrate or judge we are demanding with immediate effect that lawyers and advocates stop advising their clients to open spurious protection orders with immediate effect. * That all social workers have to within three years present a psychological degree with an aggregate of 90% pass rate, and a 100% aggregate in child hood development and psychology. Within six years that all social workers must have a law degree with an emphasis in family law and related matters with a 90% aggregate. * That a strict code of conduct be implemented for the conduct of social welfare officers. * That a child may only be placed in a place of safety on the instruction of a Supreme Court judge where quantifiable defined measurable evidence must be presented. All parties involved must be automatically allowed to present oral evidence. These matters must be heard on an urgent basis. * The means of removing a child from one or both parents must be done in line with international norms and practice and procedure. * A scientifically designed means test must be formulated and be the primary motivation for the removal of a child to place of safety. * A thorough scientific investigation must be done.      * All investigation methodologies and reports must be made available within 24 hours of an investigation being completed to all parties involved – withholding of a report must be met with jail time.      * Further in social welfare workers that display a gender bias must be immediately removed from being involved in social work. * With immediate effect all mediation, be abandoned in favour of arbitration in medium to high conflict cases with the standard of 50/50 Contact care guardianship and maintenance being the norm.   ***Parenting Plan***   * Within 24 hours of the parents separating or divorcing a parenting plan MUST automatically be drawn up. * Within 36 hours of the parents separating the parenting plan must automatically be signed by both parents It is irrelevant whether it is a weekend, religious or public holiday. * Within 90 days of the parents, separating a parenting plan must be made an order of court. * Both parents are automatically entitled to and must automatically receive an absolute minimum joint equal shared 50/ 50 rights and responsibility regarding contact, care, guardianship and maintenance; * Only a supreme court judge or higher may determine otherwise on the strict and clear quantifiable measurable defined provable evidence as to why there should be another outcome. * In the interim section 10 (a) (b) and (c) remain in full effect and this must be done immediate effect. | Proposal noted. Section 35 of the Act covers this.  This is not always possible and cannot be made a matter of law as in this Bill. This is based on the fact that some parents may not be fit and proper parents.  This is dealt with in the Maintenance Act.  Not all cases are automatic because of issues of being a fit and proper parent.  This is dealt with in the Maintenance Act.  This is dealt with in the Maintenance Act.  This is dealt with in terms of parental plans/agreements.  The courts will make a pronouncement on this based on the best interest of the child as articulated in Section 7 of the Act.  This is dealt with in the Maintenance Act.  Proposal noted. However, it is implementable as it is not sound in law.  Proposal noted. Courts will always determine what is in the best interest of the child and what recourse is available to the affected party.  Proposal noted. Courts will always determine what is in the best interest of the child and what recourse is available to the affected party.  Proposal noted. However, this falls outside the scope of this Bill.  Proposal noted. However, this falls outside the scope of this Bill.  Proposal noted. However, this falls outside the scope of this Bill.  Proposal noted.  Proposal noted. This is articulated in Regulation 35 of General Regulations regarding Children, 2010.  Proposal noted. This is articulated in section 155 of the Act.  Proposal noted. However, investigations are regulated in terms of investigation codes.  Proposal noted. The Social Service Practitioners Council deals with such matters in terms of their own codes of conduct and legislation.  Proposal noted. However, we do not agree to the removal of mediation as it is very key in ensuring that parties reach a common understanding. At the same time, this legislation is not the ideal instrument to dictate how mediation/arbitration should be handled.  Proposal noted. However, this will depend on how and when the courts process the matter.  Proposal noted. However, this will depend on how and when the courts process the matter.  Proposal noted. However, this will depend on how and when the courts process the matter.  This is not always possible and cannot be made a matter of law as in this Bill. This is based on the fact that some parents may not be fit and proper parents.  Proposal noted. However, it is not clear what the recommendation is all about.  Proposal noted. However, assuming that by section 10 (a) (b) and (c) the comment refers to clause 10 (a) (b) and (c) as there is no such in the Act it is impractical to implement as the Bill is still under consideration.  Section 35(2) to be amended to allow the remaining party to express an opinion for relocation of a child. Dispute can be resolved in court or through mediation. Must review parenting plans/agreements | *We retain the clause as it is in the Bill.*  *We retain the clause as it is in the Bill.*  *We retain clause 10 of the Bill as it is.* |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child. | **Catholic Institute of Education**  The Catholic Institute of Education promotes and supports quality education for the common good through the spiritual, intellectual and professional formation of leaders and teachers in Catholic schools. It is committed to justice and compassion. It offers a Catholic perspective in its engagement with society as it works in solidarity with people mostly in need. |  | The organisation makes the following recommendation:   * Section 12(d) takes into account the new section 2A as amended by clause 12(a) and inserted after prescribed manner, “*taking into account the views of the child where the child is of sufficient maturity and mental capacity*” | There is no Section 12(d) in the Act.  We are not supporting the issue of removal of age of 18 years in relation to marriage clause 6, we believe stage of development of the child to be taken into account. | *Amend clause 6 of the Bill to include age, (18 years)* ‘‘(a) below the **age of 18 years** for a valid marriage [may] must not be given out in marriage or engagement; and’’; and |
| **Children in Distress (CINDI)** | **Children in Distress (CINDI)**  The organisation’s submission is based on its position that children should spend their childhood in safe, caring and nurturing families. They deserve the best care and stability possible to be happy and feel cared for. For this to happen, there is a need to drive more efforts towards family preservation and the prevention of family separation. Thus its submission focuses on three areas:   * Orphaned and abandoned children in the care of family members * Parental rights and responsibilities of unmarried fathers * Adoption * Corporal punishment   With regard to parental rights and responsibilities of unmarried fathers, the organisation, similarly to other organisations, highlights the distinction the Act makes between unmarried and unmarried fathers. Married fathers automatically acquire full parental rights and responsibilities (PRRs) while the unmarried father automatically acquires full PRRs only if they meet the requirements set out in section 21. Alternatively, they may acquire full or partial PRRs through a court order using section 23, section 24 and/or section 45(1) or (3). The Act conceptualises the acquisition of PRRs separately from the exercise of PRRs, and when exercise of rights is being considered, the focus shifts to the best interests of the child. Because of the above-mentioned, the organisation states that section 21 of the Act works on the premises of a cooperative relationship between parents. This situation thus not only infringes on child’s right to fatherhood, but also results to challenges faced by unmarried fathers in exercising their PRR which can lead to the denial of other rights for children.  The organisation substantiates its submission on a case study wherein a child, Vuyo’s and his father’s rights were infringed. Vuyo was born from a mother from Lesotho and South African father who were not married and not co-residents. When the relationship ended, the mother returned to Lesotho. At first the father tried to remain up to date with Vuyo’s development, but responses from his mother were sporadic and normally only took place when she needed financial assistance. His father did not have a passport to travel to Lesotho. When Vuyo was 11, his mother passed away and he was left in the care of an elderly relative in Lesotho. Finding it increasingly difficult to financially support Vuyo, the relative contacted his father and Vuyo moved to stay with him in South Africa. At the time of his birth, Vuyo’s mother did not have her paperwork with her to register him and returned to Lesotho before completing this process. As a result, Vuyo did not have a birth certificate. His father was unable to obtain a court order and/or afford the paternity test required by Home Affairs to prove the relationship between Vuyo and his father to register his birth. As a result, his father was unable to register Vuyo at a school and access the child support grant to help supplement his income from part time garden work. Eventually, Vuyo ended up living on the streets close to a year until he was placed in the care of a Child and Youth Care Centre.  The organisation opposes amendments to section 21 (3)(b). It argues that the motivation behind deleting this section is not explained in the memorandum. Is the intention to not allow parents to take the mediation on review to a court? Or is the amendment merely technical as it is being assumed this sub-section is not necessary because section 45 covers the question as to whether a mediation can be reviewed by a court? Section 45(3) makes it clear that the High Court can always review any matter. But will parents be able to have the mediation reviewed by the children’s court if this amendment is made? |  | The organisation makes the following recommendations:   * It supports amendments to section 21(1)(a) but proposes for additional subsection 21 (1A), as follows:   *‘‘(1A) A family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection*  *(1)(a) or (1)(b) on application from—*  *(a) the mother and biological father jointly;*  *(b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or*  *(c) the biological father, if—*  *(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, or*  *(ii) the mother’s whereabouts are not known or she is deceased; and*  *(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).’’;*   * It also supports amendments to section 21(1)(b). | We support the new insertion (ii) the mother’s whereabouts are not known or she is deceased;  (a) amend section 21 by providing clarification regarding a father who is not married to the mother and, who was living with her at any time between the child’s conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;  (b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;  (c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;  (d) align the current terminology or definitions i.e. social service practitioner;  (e) further delete subsection (3) (b) which provides that any party to the mediation may have the outcome of the mediation reviewed by a court. | *(ii) the mother’s whereabouts are not known or she is deceased;* |
| **Jelly Beanz** | **Jelly Beanz**  Jelly Beanz actively supports and promotes the importance of father’s participation in the care of their children and mediation processes when parents find it difficult to agree on parental rights and responsibilities and parenting plans. Research supports the benefits of father’s involvement in their children’s lives. It thus supports amendments to sections 21(1)(a), 21(1)(b) and 21(3)(a).  With regard to amendments to section 21(1A) it argues that Family Advocates office may be less accessible. The Act needs to cater for the situation where the mother has abandoned the family or she has died. Similarly, to CINDI, it also opposes amendments to section 21 (3)(b) because the motivation behind deleting this section is not explained in the memorandum. Section 45(3) makes it clear that the High Court can always review any matter. This right should not be removed. |  | The organisation makes the following recommendations:   * Insert the underlined words and sub-section as follows,   *‘‘(1A) A family advocate or the Presiding Officer of a Children’s Court, may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of (1)(a) or (1)(b) on application from—*   * *1)(a) or (1)(b) on application from—* * *(a) the mother and biological father jointly;* * *(b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or* * *(c) the biological father, if—* * *(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, or* * *(ii) the mother’s whereabouts are not known or she is deceased; and*   *(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).’’;* | We support the insertion but add relevant court | ‘‘(1A) A family advocate *or the Presiding Officer of a relevant court,* may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection  *The new insertion is supported.* |
| **Professor Ann Skelton** | **Professor Ann Skelton**  **Recommendation** |  | Professor Skelton makes the following recommendation:   * Add a new insertion in section 46 as follows: *“(1) Parental responsibilities and rights for family members caring for child - 46(1) A children’s court may make the following orders:*   *(a) an order confirming or granting parental responsibilities and rights in terms of s 23 and 24 to a family member caring of a child*.” | Proposal supported. | Add a new insertion in section 46 as follows: *“(1) Parental responsibilities and rights for family members caring for child*  *46(1) A children’s court may make the following orders:*  *(a) an order confirming or granting parental responsibilities and rights in terms of s 23 and 24 to a family member caring for a child*.” |
| **Legal Aid South Africa** | **Legal Aid South Africa**  The organisation submits that insertion of subsection 22(2A) which provides for the expression of the child’s views regarding contents of parental agreement might have an impact on Legal Aid SA. The expression of the child’s view might be through a legal representative which might have to be appointed by Legal Aid SA. |  | The organisation makes the following recommendation:   * There should be proper engagement on the proposed amendment with Legal Aid SA as it will have a significant impact on the budget and capacity in civil matters of Legal Aid SA. This aspect should be properly costed for the implementation of the proposed amendment. | Proposal noted. | *We retain the clause as it is in the Bill.* |
| **Consortium for Refugees and Migrants in South Africa (CoRMSA/the Consortium)** | **Consortium for Refugees and Migrants in South Africa (CoRMSA/the Consortium)** |  | The organisation makes the following recommendations:   * In section 21 (10)(a)€: include the word “*Magistrate*” as currently most of the children cases are addressed or dealt with Magistrate through the Children’s Court. This subsection must read as follows: (1A) A family advocate or magistrate may, in the prescribed manner, issue a certificate. | Proposal supported. | (e) ‘‘(1A) A family advocate or a **relevant Presiding Officer** may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection |
| **Centre for Child Law** | **Centre for Child Law**  The organisation submits that the Bill in section 21 (1A) 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.  It does not support the deletion of section 21(3)(b). It submits that clarity is needed on whether the intention is not to allow parents to take 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?  The organisation partially supports amendments to section 35. |  | * Insert the underlined sub-section.   *‘‘(1A) A family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection*  *(1)(a) or (1)(b) on application from—*  *(a) the mother and biological father jointly;*  *(b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or*  *(c) the biological father, if—*  *(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, or*  *(ii) the mother’s whereabouts are not known or she is deceased; and*  *(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).’’;*   * Do not delete Section 21(3)(b). * Section 35 should be amended to state 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 mediation or already has a court order. | Proposal supported.  Proposal supported.  Proposal not supported. The sanction contemplated in section 35 is already a matter of last resort. | *(ii) the mother’s whereabouts are not known or she is deceased; and*    *Agree to retain Section 21(3)(b) in the Principal Act-*  *We retain section 35 as it appears in the Act.* |
| **Children’s Institute** | **Children’s Institute**  The organisation supports the amendment to section 21(1A) with additional insertions. It points out that unmarried fathers often need a legal document to prove that they have full PRRs with regard to section 21. This amendment would enable an unmarried father to apply for a certificate from the family advocate to recognise his section 21 rights as a father. It argues that the Act needs to cater for the situation where the mother has abandoned the family or she has died. It should also allow the children’s court to provide this certificate because the children’s court is more accessible than the family advocate in rural areas and small towns.  It opposes the deletion of section 21(3)(b) as the motivation behind deleting this sub- section is not explained in the memorandum. Is the intention to not allow parents to take the mediation on review to a court? Or is the amendment merely technical as it is being assumed this sub-section is not necessary because s45 covers the question as to whether a mediation can be reviewed by a court. It is not clear from s45 that a children’s court can review the outcome of a s21 mediation. |  | * Insert the underlined words in Section 21(1A) to read,   ‘‘(1A) A family advocate or a children’s court may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection  (1)(a) or (1)(b) on application from—  (a) the mother and biological father jointly;  (b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or  (c) the biological father, if—  (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, or  (ii) the mother’s whereabouts are not known or she is deceased; and  (iii) the biological father has shown the satisfaction of the family advocate or the children’s court that he has automatically acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b).’’;   * Retain this section and amend s45(1) as follows:   **Matters a children’s court may adjudicate**  45(1) (cA) confirmation of an unmarried father’s rights in terms of s21(3)(a), or review of mediation in terms of s21(3)(b). | Proposal supported. | ‘‘(1A) A family advocate **or a relevant Presiding Officer** may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection  (1)(a) or (1)(b) on application from—  (a) the mother and biological father jointly;  (b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or  (c) the biological father, if—  (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, or  (ii) **the mother’s whereabouts are not known or she is deceased**; and  (iii) the biological father has shown the satisfaction of the family advocate or the children’s court that he has automatically acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b).’’;   * Retain this section and amend s45(1) as follows:   **Matters a children’s court may adjudicate**  45(1) (cA) confirmation of an unmarried father’s rights in terms of s21(3)(a), or review of mediation in terms of s21(3)(b). |
| Clauses 14, 23, 24 ***CORMSA***  **Centre for Child Law** | ***CORMSA***  Amendments of the Bill in summary: The Bill seeks to amend section 25 to ensure that where a non-South African citizen applies for guardianship of a child, the application, if heard in the High Court, must be referred to a children’s court having jurisdiction to be dealt with as an application for an inter-country adoption. It also seeks to amend section 44 to provide for the jurisdiction of a court, where a matter is transferred from one Children’s Court to another, in accordance with the prescribed procedure and if it is in the best interest of the child. It further seeks to amend section 45 to extend the jurisdiction of the Children’s Court to include "guardianship of an orphaned or abandoned child" and by removing all references to the Divorce Courts and to clarify that the Children’s Court and the High Court have jurisdiction over guardianship of a child. The High Court, Children’s Court and Regional Courts have jurisdiction over assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.  **Key issues raised in the submissions:** stakeholders support the inclusion of the Children’s Courts in applications for guardianship as applications to the High Courts come with expensive legal costs.  They also support amendments to section 45 (3A) and (3B) as they make provision for the guardianship orders in relation to all children can be granted by either the High Court or the Children’s Court. The only weakness with this amendment is that it refers back to section 24(1) of the Act, which is not being amended and this may cause confusion.  Notwithstanding the aforementioned, stakeholders are concerned that the Bill makes no amendment to section 45(1) to include the children’s court for the applications for guardianship. They also submit that the Bill creates uncertainty about whether all cases of guardianship can be brought to the children’s court or only those relating to orphaned or abandoned children. They further raise a concern that the proposed amendment to section 24 does not include provision for assignment of guardianship by order of the children’s court, which leaves this section restricting guardianship to the High Court, whereas the section preceding it on ‘care and contact’, clearly enable both the High Court and the Children’s Court to hear ‘care and contact’ applications, which are the other two aspects of parental responsibilities and rights.  Furthermore, the restriction to orphaned or abandoned children, as with the current wording of the amendment so section 45 (1)(bA) excludes unmarried fathers from approaching the children’s court to resolve guardianship matters. It therefore does not seem fair that relatives will be able to apply to the children’s court whereas biological parents such as unmarried fathers will have to go to the High Court. This will also adversely affect the ability of unmarried fathers to be involved in their children’s lives and to protect their children’s rights.  One submission had a different view on the amendments. It argues that the amendment to section 45(2)(a) is unconstitutional as they instruct the courts to act in a certain manner. It also interferes with functioning of the children’s court. It also fails to assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts as is required by section 165 of the Constitution**.** |  | In section 25 (14): insertion and the use of “or regional court” should be consistent throughout this amendment to avoid confusions delay of processes in contemplating whether the regional court can be in involved in any children’s matter. It proposes that this subsection be revised to read: “*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 if heard in the High Court or Regional Court, may be referred to a children’s court having jurisdiction, to be dealt with as if it was an application for 7 5 10 15 20 25 30 35 40 45 50 an inter-country adoption for the purposes of the Hague Convention on Intercountry Adoption and Chapter 16 of this Act or, in exceptional circumstances, as if it was an application for guardianship.’’*   * Revise section 44 and insertion to read as follows, in order to include all categories of children in need of care and protection*. "an unaccompanied or separated migrant child or a child who is an asylum seeker or refugee or who is dependent as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998); or’’.*   **Centre for Child Law**  The organisation submits that 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 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.  With regard to new proposal 24(3), the organisation submits that 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.  The organisation does not support amendment to section 25 in the light of its submissions to section 24. It proposes for a new heading to section 25 which better describes its content, see in the left column.  With regard to amendments to section 44, the organisation argues that 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.  The organisation further submits that 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.  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’.  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. Matters the children’s courts may adjudicate: Supported in relation to section 45(1)(bA) & 45(3A) and (3B)   * Insert underlined words 24(1):   *“(1) Any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant.”*   * Insert underlined words:   *“In the event of a person applying for guardianship of a child that already has a guardian, the applicant must indicate whether he or she is applying for co-guardianship with the existing guardian or submit reasons as to why the child’s existing guardian is not suitable to have guardianship in respect of the child.”*   * Include the underlined words 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. This is in line with the Constitutional Court judgment in AD v DW, where Sachs J said that the High Court’s would have jurisdiction to make guardianship orders brought by non-citizens in exceptional circumstances. * Amend section 25 (1) to read, “**[When**] 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 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.   (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).   * Amend section 44(3) to read, “*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 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. It thus recommends that subsection 45 (bA) be deleted and replaced with one of the two formulations:  Proposal A:  (bA) guardianship  Proposal B:  Another possible formulation is:   * 45(bA) guardianship where the application is brought by the child’s biological father or other relative of the child.   It strongly supports 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. This amendment must be read with our proposed amendment to section 24(1) so as to ensure that there is no contradiction. | **Proposal noted.**  Clause 23(3) in the Bill is intended to ensure that there is no exclusion of any child thus the wording” A matter may be transferred from a Children’s Court to another court having jurisdiction if it would be in the best interests of the child.  Proposal not supported. Subsection (2) of section 44 caters for a situation where the issue of residence may be challenged.  Proposal supported as the Department also believes access to justice and therefore children’s courts are more accessible.  **Supported and will delete reference to section 24**  **Agree and will amend Section 24(3) to include when applying for sole guardianship in the event that a child already have guardianship; the applicant must submit reasons as to why the child’s existing guardian is not suitable. Legal to check previous amendments and amend**  **We will amend the definition in section 45(1)(bA) to be aligned to the Child Care and Protection Policy.**  **Supported.**  Not supported becauseMagistrates are creatures of Statutes and therefore must apply what the law says.  **Same as Jelly Beanz, include the underlined insertions**  **Proposal supported in as far as the reasoning are aligned to the granting of sole guardianship.**  **Proposal accepted. Section 25 will be amended to include the proposed insertion.**  **Proposal supported.**  **The citation is incorrect. The correct clause here is 23(3). We however accept the proposal. We will subsequently amend as such.**  **Proposal accepted. The clause will be amended as such and in accordance with proposal A.** | *Legal to verify the powers of regional courts.*  *We retain section 44 as it is in the Act.*  **24.** (1) Any person having an interest in the care, well-being and development of a child may apply to the High Court or **Children’s Court** for an order granting guardianship of the child to the applicant. |
| **Scalabrini** | **Scalabrini**  The organisation commends the changes included in clause 25, but strongly encourage the definition of ‘exceptional circumstances’ as used in the amended clause. With regard to clause 21, amending section 40, the organisation argues that while this clause provides for significant improvements in respect of giving effect to the Constitutional Court judgment in J and B v Director-General: Department of Home Affairs, Minister of Home Affairs & President of the RSA (CCT 46/02), we urge that the title of the section should not be changed to remove the wording pertaining to the rights of the child. This is a vital part of this section and the interpretation thereof and should remain as part of the Act.  In addition, clause 21 fails to stipulate the duty placed on the Department responsible for managing the registration of births in ensuring that in the registration of births effect is given to the revised section 40 in a non-discriminatory manner. This could be included through Regulations whereby the Minister responsible for Home Affairs, in consultation with the Minister responsible for Social Development, must make regulations concerning the registration of births in respect of children born as a result of artificial insemination, and to give effect to section 40 of the Act.  The organisation further commends the inclusion of section 45(1)(jA) and reference to the Refugees Act. However, it is imperative that Regulations are made pertaining to what actions a Children’s Court may take, and the fact that where a Children’s Court does adjudicate a matter pertaining to an unaccompanied or separated migrant child who is an asylum seeker or refugee as contemplated in the Refugees Act, that such child must be documented by the Department of Home Affairs in the appropriate manner as a matter of urgency in order to ensure that the best interests of the child are met and that the child is provided with a durable solution in respect of his or her documentation status in South Africa. It also commends the inclusion of potential sanctions in respect of non-compliance with an Order of the Children’s Court. We trust that this provision will be implemented in respect of officials from other government Departments who fail to comply. |  |  | Proposal not supported. The citation is incorrect. The correct clause here should be clause 14. It is not necessary to define exceptional circumstances as it is used in its ordinary meaning and will not cause any conflicting interpretation.  Proposal not supported. The registration of Birth is already contemplated in the Birth and Death Registration Act and Home Affairs is the responsible Department in this regard.  Proposal not supported. Registration of Births is the mandate of DHA and DSD cannot encroach on same. |  |
| **Children’s Institute** | The organisation submits that section 24(1) needs to be amended. It argues that the Act should be clear that the children’s court also has jurisdiction to hear guardianship applications. The children’s court will be more accessible than the High Court for unmarried fathers and also more practised in ensuring child participation in the decision making process. It also submits that parental responsibilities and rights is made up of 3 aspects: care, contact and guardianship. Section 23 precedes section 24 in the Act and makes it clear that applications for ‘care and contact’ can be heard by a range of courts, including the children’s court. However, section 24 restricts jurisdiction over guardianship to the High Court. This needs to be amended if the intention is to extend jurisdiction to the children’s court.  With regard to section 24(3), the organisation points out that in terms of section 30(1) the Act clearly envisages that more than one person can hold PRRs with respect to one child. This is naturally the case for all married couples and for all unmarried couple where there is no dispute. There is therefore no reason to require a person applying for guardianship to have to prove the existing guardian is not suitable, unless they are applying for sole guardianship. |  |  | Proposal supported. Same as jelly Beanz. See above inputs. |  |
| **Children’s Institute** | The organisation supports the amendments to s45(3) as these will ensure that family members caring for orphaned and abandoned children, and unmarried fathers will be able to apply for guardianship at the children’s court. The children’s court is more accessible on a physical and economic level to the majority of people.  The restriction to cases of orphaned or abandoned children would exclude unmarried fathers, and family members caring for children who are not abandoned or orphaned. There is no rationale for making this restriction and it also does not match the amendments to s45(3A) & (3B) which do not contain a restriction.  It also supports amendment to section 45 (3A) and (3B) as it means that guardianship orders can be granted by either the High Court or the children’s court. It also means that if a change has to be made, you can go back to either court to change it or end it. However, the problem is that it refers back to 24(1) of the Act, which is not being amended (see above) and this may cause confusion. |  | * Insert underlined words in section 24(1):   *‘(1) Any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant.’*   * Amend section 24 and 45(1 (c) to make it clear that the children’s court can hear all guardianship matters and not just cases involving abandoned and orphaned children. * Amend section 24 (1) to read, *“Any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child*.” * Insert underlined words in section 24(3) to read, *‘‘(3) In the event of a person applying for guardianship of a child that already has a guardian, the applicant must indicate whether he or she is applying for co-guardianship with the existing guardian or submit reasons as to why the child’s existing guardian is not suitable to have guardianship in respect of the child.”* * Delete subsection (bA) and replace with:   *45 (1) (bA) guardianship of a child as contemplated in section 24’*   * Amendment section 24 and section 45(1) ( c) to make it clear that the children’s court can hear all guardianship matters and not just cases involving abandoned and orphaned children. Proposed amendment to read,   *“(bA) guardianship where the application is brought by the child’s unmarried father or other family member of the child”*   * Amend section 45 (1)(cA) to read, “*(cA) confirmation of an unmarried father’s rights in terms of s21(3)(a), or review of mediation in terms of s21(3)(b).”* * Amendment section 24 to match section 45 (3A) to read, “*24(1) Any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant.”* | Proposal supported. Clause will be amended to include the proposed insertion.  Proposal supported. We will effect the necessary amendment to convey same.  Proposal accepted. We will effect amendments as such.  Proposal supported. We will amend the clause to include only guardianship of “all **children including orphaned and abandoned children**”.  Proposal supported. We will effect the amendments to incorporate the proposed insertion.  Proposal supported. Amendments will be effected. |  |
| **The South African Association of Social Workers in Private Practice (SAASWIPP)** | The organisation submits that amendment to section 46 will allow the placement of a child in temporary safe care pending adoption once the children’s court enquiry concludes the child is adoptable. It will also enable the adoption social worker to request this temporary safe care placement notwithstanding the 60-days ‘cooling off’ period.    It will further be compliant with current case law. |  | * Insert in subsection (1) after paragraph (C) of the following paragraph   *“(cA) an order, in the prescribed form, placing a child in temporary safe care pending an application for the adoption of such child, including with prospective adoptive parents, notwithstanding the provisions of section 167(2)”* | Proposal not supported. This contravenes the provisions of section 167 that already caters for alternative care. This will create a risk of legitimate expectation. it is important to determine the adoptability of the child first. . |  |
| **Professor Ann Skelton** | The submission from Professor Skelton is in a form of a recommendation. |  | Professor Skelton makes the following recommendation (underlined):   * Insert the underlined words in section 24, *“(1) Any person having an interest in the care, wellbeing and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant.”* * Insert the underlined words in section 24(3), “*In the event of a person applying for guardianship of a child that already has a guardian, the applicant must indicate whether he or she is applying for co-guardianship with the existing guardian or submit reasons why a sole guardianship order is required [why the child’s existing guardian is not suitable to have guardianship in respect of the child].”* * Insert the underlined words in section 25(1*), “[When] 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 application for an inter-country adoption for the purposes of the Hague Convention on Intercountry 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.*   *(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).*   * Amend the current wording in Clause 24 to read as follows, “*A guardianship [of an orphaned or abandoned child] as contemplated in section 24.”* | Proposal supported. Refer to jelly beanz and amend the clause accordingly.  Proposal supported. Same as above.  Proposal supported. Same as above. we will amend the section accordingly.  Proposal supported. Same as above. we will amend the section accordingly. |  |
| **Stellcare Stellenbosch & District Family Services** | The organisation raises a concern of expensive legal fees that unmarried fathers have to pay when applying for guardianship at the High Court. It submits that guardianship should be made accessible for more unmarried fathers It therefore supports proposed amendment to section 45(3) which will expand jurisdiction of the Children’s Court to include applications for guardianship including by unmarried biological fathers. |  | The organisation makes the following recommendation:   * In Section 23, family advocate to be replaced by a social worker. Reason is that designated social workers are trained to consider the best interest of the child and to be completely impartial. Designated social worker mediators are best suited to assist the children’s court as an expert in the field in relation to generic social workers. The family advocate has the family counselor at its disposal, whereas the designated social work mediator must assist the children’s court or regional court in its assessment. * Section 24 (1) be amended to read, “*Any person having an interest in the care, well-being and development of a child may apply to the High Court or children’s court having jurisdiction over the application for an order granting guardianship of the child to the applicant*”. The reason being that a number of carers of minor children, especially family members are prepared to do so without wanting to have the child be placed in foster care. In the event of a child being orphaned or abandoned, such carer does not have any legal guardianship of the child. Granting guardianship to such an applicant may contribute towards the permanency of the child, and surely serves the best interest of the child. | We support the inclusion of a social worker but disagree with the proposal to remove a family advocate. We will amend the relevant clause to accommodate both the social worker and the family advocate.  Proposal supported. we will amend the clause accordingly. |  |
| **Solidarity** | The trade union also supports amendments to subsection 45(1)(bA) which expands the jurisdiction of the Children’s Court to include guardianship of an orphan or abandoned children. It also supports the substitution in subsection (2) in that the children’s court is obliged to *“refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in section 305 to a criminal court having jurisdiction.”* It also supports the insertion of subsection 45(3B) confirming that *“the High Court, children’s court and regional court have concurrent jurisdiction over the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.”* |  |  | Proposal supported. |  |
| **Give a Child a Family** | The organisation argues that parental rights and responsibilities is made up of 3 aspects: care, contact and guardianship. It states that section 23 of the Act precedes section 24 and makes it clear that applications for ‘care and contact’ can be heard by a range of courts, including the Children’s Court. It however points out that section 24 restricts jurisdiction over guardianship to the High Court. It therefore submits that this needs to be amended if the intention is to extend jurisdiction to the children’s court. The children’s court is more accessible on a physical and economic level to the majority of people.  It strongly supports amendments made to section 45 (3A) and (3B), as it means that guardianship orders can be granted by either the High Court or the children’s court. It also means that if a change has to be made, you can go back to either court to change it or end it. The organisation however, points out that the problem is that the amendment refers back to 24(1) of the Act, which is not being amended and this may cause confusion.  The organisation further feels that the proposed amendment to section 45 is an improvement on the current law. However, it submits that its proposed wording below will provide improved protection and access to justice. It makes two proposals, as indicated below in the recommendations. |  | The organisation makes the following recommendations:   * Amend section 24 (1) to read, “*any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant.”* * The words “or children’s court” should be inserted into section 24(1), as this will ensure that section 24 and section 45 (3A) do not contradict one another. * Delete subsection (bA)and replace with either one of two formulations:   Proposal A: “(*bA) guardianship*” or  Proposal B: “(bA) *guardianship where the application is brought by the child’s biological parent or other family member of the child*”.  The organisation strongly encourages the Portfolio Committee to adopt proposal A. | Proposal supported. Same as above. we will amend the clause accordingly.  Proposal supported. Same as above. we will amend the clause accordingly in accordance with proposal A. |  |
| **Ms Elmarie De Klerk: Chief Magistrate Palmridge** | Magistrate De Klerk’s submission on amendments to section 45 of the Act are as follows:   * The proposed amendment is unprecedented as it instructs the courts to act in a certain manner and impose a duty upon a judicial officer to report an offence in terms of section 305 or the failure to comply with court orders to a criminal court having jurisdiction. Such a duty on judicial officers is in itself unconstitutional. * The proposed amendment of section 45(2) (a), interferes with the functioning of the children’s court and fails to assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts as is required by section 165 of the Constitution. * Section 179(2) of the Constitution of the Republic of South Africa, Act 108 of 1996, provides that the prosecuting authority have the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings. Consequently, referring a Children’s Court matters to a criminal court having jurisdiction, is unconstitutional. * Section 45(2) (a) is unconstitutional as it disregards and is contrary to the provisions of section 179(2) of the Constitution and section 20(1) of the National Prosecuting Authority Act. * Further, the proposed amendment is in conflict with some of the provisions of the Act. Section 66 provides that no person has access to children’s court case records, except in terms of an order of court, if the court finds that such access would not compromise the best interest of the child. If it is required that the children’s court must disclose the contents of the children’s court file, the court’s discretion to consider whether it is in the best interest of the child to disclose the contents, is usurped by the provisions of the proposed section 45(2)(a). The court will have no choice and will not be in a position to consider whether the disclosure will be in the best interest of the child. |  | **Recommendation**  Magistrate De Klerk makes the following recommendation:  Section 45(2) (a) must be amended to clarify the position of the children’s courts to conduct (civil) contempt hearings in the same manner as provided for in the High Courts. The civil contempt proceedings will speedily address the refusal of a party or an organ of state to comply with an order of the children’s court while parties will still have the option to lodge a complaint with the South African Police Services. | Proposal not supported. Magistrates courts are creatures of statue and must comply with the provisions of the law.  The intention of clause 24(2) is to refer all criminal matters to a criminal court as a court of competent jurisdiction and exonerate the children’s court. This clause is therefore consistent with section 42(8)(c). Legal services to engage further on this. |  |
| **Children in Distress (CINDI)** | **Children in Distress (CINDI)**  The organisation supports the amendments to section 45(3) as these will ensure that family members caring for orphaned and abandoned children, and unmarried fathers will be able to apply for guardianship at the children’s court. The children’s court is more accessible on a physical and economic level to the majority of people. |  | **Recommendations**  The organisation makes the following recommendations:   * Proposes amendments to section 24 and 45(1) (c) to make it clear that the children’s court can hear all guardianship matters and not just cases involving abandoned and orphaned children. It thus recommends that section 24 (1) to read as, “‘*Any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child.*’ * Insert subsection 45(bA) to read as follows, *“(bA) guardianship of a child as contemplated in section 24’* | Proposal supported Same as jelly beanz. We will amend the clause accordingly. |  |
| **Jelly Beanz**  Proposed amendment of Section 45(1) | The organisation submits that the Bill makes no amendment to subsection 24(1) to include the children’s court for the applications for guardianship. It points out that the Act should be clear that the children’s court also has jurisdiction to hear guardianship applications to enable greater child friendliness and accessibility. It also points out that the Bill makes no amendment to subsection 45(3) which deals with assignment of guardianship by order of court. It points out that section 30(1), the Act clearly envisages that more than one person can hold parental rights and responsibilities (PRRs) with respect to one child. There is therefore no reason to require a person applying for guardianship to have to prove the existing guardian is not suitable, unless they are applying for sole guardianship.  The organisation, similarly to organisations mentioned above supports amendments to subsection 45(3A) and (3B) but points out that the amendment refers back to subsection 24(1) which is not amended and this may cause confusion. It submits that this can be solved if s24 is amended as suggested in its recommendations below. |  | **Recommendations**  The organisation makes the following recommendations:   * Insert underlined words in subsection 45 (1), *“any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant*.” * Insert underlined words in subsection 24(3), *“In the event of a person applying for guardianship of a child that already has a guardian, the applicant must indicate whether he or she is applying for co-guardianship with the existing guardian or submit reasons as to why the child’s existing guardian is not suitable to have guardianship in respect of the child.”* * It supports amendment to subsection 45(1)(bA), but recommends three proposals:   Insert word *“guardianship*” or insert *“(bA) guardianship where the application is brought by the child’s unmarried father or other family member of the child*” and *“(cA) confirmation of an unmarried father’s rights in terms of s21, or review of mediation in terms of s21(3)”.*  It submits that these proposed amendments will remove restriction to orphaned or abandoned children and extend children’s court jurisdiction to hear all guardianship matters. This will ensure parents, including unmarried fathers, can also approach the more accessible children’s court to resolve guardianship matters. They will also make it clear that the children’s court can also issue an order confirming s21 rights and review mediation with regards to section 21 rights. | Proposal supported. | * *It must be understood that this is a new insertion which does not form part of the clauses of the Bill. If the Portfolio Committee agrees that we take care of the new proposals that do not form part of the original Bill, then it should be crafted as follows: any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant.”* * *Insert underlined words in subsection 24(3), “In the event of a person applying for guardianship of a child that already has a guardian, the applicant must indicate whether he or she is applying for co-guardianship with the existing guardian or submit reasons as to why the child’s existing guardian is not suitable to have guardianship in respect of the child.”* |
| **The Child and Welfare Society** | **The Child and Welfare Society**  The organisation adds sub-clauses and insertions on the involvement of children’s courts in the assignment of guardianship as well as application for guardianship. It argues that children’s courts are more accessible than high Courts. It thus strongly supports the proposed section 54(3A and 3B), which provides for both the high courts and children’s court can grant guardianship orders. It submits that the Act should be clear that the children’s court also has jurisdiction to hear guardianship applications. The children’s court will be more accessible than the High Court for unmarried fathers and also more practised in ensuring child participation in the decision making process.  Similarly, to the submissions mentioned above, that the Bill makes not amendment to subsection 24(3). It also points out that subsection 30(1) of the Act clearly envisages that more than one person can hold PRRs with respect to one child. This is naturally the case for all married couples and for all unmarried couple where there is no dispute. There is therefore no reason to require a person applying for guardianship to have to prove the existing guardian is not suitable, unless they are applying for sole guardianship. It also supports amendments to subsections 45(3A) and (3B) and raises the same concern raised by the other organisations aforementioned and makes the same recommendation. |  | **Recommendations**  The organisation makes the following recommendations:   * Insert underlined words in subsection 24(1), *“(1) Any person having an interest in the care, well-being and development of a child may apply to the High Court or the children’s court for an order granting guardianship of the child to the applicant*.” * Insert underlined words in subsection 24(3), *“In the event of a person applying for guardianship of a child that already has a guardian, the applicant must indicate whether he or she is applying for co-guardianship with the existing guardian or submit reasons as to why the child’s existing guardian is not suitable to have guardianship in respect of the child.”* | Proposal already attended to. See jelly beanz response. |  |
| CORMSA  Clause 21 | * **Clause 21 amending section 40**, which seeks to amend the heading of section 40 (Rights of child conceived by artificial fertilisation) and correct the terminology so that it is aligned with current family and child law practice. |  |  | Comment noted |  |
| CORMSA  S213 | * It also Amendment of section 213 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007 - Section 107(d): include the word “religious” in order to include and cover all beliefs and not to discriminate children with different beliefs other than the spiritual belief. This will be in line with section 9 of the South African Constitution. This subsection must or should read as: cognitive, religious and spiritual;’’ and. |  |  | Proposal supported. We will amend clause 107 to include the word religion. |  |
| CORMSA  S292 | * In section 292 of 2005, define or explain the word “ordinarily resident” for effective application of this Amendment Act. |  |  | Proposal not supported because it is not necessary to define this term as it is used in its ordinary meaning. |  |
| Corporal punishment New proposal - definition of corporal punishment ***Professor Ann Skelton, Stellcare Stellenbosch & District family services, South Africa National Child Rights Coalition (SANCRC), Emthonjeni Family Tree, Save Children South Africa, World Vision South Africa, Sonke Gender Justice, Children in Distress (CINDI), Jelly Beanz, Centre for Child Law, Children’s Institute*** | ***Professor Ann Skelton, Stellcare Stellenbosch & District family services, South Africa National Child Rights Coalition (SANCRC), Emthonjeni Family Tree, Save Children South Africa, World Vision South Africa, Sonke Gender Justice, Children in Distress (CINDI), Jelly Beanz, Centre for Child Law, Children’s Institute***  The above mentioned stakeholders submit that the Bill should insert the definition of corporal punishment to read, “*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*”.  This definition is in line with National Child Care and Protection Policy and the United Nations Convention on the Rights of Children (UNCRoC). |  |  | Proposal not supported. To verify whether the Act makes provision for corporal punishment. |  |
| **Clause 3** seeks to insert a new section 6A that provides for protection of a child’s right to privacy and information. |  |  |  |  |  |
|  | Key issues raised in the submissions**:** stakeholders mainly raise a concern that subsection 6(A) on its own, with proposed deletion of section 74, fails to protect children in children’s court, which would result in the media being allowed to identify and publish photos of children in proceedings before the court. They therefore, recommend that the proposal that was made in the July 2018 draft of the Bill replace the new proposed subsection 6(A). They also reject proposed deletion of section 74 of the Act which prohibits any person publishing without permission any information relating to the proceedings of a children’s court which reveals or may reveal the name or identity of a child who is party or a witness in the proceedings.  They also raised the need for the legislation to make explicit safeguards of the children’s rights to privacy in the context of both online and offline platforms and an increasing merge of them. Children’s rights to privacy are threatened by various online and offline activities such as tracking, monitoring and broadcasting of children’s live images, collection of children’s personal data, online criminal activity and surveillance activities which include the automated processing of personal data. The main concern raised is the apparent conflation of data protection and personal information with identity information, hence the Bill seeks to delete section 74 of the Act with the explanation that it is “superfluous because of the insertion of the new section 6A”. It is argued that protection of personal information relates to the processing of personal information such as the collection, receipt, storage, and dissemination of personal data. Prevention of the publication of identifying information relates to the protection of the identity of children who are party to children’s court proceedings, this usually applies in the context of the media publishing the identifying features of children. As such then, protection of children’s personal information should be understood in the context of processing of their personal data. This is different to protection needed from the public disclosure of identifying information of children which is mainly applied in the context of media publications or information made publicly available.  They therefore recommend that section 74 of Act be retained. Section 6 be amended to prohibit any person, including a social worker, publishing any information of a child including pictures or images without a court order, also include protection of children’s privacy rights both on online and offline platforms and protection of children’s privacy rights with regard to their personal information as well as data processing and surveillance. It should also include protection of publication identifying information. |  |  | Proposal not supported. The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein.  This is addressed by insertion of clause 6A in section 6 of the Principal Act which provides as follows:  ‘‘**Children’s right to privacy and protection of personal information**  **6A.** (1) A child’s right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other law protecting the privacy and protection of personal information of the child.’’.  The reinstatement of section 74 is supported. |  |
| Cause for Justice & Media Monitoring Africa | The stakeholders mainly opposed the Bill’s proposed amendment to insert section 6A and delete section 74 of the Principal Act. The following reasons were advanced:   * The proposed section 6A on its own does not provide for the protection of privacy of children in children’s court proceedings. To leave the Bill as it is, with the deletion of section 74 in its entirety will result in children’s identity information in the children’s court proceedings unprotected. * By deleting section 74, the Bill has removed the protection to 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 protection of children’s personal information is already provided for in Protection of Personal Information Act (POPI Act) (No.4 of 2013). * The Children’s Act in section 6 protects the identity information of children but only for children in the children’s court. However, children are also involved in High Court cases, for example, the kidnapping case of Zephany Nurse or in cases of child abduction when a parent takes a child overseas without the consent of another or in cases of baby swop. All these children need protection. * Many children fear exposure of the personal details in the press and in many communities there is still a stigma attached to particularly to the rape of girls. | | | | |
|  |  |  | 1. ***Proposal 1: Re-insert improved version of new section 6B and ensure that the provision is implementable and enforceable.***   This will protect children from exposure to potentially disturbing or harmful materials and from premature exposure to adult experiences.   1. There should also be a cross referencing (and not duplication) between the Children’s Act, the Films and Publication Act (FPA) the Films and Publications Board (FPB) guidelines, the Criminal Sexual Offences and Related Matters Act and other existing mechanisms. This will enable a more comprehensive integrated system. 2. The Bill should thus be amended and converted to “Committee Bill” as these amendments cannot wait for the next round of legislative amendments to the Children’s Act. The Cause for Justice organization, which made these submissions, offered to provide assistance with regard to drafting. However, should the Committee be disinclined to amend the Bill this time, it is proposed that the Committee should provide opinion for purposes of guidance to the Department to the following effect: 3. The Department to amend the Children’s Act to include the necessary protective provisions; ***OR*** 4. DSD to work with Department of Communications and Digital Technologies and the Films and Publications Board to add the necessary protective provision to the Films and Publications Act (or other legislation falling under mandate of the Department of Communications and Digital Technologies). | 1. The proposal is not supported. The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein. 2. The Children’s Amendment Bill in Clause 6B cross-refers to the Films and Publications Act and other relevant legislation. 3. Proposal not supported 4. Proposal not supported 5. The DSD is open to the proposal to work with the the Department of Communications and Digital Technologies and the Films and Publications Board to identify gaps and where applicable add the necessary protective provision to the Films and Publications Act (or other legislation falling under mandate of the Department of Communications and Digital Technologies). |  |
|  |  |  | ***Proposal 2: Clarify the meaning of media***  Insert definition of “the media” in section 1 that at least includes: *“Broadcasters who are subject to regulation by ICASA23 and/or the BCCSA; Creators, producers, distributors and exhibitors of films, games, and publications that the FPA regulates; Creators, producers, distributors, and exhibitors of advertisements that fall under the jurisdiction of ASASA; and Members of the Press Council of South Africa.”* | Proposal not supported. Neither the Children’s Act nor the Children’s Amendment Bill make any reference to the term ‘media’, hence there is no need to define the term if it is not utilised. |  |
|  |  |  | ***Proposal 3: Inclusion of other accountable persons***  The list accountable persons to be extended from only media, parents and caregivers or guardians to include all other persons and/or entities that work directly with or in the furtherance of the best interests of children. Also, the duty to protect children from disturbing or harmful materials and from premature to adult experiences to be extended to refer to section 110 of the Principal Act. | Proposal not supported. It is not necessary to add a list of accountable persons.  The proposal to use the wording of the July 2018 version of the Bill in Clause 6C is not supported.  The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein. |  |
|  |  |  | ***Proposal 4: potentially disturbing and harmful materials’***  This phrase needs to be clarified to pass threshold of law and constitutional muster. Reference should be made to Films and Publication Act and Films and Publications Board Classification Guidelines. These provide appropriate and suitable objective standard. Guidelines give meaning to “potentially disturbing and harmful materials” and assign age classifications to different materials based on wide range of relevant factors. They are also subject to review every four years (democratic and participatory comprehensive public consultation process) to ensure norms, values, and standards consistent with those of South African public as well as constitutional norms and values. | Proposal not supported. It is not necessary clarify the terms  “***potentially disturbing and harmful materials’***  The proposal to use the wording of the July 2018 version of the Bill in Clause 6C is not supported.  The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein |  |
|  |  |  | ***Proposal # 5: “Premature exposure to adult experiences”***  Clarity to be provided that “adult experiences” refers to experiences that are sexual in nature (including displays of non-sexual nudity) or relate to what is traditionally commonly referred to as “vices” (such as substance abuse). | Proposal not supported. It is not necessary clarify the terms  ***“Premature exposure to adult experiences”***  The proposal to use the wording of the July 2018 version of the Bill in Clause 6C is not supported.  The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein |  |
|  |  |  | ***Proposal # 6: Clarify "must protect"***  There should be a directive for media regulatory authorities (guided by the FPA classification scheme and Guidelines) to revise and include practical measures in codes of conduct/good practice. There should also be an expressed obligation that all persons required to protect children (as contemplated in provision) must comply with all other applicable legal and ethical obligations and duties to protection of children in terms of law and the rules governing their professions, practices, industries, services, products, goods, media, and other created or produced content. | The proposal is not supported. As contemplated by the proposal; the Films and Publications Act regulates the media. |  |
|  |  |  | ***Proposal # 7: "offences" Amendment of section 305***  Amend section 305 of the Act to include contravention of proposed in new section 6B as an offence. There is a need to provide enforcement mechanism and consequences (sanction) for non-compliance. Include in section 305(1)(c): “*A person is guilty of an offence if that person —fails to comply with section…*”. | Proposal not supported. The Children’s Amendment Bill in clause 145 amending section 305 proposes offences and penalties relating to the new section 6A. |  |
|  |  |  | **The following recommendations were made:**  1. Either section 6A of the Bill be deleted in its entirety and retain section 74 of the Act or the wording of the July 2018 version of the Bill in Clause 6C be used and the following new section be inserted:    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 contemplated in this section upon reaching the age of 18 years.”.    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.”. 2. Bill needs to explicitly set out the content and ambit of the right to privacy for children, both on- and offline. 3. The Bill should further make clear that this extends to appropriate protection against unlawful data processing, data exploitation and surveillance, as well as other unjustifiable limitations on the right to privacy. 4. Any processing of the personal information of a child must be done in such a manner that protects the rights of, and is in the best interests of the child. 5. Where the personal information of a child is collected, the child must be informed about how the data is collected and used. Information on the processing of personal information shall be provided in a simple, clear and accessible manner, taking into account the evolving capacities of children, to ensure that a child will be able to understand what will happen to their personal data. 6. The right to privacy should form part of Chapter 2 on General Principles and should be a stand-alone section, providing scope and meaning to children’s privacy rights. 7. Children must be protected against all forms of unlawful data processing and data exploitation. 8. Surveillance regimes that may impact children must be subject to the privacy rights and the principle of the best interests of the child and must include child-sensitive safeguards. 9. Section 74 should not be deleted, but rather incorporated in the expanded section on children’s privacy rights. 10. Section 6A should be expanded. 11. There should be the prohibition of taking and circulating pictures of both maidens taking part in reed dance as well as initiates. 12. There should be protection of privacy of children who either parties or witnesses in traditional court proceedings. Their privacy should be protected by not publicizing information relating to proceedings in a traditional court. | 1. Proposal to retain section 74 is supported. 2. Proposal not supported. The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein 3. Same as in (b) above. 4. Same as in (b) above. 5. Same as in (b) above. 6. Proposal supported. 7. Proposal not supported for the same reasons as stated in (b) above. 8. .Proposal not supported for the same reasons as stated in (b) above. 9. Proposal supported. 10. Proposal not supported for the same reasons as stated in (b) above. 11. Proposal not supported. Same reasons as in (b) above. 12. Proposal supported. Re-instatement of section 74 to include and extend to all courts. |  |
| **The South African Social Workers in Private Practice (SAASWIPP)** | **The South African Social Workers in Private Practice (SAASWIPP)**  The organisation argues that this amendment simply lists a range of privacy laws. This is trite because obviously, all those laws need to be respected, and the Children’s Act therefore does not need to say this. Furthermore, the list of laws is incomplete, as it omits the Divorce Act and the Maintenance Act, which also provide important provisions on the protection of children’s identity in court proceedings. |  | **Recommendation**  It thus makes the following recommendation:   * Section 6A (1) to read as follows, “*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 contemplated in this section upon reaching the age of 18 years.”*   (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.”* | Same as above.  Proposal not supported. The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein.  This is addressed by insertion of clause 6A in section 6 of the Principal Act. which provides as follows:  ‘‘**Children’s right to privacy and protection of personal information**  **6A.** (1) A child’s right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other law protecting the privacy and protection of personal information of the child.’’.  The reinstatement of section 74 is supported. |  |
| **Scalabrini centre** | **Scalabrini centre**  The organisation supports the changes included in subsection 6(A) and note that this must include protection from discrimination on the basis of social origin or documentation status. It however strongly objects to this clause and the Bill’s proposal to delete section 74 of the principal Act. Section 74 has an important function in terms of protecting particularly vulnerable children – those placed in care as a result of an order by the Children’s Court. The deletion of this section may remove such protection from such children. |  |  | Same as above.  Proposal not supported. The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein.  This is addressed by insertion of clause 6A in section 6 of the Principal Act which provides as follows:  ‘‘**Children’s right to privacy and protection of personal information**  **6A.** (1) A child’s right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other law protecting the privacy and protection of personal information of the child.’’.  The reinstatement of section 74 is supported. |  |
| **Centre for Child Law** | **Centre for Child Law**  The organisation is extremely concerned 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. It assumes 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. 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 6(C) 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 subsection 6(A) AND Not delete s74. 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. |  | **Recommendation**   * Proposal A: Do not delete section 74 and Delete proposed s6A.   OR Delete section 74 and 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*:*  *(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 contemplated in this section upon reaching the age of 18 years.”.*  *(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.”.* | Proposal not supported. The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein.  This is addressed by insertion of clause 6A in section 6 of the Principal Act which provides as follows:  ‘‘**Children’s right to privacy and protection of personal information**  **6A.** (1) A child’s right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other law protecting the privacy and protection of personal information of the child.’’.  reinstatement of section 74 is supported. |  |
| **National House of Traditional Leaders** | **National House of Traditional Leaders**  The National House of Traditional Leaders explains that the Bill provisions for a child rights to privacy is subject to the Films and Publication Act, 1996, the Protection of Personal Information Act, 2013, the Promotion of Access Information Act, 2010 and the Criminal Procedure Act, 1977. The House is of the view that children’s privacy should be protected by not publishing information relating to proceedings in the traditional courts. It is also of the view that there are rituals and practices taking place at initiation schools in accordance with the customs and traditions which would be against custom practices to circulate pictures of initiates because initiation practices are considered sacred. |  | **Recommendation**   * There should be a prohibition of taking and circulating pictures of maidens during reed dance. * Children who are parties or witnesses in the proceedings and are subject to an order of traditional courts should be protected by not publicising information relating to proceedings in a traditional court. | Proposal supported. The clause to be extended to include prohibition on taking of videos. |  |
| **We’re Fathers, We’re Parents** | **We’re Fathers, We’re Parents**  The organisation points out that section 74 of the Act protects the privacy of children involved in children’s court cases such as abuse, custody, adoption and removal from care, the patch clause, but clause 6(a) fails to include children court cases. It submits that if the Bill is passed in its current form, the implications is that media would be allowed to identify and publish photos of children. |  | **Recommendation**  The organisation makes the following recommendation:   * The Children’s Court must be given authority to finalise the court cases within 90 days to prevent unfairness due to justice delayed. | Proposal supported. The court may however vary this timeframe as contemplated in section 48(1)(C). We will amend the clause accordingly. |  |
| **Jelly Beanz** | **Jelly Beanz**  The organisation welcomes the intention of the amendments. It points out that many children fear exposure of the personal details in the press and in many communities there is still a stigma attached to particularly to the rape of girls. It however, submits that this section on its own is not adequate. It therefore supports the proposal put forward by the Children’s Institute and the Centre for Child Law as shown in the below recommendations.  It supports sections 4, 5 and 6 of the Bill, amending section 7,8 and 12 and see them as positive developments as they protect all children regardless of disability, nationality and gender. |  | **Recommendations**  In support of the proposals made by the Children’s Institute and the Centre for Child Law, Jelly Beanz makes the following recommendations:   * Delete 6A in its entirety and replace it with the proposal that appeared in the July 2018 draft of the Bill as follows:   “(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 contemplated in this section upon reaching the age of 18 years.”*  *“(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.”*   * Retain clause 35, which deletes section 74. | Repetition. |  |
| **Dear South Africa** | **Dear South Africa**  Respondents in the public participation project conducted by Dear South Africa who indicated that they were in support of the Bill still highlighted various concerns, which included the following:   * child protection to include children with special needs, * the definition or evaluation system to establish when a child is capable of making decisions on their own needs to be sharpened, greater rights to children means greater protection and direct harsh consequences to perpetrators of violence, * children have rights but are often violated, courts take too long to finalize cases.   Those not in full support or do not support the Bill also raised the following concerns:   * children’s rights should not be superseding parents’ rights, * parents should have rights to make decisions for children who are not mature enough to make them, * acknowledged that children have rights but up until the age of 18 years parents or guardians should give permission for birth control, under-age sex and abortions, * concerned that parents cannot access electronic devices of children but still have to safeguard them against perpetrators and set rules and boundaries, so “age of maturity must correspond with responsibility”. * Parents are in fear of children because they may open cases against them. * Parents were not equipped on how to handle all these children’s rights. * Parents have no knowledge of their children testing HIV positive, terminating their pregnancies or are taking contraception because social workers are not allowed to disclose this information to them. |  |  | The first proposal is covered in section 11 of the Principal Act.  Comment attended to. Children’s courts are afforded 90 days to deal with cases.  The proposal is in conflict with other pieces of legislation in terms of allocation of rights according to age. |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any marriage of a child. | Key issues raised in the submissions**:** The stakeholders support the amendment as it is aligned to the international commitments and regional obligations, South Africa is part of. These prohibit child marriages. Despite the support, they submit that replacing the word “may” with “must” in section 12(2)(a) of the Act falls short, as it fails to clearly state that child marriages are prohibited in South Africa and that 18 is the minimum age of marriage, as well as that no child can be given out in marriage or engagement even with the consent of a parent, guardian or state official. Furthermore, the Bill misses an opportunity to define early, child and forced marriages within the South African context. |  |  |  |  |
| **Women’s Legal Centre**  6 | **Women’s Legal Centre**  The organisation gives a contextual background to its submission as follows: **Specific comments on the Bill:**  The organisation supports section 6(a) of the Bill, amending section 12(2)(a) of the Act, and notes from the Memorandum on the Objects of the Children’s Amendment Bill that the intended consequence is prohibiting child marriages in South Africa. It however, submits that replacing the word “may” with “must” in section 12(2)(a) of the Act falls short, as it fails to clearly state that child marriages are prohibited in South Africa and that 18 is the minimum age of marriage, as well as that no child can be given out in marriage or engagement even with the consent of a parent, guardian or state official. Furthermore, the Bill misses an opportunity to define early, child and forced marriages within the South African context.  It also submits that section 12(2)(b) provides for children under the age of 18 to enter into a valid marriage, provided that they consent. However, this leaves it open to interpretation for allowing child marriages and it could be argued that it creates an environment for social, cultural and religious pressure to be applied to children to coerce them into marriage. | **Women’s Legal Centre**  The organisation gives a contextual background to its submission as follows:  ***Definition of child marriages***  The organisation submits that, for the purposes of section 12(2)(a) and (b) of the principal Act, a child marriage is a form of forced marriage, given that one and/or both parties have not expressed full, free, and informed consent to enter into a marriage or is deemed not to have the capacity in law to enter into a contract of marriage in legal terms.  ***Statistics on child marriages***  It reports that statistics on child marriages, including UNICEF figures estimate that 6% of girls in South Africa marry before the age of 18 years (child marriages) and 1% by the age of 15. They further indicate that more girls than boys enter into marriages while under the age of 18. These numbers are likely to be higher, since the Department of Home Affairs’ marriage registry only records customary marriages that are registered after they are concluded and in instances where the necessary legal consent has been obtained, as required by the Recognition of Customary Marriages Act S4(3). Based on the experience of the organization, the majority of customary marriages are not registered in South Africa, as such registration is not a requirement. Furthermore, the register only captures details of marriages legally recognized in South Africa and excludes religious marriages such as Hindu and Muslim marriages. The number of child marriages in terms of religious beliefs is unrecorded. The number of child marriages in South Africa are therefore likely much higher than the number captured and registered in official records. It is clear from available data that forced marriages and child marriages disproportionately impacts on girls, and based on the available data, black girls in particular.  ***Circumstances causing child marriages and the consequences of child and forced marriages***  The organisation further reports that statistics on child marriages demonstrate a correlation between poverty and child or forced marriages. Girls with access to education and health services from urban, educated and wealthier families are less likely to be married at a young age compared to girls from rural, poor and uneducated backgrounds. Power relations between men and women also play a role. Therefore, there is a direct correlation between promoting gender equality and successful developmental policies. Early childbirth is one of the consequences of child, early or forced marriages. Pregnancy is reported consistently as a primary cause of death among young girls between the ages of 15 and 19. Young mothers under the age of 15 are five times more likely to die from maternal causes than adult women. Young girls are also at greater risk of contracting HIV/AIDS as they are more likely to be married to older men who have had a greater number of sexual encounters. Furthermore, the power imbalance means that young girls are likely unable to negotiate safe sex methods and contraceptives.  ***Harmful cultural practices related to child marriage***  The organisation further reports that in 2009, the South African Law Reform Commission released a discussion paper on ukuthwala (forced marriage), a re-emerging cultural practice, which often results in forced and child marriages. There was a High Court ruling during which the contrasting conceptions of the cultural practice were highlighted. On the one hand, the traditional concept of ukuthwala requires consent, while in the aberration of the traditional conception, permits rape and abduction.  ***Age of marriage in South Africa***  The organisation submits that while the Children’s Act defines a child as a person under 18 years of age, it fails to provide a minimum age of marriage outside the reference to the common law of South Africa, where the minimum age of marriage for girls is 12 and 14 for boys. This means that the common law ages of marriage represent and reiterate gender discrimination. Furthermore, the Marriages Act regulates heterosexual monogamous marriages in South Africa and the general age of consent is 18 years. However, the Marriages Act allows for parents or guardians to consent to marriage where at least one of the parties to a marriage is a minor. However, the Marriages Act sets the minimum age for marriage for girls at 15 and for boys at 18, constituting unfair discrimination on the grounds of gender. This is a violation of the equality clause.  The Recognition of Customary Marriages Act (No 120 of 1998) further allows for an exception to the requirement of consent by giving parents/guardians the power to consent to a marriage where one or both parties is a child. It further provides for an exemption in this instance where the parents/guardians do not consent, for the Commissioner of Child Welfare or a Court to consent to a minor entering a marriage. The Marriage Act also provides for individuals under the age of 18 to marry each other if the consent of the Minister of Home Affairs has been obtained, as per S 3(4)(a) and (c). The Civil Unions Act (No 17 of 2006) regulates same and opposite sex and gender unions and sets the minimum age of marriage at 18 years of age, without granting any exceptions for the marriages of children, making it the only legislation to comply with South Africa’s international commitments and regional obligations in this regard. Some examples include the:   * 1948 Universal Declaration of Human Rights, * United Nations Convention on the Elimination of All forms of Discrimination against Women, * United Nations Convention on the Rights of the Child, * United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages, * United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, * African Charter on the Rights and Welfare of the Child, * Protocol on the Rights of Women in Africa, * South African Development Community Protocol on Gender and Development, and the * Sustainable Development Goals.   The organisation further reports that during South Africa’s voluntary National Review at the 2019 High Level Political Forum, the Government reported progress on target 5.3 (eliminate all harmful practices, such as child, early or forced marriage and female genital mutilations) under Goal 5 (Achieve gender equality and empower all women and girls). However, it noted that the exceptions for marriage under the age of 18 was one of the shortcomings that remain in the legal framework. Based on this awareness on the part of the state, and therefore action is required. | **Recommendations**  The organisation makes the following recommendations:   * The Bill should explicitly state that the minimum allowable age of a person to enter marriage is 18 years, regardless of the sex of the person. * Furthermore, the Bill should explicitly state that no child could be given out in marriage or engagement under any circumstance, also not with the consent of a parent, guardian or state official. * The protection mechanisms in the Children’s Act’s ambit should include the prevention of children from entering marriage. * Section 150 of the Act should be amended to include children who are married and forced into marriages into the ambit of “children in need of care and protection”. This would also open avenues for psycho-social support to children and are important when considering whether the child should return to his/her parental home. Kenya’s Children’s Act is recommended as a good comparative Act in this regard. * The inclusion of a provision to provide for the mandatory reporting obligations of suspected forced marriages by relevant persons, such as teachers or social workers is recommended. * Insertion of section 12(2) to read*,*   *(a) “Contrary to any provisions in law, no child under the age of 18 can be given away into a child marriage.”*   1. *“Contrary to any provision in law, any adult who marries a child below the age of 18 is guilty of an offence of marrying a child.”* 2. *“Any person who forces a child into a marriage is guilty of an offence of forcing a child into a marriage.”* 3. “*Whenever an accused person is charged with an offence under section 12(2)(c) and/or (d) it is not a valid defence for that accused person: 63.4.1. to contend that the child in question consented to the marriage.’: 63.4.2 to contend that their religion, culture, or any other similar practices that permit children to be married allows for children to be married.”*  * Amend section 150(1) of the principal Act by adding section 150(1)(j) which states that: *“(j) has been subjected to a child and/or forced marriage*.” | Agree  clause 6 be amended taking into consideration the recommendations made.  Agree with the recommendation that the Bill should explicitly state that no child could be given out in marriage or engagement under any circumstance  Disagree with the latter part of the recommendation as it takes away the parental responsibilities and rights.  Practicality of including children who are married and forced into marriages into the ambit of “children in need of care and protection”. |  |
| **Give a Child a Family** | **Give a Child a Family**  The organisation supports the amendment on the basis that the African Charter on the Rights and Welfare of the Child in Article 21 states that “Governments should do what they can to stop harmful social and cultural practices, such as child marriage, that affect the welfare and dignity of children”. It submits that child marriages threaten and violates the human dignity of girls. Section 28(3) of the South African Constitution defines a child as a person under the age of 18 years. |  |  | Proposal supported |  |
| **Centre for Child Law –**  **Age of consent** | **Centre for Child Law –Age of consent**  The organisation submits that 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 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. |  | **Recommendations**   * Section 12(2) must be amended to provide that minimum age of consent to marriage is 18 years without exception. * 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. * The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception | Proposal supported |  |
|  | Genital mutilation - clause 6 Amendments of the Bill in summary**:** The Bill seeks to amend section 12 of the Act by aligning the prohibition of genital mutilation with the new definition, which inserts “alters genital organs” to the list of procedures.  Key issues raised in the submissions**:** Intersex South Africa raises a concern that many intersex people in South Africa have been victims of coerced, uninformed and unnecessary genital normalising surgeries on minors, aimed at altering their sex characteristics to suit social classifications of male and female. The surgeries are performed without the informed consent of the minor and are often irreversible, causing permanent infertility, permanent pain, loss of sexual sensation, and lifelong mental suffering, including depression. This is done despite global human rights frameworks recognising that intersex genital mutilation is recognising that intersex genital mutilation is a serious violation of human rights. |  |  |  |  |
|  | **Intersex South Africa**  The organisation’s submission raises a concern over the lack of legislative provisions for the prohibition of intersex genital mutilation in South Africa. This is despite South Africa being the first country in the world to explicitly include intersex people within the definition of ‘sex’ in its Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) of 2000 and grant legal recognition to intersex, and transgender, people through the Alteration of Sex Description and Sex Status Act 49 of 2003. It reports that regardless of these protections, the testimonies of intersex persons, and healthcare professionals, indicate that intersex children continue to be subjected to ‘medically sanctioned’ non-consensual coercive genital surgery, more commonly known globally as intersex genital mutilation (IGM), with devastating physical and mental harm to many intersex persons. This is happening despite global human rights frameworks recognising that intersex genital mutilation is a serious violation of human rights. These include: United Nations (UN) committees and bodies, conventions, Special Rapporteur on Torture (SRT) and World Health Organisation (WHO).  The organisation also reports on the recommendations made during a National Dialogue on the Protection and Promotion of the Human Rights of Intersex People. At this Dialogue, the Deputy Minister of Justice John Jeffery, gave an undertaking to raise the prohibition of surgery on intersex children with the Ministries of Health, Home Affairs and Social Development. He also mentioned the possibility of public hearings and/or an investigation into harmful practices by a Chapter 9 institution such as the South African Human Rights Commission or the Commission for Gender Equality. The recommendations flowing from the national dialogue included a number of legal interventions, including:   * Banning intersex genital mutilation (IGM) surgeries in medical settings; * Enactment of self-standing legislation/directives to deal concretely with surgical and hormonal interventions on intersex children; * Amendment of Children’s Act – include recognition of the right to consent to surgical intervention by intersex children; * Amendment of Sterilization Act to cover intersex surgeries which may have a sterilising effect on children; * Definition of what would be considered medically necessary interventions on intersex children; * Making provision for redress and reparations for intersex adults, including adequately prolonging statutes of limitations; * Revision of the Alternation of Sex Description and Sex Status Act 49 of 2003.   The organisation also wishes to bring to the attention of the Committee the demands made by The African Intersex Movement in 2017 and 2019:   * To put an end to mutilating and ‘normalising’ practices such as genital surgeries, psychological and other medical treatments through legislative and other means (such as education, policy and treatment protocol change). Intersex people must be empowered to make their own decisions affecting their own bodily integrity, physical autonomy and self-determination. * To include intersex education in antenatal counselling and support. * To put an end to non-consensual sterilisation of intersex people. * To depathologise variations in sex characteristics in medical practices, guidelines, protocols and classifications, such as the World Health Organization’s International Classification of Diseases. * To create and facilitate supportive, safe and celebratory environments for intersex people, their families and surroundings. * To ensure that intersex people have the right to full information and access to their own medical records and history. * To ensure that all professionals and healthcare providers that have a specific role to play in intersex people’s well-being are adequately trained to provide quality services. * To acknowledge the suffering and injustice caused to intersex people * To build intersex anti-discrimination legislation in addition to other grounds, and to ensure protection against intersectional discrimination. * To recognise that medicalization and stigmatisation of intersex people result in significant trauma and mental health concerns. * In view of ensuring the bodily integrity and well-being of intersex people, autonomous non-pathologising psycho-social and peer support be available to intersex people throughout their life (as self-required), as well as to parents and/or care providers. | The organisation makes the following specific comments on the Bill:   * There was a lack of consultation with organisations led by, and advancing the rights of intersex persons, as noted in the Memorandum on the Objects of the Children’s Amendment Bill. * While it is encouraged by the decision, and steps taken to amend the Children’s Act to ensure that genital mutilation is prohibited, it is of the view that the prohibition must be specific to the types of mutilation that are experienced in South Africa in order to ensure that any protective mechanisms are responding directly to the lived realities and experiences of those whose rights the Act seeks to uphold. This is indeed the manner in which section 12 has generally dealt with other practices that are banned because they are considered harmful to children. | **Recommendations**  The organisation makes the following recommendations:   * The Portfolio Committee ensures that when adjudicating on the Bill, takes intentional steps and measures to ensure that intersex persons and intersex-led organisations advancing their rights are consulted with to ensure that this amendment does not leave any child behind and/or ensure that intersex children do not continue to be made invisible in the development and adoption of laws in South Africa. * Two subsections should be added under section 12(3), with one subsection dealing with intersex genital mutilation and another subsection dealing with female genital mutilation, as these are two distinct harmful practices.[[2]](#footnote-3) | Comment noted  The proposed amendment of section 12 seeks to prohibit all forms of genital mutilation. |  |
| Virginity testing | Virginity testing – clause 6 Amendments of the Bill in summary**:** as indicated above this clause seeks to amend section 12 by prohibiting child marriages and genital mutilation. Section 12 (4) and (8), prohibits virginity testing on children under the age of 16 as well as male circumcision on children under the age of 16 with certain exceptions, contemplated in sections 12 (b) and 8(a).  Key issues raised in the submissions**:** The National House of Traditional Leaders makes recommendations that virginity testing should be performed taking into consideration the maturity and stage of development and a female child has the right to refuse virginity testing. |  |  |  |  |
| **National House of Traditional Leaders** | **National House of Traditional Leaders**  The House does not support the prohibition of children under the age of 16 years going for virginity inspection. It points out that the reality is that, especially in KwaZulu-Natal, Mpumalanga and Eastern Cape, girls below the age of 16 years willingly consent to virginity inspection. There is no age limit in terms of culture and tradition. It is done guide by the stage of maturity. At the age of 12 years a girls gave give consent to virginity inspection.  The House submits that male circumcision is part of initiation and culture goes hand in hand with religion. The practice of boys attending initiation schools at the age below 16 years is common in provinces such as Gauteng, Mpumalanga, North West and Limpopo. |  | **Recommendations**  The House makes the following recommendations:   * Amend section 12(4) and (5) to read, *“virginity inspection of children may be performed taking into consideration the maturity and stage of development and a female child has the right to refuse virginity testing*.” * Amend section 12(8)(a) by inserting the words ‘cultural purpose’ to allow the circumcision of boys below 16 years for cultural as well. Based on provincial peculiarities, a lower minimum age recommended is 12 years. | Virginity testing and circumcision are provided for in section 12 of the Children’s Act, however the Department did not propose amendments relating to the two aspects are there has not been public consultation on the issues. |  |
| Corporal punishment | Corporal punishment Amendments of the Bill in summary**:** the Bill has no amendments on corporal punishment.  Key issues raised in the submissions**:** in the main stakeholders propose insertion of a new subsection (11) under section 12 of the Act to make provisions of the ban of corporal punishment. The proposal is based on the Constitutional Court 2019 judgement that declared the common law defence of “reasonable and moderate chastisement” invalid and unconstitutional. They then propose the Bill to include definition of corporal punishment as defined in the National Child Care and Protection Policy based on the guidance from the United Nations Convention on the Rights of the Child (UNCRoC). The Policy defines corporal punishment as,  “*corporal punishment’ or ‘physical punishment’ means any punishment in which physical force or action is used and intended to cause some degree of pain or harm. It involves, but is not limited to, hitting (‘smacking’, ‘slapping’, ‘spanking’) children in any environment or context, including the 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”.* |  |  | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Centre for Child Law** | **Centre for Child Law**  The organisation points out that the 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.” It submits the importance 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. 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.  It further submits that even ‘moderate’ corporal punishment violates children’s rights and evidence shows that it increases 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. 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.  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 itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to change behaviour. 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. |  | **Recommendations**   * Section 12(11) No child may be subject to corporal punishment or be punished in a cruel, inhuman and degrading manner. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Children’s Institute** | **Children’s Institute**  The organisation submits that it is important for the Bill 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. This mirrors the principles in the National Policy. It is necessary to increase public awareness, and correct implementation of the Children's Act. |  | **Recommendations**  Add the following sub-clause:   * Amend section 12 (11), to read, “*No child may be subject to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault.”* * Add the following sub-clause:   *Section 18(2A) “A person who has parental responsibilities and rights in respect of a child, including any other person who has the care of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution.”* | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Stellcare Stellenbosch & District Family services** | **Stellcare Stellenbosch & District Family services**  The organization basis its submission on corporal punishment on the Constitutional Court’s Judgement of 18 September 2019 which concluded that corporal punishment is a violation of the best interest principle and children’s rights to dignity, equality and freedom from violence, and because parents can use positive parenting practices to guide children’s behaviour that it is not justifiable to hit children. This meant that the law would no longer protect parents who use corporal punishment, even a light smack, or the threat of force to discipline a child. Parents are now treated like everyone else and can be charged with assault. However, the Court recognized that this would not be in the best interest of a parent if they would be criminalized for something that has been common practice, it called on Parliament to consult with parents, children and other interested parties on a regulatory framework that would outline how the state and child protection agencies should deal with reports.  The organization explains that according to the legal principle de minimis non curat lex, the law does not concern itself with excusable and/or trivial conduct, hence, prosecutors have discretion whether or not to prosecute cases of assault. This therefore calls for development of clear set of principles based on restorative justice that determines how cases should be handled including the option to refer parents to community-based parenting programmes. Additionally, the law should place a clear obligation on the State to promote behaviour change. |  | **Recommendations**  The organisation makes the following recommendations:   * In Section 12 of the Act add a new subsection (11) that would read, as, “*No child may be subject to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault*”. This is line with the principles of the National Child Care and Protection Policy. * To address a concern that banishment of corporal punishment removes parents’ rights and responsibilities to discipline their children, the organization recommends that the Children's Act should clarify that parents have the responsibility to care for children and guide their behaviour without resorting to violence. It can do that in two ways: * the definition of care should be amended to correspond to the definition used the Policy. It proposes this amendment, “(g*) guiding the behaviour of the child in a humane manner [using positive parenting and non-violent disciplinary methods];* * Section 18 of the Act should be amended to include specific reference to the responsibility to discipline children without resorting to violence. This should be done by adding a new subsection (6) that would read as*, “A person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution”*. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **South African Disability Alliance** | **South African Disability Alliance**  The organisation also bases its submission on the Constitutional Court’s 2019 judgement on corporal punishment and the definition of corporal punishment as contained in the National Child Care and Protection Policy. It highlights that the policy further clarifies that *‘violence has no minimum, moderate or maximum… it is clear that protection must be from “all forms of violence” and therefore anything that resembles violence is unacceptable”*. It also points out that the Constitutional Court judgment made it clear that corporal punishment by parents is assault, where existing definitions of assault are clear that the slightest touch or even the threat of the use of force are included, that “*Violence is not so much about the manner and extent of the application of the force as it is about the mere exertion of some force or the threat thereof”*. |  | **Recommendations**  The organisation makes the following recommendations:   * Proposed amendment to section 18 on Parental Responsibilities and Rights   Add a new subsection (6) that would read as, “*A person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution*”.   * Amendment to the Act to have a clear provision on ‘Promoting positive parenting’ in chapter 8 on prevention and early intervention programme. Section 144 of the Act which deals with purposes of prevention and early intervention programmes, be amended to add a new subsection that would stipulate that the Department in partnership with relevant stakeholders, must take all reasonable steps to ensure that: * education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and * programmes promoting positive discipline at home and in alternative care are available across the Republic. * Amend section 110(2) to stipulate that “any person who on reasonable grounds believes that a child has been abused or neglected or is in need of care and protection may report that belief to the provincial Department of Social Development, a designated child protection organisation or a police official.” This would encompass corporal punishment as the current definition of abuse covers assault.   The organisation substantiates its proposal on the fact that the Act already makes provisions on the reporting of abuse or neglect of a child and a child in need of care and protection. Sections 110 (1) or (2) of the Act stipulates that police officers receiving a report are required in terms of section 110(4) to ensure the safety of the child and within 24 hours notify social services of the report and any steps that have been taken with regard to the child. Also section 110(5) of the Act requires the social worker to make an assessment and allows him/her to take measures to assist the child. The Children’s Act provides for different types of early intervention measures that can be used to assist parents to develop skills in positive parenting. In other words, the social worker could refer the family for another intervention even where previous interventions have failed.  Section 110 (5) places the obligation on social services to submit reports to the Director-General, but it confines it to “such particulars as may be prescribed”, where the regulations and the Form 23 state that only section 110(1) reports involving physical injury, deliberate neglect or sexual abuse must be reported on a Form 23 to the Director-General are to be submitted. The organisation submits that in practice the form 23 is only submitted at the end of an investigation when a child is deemed to be in a child in need of care and protection. S | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Save the Children South Africa** | **Save the Children South Africa**  The organisation makes the same inputs and recommendations as the South Africa African Disability Alliance. |  | **Recommendations:**  It makes the following recommendations:   * Definition used in the policy to be inserted into the Act. * Addition of a new subsection into section 12 (11), based on the principles of the National Child Care and Protection Policy to stipulates that, “no child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault. * The definition of care should be amended to correspond to the definition used in the Policy. Secondly, section 18 of the Children's Act details parental responsibilities and rights. It should be amended to include specific reference to the responsibility to discipline children without resorting to violence. * Proposed amendment to section 18 on Parental Responsibilities and Rights * Add a new subsection (6), that would stipulate that, *“a person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution*”. * Amendment to the Act to have a clear provision on ‘Promoting positive parenting’ in chapter 8 on prevention and early intervention programme. Section 144 of the Act which deals with purposes of prevention and early intervention programmes, be amended to add a new subsection that would stipulate that the Department in partnership with relevant stakeholders, must take all reasonable steps to ensure that: * education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and * programmes promoting positive discipline at home and in alternative care are available across the Republic. * Amend section 110(2) to stipulate that “any person who on reasonable grounds believes that a child has been abused or neglected or is in need of care and protection may report that belief to the provincial Department of Social Development, a designated child protection organisation or a police official.” This would encompass corporal punishment as the current definition of abuse covers assault.   Similarly, to South African Disability Alliance, the organisation substantiates its proposal on the fact that the Act already makes provisions on the reporting of abuse or neglect of a child and a child in need of care and protection. Sections 110 (1) or (2) of the Act stipulates that police officers receiving a report are required in terms of section 110(4) to ensure the safety of the child and within 24 hours notify social services of the report and any steps that have been taken with regard to the child. Also section 110(5) of the Act requires the social worker to make an assessment and allows him/her to take measures to assist the child. The Children’s Act provides for different types of early intervention measures that can be used to assist parents to develop skills in positive parenting. In other words, the social worker could refer the family for another intervention even where previous interventions have failed. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Childline South Africa** | **Childline South Africa**  The organisation views sections 4,5 and 6 of the Bill, amending S 7,8 and 12 as positive developments as they protect all children regardless of disability, nationality and gender. It however, proposes that the Bill ensures the implementation on the ban on corporal punishment and support of positive parenting. It should also ensure that parents education in positive parenting and restorative justice principles are applied when corporal punishment is reported. |  | **Recommendation**  The organisation supports the recommendation of the Adoptive Alliance. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **World Vision South Africa** | **World Vision South Africa**  The organisation also has similar inputs and recommendations as Save Children South Africa and South Africa African Disability Alliance. |  | **Recommendations**  It makes the following recommendations:   * Definition used in the policy to be inserted into the Act. * Add a new subsection into section 12 (11), based on the principles of the National Child Care and Protection Policy to stipulates that, “no child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault. * The definition of care should be amended to correspond to the definition used in the Policy. Secondly, section 18 of the Children's Act details parental responsibilities and rights. It should be amended to include specific reference to the responsibility to discipline children without resorting to violence. * Proposed amendment to section 18 on Parental Responsibilities and Rights   Add a new subsection (6), that would stipulate that, “a person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution”.   * Amendment to the Act to have a clear provision on ‘Promoting positive parenting’ in chapter 8 on prevention and early intervention programme. Section 144 of the Act which deals with purposes of prevention and early intervention programmes, be amended to add a new subsection that would stipulate that the Department in partnership with relevant stakeholders, must take all reasonable steps to ensure that: * education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and * programmes promoting positive discipline at home and in alternative care are available across the Republic. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Professor Ann Skelton** | **Professor Ann Skelton**  Professor Skeleton also makes submission on the definition of corporal punishment as contained in the National Child Care and Protection policy. |  | **Recommendation**  She also recommends that a definition of corporal punishment be included in the Bill to read, “*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*”. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Sonke Gender Justice** | **Sonke Gender Justice**  The organisation raises three areas that underpin its submission on the ban of corporal punishment – Constitutional Court’s 2019, relationship between corporal punishment and violence in South Africa as well as a relationship between corporal punishment and gender based violence (GBV). It submits that more attention needs to be placed on the relationship between corporal punishment and the culture of violence that permeates South Africa, including gender based violence. Research has shown that intimate partner violence and use of corporal punishment share certain risk factors. For instance, cultural common risk factors include patriarchal beliefs, hierarchical and authoritarian households with the male figure being at the top of the hierarchy and the children at the bottom. Another common risk factor for both is low levels of marital satisfaction and corresponding levels of marital conflict. It maintains that intimate partner violence and corporal punishment are however differentiated by gender. Men approve the use of violence in both cases to a higher degree than women however, women use corporal punishment more often. This is simply because of their role as caregivers. |  | **Recommendations**  The organisation makes the following recommendations:   * The Children’s Bill needs to be developed with the goals of the National Strategic Plan on GBVF in mind. * Add definition of corporal punishment as contained in the National Child Care and Protection Policy. * Insert the following clause 12A(1), “ *a person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution*”. * Insert section 12A (2), “*no child may be subject to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault”*. * Insert section 12A(3), “*a parent, guardian, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to any inappropriate form of punishment, including corporal punishment, must be referred to a prevention and early intervention programme as contemplated in section 144*”. * Insert section 12A (4), “the department in partnership with relevant stakeholders, must ensure:   *(a) the implementation of education and awareness-raising programmes across the Republic concerning–*  *(i) the effect of subsections (1) and (2);*  *(ii) positive forms of discipline;*  *(b) the availability of programmes promoting positive discipline at home and in alternative care across the Republic; and*  *(c) capacity building of all relevant government and civil society role-players to understand their role in the promotion of positive discipline*”   * Insert section 12A(5), “*when prevention and early intervention services have failed, or are deemed to be inappropriate, and the child’s safety and wellbeing is at risk, the designated social worker must assess the child in terms of section 110”*. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **The Child and Welfare Society** | **The Child and Welfare Society**  The organisation argues that 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 itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to change behaviour. It therefore makes proposed amendments to add subsectio144(4)(a)(a) as shown in the recommendations below. In essence it argues that these amendments 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 caregivers about non-violent discipline. They will also emphasise 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 alternative care. Given the widespread acceptance of corporal punishment in society, role-players need to understand the rationale behind the prohibition and their role in promoting the prohibition. |  | **Recommendations**  The organisation makes the following recommendations:   * Define corporal punishment in line with the National Child Care and Protection policy. * The Department in partnership with relevant stakeholders, must take all reasonable steps, to ensure that:   (a) education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and  (b) programmes promoting positive discipline at home and in alternative care are available across the Republic.   * Add sub-clause12(11) to read, *“no child may be subject to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault*.” This mirrors the principles in the National Policy. It is necessary to increase public awareness, and correct implementation of the Children's Act. * Add sub-clause 18(6) to read, “*a person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution*.” It is 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. | The proposal is not supported because the Constitutional Court judgement dealt with the matter. |  |
| **Children in Distress (CINDI)** | **Children in Distress (CINDI)**   * Similarly, to the submissions above basis its submission on the 2019 Constitutional judgement on the ban of corporal punishment. |  | **Recommendations**  The organisation makes the following recommendations:   * Addition of a new subsection into section 12, based on the principles of the National Child Care and Protection Policy: “*12. (11) No child may be subject to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault.”* * Add a new subsection (6) to read, *“A person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution.”* * Add a new subsection:   *(4) The Department in partnership with relevant stakeholders, must take all reasonable steps to ensure that:*  *(a) education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and*  *(b) programmes promoting positive discipline at home and in alternative care are available across the Republic.*   * Amend section 110(2) to read, “*Any person who on reasonable grounds believes that a child has been abused or neglected or is in need of care and protection may report that belief to the provincial Department of Social Development, a designated child protection organisation or a police official.”* This would encompass corporal punishment as the current definition of abuse covers assault. * Amend section 114 as follows: Contents of Part A of Register.—   (1) Part A of the Register must be a record of—  (a) all [**substantiated**] reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act;” | The proposal is not supported because the Constitutional Court judgement dealt with the matter.  Proposal supported  Proposal supported  Proposal supported  Proposal not supported.  All substantiated reports of abuse or deliberate neglect of a child to be made to the Director-General in terms of this Act;” the intent is to avoid unsubstantiated and unfounded reports being made. This is to avoid clogging of the system. |  |
| **Jelly Beanz** | **Jelly Beanz**  The organisation also basis its submission on the 2019 Constitutional judgement that banned the use of corporal punishment. |  | **Recommendations**  The organisation makes the following recommendations:   * Add definition of ‘corporal punishment’ in section 1, in line with National Child Care and Protection Policy. * Add sub-clause 12(11) to read, “*no child may be subject to corporal punishment or be punished in a cruel, inhumane, or degrading way*.” This mirrors the principles in the National Policy. It is necessary to increase public awareness, and correct implementation of the Children's Act. * Add sub-clause 18(6) to read*, “a person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution.”* It is important to have explicit reference to corporal punishment – the most common form of cruel punishment – to make it clear that corporal punishment by parents/caregivers is prohibited. * Amend section 110(2) by inserting the word in bold, *“Any person who on reasonable grounds believes that a child [****has been abused or neglected or****] is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.”* Criminalisation of parents for using corporal punishment should be considered a last resort. The addition of a non-mandatory reporting clause will allow social worker to assess the situation and refer parents to a suitable prevention and early intervention programme such as positive parenting or anger management. * Add the following sub-clause:   “*144(4) The Department in partnership with relevant stakeholders, must take all reasonable steps, to ensure that -*  *(a) education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and*  *b) programmes promoting positive discipline at home and in alternative care are available across the Republic.”* | all [**substantiated**] reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act;” |  |
| ***Centre for Child Law***  Children with disabilities and chronic illness | Children with disabilities and chronic illness – Section 11 of the Act ***Centre for Child Law***  The organisation submits that 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 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. 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. |  | **Recommendation**   * There should be a holistic reform of the Bill to facilitate inclusivity in the care and protection system. | Recommendation highly supported. Issues like the allocation of trained/capacitated care givers to address the support needs of children with disabilities should be included in this section to enhance the inclusivity of the developed programmes and service. Partial care facilities for children with disabilities remain unsupported/ unfunded /unattended, resulting in the highest neglect of children with disabilities. Cognisance should be taken to understand that most children with disabilities especially those with intellectual disabilities, inherit their disabilities form their parents. This presupposes that there is a high support need in that family as the parent may not be in a position to understand the support needs of the child. |  |
| Child Protection Services 82 | Child Protection ServicesPlacement of a child in need of care and protection –- Foster care and child and youth care centres, drop-in centre – clauses 60, 74, 82, 86, 87, 93 – 98 Amendments of the Bill in summary**:** The Bill seeks The Bill seeks to amend section 109 and 110 adding people who may report an abuse or neglect of a child. It also seeks to amend section 131 including necessary medical testing for children in need of care and protection or adoption. It also seeks to amend section 150 to clarify that a child who is abandoned or orphaned and has no parent, guardian, family member or caregiver who is able and suitable to care for that child, is a child in need of care and protection. A child in need of care and protection will include "an unaccompanied migrant child from another country", "a victim of trafficking", or a child who "has been sold by a parent caregiver or guardian". It also seeks to amend section 159 by providing that a court may extend an alternative care order that has lapsed or make an interim order. Furthermore, it will be regulated to ensure the accountability of the respective officials regarding the lapsing of these orders. It forms part of the comprehensive long-term solution to foster care as a mechanism for managing foster care orders. It also seeks to amend section 167 by providing that a child may not be placed in temporary safe care for more than 72 hours without a court order.  The Bill also seeks to amend section 167 to provide that a child may not be placed in temporary safe care for a period longer than 6 months at a time. It also seeks to amend section 186 to provide that a children’s court may deem it necessary to order further supervision services and despite the provisions of section 159 (1) (a), regarding the duration of a court order, and after having considered the need for creating stability in the child's life, (b) the court may place a child in foster care with a family member and order that the foster care placement subsists until the child turns 18 years.  It further seeks to amend section 185 by the providing that not more than six (6) children may be placed in foster care with a single person or two persons sharing a common household in terms of a registered cluster foster care scheme. The amendment is intended to ensure that children placed in cluster foster care are cared for appropriately and the caregiver is not overburdened. It also seeks to provide that child and youth care centres must be registered; include an exclusion of treatment centres from the requirement for registration as child and youth care centres in order to avoid dual registration; provide that a registered child and youth care centre in addition to offering a therapeutic programme must offer a developmental programme designed for the residential care of children outside the family environment; clarify that a parent or other person having responsibilities also has rights with regards to the reception, care and development of children; and add to the list of programmes that a child and youth care centre must provide | Key issues raised in the submissions**:** stakeholders generally support amendment to section 150 in that it makes orphaned or abandoned children in the care of relatives no longer deemed as children in need of care and protection. They believe that with this amendment combined with an adequate replacement grant in the form of the CSG Top-Up, the number in the foster care system will be reduced. They however, submit that the amendment should make that more explicit, by stating that only children who are in the care of a family member should be excluded, as shown in the recommendations made below. They further submit that a child who is placed with a relative the child and has no bond with, that placement should be a foster care placement so that the state can supervise and monitor it for the first two years. If the child and relative are both happy with the arrangement, it could be converted to guardianship after the first two years.  Stakeholders, also support amendments to subsections 167 (1)(c), (2) and (3).  There is however, a submission that questions the amendment for the court to extend lapsed foster care court orders by not by six months. The argument is that, this amendment is an “overstretch” of the law to make up for a lack of implementation capacity and/or lack of a comprehensive legal solution aimed at reducing the foster care case load. It is questioned if this amendment will still be necessary if the comprehensive legal solution is in place and there is less demand for foster care? It was pointed out that that this provision will not prevent SASSA from stopping payment of the Foster Care Grant (FCG) on the day the foster care order expires. It only ensures that the FCG will later be re-instated and back paid when the extension order is finally submitted to SASSA. FCGs will therefore still lapse for a period of time. It thus argues that this provision is not aimed at ensuring the child continues to receive the FCG uninterrupted. It is therefore proposed 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.  Another concern is that once the 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 section 159, the children’s court will review their case against the criteria specified in section 150(1) (a). Because section 150 (1) (a) is being amended to exclude new 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. Related to this, stakeholders also submitted that due to the high a high number of children in the foster care system compared to the low number of social workers, the legal requirement of two -yearly social worker reports and court reviews of all children in foster care cannot be implemented.  Another concern is that the department’s proposal is too broad and will result in the department 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 and this will be not in the best interest of the child.  With regard to Child and Youth Care Centres, stakeholders mainly raised a concern that the Bill as it currently stands does not adequately provide for the transitional support needs of young people in child and youth care centres when they age out at 18 or older. Without mandatory preparation and support, the transition from the care setting to the reality of life beyond care is wrought with challenges including lack of access to social support, employment, to stable accommodation, to resources and to opportunities which would allow them to gain skills and further their education. |  | The orphaned and abandoned children who are in the care of family members should not be automatically excluded as children in need of care and protection as they will fall within the cracks of the child protection system and will be exposed to further vulnerabilities.  The Department supports the proposal by Centre for Child Law (CCL), Children’s Institute and Professor Ann Skelton. The Bill will be amended to cater for the proposed amendments.  The Department does not support the proposal based on the fact that a period of six (6) months that is suggested in the Bill is reasonable to allow the Magistrates to process the extension of the foster care orders. This is in line with the section 48 of the Act which allows the Magistrates to grant an extension in accordance with the best interest of the child.  The Department notes the recommendation regarding clause 86 (2B) however, the amendment of clause 82 as proposed by the stakeholders e.g. Centre for Child Law (CCL), Children’s Institute and Professor Ann Skelton regarding children in the care of family members, the concern raised will be addressed as well as by the provisions in clauses 83(6)(b)(iv) and 84(1)(cA).  Department notes the submission. Clause 77(jB) seeks to address this concern through the establishment and resourcing of designated child care and protection units  It is unclear which part of the proposal that is referred to. The clauses comprising of the comprehensive legal solution do not make reference to the stated concerns. |  |
| **National House of Traditional Leaders** | **National House of Traditional Leaders** |  | **National House of Traditional Leaders**  **Recommendation**  The House supports the view that, amongst others, traditional leaders should report an abused or neglected child and child in need of care and protection in traditional communities. | Proposal supported |  |
| **South African National Civic Organisation (SANCO)** | **South African National Civic Organisation (SANCO)**  In relation to section 150(1)(a), SANCO believes that family members who look after children considered “wards of state” should be entitled to appropriate financial assistance, depending on their own financial circumstance, meaning this should be justifiable. The reality is that poor relatives who take on the responsibility of looking after orphans must not do it as source of income rather the best interest of the child must be consider. Therefore, investigations must be done to determine the need sufficient financial support in order to provide children with the required care and protection.  SANCO further submits that most magistrates interpret this clause to mean that children who are abandoned or orphaned, are generally not ‘without visible means of support’ so just require care and protection. The organisation’s experience has been that this is necessary the reality therefore a court order to exclude foster parent grant deepen the plight of willing relatives to care and it increase their levels of poverty for poor households who do need the additional assistance provided by the Foster Child Grant. The Child Support Grant (which is worth substantially less than the Foster Child Grant) cannot be viewed by magistrates as providing the child with sufficient ‘visible means of support’. Those caring for these vulnerable children should correctly be awarded the Foster Child Grant which provides more significant financial assistance to poor relatives.  The interpretation of the provision by magistrate’s acts as a barrier to providing care and protection to vulnerable children SANCO furthermore believes that the current interpretation does deny access to the Foster Child Grant. Furthermore, appropriate financial assistance to the poor relatives and foster parents will provide for basic needs of abounded children  SANCO firmly believes that the turnaround time from time a child has been abandoned and placements should be done within reasonable time, since the lack of sufficient Social Workers to conduct investigation and court date for placement affects the child’s life in more negative manner. Therefore, the Department of Social Development and the Department of Justice and Constitutional Development should work within a reasonable timeframe.  SANCO furthermore believes that the jurisdiction of the Children’s Court needs to be extended to oversee cases since the High Court is costly and this denies many children’s matters to be finalized.  Guardians/Foster Care individuals should ensure that the wellbeing of the child is a priority and that the grant money is never utilized for personal use but on the respective children. School District councilors should consult quarterly with respective Schools and Health Centre’s to ensure that adherence is in place and that the Child/children is always in a well-run secured environment. |  | **Recommendations**   * DSD should facilitate a national debate (with those in the children’s sector as well as other interested parties) around the most appropriate grant system to ensure decent financial support for those poor people who are looking after children in need of care and protection. * More effective co-operation between the Department of Social Development and the Department of Justice and Constitutional Development is critical. * The long court roll, especially at the Children’s Court, needs to be addressed as a matter of urgently. This does not only apply to the renewal cases but also the new applicants. | Department notes the recommendation that is within the scope of the Social Assistance Act.  Department notes the recommendations  Proposal supported. Clause 94 of the Bill caters for the strengthening of supervision for children in Foster Care. However, Grants are regulated in terms of the Social Assistance Act, 2004 as amended. |  |
| **Centre for Child Law**  56 | **Centre for Child Law**  The organisation does not support amendment to section 105. It submits 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 organisation. Clarity must be sought with the Department concerning the 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.  In relation to section 107 questions 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].  The organisation supports the amendment and propose and additional amendment to section 109(2). It states that quality assurance should happen as a regular and ongoing process. Not only before the withdrawal of a designation.  It partially supports amendments to section 110 but it notes that 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.  With regard to section 129, the organisation 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-parents” and the autonomy already recognised in the very section.  Pertaining to section 150 (1)(a) it supports 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.  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 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.    It also recommends 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).  In relations to section 155, the organisation argues that it should be amended because the majority of the problems in respect of removed children should have been cured by the judgment in C and Others v MEC for Social Development, Gauteng and Others. 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 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.  It supports amendment to section 156 with additional amendment. It submits that 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. However, 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 section 156(1) (cA) ‘placement’ order cannot be made. [See s156(4)]. 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.  The organisation partially supports amendment to section 157 in that This proposed amendment aligns with what is already in the Act describing such age group, see section 135(2)(c).  With regard to amendments to section 159 (2A), the organisation submits that more information is needed from DSD as to why this amendment is needed and how it will further children’s best interests. 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.  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. Will this amendment be necessary if the comprehensive legal solution is in place and there is less demand for foster care? If foster care caseloads are reduced, there should be no reason for delays in reviewing and extending alternative care orders and therefore no need for this new section 159(2A). Also, 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. The organisation therefore proposes 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.  With regard to section 159(2B) the organisation submits that 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 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.  The organisation does not support amendment to section 167(1)(b) because it argues that 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 dealt with these children in so far as their programmes and possibilities for early release are concerned.  It supports amendment to section 167(2).  With regard to proposed amendment to section 167(3) the organisation argues that it 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. 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.  In relation section 188, the organisation 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. 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. 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.  The organisation supports amendments to section 194 to include access to rehabilitation services for children with disabilities. However, as stated above, it is unclear what is meant by rehabilitation services.  The organisation does not support amendment to section 201. It mentions that 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. This is a hard line of compliance, with its new set requirements. Anything deviating from that, will not qualify. This inconsistency caused by the use of ‘conditional registration’ and ‘conditions of registration’. The use of conditional registration for the purposes of progressive realisation of norms and standards or relevant requirements should be made clear.  In relation to section 219, the organisation is of the view that the amendment will enable much needed access to assistance for drop-in centres. |  | **Recommendations**   * An amendment to section 46 to make it clear that the court can confirm or grant parental responsibilities and rights to family members. Section 46 to read, *“(1) A children’s court may make the following orders:*   *(aA) an order confirming or granting parental responsibilities and rights in terms of s23 and 24 to a family member caring for a child”*   * Proposed amendment to section 156(1)(e)(ii) be reversed. * Amend section 157(3) to read “*A [****very young****] child who is three years or younger who has been orphaned or abandoned…”* * Amend section 150(1)(a) to read, “*A child who has been abandoned or orphaned and is not in the care of a family member as defined in section 1”* * The proposal that was in the August 2020 draft of the Third Amendment Bill in relation to section 129(3) must be re-inserted. * A Form as contemplated in section 131 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 144(2)(b) should be amended by adding the words “and their children” after “for themselves”. * There is also a need to include a definition of “child-parent”. * Amend section 105(4) to read, “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 appropriate programmes for the child and his or her family and not to do other ‘statutory work’.” * Amend section 105(5)(d) to read, “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.” * Amend section 105(6) to read, “the Department must develop and conduct a quality assurance process for the evaluation of child protection services as prescribed.” * Amend section 107(1A) to read, “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”. * Insert the following in section 109, “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.” * 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. * Amend section 155(1) to read, *“[****A children’s court must decide the question of whether****] 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 must decide the question of whether is in need of care and protection.”* * Amend section 155(2) to read, *“[****Before the child is brought before the children’s court,]*** *A designated social worker must investigate the matter and within 90 days from the date of referral compile a report in the prescribed manner on whether the child is in need of care and protection.”* * Amend section 159(2A) to read, *“(2A) For three years from the date of commencement of this Act, in relation to orphaned or abandoned children in foster care with family members, a court may extend an order that has lapsed or make an interim extension of an order for a period not exceeding six months, on good cause shown.”* * Insert a new subsection 159 (2B) to read, *“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 extended by the court in terms of section 159(2) or section 186(2).”* * Section 167(3) 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. * 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’. * Reference to disability in section 188 should be deleted. 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. * The definition for “rehabilitation services” be provided in the definition section of the Bill. * The words ‘financially’ should be included so that s.219(5) reads as follows:   *“Notwithstanding the provisions of section 215 (3) a provincial head of social development may assist the person or organisation operating a drop-in centre financially, through conditional registration or otherwise, to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.”* | DSD contends that this is not always possible and cannot be made a matter of law as in this Bill. This is based on the fact that some parents may not be fit and proper parents. Furthermore parenting agreements and parenting plans may be drafted to address care arrangements between parents.  Proposal supported  Proposal supported  Proposal supported  Proposal supported  Proposal supported  Proposal supported  Proposal supported  Proposal supported  Proposal supported  The Department does not supported the recommendation to merge Form 22 and Form 23.  Form 22 serves as a tool to collect data. It is used by different officials mentioned in section 110.  Form 23 is a tool utilised by investigating social workers to follow up on cases reported through Form 22.  The Department of Justice is responsible for court administration and case management.  Recommendation supported  The period of foster care extension is an overstretch of the law. There must be a transitional period of three (3) to five (5) years.  The Department does not support the proposal based on the fact that a period of six (6) months that is suggested in the Bill is reasonable to allow the Magistrates to process the extension of the foster care orders. This is in line with the section 48 of the Act, which allows the Magistrates to grant an extension under certain circumstance in accordance with the best interest of the child.  Proposal not supported.  A person who is related or not related to a child may provide temporary safe care.  Proposal not supported. The temporary safe care period is provided for in section 167 (2) of the Act.  Proposal not supported. The views of a child including a child with a disability must be considered.  Supported  Proposal not Supported. The current provision is sufficient and an enabler to deal with issues of applications and consideration for conditional registration. | Rephrase clause 84 to Foster care with a registered cluster foster care scheme.  Definition of a care giver: A care giver is a person assigned the care of a child in cluster foster care scheme. |
| **Children’s Institute** | **Children’s Institute**  With regard to amendment to section 110(2), the organisation states that in general, criminalisation of parents for using corporal punishment should be considered a last resort. The addition of a non-mandatory reporting clause will allow social workers to assess the situation and refer parents to a suitable prevention and early intervention programme such as positive parenting or anger management.  The organisation supports the intent of amendment to section 150(1)(a) 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.  However, it is 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 it’s important 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.  In relation to amendment to section 186, the organisation explains that 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 ito s159(1) & (2). Once there are no more orphaned or abandoned children in the care of family members in the foster care system, the rationale for these clauses may become redundant.  In relation to section 186(2) and (3), the organisation is not convinced these amendments will achieve their objective  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 ito s159(1) & (2). Once there are no more orphaned or abandoned children in the care of family members in the foster care system, the rationale for these clauses may become redundant. |  | **Recommendation**   * Amend section 110(2) by inserting the underlined words:   *“(2) Any person who on reasonable grounds believes that a child has been abused or neglected or is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.”*   * 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). * Amend section 150(1)(a) to read, “*A child who has been abandoned or orphaned and is not in the care of a family member as defined in section 1* | The Department supports the proposal. The Bill will be amended to cater for the proposed amendments.  The Department does not support this view by the organisation because the whole purpose of the monitoring of Foster Care placements is to serve the best interest of the child and it is a key component of child protection services. |  |
| **Scalabrini Centre** | **Scalabrini Centre**  The organisation supports the specific inclusion of ‘unaccompanied migrant child’ in the definition of a child in need of care and protection. |  | **Recommendations**   * There should be inclusion of the “unaccompanied migrant child” in list form in the amendment, and that it forms one of the list found in section 150(1) of the principal Act. * Regulations in respect of the procedures for practical realisation of this inclusion in the definition, be published. Such regulations must indicate the steps that should be taken when an unaccompanied migrant child falls within the ambit of section 150. This should include what additional strategies and care management may need to be in place for such child, and should include access to documentation and a durable solution for the child. Such durable solution could take the form of a special dispensation visa for children, which could be created in terms of section 31(2)(b) of the Immigration Act and would assist unaccompanied migrant children in a pathway to documentation. This in turn, assists in ensuring the best interests of the child including their mental and social wellbeing. | already suggested in the amendment bill” |  |
| **Smartstart** | **Smartstart**  It recommends that section 107(e) TO BE ADDED with the following words:  “Provincial heads of Social Development must have direct access to Parts A and B of the National Child Protection Registry.” |  |  | Section 125 already provides for that |  |
| **Engo CYCC** | **Engo CYCC**  With regard to section 105 (5)(b)(iii), the organisation submits that it happens that child protection organisations place a child in a child and youth care centre. Thereafter services to the child’s family or other meaningful people are terminated. The child and youth care centre’s experiences in some cases that active reunification services are not rendered to children’s families or significant others (core or extended family). There is no active attempt in working with families so that children can nurture integral relationships outside the centre. Another issue is that case files are closed by the child protection organisation when there is still extended family members with whom reunification or meaningful relationships may be possible. Reunification services to help reunify children in alternative care is not prioritised by child protection organisations. These children spend most holidays in the child and youth care centres and when they turn 18 or leave the centre they have no relationships with significant others from their families and are mostly still reliant on the centre or themselves.  It partially supports amendments to section 106. It welcomes the inclusion of a reference to the specific needs of children with disabilities, but the use of the term “rehabilitation services” is not clear. Its 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 the drafters of the Bill mean by “rehabilitation services.”  In relation to amendment to section 159, the organisation submits that there is uncertainty about which social worker should write and submit the final report to obtain extension orders for children placed in child and youth care centres. At Engo Child and Youth Care Centres, the social worker at the centre facilitates a multi-therapeutic team meeting to discuss the child’s permanency with their family and the designated social worker. The youth care centre social worker requests a circumstances report from the designated social worker working with the family. The youth care centre social worker then compiles and submits the final extension report accompanied by the report on the family. The extension order is given to the child and youth care centre social worker.  Some child protection organisations and social workers from the Department of Social Development view it as the responsibility of the social worker working with the family to compile, submit and get the 159 order. The inclusion of the extension for 6 months or extending an order that has lapsed is supported by our organisation as sometimes time is needed to gain a background report of the family.  In relation to section 167(2)(a), the organisation states that child and youth care centres only admit children with temporary safe care orders. This placement is temporary and subjected to an assessment period of three to six months. This section is confusing when read with Section 173 (b)(ii), as 167(2)(a) does not specifically indicate that this refers to temporary safe care orders. The inclusion of the amendment for the time period is supported as it is experienced that children are admitted into care without the needed court orders. It would be beneficial to clarify that this section refers to temporary safe care orders.  In relation to section 170(a), the organisation submits that children who abscond from a child and youth care centre either return on their own accord or are found in the same or other towns. There is confusion between which social worker is responsible for intervening during abscondments. Is it the social worker of the child and youth care centre or the designated social worker from the specific area in which the child is found? This creates conflict and both organisations are hesitant to take responsibility for the court process or arrange that the child returns to their previous placement or go to a new placement. This is also an intensive form of service if it is the child and youth care centre’s responsibility which requires extensive resources in terms of staff and transport. It is unfair and risky if a child and youth care worker travels to another town for one child when 11 other children remain at the centre without proper supervision.  The next problem is that some children abscond routinely from child and youth care centres. They abscond to their families or to friends where they experiment with alcohol and drugs. The children's court assists in these matters by firstly allowing the child to voice their views if they are unhappy in the youth care centre or wish to be placed with family and secondly by holding children in the state’s care accountable for their actions. The authority of the presiding officer when children abscond for recreational reasons is valuable by fulfilling the role of an unpleasant consequence for their actions. These proceedings also assist child and youth care centres to support referrals to child and youth care centres with more structure and routine which has become a tedious and strenuous task as services from the Department of Education (Inclusive Education) is poor.  In relation to section 191(m), the organisation submits that it becomes a challenge in the sense that other children’s safety is at risk and sometimes also staff members. Referrals for intervention to a more structured placement and schooling environment takes very long and the systems in place, like secure care centres for children, do not function effectively. Minimal assistance is received from SAPS as there is great hesitation to admit children into holding, even if they were responsible for a violent incident.  Services to children with disruptive behavioural disorders is a specialised programme that needs to meet specific requirements if to be delivered with intended outcome. The NGO child and youth care centres receive insufficient funding from the Department of Social Development to offer programmes to children with severe behavioural difficulties and disruptive behaviour. Accommodating and delivering programmes to children with these specific challenges cannot be rendered in a setup with other children who do not present such demanding challenges. Children requiring more structure and intensive help with behavioural challenges often disrupt child and youth care centres to a great extent.  A practical example is placing a boy of 13 in a centre for both genders and all ages. This boy exhibits severe behavioural challenges and intentionally seeks to defy authority and hurt other children. This puts the other residents at risk in a placement where they are entitled to be kept safe and develop optimally. Such a child needs constant supervision; one staff member is always occupied and cannot tend to other children. Such a child does not always respond to any programmes rendered at a child and youth care centre. It becomes a challenge in the sense that other children’s safety is at risk and sometimes also staff members. Referrals for intervention to a more structured placement and schooling environment takes very long and the systems in place, like secure care centres for children, do not function effectively. Minimal assistance is received from SAPS as there is great hesitation to admit children into holding, even if they were responsible for a violent incident.  With regard to Section 191 (n), the organisation submits that there is confusion if this entails that programmes should reach children of 18 and older or younger children who are reunified with their families. The child and youth care centres already provide programmes to young people completing their education or nearing the age of 18. Or is this programme intended for children who are reunified into the care of their family or a foster care setting. The role of the child and youth care centre should be clarified if this programme intention is to assist younger children reunified with their families or in foster care as it is normally the child protection organisation. |  | **Recommendation**   * Specify that Child Protection Organisations are responsible to render active reunification and integration services to family members or significant others of children placed in child and youth care centres. * The definition of “rehabilitation services” must be amended to refer to “rehabilitation and habilitation services” and included in the definitions section of the Bill. * 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. * Specify which social worker is responsible for writing and submitting the extension report. The social worker working in the alternative care setting with the child or the social worker from the child protection organisation working with the child's family. In our opinion, the social worker of the child, the case manager, should write and submit the extension report accompanied by a background report of the family from the designated social worker of the family. It would be beneficial to indicate that a Section 159 report must be accompanied by a background report from a child protection organization on current circumstances and reunification services rendered to the child’s family. * Indicate specifically in section 167(2)(a) the durations as planned by the amendment are for temporary safe care orders. * Specify which social worker is responsible to handle abscondments proceedings. The suggestion is that the social worker rendering services in the area in which the child is found. This would be the most practical and cost-efficient manner to handle a child who absconds. Appearing before a presiding officer is seen as a resource to help children move to a more appropriate placement and this not be deleted. * Children with severe behavioural difficulties should be placed in a child and youth care centre equipped to render such a service. This entails that children can be grouped on the grounds of gender and ages. Such a programme requires logistical expenses in terms of the physical structure of buildings and premises as children with these challenges needs a more structured environment (often they damage property and tend to leave the premises). * To create a safe place where children can develop, more staff members will need to be employed to effectively address the child’s challenges. The intensive therapeutic input from social workers and child and youth care workers is integral to running such a programme with positive outcomes. The current workload of child and youth care workers and social workers in existing child and youth care centres do not allow them to effectively render services to children with severe behavioural difficulties. * Section 191(m) be amended to read, “*That only identified child and youth care centres who are equipped accordingly renders programmes to children with severe behavioural difficulties. These children should only be placed with other children in child and youth care centre when their difficulties have been addressed and are ready to be integrated into a less restrictive and structured child and youth care centre. The child and youth care centre rendering this service, a therapeutic centre, should also receive additional adequate funding to successfully render such a much-needed service. The Department of Social Development should adequately fund such a youth care centre that is registered to render the mentioned programme.”* * Section 191(n) should specify if this is intended for children of 18 years and older leaving the centre or younger children transferred to foster or family care. In the case of children of 18 years and older it would be suggested that Section 176 is also amended to offer a further 12 months of support to children in child and youth care centres even if they are not attending training institutions. If it refers to children placed in foster or family care it is recommended that the child protection organization renders this programme.   The organisation made the following summary of recommendations:   * Clause 56, Section 105 (5)(b)(iii):   Child Protection Organizations are required to render reunification service to the direct or extended family or significant others of children placed in child and youth care centres.   * Clause 86, Section 159:   Clarify which social worker is responsible for writing and submitting the extension report and obtaining the order. The social worker working with the child at the alternative care placement or the social worker rendering reunification services to the family.   * Clause 87, Section 167(2)(a):   Indicate specifically in this section the durations as planned by the amendment are for temporary safe care orders.   * Clause 88, Section 170 4(a):   Clarify that the designated social worker from the area in which the child is found is responsible for abscondment proceedings. Do not delete the option that a child is to appear before a presiding officer when they have absconded.   * Clause 96, Section 191 (m):   That only specific child and youth care centres (therapeutic centres) registered, equipped and adequately funded by the Department of Social Development offers programmes specifically to children with severe behavioural disorders.   * Clause 96, Section 191 (n):   If referring these programmes are for children 18 and over, consider also amending section 176 to allow a 12-month extension of the placement of young people in child and youth care centres over 18 still involved in such a programme, who are not necessarily enrolled at a training or educational institution. | Recommendations supported.  Proposal supported  The matter is fully addressed in practice guidelines.  Duration of placement in temporary safe care is 6 months as contemplated in section 167 (2)  Recommendation supported.  Recommendation supported.  This proposal is not in the scope of the Bill.  This proposal is not in the scope of the Bill.  This proposal is not in the scope of the Bill.  The recommendations are supported, but they are outside the scope of the Bill. They are already addressed in practice guidelines.  Proposal not supported.  The proposed amendment caters for children who abscond from alternative care for less than 48 hours to be dealt with by a social worker not the court. Those who abscond for more than 48 hours will be refered to the court.  Section 192 and 193 of the Children’s Act addresses the issue of funding and resourcing of child and youth care centres. |  |
| **Engo Therapeutic Centres Bloemfontein** | **Engo Therapeutic Centres Bloemfontein**  The organisation submits that over the past few, the need for a therapeutic centre has become more apparent as all centres are struggling with children with severe behavioural challenges. The resources to assists with these children almost collapsed during 2020. The children are no longer only in need of care and protection, but in need of serious and intensive multi therapeutically therapy to overcome the developmental trauma that they have endured.  The root of the high prevalence of psychiatric disorders amongst children in the centre is caused by extreme abuse and neglect that our children endure before and after placement in the centre. The centre is dependent on Free State Psychiatric Complex to provide a diagnosis and treatment for the children. We experience many challenges with this process which include: long and slow referral process; long periods between assessments and follow-up treatment; inconsistency in staff and ineffective/ no therapy and limited medication prescribed.  The process of transferring a child to special education is slow and challenging and not always successful. When a child does not cope in mainstream schooling it is the responsibility of the school to refer the child to inclusive education for assessment and proper placement. However, frequently, it is us that pick up that the child is not coping and the school is completely unaware of the child’s academic challenges. |  | **Recommendation**   * The current definition of a therapeutic centre is unreachable. The whole concept of a therapeutic centre should be redefined. | Recommendation supported. |  |
| **Scalabrini Centre** |  |  | **Scalabrini Centre**  **Recommendation**   * It recommends that “the documentation needs of the child” be added to the list in subsection 106(2). | Recommendation supported |  |
| **Give a Child a Family** | **Give a Child a Family**  The organisation supports amendment to section 156 (1)(cA) in that it will provide the option for 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. It submits that it 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’ biological parent. It however, raises a concern 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 section 156(1) (cA) ‘placement’ order cannot be made. [See section 156(4)]. It therefore recommends an amendment to section 46 to make it clear that the court can confirm or grant parental responsibilities and rights to family members.  With regard to amendments to section 159 (2A) the organisation submits that the Department needs to give more information on why this amendment is needed and how it will further children’s best interest. It notes that in practice the first part of this 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. It is of the view that this amendment can only be necessary if social workers are unable to prepare the extension in time, which indicates that 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. It therefore poses this question:   * Will this amendment be necessary if the comprehensive legal solution is in place and there is less demand for foster care? If foster care caseloads 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).   The organisation also points out that that this provision will not prevent SASSA from stopping payment of the Foster Care Grant (FCG) on the day the foster care order expires. It only ensures that the FCG will later be re-instated and back paid when the extension order is finally submitted to SASSA. FCGs will therefore still lapse for a period of time. It thus argues that this provision is not aimed at ensuring the child continues to receive the FCG uninterrupted. It therefore proposes 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.  The organisation also cautions that once the 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 section 159, the children’s court will review their case against the criteria specified in section 150(1) (a). Because section 150 (1) (a) is being amended to exclude new 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. It therefore submits that this needs to be explicitly prevented as it will constitute regressive action for the families already in receipt of the foster care grant.  The organisation supports amendment to sections 167 (2)(b) and (3). It is however raises a concern as when the child is not legally placed and parent, etc. has the right to fetch the child at any given time, even though he/she may not be suitable to care for the child. It explains that high case load, foster care backlog, child placed out of district are contributing factors that children are without court orders.  With regard to amendments to section 186 (2) and (3), which provides for duration of foster care placements, the organisation points that out the amendments are aimed at reducing the need for review of these placements. It notes that 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 with regard to section 159(1) and (2). Once there are no more orphaned or abandoned children in the care of family members in the foster care system, the rationale for these clauses may become redundant. |  | **Recommendations**  The organisation makes the following recommendations:   * Section 46 (1) to be amended to read, *“A children’s court may make the following orders:*   *(aA) an order confirming or granting parental responsibilities and rights in terms of s23 and 24 to a family member caring for a child’*.   * Section 159 (2A) be amended to read, “*for three years from the date of commencement of this Act, in relation to orphaned or abandoned children in foster care with family members, a court may extend an order that has lapsed or make an interim extension of an order for a period not exceeding six months, on good cause shown.”* * Section 159 (2B) to be amended to read, “*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 extended by the court in terms of section 159(2) or section 186(2).”* | The Department does not support the proposal based on the fact that a period of six (6) months that is suggested in the Bill is reasonable to allow the Magistrates to process the extension of the foster care orders. This is in line with the section 48 of the Act which allows the Magistrates to grant an extension in accordance with the best interest of the child.  The Department supports this view however, the amendment of clause 82 as proposed by the stakeholders regarding children in the care of family members, the concern raised will be addressed as well as by the provision of clauses 83(6)(b)(iv) and 84(1)(cA). |  |
| **We’re Fathers, We’re Parents** | **We’re Fathers, We’re Parents**  The organisation notes that section 150(1)(a) of the act states that orphaned children in family care are no longer deemed in need of state care and protection. If properly implemented, the organisation submits that the amendment will free up children in kinship care from being included in foster care and its accompanying court orders, social supervision and massive delays in accessing social grants. |  | **Recommendation**  The organisation makes the following recommendation:   * Section 150(1) must be retained and changes to the definition of an orphan and abandoned children in need of care and protection to exclude those in family care. | Recommendation not supported.  The proposed amendment Bill seeks to amend section 150 to clarify that a child who is abandoned  or orphaned and has no parent, guardian, family member or caregiver who is able and suitable to care for that child, is a child in need of care and protection. |  |
| **Consortium for Refugees and Migrants in South Africa (CoRMSA/the Consortium)** |  |  | **Consortium for Refugees and Migrants in South Africa (CoRMSA/the Consortium)**  **Recommendation**  The organisation makes the following recommendation:   * In section 150 be amended by insertion of the word “separated” for this subsection to include these categories of children. This subsection should read: “*is an unaccompanied or separated migrant child from another country.”* * The substitution in section 194 be reviewed to read as follows in order to accommodate all children within the republic: ‘‘access to rehabilitation services for children *living with disabilities or special needs*;’’ | Proposal supported, however it should be a new insertion under section 150(2) (c). Not all separated migrant Children are in need of care and protection |  |
| **Professor Ann Skelton** | **Professor Ann Skelton**  Professor Skelton makes her submissions in the form of recommendations. She however, strongly rejects amendment to section 167 (1)(b). She submits that the effect of this amendment will be that children that have been referred to child and youth care centres by a Child Justice Court will not be considered to be in alternative care. This will have major implications for these children, as all the protective measures for children in alternative care (e.g. abscondment) will no longer apply to them. A department cannot unilaterally divorce itself from thousands of children for whom it has been responsible under the law. The Children’s Act 38 of 2005 created secure care for child offenders, and also transferred the previously named ‘reform schools’ from the Department of Basic Education to the Department of Social Development. This was in line with policy developed by the Inter-Ministerial Committee for Children at Risk, which was a cabinet mandated Committee led by Minister Geraldine Fraser Moleketi. Therefore, this amendment is ominous and is a major turnaround from the intention of the Children’s Act. There is no other legal framework that relates to the care of this category of children. If they are no longer going to be considered to be children in alternative care, an alternative legal framework will need to be developed. Under which law would such provisions reside? The Children’s Act is the logical place because CYCCs fall under the Children’s Act.  **R** |  | **ecommendationsRecommendations:**   * Recommends for an alternative wording for section 150(1)(a), to read, *“a child who has been abandoned or orphaned and is not in the care of a family member as defined in section 1”.* * Recommends that section 159 (2A) to read, “*For five years from the date of commencement of this Act, in relation to orphaned or abandoned children in foster care with family members, a court may extend an order that has lapsed or make an interim extension of an order for a period not exceeding six months, on good cause shown and if such an extension is in the best interests of the child.* | Recommendation not supported.  The proposed amendment Bill seeks to amend section 150 to clarify that a child who is abandoned  or orphaned and has no parent, guardian, family member or caregiver who is able and suitable to care for that child, is a child in need of care and protection.  The period of foster care extension is an overstretch of the law. There must be a transitional period of three (3) to five (5) years.  The Department does not support the proposal based on the fact that a period of six (6) months that is suggested in the Bill is reasonable to allow the Magistrates to process the extension of the foster care orders. This is in line with the section 48 of the Act, which allows the Magistrates to grant an extension under certain circumstance in accordance with the best interest of the child. |  |
| **Catholic Institute of Education** |  |  | **Catholic Institute of Education**  The submission from the Institute is in a form of recommendations.  **Recommendations**  The Institute makes the following recommendations:   * The extension period in section 86 be no longer that two years as per the existing practice. * Section 96(J) The clause should not be deleted by amended to say “correctional facility” instead of prison | Disagree with recommendation. Clause 86 makes reference to 6 month interim extensions |  |
| **Ms Viccy Wanliss** | **Ms Viccy Wanliss**  Ms Wanliss feels that amendment to section 150 maybe be opened to abuse. A migrant child can be rendered "unaccompanied", by the removal of their parents. This is unfair and unjust. Pertaining to amendment to section 170, she asks, “why is it treated like a criminal matter if a child "absconds"? |  |  | The comment is not clear |  |
| **Children in Distress (CINDI)** | **Children in Distress (CINDI)**  The organisation supports the intent of amendment to section 150 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.  However, the organisation is concerned that the department’s proposal is too broad and will result in the department 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 and the child has no existing bond with, then it is important 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.  Similarly, to Give a Child a Family, CINDI supports amendments to section 156 (1)(cA) as it formalises the option of the court to place a child in need of care of family only if it has found a child to be in need of care and protection. It however raises a caution that a child who is orphaned or abandoned and is in the care of a family member, will not be found to be in need of care and protection by the court and a section 156 (1)(cA) placement order will not be made. It similarly submits that the department needs to give more details as why amendment to section 159 (2A) is needed and how it will further children’s best interests and makes the same recommendation as Give a Child a Family as shown below.  Again, similarly, to Give a Child a Family, CINDI, submits that amendments to section 186 (2) and (3) make 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 ito s159(1) and (2). |  | **Recommendations**  The organisation makes the following recommendations:   * The words ‘suitable and able’ in section 150(1)(a) 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 section 150(1). The section to read, *“A child who has been abandoned or orphaned and is not in the care of a family member as defined in section 1”.* * Section 46(1) be amended to read, “*a children’s court may make the following orders:* *(aA) an order confirming or granting parental responsibilities and rights in terms of s23 and 24 to a family member caring for a child’.* * Amend 159 (2A) to read, “*for three years from the date of commencement of this Act, in relation to orphaned or abandoned children in foster care with family members, a court may extend an order that has lapsed or make an interim extension of an order for a period not exceeding six months, on good cause shown*.” * Amend section 159 (2B) to read, *“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 extended by the court in terms of section 159(2) or section 186(2).”* | See DSD response above  Recommendation supported  The Department does not support the recommendation since a period of six (6) months that is suggested in the Bill is reasonable to allow the Magistrates to process the extension of the foster care orders. This is in line with the section 48 of the Act which allows the Magistrates to grant an extension in accordance with the best interest of the child.  The Department supports this view however, the amendment of clause 82 as proposed by the stakeholders e.g. Centre for Child Law (CCL), Children’s Institute and Professor Ann Skelton regarding children in the care of family members, the concern raised will be addressed as well as by the provision of clauses 83(6)(b)(iv) and 84(1)(cA). |  |
| **SAYes Mentoring Alumni** | **SAYes Mentoring Alumni**  The organisation submits that trained staff to young people in care is inadequate resulting in few supportive conversations focused on preparing young people for life outside the home. The Child Youth Care Centres (CYCCs) has only two social workers providing services to 20 or more young people. Also, these centres do not realistically prepare children for independently living. There also no housing support from government and there is a problem of re-integration because lack of support from CYCCs and government. |  | **Recommendations**  The organisation makes the following recommendation:   * Government should be mandated to support formal one-to-one mentorship programmes for young people in care in order to support their transition to independence. * Government should extend these programmes of support up until 26 years of age. | Recommendation supported. Independent living programmes include comprehensive support to children exiting the child and youth care system |  |
| **Mamelani Projects** | **Mamelani Projects**  The organisation states that National Child Care and Protection Policy states that all children found in need of care and protection are guaranteed access to developmental programmes to strengthen resilience while in care and prepare children and youth for the transition from care when they return to family or community. It recognises that support for transition is an essential service and that young people will continue to require support for an extended period after leaving. After having been cared for within an institutional setting, where all of their basic needs are met, returning to an under-resourced community where they suddenly need to meet their own needs and navigate their own independence can be extremely challenging for these young people who have to deal with multiple transitions. The organisation recognizes the attempt in section 191 (3) (e) of the Bill to address the preparation and after care support of children leaving child and youth care centres. It however, raises three concerns:   * The proposed amendment does not sufficiently address the unique challenges facing adolescents who age out at 18 or older. Preparation and support are critical to ensuring they strengthen the protective factors that will improve their long-term outcomes. * The word ‘may’ make provision for the possibility of care-leaving preparation, but it does not require that the child and youth care centre provide such services. Given that this provision is encouraged, but not required, the number of Child and Youth Care Centres that currently provide this support is very limited; the nature and extent of these services are unclear; and because provision is insufficient, the resulting long-term outcomes for this particular group are particularly poor. * The definition for after care is vague and does not stipulate the person responsible for providing these services, although in some way it places responsibility of such a service on Child and Youth Care Centres even though the CYCC’s are often not well placed in terms of location, staffing and resources to provide aftercare services. The role of the designated social worker is not mentioned. * The National Child Care and Protection Policy states that all children found in need of care and protection are guaranteed access to developmental programmes to strengthen resilience while in care and prepare children and youth for the transition from care when they return to family or community. * As it currently stands the Bill does not adequately provide for the transitional support needs of young people in child and youth care centres when they age out at 18 or older. Without mandatory preparation and support, the transition from the care setting to the reality of life beyond care is wrought with challenges including lack of access to social support, employment, to stable accommodation, to resources and to opportunities which would allow them to gain skills and further their education. |  | **Recommendations**  The organisation makes the following recommendations:  Amendment of section 191 (2) to read, *“A registered child and youth care centre must offer [a] therapeutic [programme] and developmental programmes designed for the residential care of children outside the family [environ-ment] environment, and for the transition from care when they return to family or community or reach the age of 18 years or older. These may include a programme designed for—”.*  *(n) the preparation of a child who is leaving a child and youth care centre to return to family, and support for a period of 12 months after leaving care; and*   * *(o) the preparation of a child or young person with the transition when leaving a child and youth care centre after reaching the age of 18 or older, and support for a period of 12 months after leaving care.”* | Recommendation supported |  |
| **NACCW Youth Forum Gauteng Region Alternative Care** | **NACCW Youth Forum Gauteng Region Alternative Care**  The Forum states that section 191 of the Act provides that “a registered Child and Youth Care Centre must provide therapeutic and developmental programmes designed for the residential care of children outside the family environment which may include a programme designed for in subsection(n) -the assistance of a person prior to leaving a Child and Youth Care Centre and to provide after care services for a period not exceeding 12 months. The Act also clearly states that each CYCC must have standardized programmes (therapeutic and developmental) in place for children who are in the Social Development System. The Forum argues that when it comes to children leaving or prior to leaving the CYCC’s, the Act uses the word “may”, which doesn’t guarantee that services will be rendered to those leaving the CYCC’s. The Act also does not state which services “may” be rendered and which professionals will render the services. It had come to its attention that the period given for after care or continuum care is “not longer than 12 months”. The Act doesn’t state who this is applicable to, fails to look at or consider different backgrounds, services rendered while the child was in the system, the progress of the child and age differences. It thus submits that it is imperative that the Children’s Act protects children who are leaving the CYCC’s by all means. |  | **Recommendations**  The Forum makes the following recommendations:   * The proposed amendments must make preparations and after care a “must” for the youth transitioning out of care because support for this age group is still vague. * The Children’s Act must give clarity about the definition of “after care” and must give objectives for after care. It should state which programmes are to be rendered during this after care period. The duration of this service will differ from one child to another, as age, the child’s current situation and other factors should determine the duration of this service. * The Children’s Act should give clarity around the “*supportive services*” that are to be rendered to children leaving the CYCC’s and it should provide clarity on who will be responsible for this after care process (for example police services, internal or external social worker or child and youth care worker or the CYCC itself?) * The Department of Social Development needs to support the CYCC’s, social workers and child and youth care workers and prioritise the transitioning of the children leaving the DSD system. | Recommendation supported.  The proposed insertion of after care addresses services that need to be provided when a child is discharged from alternative care.  Independent living programmes include comprehensive support to children exiting the child and youth care system.  Recommendation is noted. It is an administrative matter that will be addressed in the Guidelines. |  |
| **Mr Avanda Godongwane** | **Mr Avanda Godongwane**  Mr Godongwane states that Section 191 states *“a registered Child and Youth Care Centre must provide therapeutic and developmental programmes designed for the residential care of children outside the family environment which may include a programme designed for:*  *(n) The assistance of a person prior to leaving a Child and Youth Care Centre and to provide after care services for a period* ***not exceeding 12 months****.*  Mr Godongwane submits that the Children’s Act clearly states that each CYCC **should or must** have standardized programmes (therapeutic and developmental) in place for children who are in the Social Development System **but** when it comes to children **leaving or prior to leaving** the CYCC’s, The Act uses a word “may”, which doesn’t guarantee that services will be rendered to those leaving the CYCC’s. And if these services are to be rendered, the Act does not state which services “*may*” be rendered and which professionals will render the services. It came to attention that the period given for after care or continuum care is “not longer than 12 months”- the Act doesn’t state that to whom this is applicable, failing to look at or consider different backgrounds, services rendered while the child was in the system, the progress of the child and age differences.  Mr Godongwane further submits that the failing system enables the children who were part of the system to find other alternatives ways of coping and finding support outside the system like joining a gang and being active in crime activities and other social ills. And one way or the other they do contribute to the social ills that government is trying to fight and stop. Most who are not strong enough end up taking away their own lives as they can’t deal with their situation because while in the CYCC’s, they were not equipped with necessary social skills so they can’t approach challenges they face. It’s imperative that the Children’s Act protects children who are leaving the CYCC’s by all means |  | **Recommendations**   * Teenagers or Adolescents that are about or prior to leaving the CYCC’s have unique needs and challenges and they must be recognized and given greater priority as they are transitioning out of the care of the CYCC’s. This will grant them a better chance to thriving and coping in the outside society hence their challenges are very particular. * The programmes or services rendered whilst children are in the CYCC’s **must** differ from the programmes rendered **prior leaving** the system. These programmes should equip them with skills or mechanisms that will assist or help their development in the broader society. * Transition programmes must include or consider self-development, academic support, social skills, long-term employment and psychological/mental support, identity and belonging. * Age differences must be considered as it will help knowing **which programmes must be rendered** to the identified child. * The proposed amendments **must** make preparations and after care a “**must**” for the youth transitioning out of care because support for this age group is still vague. * The Children’s Act must give clarity about the definition of “after care” and must give **objectives** for after care. It should state which programmes are to be rendered during this after care period. * The Children’s Act should give clarity around the “*supportive services*” that are to be rendered to children leaving the CYCC’s. It should also clarify who will be responsible for this after care process - which professionals will carry out this task (police services, internal or external social worker or child and youth care worker or the CYCC itself?) * The Department of Social Development needs to support the CYCC’s, social workers and child and youth care workers prioritise the transitioning of the children leaving the DSD system. | Recommendation supported  Independent living programmes include comprehensive support to children exiting the child and youth care system.  All the proposal below are supported, however those that are programmatic will be included in the regulations and practice guidelines. |  |
| **Centre for Child Law**  Prevention and Early Intervention | Prevention and Early Intervention – sections 144 of the Act **Centre for Child Law**  Centre for Child Law makes new proposal to section 144. 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. This will emphasise the fact that the services are delivered to the families for the benefit of children. It submits that 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 itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to support behaviour change.  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. 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 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. |  | **Recommendations**  • Section 144(2)(b) should be amended by adding the words “and their children” after “for themselves”.  • Add the following sub-clause, section 144(4):  (4) The Department in partnership with relevant stakeholders, must take all reasonable steps, to ensure that -  a) education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and  b) programmes promoting positive discipline at home and in alternative care are available across the Republic.   * Amend section 145(3) to read *“…to make [****the necessary****] such information as may be prescribed available”.* | proposal supported  Proposal not supported. Section 145 addresses the provisions relating to a national comprehensive prevention and early intervention strategy.  Awareness programmes are part of prevention and early intervention programmes and they are catered for in section 144 of the Children’s Act. |  |
| **Children’s Institute** | **Children’s Institute**  The organisation submits that 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 itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to change behaviour.  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 caregivers about non-violent discipline.  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 alternative care. Given the widespread acceptance of corporal punishment in society, role-players need to understand the rationale behind the prohibition and their role in promoting the prohibition. |  | **Recommendations**  • Add the following sub-clause:  Section 144(4)  (4) The Department in partnership with relevant stakeholders, must take all reasonable steps, to ensure that -  (a) education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and  (b) programmes promoting positive discipline at home and in alternative care are available across the Republic. | Proposal not supported. Section 145 addresses the provisions relating to a national comprehensive prevention and early intervention strategy.  Awareness programmes are part of prevention and early intervention programmes and they are catered for in section 144 of the Children’s Act. |  |
| **ADOPTION** | Adoption services – Clauses 120,122 - 125, 129 - 138 Amendments of the Bill in summary: The aforementioned clauses define adoption social worker and inserts state adoption social workers, deletes reference to adoption fees, gives power to the Director-General of DSD to withdraw accreditation to provide adoption services, gives the South African Central Authority to enter into adoption working agreements with the central authority in another convention country, removes 140 days from the time the Authority has consented to the adoption, thus allowing the Authority to withdraw the consent at any time before the court order in respect of an inter-country adoption is granted. The inclusion of 140 days was not in line with the provisions of The Hague Convention. They also provide for the adoption of a child habitually resident in the Republic by a family member of that child resident in a convention country or by a person who will become an adoptive parent jointly with the child’s biological parent to be dealt with in the prescribed manner as an inter-country adoption. They also make provision for the recognition of an adoption by the Central Authority if an adoption compliance certificate was not issued by the relevant convention country. They also provide that an adoption in a non-convention country by a person habitually resident in another non-convention country must be recognised in the Republic if an adoption compliance certificate was issued in the non-convention country where the adoption was granted is in force for the adoption.  Key issues raised in the submissions**:** stakeholders raised challenges of administrative delays from the Department of Social Development as the key issue that delays in the completion of adoption processes, adoption agencies do not have any financial gains from adoption fees as these fees pay for the administrative and legal costs, adoption is a specialised service and so it should be performed by experienced social workers who are primarily working in the private sector, state social workers do not have that necessary expertise and are also overburdened by other social welfare services. |  |  |  |  |
| **Bakhanya Foundation** | **Bakhanya Foundation**  The Foundation view the proposed Bill as unconstitutional and it is of the firm belief that it must be withdrawn and reworked on constitutional principles. It bases this view on its argument that both the Policy and the proposed Bill have failed to place the best interest of the child first. The Bill have elevated the rights of others and rights of children subjugated. It opines that the principle of subsidiarity which should be secondary or subsidiary to the best interest of the child has been incorrectly applied in the determination of all placement options for children. The Bill have relegated the child’s rights to second place-behind the rights of others. It further submits that the word “subsidiarity” is not defined but is used throughout to place “family” or “local” first, irrespective of the suitability or capacity of that option to meet the needs of the particular child. The Foundation is also of the opinion that this is contrary to the Constitutional Court Judgements that have already interpreted how subsidiarity has to be applied.  Furthermore, the Foundation proposed procedure to be followed if any adult wish to assume full or partial responsibilities and/or rights or care of the child, among providing verifiable proof of identity and relationship to the child. It avers that the principle of reunification drives the narrative but proper safeguards for children are not included. Unification through adoption has not been defined nor differentiated from unification. It thus notes that clarification is required in the legislation as to what reunification, return and reintegration mean and implementation in practice thereof. |  | **Recommendations**  The Foundation makes the following recommendations:   * The Policy and proposed Bill be withdrawn in their entirety as substantial reworking is necessary to incorporate children protection entitled to. * Suggest the appointment of an intersectoral panel of experts including legal and social work professionals who have practical experience and know how to translate the rights that children have. | The children’s Act and the National Child Care and protection Policy include services that children are entitled to.  Section 4 and 5 of the Children’s Ac makes provision for intersectoral implementation. This section has empowered the establishment of the relevant intersectoral forums. |  |
| **Abba Specialist Adoption & Social Services** | **Abba Specialist Adoption & Social Services**  Abba submits that it is crucial that the Children’s Act and the manner in which adoption is regulated should safeguard the rights of the child without being too restrictive and as such creating barriers for children to be placed in an expedient manner with forever loving and stables families. The Children’s Amendment Bill proposes significant changes to some of the key sections dealing with adoptions. It argues that not only do these proposed amendments raise concerns, but they also fail to address some key problems with the adoption process in South Africa that is resulting in such small numbers of adoptions. It states that procedural delays have been the major factor impacting the low number of adoptions that are being recorded annually. With efficient implementation of prescribed processes in accordance with minimum norms and standards, an average adoption process should take approximately 9-12 months to finalise. Yet in recent years the average time to complete the adoption process has increased to an estimated period of 12 to 24 months.  The organisation notes that the deletion of section 249 addresses concerns about a prohibition on fees and submits that the sector does not oppose charges for professional services being regulated elsewhere. However, the sector has some concerns regarding the removal of the provisions in its entirety, since it could result in unintended consequences, potentially allowing for the exploitation of mothers and children. It cautions that the proposed regulation of fees by Professional Councils’ could take years given that it can take some years for a professional body to finalise a new code or regulation. Should the tabled Bill repeal Section 249 in its entirety, this would in effect leave the space unregulated for some time.  It further argues that the provision in section 150(1) (a) does not help to clarify which orphaned or abandoned children need care and protection. The Amendment Bill therefore proposes to change section 150(1) (a) as follows: ‘150(1) A child is in need of care and protection if, the child -has been abandoned or orphaned and [**does not have the ability to support himself or herself and such inability is readily apparent**]; has no parent, guardian, family member or care-giver who is able and suitable to care for that child.’ The organisation however supports the intention behind this amendment and believes that this amendment, combined with an adequate replacement grant in the form of the CSG Top-Up, will reduce the number of children referred to the foster care system |  | **Recommendations**  The organisation makes the following recommendations   * Prevention of improper financial gain and regulating of professional fees - that exorbitant fees are being charged. * Prevention of procedural delays and ensuring that adoptable children’s placement into family care is done in an expedient manner - very stringent legal requirements and procedures for adoptions and the service. * Proposes amendment to Section 250 which deals with persons allowed to render adoption services by insertion of subsection (1)(e) “*A social worker employed by the Department or a Provincial Department of social development who provides adoption services”.* This amendment aims to include adoption social workers employed by the Department of Social Development who are currently excluded from this provision. It also refers to a social worker rendering adoption services. In order to be consistent and to avoid confusion, it should refer to an adoption social worker employed by the Department as per the definition in the Act | Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter.  The recommendation is noted, however it is unreasonable as time that lapses during the adoption process is due to compliance with various provisions of the Children’s Act which are meant to serve Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter.  The comment is noted |  |
| **Childline South Africa (Julius)** | **Childline South Africa (Julius)**  Childline South Africa supports the recommendation of the South African Adoptive Alliance. Further express great concern about children who languish in child and youth care centres when adoptive parents are available, simply because of the unnecessary limitations on adoption practice. |  |  | The comment is noted, however it should be noted that we should at all times act in the best interest of the child and this requires that we follow all due processes. |  |
| **Door of Hope** | **Door of Hope**  The organisation states that the key issues requiring legislative reform are the following:  (i) Prevention of improper financial gain and regulating of professional fees  (ii) Addressing who may provide adoption services and consistent reference in this regard  (iii) Prevention of procedural delays and ensuring that adoptable children’s placement into family care is done in an expedient manner  It notes that section 249 of the Act which provides for certain professional fees to be charged for adoptions has been highlighted and allegations have been made about adoptions being used for trafficking or exorbitant fees are being charged. It however submits that the deletion addresses a concern about a prohibition on fees. However, the sector does not oppose charges for professional services being regulated elsewhere, but it has some concerns about the removal of the provisions in its entirety, since it could result in unintended consequences, potentially allowing for the exploitation of mothers and children. The problem with the proposal is that it could effectively open the door for unscrupulous individuals to profit from adoption.  Similarly, to the submission from Abba Specialist Adoption & Social Services, it cautions that the proposed regulation of fees by Professional Councils could take years given that it can take years for a professional body to finalise a new code or regulation.  The costs for intercountry adoptions should continue to be regulated in accordance with The Hague Convention.  The organisation also notes that Section 239 (1)(d) of the Children’s Act calls on the HOD of the Provincial Department of Social Development to provide letter of recommendations to Court regarding each prospective adoption. It however submits that neither the Act nor Regulations provide for a specific timeframe in which this letter must be issued. Litigations have been caused due to delays encountered in terms of children’s right to placement in permanent family care. The delay compromises care and is potentially life threatening.  Again similarly to the submission from Abba Specialist Adoption & Social Services, Door of Hope states that Section 150(1) does not help to clarify which orphaned or abandoned children need care and protection. It also supports the amendment in section 150(1) in that combined with an adequate replacement grant in the form of the CSG Top-Up, this will reduce the number of children referred to the foster care system. |  | **Recommendations**  The organisation makes the following recommendations:   * Proposed amendment to section 239(1)(b) proposes that the section replaces reference to an adoption social worker with “a social worker responsible for adoption” * Proposed amendment to Section 250 which deals with persons allowed to render adoption services seeks to an insertion, subsection (1) (e) A social worker employed by the Department or a Provincial Department of social development who provides adoption services. * Amendments to section 150(1) should exclude children who are already in the care of a family and not children who may have a suitable and able caregiver that is yet to be located and approached. * Section 150(1) should be worded slightly different to focus on the question of whether or not the child is already in the care of family member and not whether they ‘have’ such a family member. It therefore recommends that word ‘suitable and unable’ be removed. | Disagree, adoption social worker should be used for consistency  for consistency  Not supported, because the phrase suitable and able clearly differentiates between parents or caregivers who are fit and those who are not fit to have parental rights and responsibilities of a child  **The proposal not supported Clause 122**  Seeks to delete section 249. This amendment is intended to delete reference to all fees that may be charged for adoption. The rationale behind this amendment is to harmonise the provision of adoption services with the rest of other services in the Children’s Act, 2005.  Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matterconcern is noted however this is the responsibility of the SACSSP.  Not supported, fees for both national and inter-country adoption should be removed from the Act, section 249 must be completely deleted. , 30 days is a reasonable time frame for the issuing of section 239 letter  The comment is noted. The section 150 amendments apply. |  |
| **Ms Thandi Refilwe-Rose Nkomo** | **Ms Thandi Refilwe-Rose Nkomo**  Ms Nkomo believes that those who provide adoption services and who perform psychological assessments do deserve a fee for their services. Section 234 which makes provision for post-adoption agreements should be even more strongly worded. Instead of saying “may” direct and “may confirm” that a post-adoption is in existence. |  | **Recommendations**  Ms Nkomo makes the following recommendations:   * Section 239 letter from the provincial head of social development- insert time frame to the amendment after which the adoption can go ahead, if the letter stating that all requirements have been met, has not been received * A range of fees should be provided by a governing body from which the adoption social workers can choose, or that they account from their fees to a regulatory body. * Oversight of fees required by adoption service providers and a ceiling on said fees. * Post-adoption agreements be held to be binding by all parties involved. * Adoption letter from the provincial head of social development, not be received within 30 days, that the adoption be allowed to go ahead as if granted. | , 30 days is a reasonable time frame for the issuing of section 239 letter  Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter.  This is already provided for in the Children’s Act, the HOD must issue a non-recommendation letter if they are not issuing a recommendation letter |  |
| **Ms Mathilda Chirwa** | **Ms Mathilda Chirwa**  Her main concern is the deletion of Section 249 and the omission of social workers in private practice from Section 250. She submits that the definition of an adoption social worker should be the same irrespective of the setting where the social worker work is working, i.e. in government or in an accredited CPO. She points to a contradiction in the definition of social worker wherein social worker in private practice and social worker employed by DSD have to be registered as a specialist, while this is not required from a social worker in an accredited CPO. She further argues that government policy states that government resources should be focused on service delivery to poor and marginalised individuals, families and communities. With the proposed amendments it will mean that those who can afford to pay for their service will no longer have the opportunity to receive a service from a social worker/CPO where they pay for the service.  She also submits that social workers in private practice are accredited to render adoption services. They also have to be registered as specialists in adoption social work and need to proof their expertise, skills and experience in order to be accredited. As they run a business they need to charge fees for the services they render. If they are denied the opportunity to charge a fee, they will no longer be able to render the service and their skills and competencies will be lost for the profession. If social workers in private practise and CPO can no longer charge fees, prospective adoptive parents who can afford to pay for a service will no longer have the choice of such as service. Currently the funding for adoption services rendered by accredited CPO’s is limited, therefore most of them charge a minimal fee to cover their costs. If the funding of adoption services is not increased to largely cover their cost, they might not be able to provide the service any longer and all adoption services will fall back onto DSD. Funding of the services will have huge cost implication for DSD. |  | **Recommendations**  Ms Chirwa makes the following recommendations:   * Section 250(1)(e): Definition of “adoption social worker”: Consider to either remove the definition from the Act or amended it to read “a social worker responsible for adoption services” * Amend (1)(a) to read “a social worker employed by a child protection organisation accredited in terms of sec 251 to provide adoption services” * Furthermore, sec 250(1)(a) refers to an organisation accredited in terms of sec 251 and not a person, which implies that the person does not need to be registered as a specialist in adoption social work. The amendment of Sec 250 to include sub section (e) should also be applicable to social workers in the employ of accredited CPO’s. * Sec 251(1)(A) which states that the Director General may withdraw an accreditation to render adoption services. Now that DSD is included in the Act to render adoption services, the accreditation of service providers (social workers in private practice and CPO’s) should become the responsibility of another entity (e.g. South African Council for Social Service Professions) to avoid DSD being a player and referee. With the amendment of sec 251, DSD has the authority to change/amend criteria for accreditation which will determine who can be accredited, withdrawal of accreditation, etc. which might leave the door open for possible biasness. | Disagree, adoption social worker should be used for consistency  Disagree with the proposed insertion. However CPO social workers are also supposed to be registered as adoption social.  CPO social workers are also supposed to be registered as adoption social.  Not supported, DSD social workers are not supposed to be accredited in terms of the Act. The Director General is not a player and a referee |  |
| **Fish Hoek Valley Ratepayers and Residents Association** | **Fish Hoek Valley Ratepayers and Residents Association**  The Association avers that the change from “adoption social worker” to “a social worker responsible for adoption” in section 239 is worrisome. The wording may allow for more capacity, but it belittles the thought that adopted children matter and deserve a knowledgeable, experienced specialist in adoptions to deal with the ethical complexities and legal implications.  It argues that the deletion of section 249 in its entirety does not promote the family first as a placement option, which is often a problem for social workers seeking exorbitant fees. Rather, fees should be regulated, including for private social workers currently using sliding scales based on adopting parents' income, in order to just cover costs and prevent exorbitant pricing and miscellaneous charges being included.  It submits that adoptions should take less than 12 months. The emotional damage from delayed adoption of these children has long-term implications for society when the children do not have any inclination to thrive scholastically, develop good human relationships and have a sense of well-being. |  | **Recommendations**  The Association makes the following recommendations:   * [A]doption social worker” wording remaining as is in section 239. * Section 249 should be changed to include an industry wide fee structure instead of this section being deleted. * Adoption process, especially to relatives, should be streamlined to not take longer than nine months. | Agree, the word adoption social worker should be used for consistency  **Clause 122** seeks to delete section 249. This amendment is intended to delete reference to all fees that may be charged for adoption. The rationale behind this amendment is to harmonise the provision of adoption services with the rest of other services in the Children’s Act, 2005.  recommendation is unreasonable as time that lapses during adoption process is due to compliance with various provisions of the children’s act which are meant to serve the best interest of the child. |  |
| **Give a Child a Family** | **Give a Child a Family**  The organisation raises a concern of inconsistency in that a 12-year-old can decide termination of pregnancy, but cannot decide about adoption. It argues that adoption is about the young mother and father. DSD has forced children into kinship when adoption is suitable. Any child must have support. Adoption is a specialized. Family involvement prior court.  In Section 234 and 249, it raises a question on who is “family member”? Significant other? Formally recognized as a caregiver and demonstrated bond with the child concerned. It must be defined. If not defined it will leave it open for interpretation.  It supports the power given to the South African Central Authority to withdraw an accreditation to provide inter-country adoption services provided for in Section 260 and 262. |  |  | Disagree, DSD does not force children into kinship. The best interest of the child is always considered.  Disagree, family member is clearly defined in the principal Act  Noted |  |
| **AFM Welfare - Ms Denise Douglas-Henry** | **AFM Welfare - Ms Denise Douglas-Henry**  Ms Henry is concerned about the tabled changes affecting adoption. Her view is that currently, there are 59 adoption social workers in private practice and 93 designated and accredited child protection organisations (“DCPO’s”) mandated to render professional adoption services nationally. There is a process between SACSSP and the national DSD to register DSD social workers as specialists in adoption, but this may take time. At present, the bulk of adoption expertise lies within the adoption accredited DCPO’s and private adoption social workers. Some of these DCPO’s received partial financial subsidies that often only cover approximately 50 % of the social work posts and programmes.  Her fear is that should Parliament approve the tabled Bill that repeals Section 249, many of the adoption accredited DCPO’s and private adoption social workers will no longer be able to cover the inherent costs of the programme. In Ms Henry’s view, this could lead to a further decline in adoption targets, thereby seriously impacting the future of orphaned and vulnerable children currently benefitting from permanent family care through adoption. Should the tabled Bill repeal Section 249, it can take some years for a professional body to finalise a new code or regulation, which would in effect leave this space being unregulated for some time. It is contended that DSD social workers are still in a process of being registered as specialists in adoption. Even after their registration, so the argument goes, it will take years to build up the necessary adoption experience to render the service efficiently and effectively. Orphaned and vulnerable children could therefore fall off the safety “ledge”, as it were, if Parliament removes the current adoption safety gates i.e. Section 249, by deleting reference to all fees that may be charged for adoptions, as currently tabled before Parliament.  By deleting all reference to fees that may be charged for adoptions, the objective of the legislator may have been to remove barriers to adoption and thereby increase the performance in terms of adoption, but in Ms Henry’s view, this will have the opposite effect. She opines that the declining numbers in terms of adoption is more a consequence of a very cumbersome time-consuming process, than one of finance. Most adoption accredited DCPO’s apply an income-based sliding scale in cases where applicants cannot afford the standard fee. No fees are charged where applicants cannot afford to pay any fee and services are rendered free of charge. In this way, Ms Henry asserts that nobody is excluded from adoption due to a lack of finances. She proposes that it would therefore be better for Parliament to keep Section 249 and Regulation 107 as part of the legislation and to rather take measures to simplify the adoption process.  However, should Parliament go ahead and approve the tabled Bill that repeals Section 249, Parliament might consider full subsidy for adoption accredited DCPO’s at the same level of years of experience as the counterparts employed by DSD, in order to mitigate the unintended consequence of underperformance in terms of adoption. This will have financial implications for the fiscus. |  |  | Adoption workforce has been increased by registering DSD social workers as adoption social workers.  This is a misinterpretation of the Bill as the Bill is not prohibiting adoption fees  The Bill is not prohibiting adoption fees |  |
| **Arise Children’s Ministry** | **Arise Children’s Ministry**  Arise Children’s Ministry submits that it opposes the amendments to the Children’s Bill, as they currently stand. The organisation’s concern is that should the Bill be passed in its current format, the children it seeks to advocate for will be stuck in a system that is already overburdened, overwhelmed and not working efficiently across different sectors in the interests of children. Arise Children’s Ministry avers that it has recognized over the last 12 years of practice and seen endorsed in evidenced-based literature, the importance of permanency for the long term well-being of children.  As an organisation, Arise believes that all children belong to thriving families. Arise Children’s Ministry argues that it works in resource poor communities to strengthen families through positive parenting programmes and support with the purpose of greater connection, resilience, purpose, belonging and problem solving. These programmes are underpinned by evidence-based research and highlight the importance of attachment. Additionally, its programmes seek to support and educate families formed through adoption, recognizing the conscious thought and deliberate action needed to ensure that children can thrive. Developmental research reflects the need for belonging, attachment and security for children to thrive –something that is found in permanency.  Arise Children’s Ministry argues that it has heard children in care affirm that when you are in the system, you belong to the system but when you are in a family you belong to family and them to you. Overburdened systems are not able to offer permanency, security and belonging. The organisation advocates and suggests that family strengthening programmes informed by the above principles need to be prioritized as part of the mandate of the Department of Social Development, with the specific purpose of prioritising family strengthening and permanency for children. Arise Children’s Ministry suggests that these do not need to be adversarial, but rather that continued clear parameters and mandates for all role players, specifically public and private social workers and child protection organisations be developed.  It advocates for stronger, working partnerships between the private and public sector. Increased training opportunities and resource sharing should benefit and inform all involved in the adoption constellation. This includes ensuring that all adoption-accredited social workers are adoption and trauma competent and informed, with a minimum requirement of training including an applied understanding of attachment, grief and loss as well as identity, with reference to transracial adoption dynamics. This training would benefit all families formed through adoption, with specific focus on ensuring that prospective adoptive parents are upskilled and challenged to consider the additional parenting skills required to ensure that children who are adopted can thrive in their care. |  |  | Advocacy for partnerships is in line with the spirit of the Children’s Act, it is for this reason that the department accredits social workers in private practice and Child Protection Organizations to render adoption services |  |
| **Engo Adoptions (ENGO)** | **Engo Adoptions (ENGO)**  Engo argues that the wishes of the biological mother must be respected. Keeping a baby in the family at all costs dispenses of the biological mother's right to consent to the adoption of her child. The Act makes a clear provision for a parent’s wishes for his/her child to be adopted by a particular person (Section 233 (3), hence providing the mother with the opportunity to nominate her family to care for the child when she decided to have her child adopted.  The organisation asserts that it is unethical for social workers to decide that the mother is not allowed to avail her child for adoption, or to disregard her legal right not to inform the family about her decision to consent to the adoption by a person not known to her. A social worker who decides for the mother about her child’s future, often causes a child to be neglected, or rejected by the mother and eventually results in a child being removed from the mother/family’s care and then may become a child in need of care and protection. If the mother’s decision to have her child adopted is respected, the child may be placed in a forever-loving family and the disruption and trauma the child is exposed to are minimised. The reality is that the quality of support to the mother who is persuaded to keep her child is not sufficient (not emotionally or financially) due to social workers with a high caseload and lack of resources to render this support to mothers |  | **Recommendation**  The organisation makes the following recommendation:   * Section 249 of the Children’s Act should not be deleted | **Clause 122** seeks to delete section 249. This amendment is intended to delete reference to all fees that may be charged for adoption. The rationale behind this amendment is to harmonise the provision of adoption services with the rest of other services in the Children’s Act, 2005.  Agree, parents have the right to lawfully consent for the adoption of their children. Social workers have a professional obligation to respect right to privacy of the parents who choose to give their children up for adoption in line with the social work ethical principle of confidentiality  Agree, parents have the right to lawfully consent for the adoption of their children. Social workers have a professional obligation to respect right to privacy of the parents who choose to give their children up for adoption in line with the social work ethical principle of confidentiality |  |
| **Women’s Legal Centre** | **Women’s Legal Centre**  The organisation raises concerns regarding the declining rate of adoptions. It submits that the adoption rate has been steadily declining over the past few years, while a much larger proportion of children remain in foster care. It points out that there are fundamental issues plaguing the adoption process in South Africa, also making it an inaccessible option for women. These are highlighted below:   * The distinction between open (adoption cases where the identity and details of the birth mother/biological parents and the adoptive parents are known to one another) and closed adoptions (adoption cases where the identity and details of the birth mother/biological parents and the adoptive parents are not known by or shared with one another) is not made in the Children’s Act. It is also not provided for in the amendments to the Act. In general, information related to the adoption process in South Africa is not readily available or accessible. * During a Kwa-Zulu Natal High Court judgment of 24 February 2020, highlighted the difficulties experienced by birth parents in placing their babies up for adoption and attributed this factor to the number of abandoned babies. Difficulties include the lack of confidentiality and a disregard for self-determination, precluding adoption as an option for many birth mothers and many mothers considering adoptions experienced disparaging encounters at government hospitals and clinics. * The Human Science Research Council report of 2010 highlighted a number of challenges, including: * the current policy’s priority shown to adoption of children within their own communities and families and within the same culture, despite a generally favourable attitude towards inter-racial and cross-cultural adoptions in the country, * Findings on system and knowledge related barriers revealed a lack of consistency and uniformity in the interpretation and implementation of adoption provisions and an inadequate understanding of processes related to adoptions, * A shortage of human resources * Case law indicates that delays in the finalization of adoption applications are attributed to the intervention of the Department of Social Development at different stages of the adoption process, including accreditation of adoption social workers, managing the register of adoptable children and prospective adoptive parents, the issuing of section 239(1)(d) letters recommending adoption, and the finalization of an adoption where formal court procedures have taken place. * The delay in issuing section 239(1)(d) letters is a common factor and is largely influenced by prioritizing placing children within birth or extended families, often against the wishes of birth mothers. * Mothers who have made use of the adoption process with the express wish of keeping their pregnancies, birth and the adoption confidential from their families, experience the adoption policy in a manner that violates their constitutional rights.   The organisation also reveals cases where the Department of Social Development contacted family members despite the express wish of privacy and confidentiality, effectively ignoring the birth mother’s wish for adoption and creating a challenging situation in the family, where the child is effectively adopted by a close family member and often sees his birth mother.  **Effect of delays and issues on the rights of birth mothers**  It identified the following effects of delays:   * Single birth mothers make up the largest proportion of persons seeking the option of placing their children up for adoption. As the largest proportion of women in South Africa are black, it is important to ensure equitable rights are enjoyed by the most marginalized in society. * The proposed amendments to the Act fall short of addressing the fundamental challenges plaguing adoptions and also fails women who would like to seek adoption as an option. * This failure ultimately affects the right to make decisions concerning one’s reproduction and due to gendered nature of the adoption process, negatively impacts on the right to equality. It further affects the right to dignity and privacy as well. * International and regional commitments and obligations were reiterated in the submission, including the Maputo Protocol, relating to the reproductive rights of women, and the Convention on the Rights of Persons with Disabilities, which contains a comprehensive rights recognition for reproductive health and decision-making. Other relevant documents include the United Nations Convention on the Elimination of All forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the Programme of Action adopted at the International Conference on Population Development and the International Covenant on Economic, Social and Cultural Rights. * Clause 118 amendment to s 234 of the Principle Act speaks about family members, where these form part of the care-givers of the child, but it does not however, refer to a family member that has been formally recognised as a care-giver. It merely states ‘or a family member as contemplated in section (1) under paragraphs (a), (b) and (c)’ for the purposes of entering the post-adoption agreement. Section 1(a), (b), and (c) of the Act defines a ‘family member’ as a parent of a child; any other person who has parental responsibilities and rights in respect of the child; and a grandparent, brother, sister, uncle, aunt or cousin of the child, respectively. * The inclusion is too broad and will be open to abuse where misinterpreted by social workers in private practice or in the employ of the Department given the current nature of adoption processes and service provision in South Africa, as we have set out with reference to our clients’ experiences. * The current wording in S 250 of the Act is too broad for the list of persons who may provide adoption services, especially in (b), (c), and (e). |  | **Recommendations**  The organisation makes the following recommendations:   * It is imperative that there are rights pronouncements for birth mothers who choose to place their children up for adoption, and where amendments to the Children’s Act are made, they are done cognisant of the practices of the Department when engaging in adoption processes. This is necessary to ensure that the rights of birth mothers are protected in pursuit of the best interests of the child to be adopted. * An unequivocal recognition and pronouncement of rights in relation to adoption is necessary for effective respect, protection, promotion and fulfilment of the constitutional right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction. And at all times, with the appreciation that this rights enjoyment is done in the best interests of the child, the inclusion of such rights recognition and pronouncement will work towards alleviating any confusion around adoption processes, and its interpretation and implementation by social workers so that abuse of processes do not occur in the interests of skewed policy and practice. * In addition to the purpose set out in the Memorandum, the objectives listed in the preamble of the Bill is to provide for “additional matters relating to adoption”. This should include rights recognition and pronouncements of birth mothers in the adoption process and in pursuit of the best interests of the child. * Following section 229 of the Principal Act, a section must be included relating to the rights of birth mothers and biological parents in adoption processes, to recognise the constitutional rights the section seeks to respect and protect; and to provide for protection therefor through rights recognition and mechanisms of redress where such rights have been violated. Equal rights protection ought to extend to prospective adoptive parents as adoption processes give equal effect to their rights to make decisions regarding reproduction as it does for birth mothers. * A pronouncement must be included in the Act that a) parents have a right to place a child up for adoption; and b) they can choose to do so privately and confidentially. * Proposed wording:   “229A Rights of parents in Adoptions –  (1) A parent has the right to place a child up for adoption, in accordance with the provisions of the Act.  (2) A parent who chooses to exercise their right to place a child up for adoption has the right to privacy and confidentiality.  (3) Where a parent has exercised the right to place a child up for adoption privately and confidentially, the conditions for the protection of the parent’s privacy and confidentiality are to be stated in the consent to the adoption.  (4) To the extent the exercise of the right does not infringe on the rights of others, a social worker providing adoption services must respect the rights of a parent to place a child up for adoption and according to the conditions related to privacy and confidentiality.   * Section 233, which regulates consent to adoptions, would therefore be amended as follows, with inclusion of the following section after section 233(3):   *“(3A) If the parent of a child exercises the right to place a child up for adoption privately and confidentially, the conditions of privacy and confidentiality must be stated in the consent.”*   * Clause 118: We propose the inclusion of the words ‘*where the family member has been formally recognised as a care-giver to the adoptable child’ to the proposed amendment as follows:*   *“The parent, [or] guardian or a family member as contemplated in section (1) under paragraphs (a), (b) and (c), where the family member has been formally recognised as a care-giver, of a child may, before or during an application for the adoption of a child is made in terms of section 239, enter into a post-adoption agreement with a prospective adoptive parent of that child to provide for—’’;*   * It is recommended that Clause 120 amendment to S 239 reads as follows: “(*d) be accompanied by a letter [by] from the provincial head of social development [recommending] confirming compliance with the requirements for the adoption of the child in terms of this Act, to be provided within 30 days from the date it was requested; and*” * It is recommended that the wording align with that of the definition of ‘adoption social worker’ in the principal Act, and be worded as follows: “e) a social worker employed by the Department or a provincial department of social development who [provides adoption services] has a speciality in adoption services’. | Agree, parents have the right to lawfully consent for the adoption of their children. Social workers have a professional obligation to respect right to privacy of the parents who choose to give their children up for adoption in line with the social work ethical principle of confidentiality  Same as above  Disagree, the right to privacy is well articulated in the Constitution and we cannot reinvent the Constitution in the Children’s Act  Disagree, the right to privacy is well articulated in the Constitution and we cannot reinvent the Constitution in the Children’s Act  Disagree, the right to privacy is well articulated in the Constitution and we cannot reinvent the Constitution in the Children’s Act  Disagree, the right to privacy is well articulated in the Constitution and we cannot reinvent the Constitution in the Children’s Act  Agree, social workers have a professional obligation to respect right to privacy of the parents who choose to give their children up for adoption in line with the social work ethical principle of confidentiality, there is no need state the parent’s privacy and confidentiality in the consent as the right to privacy is well articulated in the Constitution and we cannot reinvent the Constitution in the Children’s Act , social workers have a professional obligation to respect right to privacy of the parents who choose to give their children up for adoption in line with the social work ethical principle of confidentiality  Disagree, the proposed insertion is not supported as the right to privacy is well articulated in the Constitution and we cannot reinvent the Constitution in the Children’s Act  Disagree, a family member should not be legally recognized in order to enter into post adoption agreement.  The use of the word recommendation should be retained as the HOD checks compliance with the requirements of the Act and then issue a recommendation letter, 30 days is a reasonable time frame for the issuing of section 239 letter  Not supported, there is no need to specify the registration of speciality in this section because once you are an adoption social worker, you are obviously registered for speciality with SACSSP  Disagree, a family member should not be legally recognized in order to enter into post adoption agreement.  The definition is inclusive as it covers any other person who has parental responsibilities in respect on the child  Disagree, section 250 is clear in terms of who may render adoption services |  |
| **Ms Viccy Wanliss** | **Ms Viccy Wanliss**  Ms Wanliss contends that the Bill needs to be aligned to The Hague Convention with regard to Clause 130, which intends to distinguish between the SA Central Authority and one of a foreign country; maintain consistency in terminology and allow the Minister to make regulations regarding the adoption of a child by a family member or a person adopting the child together with the child’s parent, who resides in a convention country.    With regard to Clause 132, which intends to remove the discretion of the Central Authority and obligates him or her to issue an adoption compliance certificate if the children’s court has approved the adoption of a child, feels that the discretion was there for a reason in the first place. She also feels that the addition on subsection (6) in the same clause defeats the purpose of adoption when the person is already an adult.    She notes that the Bill, even though is very vague, it is oddly specific in Clause 138 which seeks to insert a new section 278(A) to expedite proceedings concerning the return of a child who has been abducted. |  |  | Agree, this already covered in the Bill  Disagree, procedures for an adoption of a child by a family member is the same as an unrelated adoption. There is no need for special regulations  Not supported, once the adoption is approved by the court it obligates the Central Authority to issue a compliance certificate  Noted |  |
| **Mr D Douglas-Green - The Executive Welfare Council of the AFM in South Africa** | **Mr D Douglas-Green - The Executive Welfare Council of the AFM in South Africa**  The organisation supports submissions made by NACSA and the Centre for Child Law. It states that currently the bulk of adoption expertise lies within the adoption accredited Designated Child Protection Organisations (DCPO’s) and private adoption social workers. DCPO’s do not make any profit through fees charged since these fees mostly just cover expenses incurred. If the Bill was approved (which repeals Section 249), many of the adoption accredited DCPO’s and private adoption social workers will no longer be able to cover the inherent costs of the programme and this could lead to a further decline in adoption targets. This would seriously impact the future of orphaned and vulnerable children currently benefitting from permanent family care through adoption. It can take some years for a professional body to finalise a new code or regulation, which would in effect leave this space being unregulated for some time. Orphaned and vulnerable children could therefore fall off the safety “ledge” by deleting reference to all fees that may be charged for adoptions, as currently tabled |  |  | **Clause 122** seeks to delete section 249. This amendment is intended to delete reference to all fees that may be charged for adoption. The rationale behind this amendment is to harmonise the provision of adoption services with the rest of other services in the Children’s Act, 2005. |  |
| **National Adoption Coalition of SA (NACSA)** | **National Adoption Coalition of SA (NACSA)**  The organisation points out that the Children’s Amendment Bill proposes significant changes to some of the key sections dealing with adoptions. However, it fails to address some key problems with the adoption process in South Africa, resulting in small numbers of adoptions. These relate to the following:   * Delays with the statutory placement of children into the care of adoptive families. * Delays in the issuing of Form 30’s by the National Department of Social Development for prospective adoptive parents verifying that their names do not appear on the Child Protection Register (“CPR”). * Lack of permanency in planning for abandoned and adoptable children, resulting in abandoned children remaining in the Institutions for years. * Infringement on the rights of birth mothers and fathers when they choose to place a child up for adoption. |  | **Recommendations**  The organisation makes the following recommendations:   * Instead of deleting the section 249 * Amend subsection (2)(c), (d) and (e) by deleting the words: *“Receiving the prescribed fees*”. * Amend subsection (d) by including: “a *child protection organization or an adoption social worker in private practice accredited in terms of section 251 to provide adoption services*”. * On Section 259: reinstate subsection (3)(a) and delete the words: “*receiving the prescribed fees*”. * Amend section 250 by inserting in subsection (1) after paragraph (d) of the following paragraph*:"(e) a social worker employed by the Department who has a specialty in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978”.* * Section 239(1)(d) be accompanied by a letter by the provincial head of social development [**recommending**] confirming compliance with the requirements in terms of this Act regarding the adoption of the child: Provided that when the provincial head does not issue the letter within 30 days of it being requested, the provincial head must report the reason for such failure to the children’s court within 14 days from the date on which the letter was due; and if the provincial head fails to provide the report required in subsection (1), the letter may be dispensed with; | Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter.  The recommendation does not have a clear clause/section  Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter.  Not supported, there is no need to specify the registration of speciality in this section because once you are an adoption social worker, you are obviously registered for speciality with SACSSP  Disagree, the use of the word recommendation should be retained as the HOD checks compliance with the requirements of the Act and then issue a recommendation letter  Agree, time frames are necessary to avoid undue delays |  |
| **Ms Elke Day** | **Ms Elke Day**  Similarly, to submissions above, Ms Day highlights challenges in the administrative systems that cause delays in the adoption processes. She argues that huge delays in adoption process are being created due to failure on the part of some provincial DSD offices when it comes to issuing section 239 letters of recommendation. These delays in many instances prevented adoptions form proceeding by the departments failure to make a decision within a reasonable timeframe and preventing the Children’s Court from considering the adoptions. In some provinces this process can take up to months contravening the policy which states that the letter of recommendation should be issued within seven (7) working days after the panel meeting.  She submits that her proposal for the amendment of this section will help to resolve the delays experienced in getting these letters and it will then comply with the current case law that the letter may be dispensed with due to unreasonable delay to deliver. It will further address the purpose of the section 239(1) (d) clause, which is to assess legal compliance with the requirements of the Act. In view of the many delays often associated with the finalization of an adoption, this inclusion will compliment section 156 that allows the placement of a child in temporary safe care pending adoption once the children’s court enquiry concludes the child is adoptable. This will allow that the child can be placed in family care as soon as possible, which is crucial when considering that a window of opportunity exists in the first 1000 days of children’s lives to establish the foundation of their physical, emotional, and psychological wellbeing that has effects into adulthood. By creating more accountability in the system for time frames and prioritising children being placed into a family environment as soon as possible, we can minimize the trauma experienced by adopted children.  Ms Day argues that the definition of adoption social worker in the Act is comprehensive and inclusive of social workers in private practice, DCPO’s and social workers in the employ of the Department. This amendment proposes that adoption social worker as defined by the Act be substituted by” a social worker responsible for adoption.” This creates confusion on who may render adoption services as defined by the Act. The Bill does not define “a social worker responsible for adoption” whereas the Act defines and refers to “adoption social work”. The amendment in Bill should therefore be aligned with the definition, therefore referring consistently to an “adoption social worker.  She further argues that the removal of section 249 in its entirety will not be recommended since it could allow for criminal exploitation. By deletion of the words “receiving the prescribed fees” the objective aimed at removing the regulating professional fees for adoption services from the Children’s Act will be achieved, since it will not place a complete prohibition on the charging of fees. Professional fees charged will however still be regulated by the relevant respective professional bodies and councils as per the Memorandum of objects to the Amendment.  Insertion of an adoption social worker in private practise under subsection (3) (d) will extend the list of those exempted from the no consideration clause to adoption social workers in private practise. |  | **Recommendations**  Ms Elke makes the following recommendations:   * Section 239(1)(d) be accompanied by a letter by the provincial head of social development [recommending] confirming compliance with the requirements in terms of this Act regarding the adoption of the child: Provided that when the provincial head does not issue the letter within 30 days of it being requested, the provincial head must report the reason for such failure to the children’s court within 14 days from the date on which the letter was due; and (2) if the provincial head fails to provide the report required in subsection (1), the letter may be dispensed with. * Amend Section 46 of the principal Act, by insertion in subsection (1) after paragraph (c) of the following paragraph: “(*cA) an order, in the prescribed form, placing a child in temporary safe care pending an application for the adoption of such child, including with prospective adoptive parents, notwithstanding the provisions of section 167(2).”* * Amend Section 156(1)(iii), as follows: “(e) *if the child has no parent or caregiver or has a parent or caregiver but that person is unable or unsuitable to care for the child, that the child be placed in- (iii)) temporary safe care, pending application for, and finalization of, the adoption of the child, which placement may include placement with prospective adoptive parents in appropriate circumstances*”. * Section 239(1)(b) remain unchanged: *"(b) be accompanied by a report, in the prescribed format, by an adoption social worker”*. * Instead of deleting the section 249 amendment of subsection (2)(c), (d) and (e) by deleting the words: “*Receiving the prescribed fees*”. * Amendment of subsection 249(d) by including: “*a child protection organization or an adoption social worker in private practice accredited in terms of section 251 to provide adoption services.*” | Disagree, the use of the word recommendation should be retained as the HOD checks compliance with the requirements of the Act and then issue a recommendation letter  Agree, time frames are necessary to avoid undue delays  placement may not be in the best interest of the child as their screening is for permanent placement and not temporary placement.  placement may not be in the best interest of the child as their screening is for permanent placement and not temporary placement.  Agree, an adoption should not be deleted for consistency  Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter. The Act is not the right instrument to regulate this matter.  Disagree, this Act is not the right instrument to regulate this matter |  |
| **Solidarity** | **Solidarity**  In relation to amendments to section 249, the organisation argues that as it is, there is a serious shortage of qualified social workers in South Africa. To exacerbate the problem, social workers are already overburdened by high caseloads; they are under-resourced; overworked; and sometimes simply lack the knowledge and experience to render a service of such importance. Ultimately, this situation adversely affects the necessary care and service social workers are required to provide to vulnerable children in need. By limiting the provision of adoption services to an accredited child protection organisation or a social worker employed by the department to deal with adoptions would not only be highly irresponsible and grossly negligent, but in some instances even criminal.  It further argues that adoption is a highly specialised field encompassing a multitude of complex issues which need to be addressed when placing a child permanently. There is a need for the professionals rendering the service to have the requisite qualifications, knowledge, experience and expertise to perform such a delicate and complex process. In addition, these professionals must meet the conditions of integrity, professional competency and accountability required by their respective professional bodies and councils.  It points out that while private accredited social workers and non-profit organisations largely facilitate the current adoption process, there has been a decrease in the number of registered adoptions due to the department’s inability to effectively deal with the cases from their side. The department is involved in several stages of the adoption process, which include: accrediting of social workers involved with adoptions, managing the National Adoption Register, issuing formal letters of reference required from the provincial Department and finalising an adoption when a formal court procedure has been completed. To expect an already beleaguered department to fulfil the role of professionals in an adoption process will only cause further harm to the children it is tasked to care of and protect, should the amendments to sections 249 and 250 be passed. The result will be that more children will be left to suffer in overcrowded orphanages, foster care systems and even on the street, instead of being adopted permanently.  It further argues that amendments to section 249 will not prevent children from being trafficked, and this needs to be addressed in criminal proceedings. |  |  | Adoption workforce has been increased by registering DSD social workers as adoption social workers. |  |
| **The Child and Welfare Society** | **The Child and Welfare Society**  The points out that the removal of section 249 in its entirety is not be recommended since it could allow for criminal exploitation. It submits that by deleting the words “receiving the prescribed fees” the objective aimed at removing the regulating professional fees for adoption services from the Children’s Act will be achieved, since it will not place a complete prohibition on the charging of fees. Professional fees charged can still be regulated by the relevant respective professional bodies and councils. |  | **Recommendations**  The organisation makes the following recommendations:   * Instead of deleting the section 249, amend subsection (2)(c), (d) and (e) by deleting the words “*receiving the prescribed fees*”. * Amendment of subsection (d) by including, “*a child protection organization or an adoption social worker in private practice accredited in terms of section 251 to provide adoption services”.* * Section 239(1)(d) be accompanied by a letter from the provincial head of social development [**recommending**] confirming compliance with the requirements in terms of this Act regarding the adoption of the child*:*   *“(1) Provided that when the provincial head does not issue the letter within 30 days of it being requested, the provincial head must report the reason for such failure to the children’s court and the requesting accredited agency/accredited adoption social worker within 14 days from the date on which the letter was due; and*  *(2) if the provincial head fails to provide the report required in subsection (1), the court may dispense with the letter and proceed with the adoption.”*  This would hopefully alleviate the current problems due to lengthy delays being experienced in DSD responding to s239 requests and expedite the adoption process. | Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter.  This Act is not the right instrument to regulate this matter.  Disagree, the use of the word recommendation should be retained as the HOD checks compliance with the requirements of the Act and then issue a recommendation letter  Agree, time frames are necessary to avoid undue delays |  |
| **Children in Distress (CINDI)** | **Children in Distress (CINDI)**  CINDI believes that adoption is a key service to be considered for a child who does not have the prospects of permanent care by his or her biological parents. It is one of the designated child protection services as stipulated by the Children’s Act. It thus basis its submission and recommendations on the following factors:   * The Children’s Act (38 of 2005) and the Adoption Policy Framework and Strategy (DSD, 2010a) prioritise adoptions as a preferred form of permanent alternative care for young adoptable children in line with The United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. * The purpose of adoptions is to protect children and to promote the goals of permanency by providing stable permanent alternative family care. * According to the Social Service Professions Act (110 of 1978) adoption is a specialised area in the field of childcare and protection. The Children’s Act (38 of 2005), the Children’s Second Amendment Act (18 of 2016) and the Social Service Professions Act prescribe who may legally provide adoption services. These are accredited adoption social workers, designated and accredited Child Protection organisations and 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) to render adoption services. * Majority of social workers in the employ of the DSD were historically excluded from rendering adoption services. They therefore frequently do not meet the prescribed requirements to register a speciality. * Currently there are 59 adoption social workers in private practice and 93 designated and accredited child protection organizations (“DCPO’s”) mandated to render professional adoption services nationally. There are 10 accredited DCPO’s mandated to render intercountry adoptions within the framework of DSD approved working agreements. The bulk of adoption expertise lies within the accredited DCPO’s and adoption social workers. * Adoption numbers remain relatively low when compared to other forms of alternative care and sadly the numbers show a consistent decline. * There is also no additional financial support or adoption grant for adoptive parents, as is the case with foster care. * The Children’s Act (Act 38 of 2005) prescribes fees that may be charged by adoption accredited DCPO’s for professional adoption services. Most accredited DCPO’s charge a nominal adoption fee based on this provision. The income derived from these fees enables DCPO’s to employ (and retain) experienced social workers, and to cover general operating costs, since not all DCPO’s receive a subsidy for the rendering of child protection and adoption services. * The majority of organizations also make use of an income based sliding scale and often render services free of charge when applicants cannot afford to pay a fee for professional services, ensuring that the service is accessible to all. * Adoptions are strictly regulated and monitored, particularly with regard to finances. The tariff in Regulation 107 of the Children’s Act No. 38 of 2005 limits the amount that may be charged in each category of adoption work. Before any adoption proceeds, a breakdown of all Regulation 107 costings must be provided to the court for inspection. |  | **Recommendations**   * Instead of deleting the section 249, amend subsection (2)(c), (d) and (e) by deleting the words: *“receiving the prescribed fees*”. Removal of section 249 in its entirety will not be recommended since it could allow for criminal exploitation. By deletion of the words “receiving the prescribed fees” the objective aimed at removing the regulating professional fees for adoption services from the Children’s Act will be achieved, since it will not place a complete prohibition on the charging of fees. Professional fees charged will however still be regulated by the relevant respective professional bodies and councils. * Amend subsection (d) by including: “*a child protection organisation or an adoption social worker in a private practice accredited in terms of section 251 to provide adoption services*”. * Section 239(1)(d) be accompanied by a letter by the provincial head of social development [recommending] confirming compliance with the requirements in terms of this Act regarding the adoption of the child:   “(1) *Provided that when the provincial head does not issue the letter within 30 days of it being requested, the provincial head must report the reason for such failure to the children’s court within 14 days from the date on which the letter was due; and*  *(2) if the provincial head fails to provide the report required in subsection (1), the letter may be dispensed with*;” This will resolve the delays experienced in getting these letters and it will then comply with the current case law that the letter may be dispensed with due to unreasonable delay to deliver   * Insertion in subsection (1) after paragraph (C) of the following paragraph:   (cA) an order, in the prescribed form, placing a child in temporary safe care pending an application for the adoption of such child, including with prospective adoptive parents, notwithstanding the provisions of section 167(2),  (e) if the child has no parent or caregiver or has a parent or caregiver but that person is unable or unsuitable to care for the child, that the child be placed in-  (iii)) temporary safe care, pending application for, and finalization of, the adoption of the child, which placement may include placement with prospective adoptive parents in appropriate circumstances.  This inclusion will compliment section 156 that allows the placement of a child in temporary safe care pending adoption once the children’s court enquiry concludes the child is adoptable  This will allow that the child can be placed in family care as soon as possible | Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter.  This Act is not the right instrument to regulate this matter.  Disagree, the use of the word recommendation should be retained as the HOD checks compliance with the requirements of the Act and then issue a recommendation letter  Agree, time frames are necessary to avoid undue delays  The placement may not be in the best interest of the child as their screening is for permanent placement and not temporary placement.  Fees charged by professionals for rendering services are dealt with by professional bodies. This Act is not the right instrument to regulate this matter. |  |
| **Jelly Beanz** | **Jelly Beanz**  The organisation supports the recommendations of the Adoption Alliance. It expresses great concern about children who languish in child and youth care centres when adoptive parents are available, simply because of an unnecessary limitation on adoption practice. Institutional care should be a last resort and permanent placements in family care the preferred option. |  |  | Agree, permanent placements in family care the preferred option |  |
| **We’re Fathers, We’re Parents** |  |  | **We’re Fathers, We’re Parents**  The organisation only made the recommendations below.  **Recommendations**  The organisation makes the following recommendations   * Department of Home Affairs Birth Registry must be update and be enforced so that mother should include fathers’ details. Department of Health must be forced to have fathers be included in registration of birth from hospital to the Department of Home Affairs. * The Bill of Rights of Children specifies the right of a child to both parents. Consent must be attained from both the mother and the father whether married or unmarried before a child if given for adoption. The adoption interview, if one parent doesn’t want the adoption to proceed the rights of that parent must supersede the prospective adoptive parents. | Noted, this is already provided for in the Act |  |
| **Catholic Institute of Education** |  |  | **Catholic Institute of Education**  The Institute submission is in a recommendations format.  **Recommendations**   * Section 249 should not be deleted. * Recommends the use of “social worker specialised in adoption” in Section 123. * Recommends the use of ““social worker specialised in adoption” in Section 125. | Section 249 is responded to above |  |
| **Centre for Child Law** | **Centre for Child Law**  The organisation submits that it is important that any reference in section 239(1)(b) and 250(1) to who may provide adoption services in the Children’s Act, should be aligned with the definition provided in the Act. The proposed amendments create confusion since they do not consistently refer to an adoption social worker: 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”. 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, this amendment proposes that adoption social worker as defined by the Children’s Act be substituted by a social worker responsible for adoption.  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 an adoption social worker. The proposed amendment to section 250 of the Children’s Act which deals 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”. 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. 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 adoption social worker employed by the Department as per the definition in the Act.  In relation to section 249, the organisation submits that its deletion 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 provision 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. 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 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.  The organisation does not support deletion on section 259(4) because it 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.  In relation to section 271(1A) the organisation submits that the proposal is detrimental to the interests of a child. If the idea is to send back the child for the correct process to be followed, such a process can be undertaken while the child is in the Republic with the “adoptive parents” or placed in alternative care. It is necessary to guard against irregular process, but each case must also be determined on its merits.  It supports amendment to section 271(3). |  | **Recommendation**   * Section 249 should be reinserted. * Section 259(4) must be reinserted. * The proposed section 271(1A) must be removed | Section 249 is responded to above  As responded above regarding adoption fees  Not Supported because before the child is returned to the country of origin, investigations have to be conducted to determine a way forward in line with the best interest of the child. |  |
| **South African Association of Social Workers in Private Practice (SAASWIPP)** | **South African Association of Social Workers in Private Practice (SAASWIPP)**  The myth that private adoption is a ‘money making industry’ is unfounded, a belief that materialised because the fees charged seem higher than those of the CPO’s. Unlike CPO’s and DSD, the private adoption social worker receives no subsidy, salary, support funding or facilities needed to provide the adoption services, therefore the fees charged to the public are inclusive of all costs involved in the service delivery (rent, medical, transport, professional time, etc.). The fees are negotiated with the people contracting the services of the adoption social worker on an income based sliding scale, are then disclosed in court reports, and submitted to peer review.  SAASWIPP has engaged with SACSSP and our Professional Board for Social Work (PBSW) to develop guidelines on the appropriate range of costs and charges that are acceptable for the adoption profession. Every adoption is different, as delays and complexities could vary the costs between adoptions comparisons. We support that our Professional Board be the custodian of the ethical parameters required. Corruption is possible in any sector, unfortunately, but the evaluation and monitoring mechanisms are already in place to protect our profession and the public.  In addition to being subjected to legislative requirements regulating the social work scope of practice, private social workers are also subjected to the requirements of the Competition Act, 1989, which amongst other provide our service users with competitive fees and service choices, and the Consumer Protection Act, 2008 which amongst other aims to protect the economic interests of our service users.  As the adoption process is governed by the Children’s Act, it is a highly regulated form of child protection. The courts of law, DSD and the accredited adoption social workers from CPO’s or private practice work in conjunction with each other to provide the service. It is unlikely and untrue that there is a fine line between adoptions and child trafficking, considering the accountability required and engagement of many parties in the adoption process.  The key issues requiring review, and which will be addressed in this submission relate to:  1. An Enabling Legislative Framework  2. Prohibition of undue consideration for adoption services.  3. Amendments that may create confusion  4. Standards and quality of service  The proposed amendments are aligned to other pieces of legislature like the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The purpose of adoptions is to protect children and to promote the goals of permanency by providing stable permanent alternative family care. The emphasis is on the fact that children have a right to grow up in permanent and stable families, and that adoption should be based on the child’s best interest and rights.  In summary, the following is required:   * Timely issuing of section 239 letters * Temporary placement of adoptable children with the adoptive parents, pending finalization of the adoption. * Safeguard of Section 249 against exploitation of adoptions. * Equal application of standards and requirements.   It must be emphasised that this submission seeks to identify key overarching issues impacting on adoptions. This submission aims to provide guiding considerations to address concerns relating to adoptions and must be read holistically. To this end, we do not deal with each proposed amendment made by the Bill. A failure to deal with any specific clause in the Bill should not be read to suggest that we necessarily accept or endorse those proposed amendments.  In relation to section 239, the organisation points that in a High Court application brought against the KZN Department of Social Development because of lengthy delays in issuing of section 239 letters, the Court declared that the right to access to court, and the right to just administrative action of children who are adoptable and that of the prospective adoptive parents of children who are adoptable, have been violated by irrelevant considerations and delays caused by such irrelevant considerations, relating to prospective adoptions. The recommended change will contribute towards creating an enabling legislative environment by removing delays and its impact on adoptable children and adoptive parents. It will further be compliant with current case law.  The organisation also submits that Proposed amendment to change ‘an adoption social worker’ to social worker responsible for adoption creates confusion. Removing the proposed amendment would ensure clarity through the consistent use of the term ‘adoption social worker’ which is also defined in section 1 of the principal Act.  In relation to amendment to section 249, the organisation submits that the proposed amendments would recognise the latitude professional and regulating bodies (such as the SACSSP) have through their enabling statute to self-regulate the profession, including aspects relating to fees in respect of adoptions. The proposed amendments would further ensure that the safeguard against possible exploitation remains in place.  With regard to section 250, the organisation submits that the proposed amendment is not consistent with the definition of an adoption social worker and section 250 of the principal Act includes reference to an adoption social worker, which by definition includes a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is registered in terms of the Social Services Professions Act, 1978 (Act 110 of 1978). Should the inclusion nevertheless be required, it is proposed that the inclusion is aligned with the definition of adoption social worker, as per the principal Act.  With regard to section 251, the organisation submits that the amendments will ensure that standards towards quality service delivery are applied consistently.  In relation to section 252, the organisation submits that the alternative proposal ensures consistent reference to adoption social worker to avoid confusion. |  | **Recommendations**   * Section 239 to be amended to read, “*Section 239 of the principal Act is hereby amended—*   *(b) by the substitution in subsection (1) for paragraph:*  *"(d) be accompanied by a letter* ***[by****] from the provincial head of social development [****recommending****] confirming compliance with the requirements for the adoption of the child in terms of this Act;*  *(i) provided that when the provincial head does not issue the letter within 30 days of it being requested, the provincial head must report the reason for such failure to the children’s court within 14 days from the date on which the letter was due; and*  *(ii) if the provincial head fails to provide the report required in subsection (), the letter may be dispensed with.*   * Amendment to section 239 should be removed and the existing clause in the principal Act should stand, since the section in the principle act already refers to an adoption social worker. * Amend section 249(1) to read, (1) No person may-   (a) give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child in terms of Chapter 15 or Chapter 16; or  (b) induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16.  (2) Subsection (1) does not apply to-  (a) the biological mother of a child receiving compensation for-  (i) reasonable medical expenses incurred in connection with her pregnancy, birth of the child and follow-up treatment;  (ii) reasonable expenses incurred for counselling; or  (iii) any other prescribed expenses;  (b) [**a lawyer, psychologist**] an adoption social worker in private practice or any other professional person receiving fees and expenses for services provided in connection with an adoption;  (c) the Central Authority of the Republic contemplated in section 257 receiving prescribed fees;  (d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;  (e) a child protection organisation accredited to provide inter-country adoption services receiving the prescribed fees;  (f) an organ of state; or  (g) any other prescribed persons.   * Section 250 of the principal Act to be amended—   c) by the insertion in subsection (1) after paragraph (d) of the following paragraph:  "(*e) a social worker employed by the Department or a provincial department of social development who has a speciality in adoption services and is registered in terms of the Social Services Professions Act, 1978 (Act 10 or 1978)"*   * Section 251 to be amended as follows:   (1) [**The Director-General**] The Registrar of the SA Council of Social Service Professions may in terms of a prescribed process accredit- an adoption social worker  **[(a) a social worker in private practice as an adoption social worker to provide adoption services; and**  **(b) a child protection organisation**] to provide adoption services.  (2) [**The Director-General**] The Registrar of the S A Council of Social Service Professions must keep a register of all adoption social workers and child protection organisations accredited to perform adoption services.   * Section 251 to be amended by the insertion after subsection (1) of the following subsection—   *"(1A) The Registrar of the S A Council of Social Service Professions may, in the form and manner prescribed, withdraw an accreditation to provide adoption services.".*   * Section 252 to be amended as follows —   (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:  "(b) [**an advertisement**] a notice by an [**child protection organisation accredited to provide adoption services**] adoption social worker for purposes of recruitment of prospective adoptive parents, according to prescribed guidelines;" | Section 239 was responded to above  Responded to above regarding fees  Comments on Section 250 were responded to above  Not supported, accreditation is correctly placed with the Director General. It is fair enough that the council remains with the registration for speciality in adoption services. The council should be responsible for regulating the social work profession and specialization areas in terms of the Social Services Profession Act while the Department should be responsible for implementation and monitoring of services and accreditation is about the provision of adoption services as per the Children’s Act  Supported, because the section excluded adoption social workers who are also responsible for advertisement dealing with the placement/adoption of a specific child. However the proposal is already covered in the Bill.  Already responded to the comment on consistent use of the phrase “adoption Social Worker”  Already responded to Section 249 proposal above  Already responded to the comment on consistent use of the phrase “adoption Social Worker” |  |
| **SURROGACY** | Effect of termination of surrogate motherhood agreement – section 299 **Centre for Child Law**  The organisation submits that 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. 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 cuts across the rights of the commissioning parents. |  | **Recommendation**   * Extensive relook at section 299 is necessary | Recommendation noted and supported. |  |
| **National Child Protection Register** | National Child Protection Register – clauses 61, 65, 66, 70, 72, 77 Summary of the Bill**:** The Bill seeks to amend section 111 by inserting a new subsection (3) which requires the Director-general to designate an official from within the Department to be the Registrar of the National Child Protection Register. It also seeks to amend the heading clarify that Part B of the National Child Protection Register deals with persons unsuitable to work with children. It also seeks to amend section 119 by inserting a new subsection (2) which excludes persons, who were children during the commission of an offence against another child, from the operational provisions of sections 120 to 128 of the Act. It also seeks to amend section 127 by effecting minor technical and consequential amendments and providing that the Registrar must inform a person found unsuitable to work with children that that person's name and particulars are entered in Part B of the Register within 21 working days of such entry.  The Bill further seeks to amend section 142 by empowering the Minister to make regulations prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register; and the establishment of well-resourced designated child care and protection units with quality assurance units.  Key issues raised by stakeholder**:** A portion of stakeholders, particularly, from Dear South Africa called for the National Child Protection Register to be made more public particularly in the context increasing human trafficking and abduction. Other submissions recommend that all provisions relating to Part B of the National Child Protection Register be deleted and criminal record system be used instead. |  |  |  |  |
| **Children’s Institute** | **Children’s Institute** – Part A of the Register  The organisation makes the following recommendation:   * Amend section 110(2) by inserting the underlined word:   **Contents of Part A of Register**  114. (1) (a) all substantiated reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act. This ensures that reports of corporal punishment will not be added to the child protection register unless a social worker has investigated and considers the child to be in need of protection. |  |  | Proposal supported |  |
| **Centre for Child Law – Part B of the Register** | **Centre for Child Law – Part B of the Register**  It does not support the Part B of the Register. 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).  It partially supports amendment to section 123 in that 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. |  | **Recommendation**   * 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. * 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. * 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. * It is proposed that section 120 be amended to include persons convicted in foreign places of safety. It should worded as follows:   “*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 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.”*   * The word ‘shelter’ should remain in section 123 as many children find themselves in shelters and may experience great harm in these shelters if the employees are not checked against the register. * It is proposed that such a person (listed in Part B) should not be permitted to work in any health profession or in education. | The Department does not support this view because SAPS records are only limited to convictions, whereas our records include both convictions and records from various Fora. For example, a case of abuse that is dealt with in disciplinary proceedings or Civil Courts will not necessarily be available to SAPS. |  |
| **Dear South Africa** | **Dear South Africa**  Respondents to the public participation project conducted by Dear South Africa made the following comments regarding the Register:   * The majority called for the Register to be made more public. * There should be an electronic database that would contain data for all children which should be updated every 3 to 5 years with a photo and area of residency. This data should be linked to the police officers and private security companies to track and record should any movements take place (even from one community to another community. Airports, bus stations, train stations etc must be equipped with the information to track and locate the children in and around the entire country. * The register should be made more easily accessible and companies should be able to find that information before hiring of any staff be it for an environment with children or not. Child offenders do not have a place in our community and deserve to be arrested and not only put on a register.” |  |  | Proposals are not supported.  The register is confidential in order to protect the identity of children. |  |
| **Professor Ann Skelton** | **Professor Ann Skelton**  Professor Skelton makes the following recommendation:   * Amend section 117 to read, *“(p)There should be consideration to delete all provisions that deal with Part B of the register towards use of the criminal record system – and a regime to prevent the employment of any persons with a relevant criminal record from working with children”.* |  |  | The Department does not support this view because SAPS records are only limited to convictions, whereas our records include both convictions and records from various Fora. For example, a case of abuse that is dealt with in disciplinary proceedings or Civil Courts will not necessarily be available to SAPS. |  |
| **Childline South Africa** |  |  | **Childline South Africa**  The organisation makes the following recommendation:   * The Child Protection Register Part B be discontinued and instead those who work with children are screened against the criminal records register. | The Department does not support this view because SAPS records are only limited to convictions, whereas our records include both convictions and records from various Fora. For example, a case of abuse that is dealt with in disciplinary proceedings or Civil Courts will not necessarily be available to SAPS. |  |
| **Solidarity** |  |  | **Solidarity**  Solidarity makes the following recommendation:   * Clause 68(d) to amend subsection 123 (2) to include the words “*club or association providing services to children*” to align it with the wording in proposed subsection (1)(d). | Proposal supported |  |
| **The Child and Welfare Society** |  |  | **The Child and Welfare Society**  The organisation makes the following recommendation:   * Amend subsection 114 (1)(a) by inserting the word “substantiated” to read, “all **[substantiated**] reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act;”. This ensures that reports of corporal punishment will not be added to the child protection register unless a social worker has investigated and deems the child to be in need of protection. | Proposal supported |  |
| **Jelly Beanz** |  |  | **Jelly Beanz**  The organisation also strongly recommends that Part B of the National Child Protection Register be discontinued and instead those who work with children be screened against the criminal records register. It provides the below rationale for its submission:   * International research indicates that the cost benefits of offender registers are poor and contribute little to the protection of children. * This register has a poor track record in terms of prompt screening and response to queries * The register is, in part, duplicated by the National Sexual Offenders Register * It does not record all offences that could place children at risk such as multiple offences related to drunk driving or assaults that indicate poor self-control. * The register is expensive to maintain, involving poor use of scarce resources, both material and personnel. | The Department does not support this view because SAPS records are only limited to convictions, whereas our records include both convictions and records from various Fora. For example, a case of abuse that is dealt with in disciplinary proceedings or Civil Courts will not necessarily be available to SAPS. |  |
| **INTERSECTORAL IMPLEMENTATION OF THE BILL SECTION 5 OF THE CHIILDREN’S ACT** | Intersectoral Implementation of the Bill Key issues raised by stakeholders**:** stakeholders submit that the Act and the Bill omit NPOs and civil society organisations as role players in the provision of child protection services. This is despite the fact that these provide the majority of these services. Summary of submissions per stakeholder **Jelly Beanz**  The organisation raises a concern of the failure of the Child Protection System in South Africa to work as a collective across all role players in the system, including both government and civil society organisations. It argues that this causes painful and long-lasting secondary trauma to children and their families. The Act has no recommendation for *all* role-players, including designated child protection organisations, providing services to children in terms of the Children’s Act to be brought into the system to improve coordination and mutual accountability*.* At present NPOs and civil society organisations providing services are not mentioned in the coordination section (5) of the Act and yet they provide the majority of services provided for in this Act. The Bill also makes no amendments relating to this section. |  | **Recommendations**  The organisation makes the following recommendations:   * Amend section 5 to read, “*To achieve the implementation of this Act in the manner referred to in S4, all organs of state in the National, Provincial and, where applicable, local spheres of government, designated child protection and civil society organisations must cooperate in the development of a uniform approach aimed at coordinating and integrating the services delivered to children.”* | The department do not support the proposal. The Act commits all organs of State at various levels to cooperate in the implementation of this Act including committing resources both financial and human for the realisation of same. We cannot commit third parties even if they share the same objectives with us in this manner. However, there are means of involving the NPOs to implement the Act by designating them to render services. Section 5 does not prevent them from cooperating with the State in implementation of this Act. | *We retain section 5 as it is in the Act.* |
| **CHILDREN WITH DISABILITIES** | **Western Cape Forum for Intellectual Disability**  The organisation submits that the Bill is silent about: -   * Special care centres that are not necessarily registered as partial care centres , and * Special care centres that accommodate learners with disabilities who are of compulsory school-going age but who are systematically refused admission at public schools. * The Constitutional, jurisprudential and legal mandate of the Department of Basic Education and provincial education departments (PED) to provide education and its components to learners with disabilities at special care centres (funding to hire adequate staff and for appropriate infrastructure; transport; training, accreditation and appropriate remuneration; teachers for learners with severe to profound intellectual disability and other disabilities). * The coordinating; cooperative and collaborative obligations of departments according to their legal mandate. * Learners with disabilities at special care centres who have a constitutional and legal right to be admitted at public schools. * The relocation of learners these learners on the closure of a special. * Learners at special care centres have a more constitutionally and legally compelling reason to demand appropriate clauses to support their right to education. The Department of Basic Education and provincial education departments are contravening the Constitution of South Africa and the South African Schools Act by not making appropriate, accessible and just provision for learners of compulsory school-going age at special care centers. * The funding of ECD centres or programmes (or special care centres), based only on location reflects the flawed education department quintile system. This system ignores the needs of centres located in more well-resourced areas, but whose learners are from poverty declared wards. * Appropriate, equitable and just provisions for special centres for learners with disabilities of compulsory school going age. * The unique composition of special care centres that accommodate persons with disabilities from one-year-old to school-age children, and in some cases youth and adults. |  | **Recommendations**  It makes the following recommendations:   * Acknowledge and recognise special care centres * include provisions for the registration of special care centres as such * Acknowledge that learners of compulsory school going age at special are the responsibility of primarily the Department of Basic Education with support from other government departments. * Include clauses articulating the obligations, roles and responsibilities of government departments in this regard, in particular, the role of the Department of Basic Education and provincial education departments (PED). * Provisions for the funding of special care centre infrastructure. * Provisions for special care centres in private homes, businesses and properties not owned by the NGO to be relocated to the campus of the local public school with access to all the resourcing of public schools, and eventual inclusion of learners and staff in that public school in all respects. * Clauses that legally obligate the Department of Basic Education, with the support of the Department of Social Development, to re-locate learners to a public school when a special care centre they attend closed. * Compel the Education and Social Development Ministers and MECs and their departments to prioritize and accelerate education for learners of schools. * Amend related regulations (e.g. Public Finance Management Act: Post Provisioning Norms; Personnel Administrative Measures; National Norms for School Funding). * The funding of ECD programmes and special care centres based on the socio-economic demographics of the children and learners attending the centres. * That the Bill should provision for clauses for special care centres. * The Bill provide clauses that speak specifically to special care centers and their learner and staff composition. * In particular, the Bill provide clauses (or a Chapter) on special care centers and the legal mandate; constitutional. | The recommendation is supported. Special care centres for children with disabilities will be addressed in the regulations where different types of partial care are provided for. These facilities will be included as one of the types of partial care. |  |
| **Equal Education Law Centre** | **Equal Education Law Centre**  The organisation endorses the submission made by the Western Cape Forum for Intellectual Disability, above.    The organisation states that the Unesco adapted principles of inclusion as referring to a process that assists in addressing and overcoming all barriers to the presence, participation and achievement of all children on an equal basis. It then contends that South Africa has enacted legislation and policies to build an inclusive system, however, many children continue to experience barriers to accessing learning, care and support. One of the contributing factors to this has been the deficiencies in the regulatory frameworks which regulate the rights of children and the lack of implementation of those laws and policies that do exist. It argues that the Children’s Act as the principal legislation in South Africa relating to children it is important that it enables inclusivity and creates an inclusive system in which all children are protected on an equal basis. The Bill presents an opportunity to ensure that the Children’s Act achieves this and that the principle of inclusion is applied in all matters concerning children.  It submits that unfortunately, the Bill misses this opportunity, in that, amongst other things:   * It does not refer to the concepts of “inclusion” and “inclusive programmes” with any degree of specificity so as to ensure a common understanding of these terms and to improve implementation. * The words “inclusion” and “disability” are used throughout the Bill without being defined. They are sometimes used interchangeably and other times to refer to distinct concepts. We recommend that these terms be defined to promote clarity and certainty and to incorporate all aspects of diversity.   Similarly, to the Western Cape Forum for Intellectual Disability, the Equal Education Law Centre submit that 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 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. The Bill fails 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. |  | **Recommendations**   * The following definitions be included: * *“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”.* * *“Inclusive programmes: A programme in which all children are supported so that they can optimally participate and benefit”.* * *“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).* * Delete the following words which appear in clause 45(1) of the Bill:   *“…in the case of a child with developmental difficulties and disabilities, until the year before the child enters school.’’*   * The definition of “rehabilitation services” must be amended to refer to “rehabilitation and habilitation services” and included in the definitions section of the Bill. * 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. * Reference to disability be deleted in clause 95(a). * The General Regulations Regarding Children (GNR.261 of 1 April 2010) be revised to reflect this amendment. | Supported  Supported.  Supported |  |
| **BEST INTEREST OF THE CHILD**  **Justice Desk** | **Justice Desk**  The Justice Desk, welcomes the amendments as proposed by the Children’s Amendment Bill. However, the organisation is of the view that while, in most part, the Bill seeks to provide clarity, some provisions create possible loopholes through which children will continue to be harmed.  The Children’s Act is meant to give impetus to the constitutionally created mandate in terms of Section 28(2), which gives expression to the best interest of the child principle. The Act further aims to create a system of protection for the well-being of children of South Africa. This distinction within the wording of the Act, allows for the creation of two systems, one for children with proof of birth and those without. This creates a system through which children can be exploited, which goes against the spirit and purport of the Constitution. The Constitutional court held in Bannatyne that the best interest principle creates a positive obligation on the state to create a legal and administrative infrastructure that ensures the protection of children, as envisaged by Section 28(2). This simply means that the inability of the state to create a fair system of protections for children is a failure to meet the requirements of Section 9, which requires the state not to discriminate, on any ground, and in this instance on the basis of age. |  |  | Comments noted |  |
| **Scalabrini Centre** | **Scalabrini Centre**  The organisation commends the Department on the inclusion of unaccompanied and separated foreign children in these amendments. It is however, concerned about implementation, and wishes to highlight to the Department that where other departments are equally responsible for implementation, or where the actions of another Department impact on the implementation of provisions included in the Children’s Amendment Act, regulations must be published so as to ensure that the best interests of the child are respected, protected, promoted and fulfilled. |  |  | The proposal is supported, however it is already provided in section 5 of the principal Act. |  |
| Safe abandonment of children | Gauteng Tshwane  **BABY SAVERS**   * The speaker stated that abandoning a child in South African is unlawful. Section 11 of the Constitution states that everyone has the right to life and section 28(2) states that the interest of the child is of paramount importance in every matter concerning the child. Unsafe baby abandonment is an infringement of the right to life and being abandoned in a drain, toilet or veld is not in the best interest of a child. * Baby savers aim to save the lives of infants and are in the best interests of children. Legalising baby savers and implementing safe haven laws will reduce the numbers of babies being abandoned and left to die. The speaker thus recommended that safe relinquishment in a baby saver should be legalised as an immediate solution for unsafe abandonment. Importantly, not all forms of abandonment should be legalised. Unsafe infant abandonment will still be illegal and prosecutable. Countries such as Namibia, Germany, China and some other countries have legalised child relinquishment in baby savers. * To ensure that all safety protocols in terms of savers are adhered to and that organisations that do not follow the intake protocols are not allowed to establish these savers. |  |  | Disagree with legalising Baby Savers entity and implementing safe-haven laws because section 105 and 107 of the Act make provision for designation of organisations to render child care and protection services that includes abandonment.  Disagree because the safe relinquishment in a Baby Saver would be part of a service provided under the provision of section 107 of the Act as well section 167 making provision for placement of children in alternative care.  Statement is not qualified regarding Decriminalization of certain forms of abandonment.  Disagree. Clause 27 does not relate to the statement made about safety protocols for savers. |  |

| **Clause**  **1-147** | **PUBLIC COMMENTS AND PROPOSED AMENDMENTS** | **EXPLANATION FOR PROPOSED AMENDMENTS** | **RECOMMENDATIONS** | **DSD RESPONSE** | **ARTICULATION IN LAW (RETAIN, AMEND NEW CLAUSE)** |
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| **WESTERN CAPE DEPARTMENT OF BASIC EDUCATION** |  |  | * Clause 1(d): (g) Reconsider the deletion of the word “suitable”. | Disagree with the proposal to retain the wording “**suitable** place to live” in the definition of care. Measurement of suitability is subjective and may result in different interpretation. |  |
|  |  |  | Clause 1(l): (j) Act 24 of 1987 has already been defined | The new definition cross refers to Act 24 of 1987. |  |
|  |  |  | * Clause 1(m): (k) Reconsider the phrase “and has no health benefit”. Clarify the relationship between FGM and circumcision. | Proposal is not supported. The inclusion of the phrase and has no health benefit” is to avoid arguments that genital mutilation is performed for health benefits.  The definition of genital mutilation will cover both boys and girls with Female genital Mutilation included. |  |
|  |  |  | * Clause 1(n): (l) Reference should be to “The Hague Convention on Inter-Country Adoption” only. | Noted, however there is no need to define intercountry adoption in the Bill |  |
|  |  |  | * Clause 1(q): (m) Provide clear guidance on the evidence required in instances where only one parent is deceased, as the other (living) parent can be the holder of full parental responsibilities and rights. | Proposal not supported. The definition caters for both maternal and paternal orphans. |  |
|  |  |  | * Clause 1(t): (n) Define “customary caregiver”. Add “of South Africa” after “Republic”. | Proposal not supported.  The Children Act is the law of the Republic of South Africa. It will therefore be totologous to refer to Republic of South Africa every time we refer to South Africa. This is consistent with how the Constitution has been crafted. |  |
|  |  |  | * Clause 1(x): (o) Add reference to facility (see s 167(3)). Add a reference to specialised care, such as hospitals. | Proposal not supported.  The definition cross refers to section 167.  Hospitals cannot be defined as temporary safe care facilities. They are only responsible for medical care. |  |
|  |  |  | * Clause 1(y): (p) Ensure similar wording is used as is used in clause 1(t), e.g. reference to custom. Also consider adding “previous legal or customary care-giver” as is the case in clause 1(t). The definition should be in line with the UNHCR wording. | Proposal supported. |  |
|  |  |  | * Clause 3 - Insertion of section 6A: (q) Reword the section. Ensure that all applicable legislation and case law are taken into account when amending this proposed section. | Proposal not supported. The phrase “any other law” address the concern. |  |
|  |  |  | * Clause 6 - Amendment of section 12: (r) Replace “children” with “a child”. | Not support.  The proposal will not add any material value to the section. |  |
|  |  |  | * Clause 9 – Amendment of section 19: (s) Reconsider the proposed reference to section 20. | DSD does not support the proposal. Cross reference to Section 20 clarifies guardianship in respect of married fathers. |  |
|  |  |  | * Clause 10 - Amendment of section 21: (t) Retain the references to “good faith” and “reasonable period”. Regulations should guide role-players on the factors to be taken into account when determining the meaning of “reasonable period”. Proposed subsection (3)(a): Replace “social service practitioner” with “social worker”. | Proposal not supported.  Disagree with the proposal to retain the wording good faith” and “reasonable period”  These phrases are not measurable, subjective and may result in different interpretation.  DSD does not support the proposal to replace “social service practitioner” with “social worker”, as the word “social service practitioner” also includes “social worker” and the other “social service professionals” who are trained as mediators are also allowed to do mediation. |  |
|  |  |  | * Clause 13 - Amendment of section 23: (u) Add to the proposed subsection (1) in the Bill, after the word “and”: “(c) guardianship of the child if it is in the best interests of the child”. At least, grandparents must be able to apply for the guardianship of a child after the two-year period. The guardianship process must be set out. Additional training for social workers will be necessary. Clarify what the role of the clerk of the court will be. | DSD agrees with the proposal as grandparents must also be able to apply for guardianship of a child. |  |
|  |  |  | * Clause 14 - Amendment of section 25: (v) Delete the quoted words. | Proposal not supported because there are no reasons provided why the quoted words should be deleted. |  |
|  |  |  | * Clause 16 - Amendment of section 29: (w) Consider adding a reference to section 24 in proposed subsection (1A). | DSD agrees with the proposal as reference to section 24 is already included in Section 29 of the Children’s Act and Clause 16 of the Children’s Amendment Bill. |  |
|  |  |  | * Clause 20 - Amendment of section 35: (x) Add a cross-reference to section 34 in subsection (1). References to “custody” should be deleted. | DSD agrees with the proposal to add a cross-reference to section 34 in subsection (1), as Section 34 stipulates how a parenting plan should be drawn. |  |
|  |  |  | * Clause 21 - Amendment of section 40: (y) Define “domestic partner”. Consider amending subsection (1)(a) as follows: “Whenever the gamete or gametes of any person other than the birth mother or her partner have been used with the consent of both such partners for the artificial fertilisation of the birth mother, any child born of that birth mother because of such artificial fertilisation must for all purposes be regarded to be the child of those partners and they automatically have full parental responsibilities and rights with regard to that child”. Specifically, state whether subsection (2) deals with a birth mother who does not have a partner at the time of artificial fertilisation. To make the provision clearer, consider adding “as the birth mother” after “child born of that woman”. | Proposal not supported. The definition is provided for in the Domestic Partnership Act |  |
|  |  |  | * Clause 22 - Amendment of section 41A: (z) Add “parental” before “responsibilities” in proposed section 41A(1)(e). Replace “Act” with “Chapter” in proposed section 41A(1)(k). | DSD agrees with the proposal to add parental before responsibilities in proposed section 41A (1) (e). DSD agrees with the proposal to Replace Act with Chapter in proposed section 41A (1) (k). |  |
|  |  |  | * Clause 24 - Amendment of section 45: (aa) Also add “migrant child” after “unaccompanied” so that the term is in line with the defined term (proposed subsection (1)(jA). Align the Children’s Court Rules to the proposed subsection (2), or the proposed subsection (2) to the Rules. If the proposed subsection (3A) is included in the final Act, then consequential amendments should be made to section 24. | Proposal not supported. The joining word “or” is used to avoid repetition of phrases. |  |
|  |  |  | * Clause 25 - Amendment of section 46: (bb) The option to place the child in temporary safe care with the prospective adoptive parents, recommended by the adoption social worker, should be included in section 46. | Proposal not supported. This contravenes the provisions of section 167 that already caters for alternative care. This will create a risk of legitimate expectation. it is important to determine the adoptability of the child first |  |
|  |  |  | * Clause 26 - Amendment of section 49: (cc) Replace “social service practitioner” with “social worker”. Social service practitioners are not able to present the mediation report as part of statutory evidence in court hearings. | DSD agrees with the proposal to replace social service practitioner with social worker, as social service practitioners are not able to present the mediation report as part of statutory evidence in court hearings |  |
|  |  |  | * Clause 33 - Amendment of section 75: (dd) Add references to sections 44(3), 49(1)(a), 62(2) and 63 in this section. The Minister of Justice and Constitutional Development should also be empowered to make regulations relating to any other incidental administrative or procedural matter that is necessary to be prescribed for the proper implementation or administration of this Chapter. | Noted  DOJ |  |
|  |  |  | * Clause 56 - Amendment of section 105: (rr)Indicate whether quality assurance should be in respect of child protection organisations and child protection services. | Proposal supported.  This will clarify that quality assurance should be in respect of both child protection organisations and child protection services. |  |
|  |  |  | * Clause 58 - Amendment of section 107: (ss)Sub-Section 1 should be rephrased to state that the DG, on receipt of a written application, must consult with the relevant Provincial HOD(s). Add wording similar to that used in proposed section 105(6). The cross-references in subsection (4) should be to subsection (3) (which deals with assignment. The current cross-references deal with designations). The relevant requirements and limitations pertaining to such assignment should be set out in section 107(4) or where it may be appropriate. | Proposal not supported. The DG does not have to consult HOD when designating national child protection organisation. |  |
|  |  |  | * Clause 59 - Amendment of section 109: (tt)Amend the wording so that it is in line with the wording in sections 101(1) and (2). The Provincial HOD should remain the functionary responsible to withdraw a designation made by such Provincial HOD. | Proposal supported. |  |
|  |  |  | Clause 60 – Amendment of section 110: (uu) Delete “a” before “ward councilor” in proposed subsection (1). Add home based carer and SAPS in the list of officials and people named in the proposed subsection. Subsection (1) should be in line with the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Define “officer of the court”. Criteria to determine whether a child has been abandoned should be set out in the Act or regulations. Retain the word “conclusion” in section 110(1). Alternatively consider “knowledge” or “reasonable cause to suspect”. Consider adding a child and youth care centre report to the provisions of section 110(5). | The deletion of “a” is supported.  The inclusion of home-based carer and police officer (instead of SAPS) is supported.  “Subsection (1) should be in line with the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007”. It may require legal opinion.  The retention of the word “conclusion” is supported. |  |
|  |  |  | * Clause 62 – Amendment of section 114: (vv) Consider adding a reference to guardian in subsections (2)(a)(vi) and (2)(c)(vii). | The addition of guardian is supported. |  |
|  |  |  | * Clause 64 – Insertion of section 117A: (ww) Ensure that identical wording is used throughout. • Delete the comma after “to” in proposed subsection (2)(b). Reconsider the wording of proposed subsection (2)(a). | The deletion of comma after “to” is supported.  The proposal to reconsider the wording of proposed subsection (2)(a) is noted. |  |
|  |  |  | * Clause 65 – Amendment of heading: (xx) Amend the heading of Part A of the Register in line with the amendment to the heading of Part B. | The amendment is supported. The heading will read as:  Part A of Register: Record of abuse or deliberate neglect of children. |  |
|  |  |  | * Clause 66 – Amendment of section 119: (yy) Reconsider the wording in proposed subsection (2) so that it is in line with section 120. | Proposal not supported. The clause cross refers to section 120. |  |
|  |  |  | * Clause 67 – Amendment of section 122: (zz) Amend the reference to DG in line with the other amendments to this section. Add a reference to reviews in subsection (2). | Reference to DG is amended by clause 67 in the current Bill.  Reference to reviews is considered as follows: The [Director-General] Registrar of the National Child Protection Register must enter the name of a person found unsuitable to work with children as contemplated in section 120 in Part B of the Register regardless of whether appeal or review proceedings have been instituted or not”. |  |
|  |  |  | * Clause 68 – Amendment of section 123: (aaa) Ensure the wording in subsections (1)(d), (e) and (f) is the same. Consider adding a reference to a cluster foster care scheme in subsection (2). Reconsider the phrase “unless evidence to the contrary is provided” in subsection (4). | The subsection (1) (d) and (e), (there is no (f)), are amended to read: By the substitution in subsection-  The addition of cluster care scheme in subsection (2) is supported.  The phrase [unless evidence to the contrary is provided] in subsection (4) is considered for deletion |  |
|  |  |  | * Clause 69 – Amendment of section 124: (bbb) Specifically, state that the person is still prohibited from working with children, as well as what the responsibilities of the employer, etc. are in this regard | The proposal is not supported. The prohibition to work with children and the is stated in Section 123. Section 124 requires the prohibited person to disclose to the employer.  The responsibilities of the employer are stated in s123 (2). |  |
|  |  |  | Clause 71 – Amendment of section 126: (ccc) Indicate that the employer should establish before a person is appointed and every two years thereafter whether the name of the person is in Part B of the Register. Add “or continue working” after “work” in subsections (1)(a)-(c), and “or continue to be employed” after “employed” in subsections (1)(d)-(e). | The amendment to indicated that the employer should establish before a person is appointed and every two years thereafter whether the name of the person is in Part B of the Register is supported.  The amendment to add “or continue working” after “work” in subsections (1)(a)-(c), and “or continue to be employed” after “employed” in subsections (1)(d)-(e) is supported |  |
|  |  |  | * Clause 74 – Amendment of section 131: (ddd) Indicate what exactly is meant by “the state” – specify who/which department is responsible. Define “medical testing” or refer to “medical examination” (which is broader). | Proposal supported. |  |
|  |  |  | * Clause 78 - Amendment of section 145: (eee) Consider making reference to guardians. | Proposal not supported  Clause 78 does not have any link or reference to guardians. It addresses provincial profiles. |  |
|  |  |  | * Clause 79 – Amendment of section 146: (fff) Delete “substantially”. | Proposal not supported. The regulations will prescribe the level of compliance in order to qualify for funding. |  |
|  |  |  | * Clause 80 – Amendment of section 147: (ggg)Delete proposed subsection (2)(a). As paragraphs (a)-(h) had contents in the past, it is advisable to delete the current paragraphs (a) to (h) and add the new paragraphs thereafter (i.e. starting with paragraph (i) in clause 80(b)). Delete “but not limited to” in proposed section 147(2)(e). | Not support.  The proposal will not add any material value to the section. |  |
|  |  |  | * Clause 81 – Amendment of section 149A: (hhh) Consider adding references to all the sections empowering the making of regulations. | Noted |  |
|  |  |  | * Clause 82 – Amendment of section 150: (iii) Delete “from another country” in proposed subsection (1)(j). A victim of trafficking must be defined, or a cross-reference to the Prevention and Combating of Trafficking in Persons Act 7 of 2013 should be included. Consider adding references to guardians in subsections (1)(b), (g) and (i). Replace “may be” with “is”, and delete “reason to believe” in subsection (1)(g). The Bill does not provide a long-term solution for the management of children in the care of family members that require financial support. The role that social workers in the Department of Health, the DBE and municipalities can play, should be further explored. Consider extending the top-up for orphans to also include abandoned children in the care of family. | Proposal not supported. The target group is children from foreign countries. |  |
|  |  |  | * Clause 83 – Amendment of section 155: (jjj) Consider whether the word should be replaced with “order”. | Proposal not supported. The word that should be replaced is not specified. |  |
|  |  |  | * Clause 84 – Amendment of section 156: (kkk) Consider adding a reference to guardians in subsection (1)(e). | Proposal supported. |  |
|  |  |  | * Clause 86 – Amendment of section 159: (lll) All court orders must be extended by the children’s court before they lapse. Reconsider removing this section and replacing with a provision that is aligned to the order in Centre for Child Law v Minister of Social Development and Others (North Gauteng High Court case number 72513/2017) (i.e. a more comprehensive legal solution). Refer to the DoJ&CD for urgent opinion regarding the legislation mandating it to extend an order that has lapsed. This will place an unnecessary burden on social workers for evidence and proof. | Proposal not supported  **Clause 86** seeks to amend section 159 by providing that a court may extend an  alternative care order that has lapsed or make an interim order. Furthermore, it will be regulated to ensure the accountability of the respective officials regarding the lapsing of these orders. It forms part of the comprehensive long-term solution to foster care as a mechanism for managing foster care orders. |  |
|  |  |  | * Clause 87 – Amendment of section 167: (mmm) As the wording under clause 87(e) is very different from the wording in the current subsection (4), rather delete subsection (4) and insert a new subsection (5). • The contents of subsections (2)(a) and (b) should be moved to section 152. •Consider removing amendments to section 167(1)(b) until children placed in terms of the Child Justice Act and referred to in other parts of the Children’s Act have been responsibly dealt with and until the Child Justice Act has been adequately amended to provide norms and standards for the management of these children whilst in a child and youth care centre. | Proposal not supported.  The intent of section 167 is to clarify what temporary safe care entails. Not to regulate removals as contemplated in section 151 and 152  Proposal supported. Children placed in CYCC in terms of the Child Justice Act are not covered by the provisions of alternative care because their court orders are not children’s court orders. |  |
|  |  |  | * Clause 88 – Amendment of section 170: (nnn) Add “who was” in subsection (5A)(c). Consider including the reference to the social worker within the child and youth care centre in proposed subsection (5B). | Proposal supported. |  |
|  |  |  | * Clause 89 – Amendment of section 178: (ooo) Rather add a new subsection to section 110 that will be relevant to sections 89, 178 and 226. | Not support.  The proposal will not add any material value to the section. |  |
|  |  |  | * Clause 94 – Amendment of section 186: (ppp) Replace “provision” with “provisions” and add a comma after “(1)” in proposed subsection (1A). | Not support.  The proposal will not add any material value to the section.  Proposal to add the comma is supported. |  |
|  |  |  | * Clause 95 - Amendment of section 188: (qqq) Delete “and” after “maturity” and add a comma. | Proposal supported. |  |
|  |  |  | * Clause 97 – Amendment of section 193: (sss) Consider whether all facilities/programmes which may be provided and funded by the MEC for social development are to be registered (as a prerequisite) and amend the relevant provisions in the Act accordingly. Clarify what is meant by “conditional compliance”. | Proposal noted |  |
|  |  |  | * Clause 101 – Amendment of section 191: (rrr) Amend proposed section 191(2) to also provide for children with disabilities who require a higher level of support, in order to respond to their special needs. | Proposal partly supported.  Section 66 (1) (h) of the Mental Health Care Act provides for the regulations relating to *“establishment of child, adolescent and geriatrics facilities to promote their mental health status and their admission, care, treatment and rehabilitation at health establishments”* However the relevant regulations do not give effect to that provision. This implies that there is a gap in the Mental Health Regulations.  Furthermore, Regulation 50 of the Mental Health Act Regulations addresses educational programmes and states that the Department of Education shall be responsible for the establishment of educational programmes of learners in the compulsory age group or those entitled to basic adult education programmes.  Section 12 of the South African Schools Act makes provision for “ *public schools which include a public school for learners with special education needs*”  DSD is of the opinion that the Departments of Health, Education and Social Development must adopt a comprehensive approach in dealing with children with disabilities.  Children with disabilities must be fully mainstreamed in the education system and those with severe and profound mental disabilities must be dealt with in terms of the Mental Health Act.  The Children’s Act already makes provision for respite care services for children with disabilities.  DSD proposes that this amendment be included in the partial care chapter. If included under section 191, it would mean that children should go through the children’s court before they are placed in such facilities. |  |
|  |  |  | * Clause 107 – Amendment of section 213: (ttt) Add another word in proposed subsection (3)(aA), e.g. programmes or services. | Not supported. Already the heading under 3 introduces the programmes to be provided in a drop-in centre. |  |
|  |  |  | * Clause 109 – Amendment of section 215: (uuu) Replace “may” with “must” in subsection (1).   Replace the word “shelter” with another word. | Not supported. Funding depends on the availability of budget. The Act makes a provision that the MEC may prioritize funding of drop-in centres.  An alternative word for shelter has not been provided. The word “shelter” is deemed appropriate. |  |
|  |  |  | * Clause 112 – Amendment of section 220: (vvv) Reconsider the deletion of subsection (2) – it is unclear why it is deleted. | Recommendation not supported  Clause 111 (b) addresses assistance for conditionally registered drop in centres. |  |
|  |  |  | * Clause 114 – Amendment of section 225: (www) The amendment references to the MEC is incorrect and the current wording “provincial head of social development” should be retained. The requirement to consult with the municipal council should be replaced with a requirement for the Provincial HOD to consult with the municipal manager before such assignment is made. Section 225(1) should be amended by replacing “by written agreement with a municipality” with “by written agreement with the municipal manager”. * Section 217(1) of the Act should be amended by including a further possibility i.e. “or a municipality where the relevant functions were assigned to a municipal manager”. Section 223 should make provision for an appeal against decisions made by a municipal manager where the functions of the Provincial HOD were assigned to the municipal manager. * The Department of Social Development must ensure that the assignment of functions must be followed by the required funding. | Recommendation not supported.  The proposed amendment seeks to align the assignment of functions with section 126 of the Constitution. .  Not supported. A provision for appeal against the Municipality has already been made in Section 225 (6).  Not supported. The Municipality must carry out the assigned functions utilising their own budget. The agreement for the assignment of functions can only be reached if the Municipality has the capacity to perform the functions. |  |
|  |  |  | * Clause 116 – Amendment of section 232: (xxx) Subsection (4)(b) should provide for being habitually resident in the Republic. Consider adding the words “habitually residing in” after “permanent resident” in proposed subsection (5)(c)(iv). • Provision should be made for staying on the list after adopting a child, but wanting to adopt another child. Subsection (5)(c) should also refer to Part B of the Register. | Proposal supported  habitually residing in the Republic and proof of residence will be prescribed in the Regulation.  Disagreed with the name staying on the list/ RACAP after adopting the a child as suitability assessment must be made when adopting a second child |  |
|  |  |  | * Clause 118 - Amendment of section 234: (yyy) Add “of the definition of a family member” after “(c)” in subsection (1). | Not supported, family member is clearly defined in the principal act |  |
|  |  |  | * Clause 120 - Amendment of section 239: (zzz) Reconsider the contents of subsection (1)(d | Not supported, The use of the word recommendation should be retained as the HOD checks compliance with the requirements of the Act and then issue a recommendation letter |  |
|  |  |  | * Clause 123 - Amendment of section 250: (aaaa) Amendment is not supported | Proposal not supported  The amendment includes adoption social workers employed by the Department of Social Development. |  |
|  |  |  | * Clause 124 - Amendment of section 251: (bbbb) References to registration as adoption specialists and the Social Service Professions Act should be added. If the Department will be able to do adoptions, this section should be repealed | Proposal not supported  There is no need to specify the registration of speciality in this section because once you are an adoption social worker, you are obviously registered for speciality with SACSSP. |  |
|  |  |  | * Clause 126 - Amendment of section 253: (cccc) The Department should make sure that all relevant amendments to this Chapter are reflected in this section. | Noted. |  |
|  |  |  | * Clause 127 – Amendment of section 258: (dddd) Add the full reference to the correct Convention, as set out in the definition. | Proposal supported |  |
|  |  |  | * Clause 128 – Amendment of section 259: (eeee) Add the words e.g. to subsection (2). Subsection (3) should not be deleted. | Disagree, section 259(3)(a) and (b) refers to intercountry adoption fees. In line with the deletion of section 249, section 259 (3)(a) and (b) should be consequentially deleted. |  |
|  |  |  | * Clause 137 – Amendment of section 271: (ffff) Specify what is meant by “competent court” in proposed subsection (3), as the principal Act always stipulates which court would be the competent court for a specific matter. | Competent court relates also to relevant court. |  |
|  |  |  | * Clause 138: Insertion of section 278A: (gggg) Rather include the same references to the different courts in proposed subsection (2). Add “that the postponement” before “is justifiable” in proposed subsection (3). | Proposal supported |  |
|  |  |  | * Clause 139 – Amendment of section 279: (hhhh) Add a new subsection (3) to deal with instances where applications have not been made to the Central Authority in terms of article 8 of the Hague Convention for the return of the child or contact with the child. When there is an application to court for the return of the child to his/her country of habitual residence or for contact, the applicant or legal representative must serve a copy of such application on the Central Authority or delegated authority. | Noted  DOJ |  |
|  |  |  | * Clause 141 – Amendment of section 295: (iiii) Proposed section 295(dA)(i) should be amended as follows: “a report from an adoption social worker or psychologist containing a psychosocial assessment of all parties to the agreement.” | Proposal not supported. The new proposal will create administrative burden for social workers and adoption social workers. Surrogacy is not a designated child protection service. It does not require the services of designated social workers and adoption social workers. |  |
|  |  |  | * Clause 145 - Amendment of section 305: (jjjj) The Department should consider that the legislation referred to in section 6A also has offences and penalties, which will also apply. | Proposal not supported. Clause 145 amending section 305 makes reference to penalties and relating to section 6A. |  |
|  |  |  | * Clause 147 - Amendment of section 312: (kkkk) Reference should also be made to the Provincial HOD. | Proposal not supported. Clause 147 makes provision for the MEC to delegate powers and duties to any person who may include the HOD. |  |
|  |  |  | * Other proposed amendments - Section 11 of the principal Act: ((mmmm)   Add references to caregivers, parents and guardians and combine the wording in sections 11(1) and (2). | Proposal supported |  |
|  |  |  | Amendment of section 123: (aaa) Ensure the wording in subsections (1)(d), (e) and (f) is the same. Consider adding a reference to a cluster foster care scheme in subsection (2). Reconsider the phrase “unless evidence to the contrary is provided” in subsection (4). | Agree with recommendation. |  |
|  |  |  | Amendment of section 159: (lll) All court orders must be extended by the children’s court before they lapse. Reconsider removing this section and replacing with a provision that is aligned to the order in Centre for Child Law v Minister of Social Development and Others (North Gauteng High Court case number 72513/2017) (i.e. a more comprehensive legal solution). Refer to the DoJ&CD for urgent opinion regarding the legislation mandating it to extend an order that has lapsed. This will place an unnecessary burden on social workers for evidence and proof. | Disagree. There is still a need to have such a provision in the Act. The proposal referred to in the 2017 High Court Order deems the foster care orders valid for a specified timeframe that is similar to clause 86(2A). This clause is aligned to sections 48(b) and (c) of the Act. |  |
|  |  |  | Section 182 of the principal Act: (bbbbb) Indicate that a prospective foster parent must be an adult. | Proposal is not supported as the Act defines a foster parent as a person and not as a child. |  |
|  |  |  | * Other proposed amendments - Addition of a section at the end of Chapter 16: (ccccc) Consider adding a section dealing with regulations | Proposal supported |  |
|  |  |  | * Other proposed amendments - Chapter 16 of the principal Act: (ddddd) Indicate whether the provisions of Chapter 15 also apply to Chapter 16 adoptions. | Proposal supported |  |
|  |  |  | * Other proposed amendments - Section 18 of the principal Act: (oooo) Replace “or” with “and” in at the end of section 18(3)(b). Amend the section so that the person with parental responsibilities and rights should also ensure that in his or her temporary absence, the child is cared for by a competent person. | Proposal supported |  |
|  |  |  | * Other proposed amendments - Section 60 of the principal Act: (pppp) Consider adding the contents of section 58(f) to section 60(1)(c) as well. | Proposal supported. The definition of Department does not refer to the Department of Justice. Hence it is important to specify. |  |
|  |  |  | * Other proposed amendments - section 248 of the principal Act: (eeeee) Amend the paragraph so that provision is made for biological children of the biological parent to get access to information or a previous adoptive parent of an adopted child. | Disagree, Principal Act already makes provision for parties who may have access to adoption information. |  |

**DSD RESPONSES**

**CONSOLIDATED PROVINCIAL PUBLIC HEARINGS SUBMISSIONS**

| **Clause**  **1-147** | **PUBLIC COMMENTS AND PROPOSED AMENDMENTS** | **EXPLANATION FOR PROPOSED AMENDMENTS** | **RECOMMENDATIONS** | **DSD RESPONSE** | **ARTICULATION OF THE LAW** |
| --- | --- | --- | --- | --- | --- |
| **Clause 1** seeks to amend section 1 of the principal Act by substituting and  inserting new definitions i.e. ‘‘early childhood development centre’’; ‘‘family  counsellor’’, ‘‘inter-country adoption’’, ‘‘regional court’’, ‘‘separated migrant  child’’ and ‘‘unaccompanied minor child’’. This will align the principal Act  with current family and child law practice. |  | **Definition of private social worker**  West Coast:  Section 2(1) of the Act is silent on the definition of a Private Social Workers (PSW). The Bill is also not clear about this definition. |  | The principal Act defines a **'social worker'** as a person who is registered or deemed to be registered as a social worker in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); |  |
| **Clause 1** seeks to amend section 1 of the principal Act by substituting and  inserting new definitions i.e. ‘‘early childhood development centre’’; ‘‘family  counsellor’’, ‘‘inter-country adoption’’, ‘‘regional court’’, ‘‘separated migrant  child’’ and ‘‘unaccompanied minor child’’. This will align the principal Act  with current family and child law practice. | **Western Cape**  **Chapter 1: “interpretation, Objects, Application and Implementation”,**   * “**Parental alienation**” MUST AUTOMATICALLY be classified as child abuse in the criminal procedures act as well as in the amended Children’s Act. * Parental alienation is when one parent alienates/isolates/distances the other parent (extended family or caregiver) from the child or children they share. This can occur through physical, emotional, or psychological manipulation. Parental alienation must carry an automatic prison sentence of 25 years’ imprisonment for the alienator and his/her legal, psychological team further there must be a 10 million rand fine and the professionals must be struck of their respective bodies or councils and banned for life from practising their profession. |  |  | The Department takes note of the proposal.to criminalisation of parental alienation, however, it is not implementable as it is not sound in law. Furthermore the definition of abuse includes the act of ‘exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally’ ; inherently, parental alienation in a sense is a form of child abuse as defined in the Children’s Act because it is psychologically and emotionally harmful to a child.  Proposal to amend section 35 to address parental alienation is already categorised in the Act as refusal of access, refusal to exercise parental responsibilities and rights and penalties for offenders. |  |
| Section 2 | **Western Cape**  **Section 2: “Objects of Act”**  **With reference to (a)** – must promote the preservation and strengthening of families, to include both parents and the child or children.  • It should be explicitly emphasized that the, rights of the child must be maintained irrespective of whether the parents were married or not, and irrelevant of the cultural, religious or traditional beliefs, the child must automatically maintain an equal, shared 50/50 relationship with both of its parents. |  |  | The Department notes the proposal that the Act must make it clear that parents whether married or not should exercise their responsibilities and rights equally on a 50/50 basis.  DSD contends that this is not always possible and cannot be made a matter of law as in this Bill. This is based on the fact that some parents may not be fit and proper parents. Furthermore parenting agreements and parenting plans may be drafted to address care arrangements between parents. |  |
| **Clause 2** seeks to amend section 6 and introduces the concept of *accessible*  *and inclusive environment* to promote and protect the interests of children  with disabilities. |  |  | **Western Cape**  **Chapter 2: Section 6 : “General principles”**  With reference to 2 the following must be included as (g): Both parents to be physically present at enrolment to school   * Any and all communication must automatically be supplied to both parents. Developmental and disciplinary issues need to have both parents involved. * Education, psychological and educational requirement of the child. * Any psychological, play therapy evaluations must o Be authorized by both parents * All reports must be released to both parents at the same time irrelevant and irrespective who has paid for the report. * Any evaluation done that requires an analysis on the other parent must be done in the physical presence of the psychologist or suitable qualified person If the psychologist or suitable qualified writes a biased report or on the other parent on the basis of the hearsay from the parent without physically having interviewed the other parent MUST AUTOMATICALLY: * Be struck of their respective professional body, * Receive an automatic 25-year sentence for presenting false, fake or none existent information, * Receive an automatic 10 million rand fine. | The Department notes the proposal that the Act must make it clear that parents whether married or not should exercise their responsibilities and rights equally on a 50/50 basis.  DSD contends that this is not always possible and cannot be made a matter of law as in this Bill. This is based on the fact that some parents may not be fit and proper parents. Furthermore parenting agreements and parenting plans may be drafted to address care arrangements between parents. |  |
| **Clause 3** seeks to insert a new section 6A that provides for protection of a  child’s right to privacy and information. | LIMPOPO POLOKWANE   * Protection of children’s rights to privacy is a progressive move, however, when privacy is compromised then it is a concern. It was indicated that children are at risk of being exposed to harmful media content as well as bullying through social media. This was clearly demonstrated by a recent case of a child who committed suicide due to bullying in a social media platform. The participants shared a view that parents should play a part in monitoring their children’s use of social media and forms of entertainment * COMMENT * It was argued that television (TV) is the main contributor to the antisocial behaviours of children in communities. One of the speakers emphasised that children lack morals due to what they watch on television and on social media. It was recommended that broadcasting companies need to monitor its TV programmes because children learn antisocial behaviours by watching and listening to these programmes. Further, government was urged to engage with broadcasting companies to include programmes that are more educational for children. |  | * Government should constantly monitor the type of media content that could be harmful to children and ban it. | The new insertion of section 6A adequately protects privacy of children by reference to various Legislation referred to therein.  This is addressed by insertion of clause 6A in section 6 of the Principal Act which provides as follows:  ‘‘**Children’s right to privacy and protection of personal information**  **6A.** (1) A child’s right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other law protecting the privacy and protection of personal information of the child.’’. |  |
| **Clause 3** seeks to insert a new section 6A that provides for protection of a  child’s right to privacy and information. |  |  | Government should regulate the various forms of media content. | Comment noted  The relevant regulatory bodies/departments regulate media content. |  |
| **Clause 4** seeks to amend section 7 by making reference to ‘‘*any special needs*  *that a child may have*’’. The intention is to create an additional set criterion,  whenever any provision in the Act requires the best interests of the child test  to be applied—the child’s special needs must be taken into consideration. | **Western Cape**  **Section 7: “Best interest of the child standard”,**   * Parental alienation must carry an automatic prison sentence of 25 years’ imprisonment for the alienator and his/her legal, psychological team further there must be a 10 million rand fine and the professionals must be struck of their respective bodies or councils and banned for life from practising their profession.   With reference to Section 7.1(a) – The issue here again is that children are removed from one parent for long periods of time due to unfair/biased practices. This results in the establishment of a **pseudo-status quo**, one that is artificially established to remove one parent. In evaluating the term “nature of the personal relationship between”, parental alienation must be taken into account and an overarching aim of immediately / without any delay of **re-uniting parent and child must be central.**  Where parental alienation has been proven (or any other form of abuse), the alienated parent must be immediately re-integrated with the child with the assistance of a well-defined government approved re-integration process. |  | RECOMMENDATIONS  It is proposed that the following definitions must be added on the Children’s Amendment Bill:   * The overarching emphasis of this section must be: in the absence of violence, abuse or neglect, the child must automatically have daily physical, emotional, psychological, spiritual contact/care/guardianship and maintenance with, by and of both parents at all time. * It must be enshrined in the Act (perhaps as 7.1(a)) that, upon separation, that a 50:50 custody arrangement must come into automatic effect by default, irrespective of marital, cultural, religious or traditional status as this is in the best interest of the child. This point should be stated as point (1) in this section. * All and any related therapies to reestablish the bond between child and alienated parent MUST AUTOMATICALLY be born at the cost of the alienator and his /her legal and psychological team * Someone found guilty of physical abuse cannot still remain with the child. The alienating parent must be removed from the child for a period of no less than 90 days and be put through a rehabilitative course in order to change this offending parent’s behavior and equip them to be re-integrated into the family once they have been evaluated as fit to do so. A suitably qualified social worker or parenting coordinator with a minimum 10-year post doctorate degree must be put in place to ensure a healthy family environment is maintained until all parties are deemed to be fit to conduct themselves as a family unit without 3rd party intervention.   A specific detailed program must be put in place to determine who, what and how the reunification will take place and what remedies i.e. reintegration therapy are expertly and proper diagnosed and proficiently implemented. | The Department takes note of the proposal.to criminalisation of parental alienation, however, it is not implementable as it is not sound in law. Furthermore the definition of abuse includes the act of ‘exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally’ ; inherently, parental alienation in a sense is a form of child abuse as defined in the Children’s Act because it is psychologically and emotionally harmful to a child.  Proposal to amend section 35 to address parental alienation is already categorised in the Act as refusal of access, refusal to exercise parental responsibilities and rights and penalties for offenders.  . |  |
| **Clause 5** seeks to amend section 8 by explicitly stating that the Act applies to  every child in the Republic of South Africa so that there are no interpretation  difficulties and that users of the Act will know that children include noncitizens. |  |  | Gauteng Tshwane  Amendment to Section 8 of the Act was supported. The amendment makes it clear that the Act applies to every child in the Republic of South (including foreign children) to avoid inconsistencies in interpretation. | Comment noted |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | **EASTERN CAPE**  **OR TAMBO DISTRICT**   * The Traditional Authority condemned the practice of forced marriages *(ukuthwala)* and was in agreement that the practice especially when is done to children under the age of 18 years is very wrong. It was stated that forced marriages are against the principles of the black culture and children should not be forced into marriages. It was alleged that forced marriages contribute to GBV and high numbers of divorce in the country. |  | **EASTERN CAPE**  **OR TAMBO DISTRICT**  Recommendation:  It was recommended that there should be a minimum age for consent to a marriage, and that the different laws that regulate age of consent in South Africa should be reviewed. For example, a 12-year-old consenting to undergo an abortion without the knowledge of a parent. | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Corporal punishment | LIMPOPO POLOKWANE   * In terms of disciplining a child, participants shared differing views, taking into account some similarities and difference in African and western countries with regard to corporal punishment and practices of disciple. It was stated by some that children’s rights are used against parents who want to discipline their children. Government was urged to protect both children and parents. |  |  | The Constitutional Court Judgement dealt with the matter of corporal punishment in the case of Freedom of Religion South Africa v Minster of Justice. The common law defence of moderate and reasonable chastisement has been found to be unconstitutional. |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | LIMPOPO FETAKGOMO  The speakers raised the following regarding *child marriages:*   * The Bill was applauded for prohibiting the practice of child marriages, as it is a major challenge facing the communities. |  |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | **MPUMALANGA: GERT SIBANDE DISTRICT MUNICIPALITY**   * **Section 12:** The speaker questioned that what would make or on what condition would the Marriage Commissioner grant permission to a child marriage? This is because it is still wrong for parents to give consent to such a as the child would still be a minor. Reference was made of some places in South Africa where of “Ukuthwala" (forced marriages) is still practiced. In some of these cases, an older man would ‘kidnap’ an underage girl as young as 12 years. The child would be ‘hidden’ until she becomes of age. However, the reality is that the child would start doing duties of a married woman. The question raised was, *“How does the Amendment Bill protect children against this sickness or how is this monitored so that it doesn’t happen in our life time and generations to come? This is a matter of culture vs law.* |  |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Corporal punishment |  | MPUMALANGA NKOMAZI LOCAL MUNICIPALITY In relation to children’s rights, most speakers commented on the issue of corporal punishment. There were differing views regarding acceptable methods of disciplining children amongst the speakers. Some are off the view that corporal punishment is an effective way of disciplining children. Whilst others are of the view that corporal, punishment is not acceptable as it violates children’s rights. One speaker stated that some schools are using a method of naughty corner to discipline children, which is very effective. | * It is recommended that parents and teachers attend parental workshops to enable them to learn about different methods of disciplining children. | Comment noted  The Constitutional Court Judgement dealt with the matter of corporal punishment in the case of Freedom of Religion South Africa v Minster of Justice. The common law defence of moderate and reasonable chastisement has been found to be unconstitutional. |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | **Northwest Moses Kotane**  *child marriages*:   * Supports the prohibition of child marriages. |  |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | **Child marriages**  • Garden Route: Supports the ban of child marriages. It was submitted that the practice of child marriages is not in the best interest of the child.  • In some instances, child marriages take place due to economic hardships. Young parents leave their children in the care of their grandparents and go seek employment in the cities but unfortunately they do not find employment. Due to lack of income, grandparents decide to marry the children. These children end up being abused and giving birth whilst they are still very young. |  |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | Mpumalanga Nkomazi local municipality  * Child marriages should be abolished. Children are not supposed to be married at a very young age. Older men should be punished for dating young girls. The Bill should include protection of young girls from old men. |  |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Circumcision | **children’s rights**   * CENTRAL KAROO DISTRICT MUNICIPALITY * In Clause 6 of the Bill there is a discrepancy between boys and girls yet for religious and cultural reasons boy are circumcised. It is unclear whether the definition of circumcision includes circumcision of both sexes. |  |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | FREE STATE FEZILE DABI  One of the speakers supported the amendment of Section 12 of the Children Act 38 of 2005, which prohibits forced child marriages. However, the speaker raised an argument relating to prohibition of child marriages versus the prevalence of teenage pregnancy experienced in the country and absent fathers. The speaker warned the legislators must not develop laws that indirectly promote a fatherless society. She stated that if children are prohibited from getting married if they wish to, the probabilities of the father not being fully present in the child’s life are very high. The speaker proposed that the Amendment Bill should allow child marriage (child marrying another child) only for the child who has consented to that marriage. Further, she recommended that children be allowed to marry at the age of 16 and if not, the law must prohibit children under 18 years not to fall pregnant or engage in sexual acts. |  |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Child marriage | *Northwest*  *child marriages:*   * Children under 18 years of age are unable to take decisions. | * Thus, support the prohibition of child marriages. No children under the age of 18 years should be married. A popular reality TV called *Isencane Lengane* show was used as an example on why child marriages should be prohibited. * All policies and traditional or cultural practices that promote child marriages should be banned in line with the new insertion of clause 6 of the Bill, which prohibits child marriages. * Child marriages destroy the children’s future and increase risk of contracting HIV/Aids, especially girls. |  | The Department supports the amendment of Section 12(2) to include minimum age of consent to marriage to be 18 years without exception.  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.  The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception |  |
| **Clause 6** seeks to amend section 12 which is intended to align the prohibition  of genital mutilation with the new definition. The clause further prohibits any  marriage of a child.  Corporal punishment |  |  | **MPUMALANGA DISTRICT:** **DR. J.S MOROKA LOCAL MUNICIPALITY**   * With regard to applying disciplinary measures on children, the Department should assist teachers with other methods of disciplining children and should conduct workshops for parents and teachers on how to better discipline children. It is not easy to work with children due to regulations regarding disciplining children. * It was mentioned that it is difficult to protect children especially with the rights they have, but children should be protected and safeguarded. Most of the children have experienced and suffered abuse during the COVID-19 pandemic and lockdown more especially when not attending schools**.** | DSD supports the proposal. |  |
| **Clause 10** seeks to—  *(a)* amend section 21 by providing clarification regarding a father who is not  married to the mother and who was living with her at any time between  the child’s conception or birth. He will automatically acquire parental  responsibilities and rights in respect of that child;  *(b)* further clarify the circumstances under which the father may acquire full  parental responsibilities and rights in respect of a child;  *(c)* further amend section 21 by the insertion of subsection 1A, in order to  clarify that the family advocate may, in the prescribed manner, issue a  certificate confirming that the biological father has automatically  acquired full parental responsibilities and rights in respect of the child;  *(d)* align the current terminology or definitions i.e. social service practitioner;  *(e)* further delete subsection (3)*(b)* which provides that any party to the  mediation may have the outcome of the mediation reviewed by a court.  Section 20 and 21 | The issue of parental responsibilities and rights of unmarried fathers was raised in all the provices.  These are the salient themes that covered the submissions.   * 50/50 rule regarding parental rights and responsibilities for both biological parents * Parental alienation * Cultural practices and requirement to pay damages in order to exercise Parental Responsibilities and Rights In terms of section 21 * Maternal preference |  |  | * The Department notes the proposal that the Act must make it clear that parents whether married or not should exercise their responsibilities and rights equally on a 50/50 basis. * DSD contends that this is not always possible and cannot be made a matter of law as in this Bill. This is based on the fact that some parents may not be fit and proper parents. Furthermore parenting agreements and parenting plans may be drafted to address care arrangements between parents. * The Department takes note of the proposal.to criminalisation of parental alienation, however, it is not implementable as it is not sound in law. Furthermore the definition of abuse includes the act of ‘exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally’ ; inherently, parental alienation in a sense is a form of child abuse as defined in the Children’s Act because it is psychologically and emotionally harmful to a child. * Proposal to amend section 35 to address parental alienation is already categorised in the Act as refusal of access, refusal to exercise parental responsibilities and rights and penalties for offenders. * The Department acknowledges that there are certain conditions and cultural practices that unmarried biological fathers (Black fathers) have to fulfil in order to exercise parental responsibilities and rights in terms of section 21 (1). These include paying of the damages. * To remedy this, the Department proposes the amendment of section 21 to replace the word “and” with “or” between section 21 (1) (b) (ii) and (iii). * This will allow fathers who meet either of the three requirements/conditions as stipulated in section 21(1) (b) (i) to (iii) exercise parental responsibilities and rights. * The Department agrees with the proposal to amend section 21 to insert a new provision that allows a biological father who satisfies Section 21 conditions to acquire Parental Responsibilities and Rights in the event of the death, incapacitation or disappearance of the mother. * this would address the perceived issue of biasness and automatic maternal preference. |  |
| Section 20 |  |  | Gauteng Ekurhuleni  A married father who raises a child born from a different father should be recognised as a father and be allowed to exercise PRR in the event of a divorce/ separation or death of the biological mother | A married father (step parent) who adopts a step child acquires full parental responsibilities and rights in respect of that child.  In case of death of the mother or divorce, he will regarded as the child’s parent and be treated likewise. |  |
| **Clause 20** seeks to amend section 35 by—  *(a)* amending outdated terminology;  *(b)* providing that a parent who is aggrieved by another parent who refuses  to allow that parent contact with a child, contrary to a court order,  parental responsibilities and rights agreement or parenting plan, may  seek recourse;  *(c)* making provision for the inclusion of a parenting plan. | West Coast:  The fathers are experiencing challenges when exercising the court order granted in their favour to have access to the child. The police should enforce the court order as per Section 35 of the Children’s Act (Act No.38 of 2005). The Bill should add on Section 21 of the Act that the South African Police Services (SAPS) should assist fathers when experiencing challenges regarding access to their children in line with Section 35 of the Act. |  |  | Section 35 of the Children’s Act deals with matters where one party refuses the other party to exercise parental responsibilities and rights, where there is a court order or parental responsibilities and rights agreement in place. The Bill seeks to add circumstances where a parenting plan is in place.  In circumstances where neither of the three is available, and there is a dispute, the matter has to go for mediation. |  |
| **Clause 25** seeks to amend section 46 by adding to the list of specific orders  that a children’s court may make. | * It was also submitted that the Bill is silent about the sanctions given to people not adhering to section 46 orders, which outlines the orders that the children’s court make to place a child in alternative care. There are people who abuse children but still work or look after the children. Maybe this is because there is not specific offence on the Act about child abuse. |  |  | Section 305 of the Children’s Act addresses offences and penalties. |  |
| **Clause 75** seeks to amend section 135 in order to effect minor technical  amendments. | Free State: Mangaung   * Concern was raised regarding Section 75 “*that intends to give the Minister the power to make regulations regarding the procedures for determining the age of the child. There is inconsistency of the definition of the age when it comes to the age of the child and giving consent*”. It was proposed that there must be a synergy of the child age with other existing pieces of legislation. |  |  | The child’s age of maturity is applied objectively in the context of a specific issue under consideration. It will be administratively impossible to use a single age for all matters addressed in the Act or Bill. |  |
| Section 129 | ***ACDP input***  *Section 129(2):*  States that a child may consent to his or her own medical treatment or to the medical treatment of his or her child if (a) the child is over the age of 12 years; and the child is of sufficient maturity and (b) has the mental capacity to understand the benefits, risks, social and other implications of the treatment. | **EASTERN CAPE**  **OR TAMBO DISTRICT ; NORTHERN CAPE; THULAMELA LIMPOPO**  **ACDP**  *Contradictions with other important legislation:*   * In terms of the Criminal Law or Child Justice Act, there is a rebuttable presumption that a child who is 10 years or older but under the age of 14 years at the time of the alleged offence lacks criminal capacity. This means that evidence must be produced before a child can be held criminally accountable. * Children aged 14-17 years can be arrested, but the Act makes provision for parents or a family member to be involved in the diversion inquiry but not in terms of the Act. * Section 71(2) National Health Act of 2003 states that where research or experimentation is to be conducted on a minor for a therapeutic purpose, the research or experimentation may only be conducted (a) if it is in the best interests of the minor; (b) in such manner and on such conditions as may be prescribed; (c) with the consent of the parent or guardian of the child; and (d) if the minor is capable of understanding, with the consent of the minor.   *Implications in terms of consent*  Certain health procedures and interventions have different requirements, e.g. children need ‘sufficient maturity’ to consent to medical treatment while they need to demonstrate that they are 12 years old in order to consent for medical procedures and interventions such termination of pregnancy and male circumcision and to access to contraceptives. | **EASTERN CAPE**  **OR TAMBO DISTRICT ; NORTHERN CAPE; THULAMELA LIMPOPO**  **ACDP**  The ACDP supports the Bill with amendments subject to the review of Section 129 of the Children’s Act (consent). The ACDP highlights that there is a need to recognize parents and guardians during such a process. (Parental consent and responsibilities).  It was stated that the Act already allows children aged 12 years and over to have irreversible medical procedures without parental consent, yet a child cannot legally enter into contracts under the age of majority.  *Recommendation(s):*   * Section 129 should be reviewed and amended to be aligned to other pieces of legislation such as the National Health Act of 2003. * Section 129(2) should include that a child that is over the age of 12 may consent to medical treatment subject to consent granted by parents or guardians. Thus, the Bill must make provisions for parental consent and responsibilities when it come to the consent of minor children. * Medical practitioners and/or social workers should be involved to assess children’s maturity. | The child’s age of maturity is applied objectively in the context of a specific issue under consideration. It will be administratively impossible to use a single age for all matters addressed in the Act or Bill. |  |
| Section 129 | ***LIMPOPO FETAKGOMO***  *Section 129(2):*  States that a child may consent to his or her own medical treatment or to the medical treatment of his or her child if (a) the child is over the age of 12 years; and the child is of sufficient maturity and (b) has the mental capacity to understand the benefits, risks, social and other implications of the treatment. |  |  | The child’s age of maturity is applied objectively in the context of a specific issue under consideration. It will be administratively impossible to use a single age for all matters addressed in the Act or Bill. |  |
| **Clause 82** seeks to amend section 150 to clarify that a child who is abandoned  or orphaned and has no parent, guardian, family member or caregiver who is  able and suitable to care for that child, is a child in need of care and protection.  A child in need of care and protection will include ‘‘an unaccompanied  migrant child from another country’’, ‘‘a victim of trafficking’’ or a child who  ‘‘has been sold by a parent caregiver or guardian’’. |  |  | Gauteng Ekurhuleni   * An amendment to Section 150 was supported. The amendment clarifies a child who is need of care as an abandoned or orphaned child and has no parent, guardian, family member or a caregiver. | Comment noted |  |
| **Clause 86** seeks to amend section 159 by providing that a court may extend an  alternative care order that has lapsed or make an interim order. Furthermore,  it will be regulated to ensure the accountability of the respective officials  regarding the lapsing of these orders. It forms part of the comprehensive  long-term solution to foster care as a mechanism for managing foster care  orders. | **Eastern Cape OR Tambo District**  One of the speakers raised concerns/comments and recommendations regarding *Foster care and adoption:*   * The clauses of the Bill that seek to amend Section 159 and 167 of the Children’s Act and provide comprehensive long-term solutions to foster care as a mechanism for managing foster care orders were welcomed. However, it was recommended that the amendments be fast-tracked in order to realise the implementation of the legislation. |  |  | Comments noted, the Bill is intended to provide the comprehensive legal solution on foster care. |  |
| **Clause 86** seeks to amend section 159 by providing that a court may extend an  alternative care order that has lapsed or make an interim order. Furthermore,  it will be regulated to ensure the accountability of the respective officials  regarding the lapsing of these orders. It forms part of the comprehensive  long-term solution to foster care as a mechanism for managing foster care  orders. | **LIMPOPO GREATER TZANEEN**   * Amendment of Section 159 should be a fail-safe, but not the norm. In this regard, as this amendment simply delays the backlogs to another day and not solving the crisis. Thus, the Bill does not provide the required comprehensive legal solution. |  | * In attempting to provide a comprehensive legal solution to the foster care system, the Bill must provide the necessary mechanisms, structures, resources to ensure that the foster care system operates in a sustainable and effective manner. There is an urgent need for legislative framework to assist both the public and private sector to ensure that they can service and assist the children. | Comment noted.  The proposed amendment t of section 142 by the insertion of section 142 (jB) seeks to address the matter. |  |
| **Clause 86** seeks to amend section 159 by providing that a court may extend an  alternative care order that has lapsed or make an interim order. Furthermore,  it will be regulated to ensure the accountability of the respective officials  regarding the lapsing of these orders. It forms part of the comprehensive  long-term solution to foster care as a mechanism for managing foster care  orders. | **Eastern Cape OR Tambo District**   * Section 159 was supported as it provides that the Courts issue an interim order with a duration of not more than six 6 months. This section initially required a Court order to be renewed every 2 years. |  |  | Comment noted |  |
| **Clause 87** seeks to amend section 167—  *(a)* by providing that a child may not be placed in temporary safe care for  more than 72 hours without a court order;  *(b)* by providing that a child may not be placed in temporary safe care for a  period longer than six months at a time;  *(c)* by the insertion of subsection (3) *(c)* to provide approval periods for  persons and registered child and youth care centres. | LIMPOPO – GREATER TZANEEN One speaker indicated that he supported the Bill with some objections to some clauses that are confusing especially clause 83(a) amending section 155 of the Act and clause 87(b) amending section 167. The confusion is that clause 83 provides that a designated social worker must investigate the matter of a child and within 90 days compile a report in the prescribed manner on whether the child is in need of care and protection. However, clause 87 provides that a child may not be in a temporary safe care for longer than 72 hours without a court order. |  |  | Section 155 and section 167 deal with different social work process relating to a child who appears to be in need of care and protection.  Section 167 relates to the three forms of alternative care, which are foster care, care of a child in a child and youth care centre and temporary safe care (TSC).  The proposed amendment of section 167 provides that a child may not be placed in temporary safe care for more than 72 hours without a court order. This is to ensure that all children placed in TSC are placed legally with a court order. |  |
| **Clause 87** seeks to amend section 167—  *(a)* by providing that a child may not be placed in temporary safe care for  more than 72 hours without a court order;  *(b)* by providing that a child may not be placed in temporary safe care for a  period longer than six months at a time;  *(c)* by the insertion of subsection (3) *(c)* to provide approval periods for  persons and registered child and youth care centres. | * Concerns were raised regarding the implementation of Section 167 of the Children’s Amendment Bill, specifically the lapsing of the period without placing the child in the temporary safe care. It was recommended that the process should be handled by the Department of Justice timeously. |  | * The clause of the Bill that seeks to amend Section 167 of the Children’s Act, which states that a child may not be placed in temporary safe care for a period longer than 6 months at a time, was supported. | Noted  The proposed amendment of section 167 provides that a child may not be placed in temporary safe care for more than 72 hours without a court order except where the expiry of the 72 hours comes into effect during a long weekend. This is to ensure that all children placed in TSC are placed legally with a court order |  |
| **Clause 87** seeks to amend section 167—  *(a)* by providing that a child may not be placed in temporary safe care for  more than 72 hours without a court order;  *(b)* by providing that a child may not be placed in temporary safe care for a  period longer than six months at a time;  *(c)* by the insertion of subsection (3) *(c)* to provide approval periods for  persons and registered child and youth care centres. |  |  | * It is of outmost importance that South Africa implements international obligations. The six months’ period proposed in amending Section 87 is too short. The amendment reads, “a child may not be placed in temporary safe care for a period longer than 6 months at a time”. It was recommended that the period should be extended to a year. | Comment noted  The proposed amendment is misinterpreted. |  |
| **Clause 87** seeks to amend section 167—  *(a)* by providing that a child may not be placed in temporary safe care for  more than 72 hours without a court order;  *(b)* by providing that a child may not be placed in temporary safe care for a  period longer than six months at a time;  *(c)* by the insertion of subsection (3) *(c)* to provide approval periods for  persons and registered child and youth care centres. | **Eastern Cape OR Tambo District**   * In terms of Section 167, which seeks to reduce the time a child may be in a temporary safe care without a Court order, it was recommended that the proposed period of 72 hours be extended to 5 working days. |  |  | The proposal is not supported.  5 days is too long for a child to be in TSC without a court order for 5 days. |  |
| **Clause 120** seeks to amend section 239—  *(a)* by the substitution of the term ‘‘adoption social worker’’ with that of  ‘‘a social worker responsible for adoption’’;  *(b)* by the amendment of subsection (1)*(e)* by the deletion of the word  ‘‘prescribed’’ and the insertion of the words ‘‘as may be prescribed’’ at  the end. This is a technical amendment necessary for ease of reading. |  |  | Gauteng – Tshwane Section 239 (d) of the Act should be amended to give timeframes for the issuance of the recommendation letters by the provincial DSD, which is submitted by adoption Social Workers to a magistrate to finalise an adoption application. Often Social Workers conduct their assessments on time but cannot submit documents to the Children’s Court without this letter. According to the National DSD Standards, the letter is supposed to be made available seven (7) days after the application is made but it takes months or years for it to be issued. | See the DSD responses above |  |
| **Clause 120** seeks to amend section 239—  *(a)* by the substitution of the term ‘‘adoption social worker’’ with that of  ‘‘a social worker responsible for adoption’’;  *(b)* by the amendment of subsection (1)*(e)* by the deletion of the word  ‘‘prescribed’’ and the insertion of the words ‘‘as may be prescribed’’ at  the end. This is a technical amendment necessary for ease of reading. | **EASTERN CAPE**  **OR TAMBO DISTRICT**  ***AFM Welfare input***  *Section 239(1)(b):*  Section 239 of the principal Act is hereby amended – (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: (b) be accompanied by a report, in the prescribed format, by [an adoption] a social worker responsible for adoption. |  | **EASTERN CAPE**  **OR TAMBO DISTRICT**  *Recommendations:*   * That Section 239(1) (b) remain unchanged; and that (b) be accompanied by a report, in the prescribed format, by an adoption social worker. * The AFM Welfare is of the view that huge delays in adoption process is being created due to failure on the part of some provincial DSD offices when it comes to issuing Section 239 letters of recommendation. This delay in many instances prevented adoptions from proceeding by the department’s failure to make decisions within a reasonable timeframe and preventing the Children’s Court from considering the adoption. * The AFM Welfare states that 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 adoption social worker employed by the department as per the definition in the Act. * s. | See the DSD responses above |  |
| **Clause 120** seeks to amend section 239—  *(a)* by the substitution of the term ‘‘adoption social worker’’ with that of  ‘‘a social worker responsible for adoption’’;  *(b)* by the amendment of subsection (1)*(e)* by the deletion of the word  ‘‘prescribed’’ and the insertion of the words ‘‘as may be prescribed’’ at  the end. This is a technical amendment necessary for ease of reading. | **Western Cape**  **Section 239 (1) (d) Children’s Act 38 of 2005.** Section 239 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: ‘‘(b) be accompanied by a report, in the prescribed format, by [an adoption] a social worker responsible for adoption, containing— | **Western Cape**   * The definition of adoption social worker in the Act is comprehensive and inclusive of social workers in private practice, DCPO’s and social workers in the employ of the Department. * This amendment proposes that adoption social worker as defined by the Act be substituted by” a social worker responsible for adoption.” * This creates confusion on who may render adoption services as defined by the 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 an “adoption social worker.” | **RECOMMENDATIONS**  It is proposed that Section 239 (1)(b) of the Children’s Act 38 of 2005 remain unchanged and "(b) be accompanied by a report, in the prescribed format, by an adoption social worker | See the DSD responses above |  |
| **Clause 120** seeks to amend section 239—  *(a)* by the substitution of the term ‘‘adoption social worker’’ with that of  ‘‘a social worker responsible for adoption’’;  *(b)* by the amendment of subsection (1)*(e)* by the deletion of the word  ‘‘prescribed’’ and the insertion of the words ‘‘as may be prescribed’’ at  the end. This is a technical amendment necessary for ease of reading. | Gauteng Brixton   * There have been long delays by provincial DSD in issuing this letter. This caused significant delays in the adoption processes. * An amendment to Section 239 of the Act which substitutes the term “adoption social worker” with “a social worker responsible for adoption” was welcomed and supported. |  | Gauteng: Brixton   * It was recommended that the Bill should set timeframes on the issuing of the recommendation letter. | See the DSD responses above |  |
| Section 249 |  |  | RECOMMENDATIONS  West Coast:  Adoption fees  It was proposed that the government should not delete the fees attached to adoption process but regulate the fees charged to provide adoption services. | See the DSD responses above |  |
| **Clause 122** seeks to delete section 249. This amendment is intended to  delete reference to all fees that may be charged for adoption. | Free State: Fezile Dabi   * The clause that seeks to amend Section 249, which intends to delete reference to all fees that may be charged for adoption, is rejected. It was argued that the adoption process requires fees. It was proposed that the Children’s Amendment Bill should reconsider and reinstate fees for the adoption services. |  |  | See the DSD responses above |  |
| **Clause 122** seeks to delete section 249. This amendment is intended to  delete reference to all fees that may be charged for adoption. | AFM  **EASTERN CAPE**  **OR TAMBO DISTRICT**  *Section 259:*  Makes provision for the accreditation for the provision of intercountry adoption service.    *Section 249:*  Makes provision that no consideration may be given in respect to adoption. | * The issue of fees and whether adoption service providers have unreasonable financial gain from this, and suggestions that there is a fine line between adoption and the sale of children which often result in adoptions not being completed in less than 12 months. * Intercountry adoptions, subsidiarity and registration challenges raised by the Department of Home Affairs (DHA) in this regard.   *Key concerns regarding repealing Section 249:*   * Should Parliament approve the tabled Amendment Bill that repeals Section 249, many of the adoption accredited Designated Child Protection Organisations (DCPOs) and private adoption social workers will no longer be able to cover the inherent costs of the programme. | *Repealing of Section 249:*   * Repealing could lead to a further decline in adoption targets, thereby seriously affecting the future of orphaned and vulnerable children currently benefitting from permanent family care through adoption. * Should the tabled Bill repeal Section 249, it can take some years for a professional body to finalise a new code or regulation, which would in effect leave this space being unregulated for some time. It is contended that DSD social workers are still in a process of being registered as specialists in adoption.   The AFM Welfare proposes that it would therefore be better for Parliament to keep Section 249 and Regulation 107 as part of the legislation and to rather take measures to simplify the adoption process | See the DSD responses above |  |
| **Clause 122** seeks to delete section 249. This amendment is intended to  delete reference to all fees that may be charged for adoption. | LIMPOPO **GREATER TZANEEN LOCAL MUNICIPALITY**  The DA (representatives) proposed that amendments to section 249 be removed from the Bill. Other speakers stressed the importance of strengthened relationships between the South African Police Service and Department of Justice and Constitutional Development in handling adoption cases professionally. |  |  | See the DSD responses above |  |
| **Clause 123** seeks to amend section 250—  *(a)* by the addition of subsection (1)*(e)* that now makes provision for ‘‘a  social worker in the employ of the Department or provincial  department of social development who provides adoption services’’.  This insertion is intended to add to the list of persons who may provide  adoption services;  *(b)* by deleting subsections (2) and (3) which provided exceptions to  professional persons and organisations not listed in subsection (1) but  can still provide adoption services. The deletion of these subsections is  necessary to remove the repetition, because its context is contained in  section 249(2)*(b)*, which has been deleted. | * Amendment of Section 250 by an insertion in subsection (1) after paragraph (d) of the following paragraph: (e) a social worker employed by the department who has a speciality in adoption services and is registered in terms of the Social Service Professional Act, 1978 (Act No. 110 of 1978). | * The fact that adoption is a specialised service that requires experienced, competent social workers with the capacity to render such a service. * The shortage of social workers, the inclusion of social workers in the employ of the DSD and their readiness for this and the potential impact on service delivery. |  | See the DSD responses above |  |
| **Clause 123** seeks to amend section 250—  *(a)* by the addition of subsection (1)*(e)* that now makes provision for ‘‘a  social worker in the employ of the Department or provincial  department of social development who provides adoption services’’.  This insertion is intended to add to the list of persons who may provide  adoption services;  *(b)* by deleting subsections (2) and (3) which provided exceptions to  professional persons and organisations not listed in subsection (1) but  can still provide adoption services. The deletion of these subsections is  necessary to remove the repetition, because its context is contained in  section 249(2)*(b)*, which has been deleted. | **Western Cape**  **Section 250(1):** ‘‘(e) a social worker employed by the Department or a provincial department of social development who provides adoption services.’’;  •  ” | **Western Cape**  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 adoption social worker employed by the Department as per the definition in the Act | **RECOMMENDATIONS**  Amendment of section 250 by insertion in subsection (1) after paragraph (d) of the following paragraph:  "(e) a social worker employed by the Department who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978) | See the DSD responses above |  |
| Age of maturity | WESTERN CAPE  CENTRAL KAROO DISTRICT MUNICIPALITY  **age of maturity**  Garden Route: The phrase “of sufficient maturity and mental capacity” in Clause 12 of the Bill was criticised of being vague. At what point of a child’s age can she/he be considered of being of sufficient maturity and mental capacity? |  |  | The child’s age of maturity is applied objectively in the context of a specific issue under consideration. It will be administratively impossible to use a single age for all matters addressed in the Act or Bill. |  |
| Age of maturity | **MPUMALANGA: GERT SIBANDE DISTRICT MUNICIPALITY**   * Age of maturity should be well defined in the Bill. An 18-Year-old child should be in a position to take his or her own decisions. |  |  | Not supported  The |  |
| Age of maturity | Northwest Moses Kotane  Children between the ages of 12 – 19 are not in a position to make decisions for themselves as they are still in adolescent stage. They still need parental guidance. |  |  | The child’s age of maturity is applied objectively in the context of a specific issue under consideration. It will be administratively impossible to use a single age for all matters addressed in the Act or Bill. |  |
| Safe abandonment of children | CAPE TOWN METROPOLITAN MUNICIPALITY:  Safe abandonment of children  Children have the Constitutional right to life. Abandonment denigrates this right in that 2/3 children are unsafely abandoned and some die. Others survive suffer trauma and, in some cases, are harmed in ways that will affect them for life. |  |  | * Legalizing baby savers and implementing safe-haven laws will reduce the numbers of babies being abandoned and left to die. * Safe relinquishment in a baby saver should be legalized as an immediate solution for unsafe abandonment. * Not all forms of abandonment should be legalized. * Clause 27: All safety protocols in terms of savers are adhered to and that organizations that do not follow the intake protocols are not allowed to establish these savers. |  |
| Safe abandonment of children | Gauteng Brixton   * Insertion of a safe relinquishment clause in the Children’s Amendment Bill to allow biological mothers who want to abandon their babies to do so safely; * Make sure children who survive abandonment get into safe loving homes as soon as possible. Allow for unification when it is possible, but where it is not possible allow for safe adoptions * Make the anonymous safe relinquishment of children legal in South Africa, so that abandoned children can be cared for appropriately and their lives saved. |  |  | * Legalizing baby savers and implementing safe-haven laws will reduce the numbers of babies being abandoned and left to die. * Safe relinquishment in a baby saver should be legalized as an immediate solution for unsafe abandonment. * Not all forms of abandonment should be legalized. * Clause 27: All safety protocols in terms of savers are adhered to and that organizations that do not follow the intake protocols are not allowed to establish these savers. |  |
| Safe abandonment of children | Gauteng Tshwane  **BABY SAVERS**   * The speaker stated that abandoning a child in South African is unlawful. Section 11 of the Constitution states that everyone has the right to life and section 28(2) states that the interest of the child is of paramount importance in every matter concerning the child. Unsafe baby abandonment is an infringement of the right to life and being abandoned in a drain, toilet or veld is not in the best interest of a child. * Baby savers aim to save the lives of infants and are in the best interests of children. Legalising baby savers and implementing safe haven laws will reduce the numbers of babies being abandoned and left to die. The speaker thus recommended that safe relinquishment in a baby saver should be legalised as an immediate solution for unsafe abandonment. Importantly, not all forms of abandonment should be legalised. Unsafe infant abandonment will still be illegal and prosecutable. Countries such as Namibia, Germany, China and some other countries have legalised child relinquishment in baby savers. * To ensure that all safety protocols in terms of savers are adhered to and that organisations that do not follow the intake protocols are not allowed to establish these savers. |  |  | * Legalizing baby savers and implementing safe-haven laws will reduce the numbers of babies being abandoned and left to die. * Safe relinquishment in a baby saver should be legalized as an immediate solution for unsafe abandonment. * Not all forms of abandonment should be legalized. * Clause 27: All safety protocols in terms of savers are adhered to and that organizations that do not follow the intake protocols are not allowed to establish these savers. |  |
| CPR |  |  | LIMPOPO FETAKGOMO   * The NCPR should be linked to the SAPS criminal register as it contains detailed information about a person. Inter-operability and synergy of government systems can play a crucial role in the fight for child protection. The SAPS criminal register will be able to provide social workers with a background of a person. | * The Department does not support this view because SAPS records are only limited to convictions, whereas our records include both convictions and records from various Fora. For example, a case of abuse that is dealt with in disciplinary proceedings or Civil Courts will not necessarily be available to SAPS. * The Department does not support the deletion of Part B of the Register for the reasons provided *supra*. |  |
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**ECD TECHNICAL TASK TEAM RESPONSES TO THE SUBMISSIONS MADE ON THE CHILDREN’S AMENDMENT BILL**

| **Amendment/ section** | **Original in Children’s Act** | **Proposal in Second Amendment Bill** | **Proposed Change** | **Motivation/ Reason** | **ECD TTT response** |
| --- | --- | --- | --- | --- | --- |
| **Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—** | | | | | |
| 1. Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended— | New | (a) by the insertion after the definition of "drop-in centre" of the following definition:  **'early childhood development centre'** means a facility that provides an early childhood development programme, for children from birth to school going age; and | The definition should be deleted. The Act should aim to have one inclusive definition of “ECD programme” and further define different modalities in regulations.  **This section should be deleted; alternatively:**  **‘early childhood development facility’** means any place at which an Early Childhood Development programme is provided for children from birth to school going age; and  Delete new definition  The new proposed definition should be deleted.  A more inclusive definition of **‘ECD programme’** must be included, which includes *all* programme modalities, not only ECD centres. Each modality can be defined by the Minister in regulations to the Children’s Act, and must be accompanied by differentiated norms and standards in respect of each modality. | ‘Early childhood development centre’ is a non-inclusive term and excludes key ECD programme modalities – including playgroups, childminder, mobile and home visiting programmes. It does not make sense to define only one modality in the Act and not others.  An inclusive definition of ‘ECD programme’ which captures all modalities is proposed against Clause 45(c) below. Definitions of individual modalities are more appropriately set out in regulations and not on the face of the Act. This will give the government more flexibility in future to make regulatory adjustments to reflect the changing ECD landscape.  See also commentary regarding ‘school going age’ below).  The current proposed definition is exclusionary. It does not provide for other ECD programme modalities, such as playgroups, childminders, toy libraries, etc. | Keep definitions for ECD programme and service and include a definition for an ECD centre to assist with the implementation of Schedule 4B in the constitution. The term ECD Centre is also used in the newly inserted S92 (2C)  S91(2) and (3) have been updated to take comments from technical team into consideration.  Also included new definitions for ‘conditional registration’; ‘conditions relating to registration’ and “school-going age” |
| **'early childhood development services'** means services referred to in section 91 (2);  [Definition of 'early childhood development services' inserted by s. 3 *(g)* of Act 41 of 2007 (wef 1 April 2010).] | (b) by the substitution for the definition of "early childhood development services" of the following definition:  **'early childhood development services'** means a service or support provided to children from birth to school going age or a service or support provided to a child's parent, guardian or care-giver with the intention to promote the child's emotional, cognitive, sensory, spiritual, moral, physical, social and communication development as contemplated in section 91(2). | ‘early childhood development service’ means a service or support provided ***by a person other than a child’s parent, guardian or caregiver*** to children from birth to school-going age or a service or support provided ***by a person other than a child’s parent, guardian or caregiver*** to a child’s parent, guardian or care-giver with the intention to promote the child’s emotional, cognitive, sensory, spiritual, moral, physical, social and communication development  “k) ‘early childhood development service’ means a service or support provided to children from birth to school-going age ***by a person other than a child’s parent, guardian or caregiver*** or a service or support provided to a child’s parent, guardian or care-giver with the intention to promote the child’s emotional, cognitive, sensory, spiritual, moral, physical, social and communication development;”  Amend reference to ‘school going age’  We recommend the inclusion of the following:  'early childhood development services' means a service or support provided to children from birth to school going age, ***by a person other than a child’s parent, guardian or care-giver***, or a service or support provided to a child's parent, guardian or care-giver with the intention to promote the child's emotional, cognitive, sensory, spiritual, moral, physical, social and communication development as contemplated in section 91(2). | See commentary below against Section 91  Reference to the service provider should be included to provide clarity.  Also see comments relating to ‘school-going’ age below in discussion of amendments to section 91(1). These comments are to be applied wherever there is a reference to ‘school-going’ age. | Updated the definition in S92(2) and included the following: “'early childhood development services' means services referred to in S91(2)”  New definition included for school-going age:  “'school-going age' means the compulsory school-going age as contemplated in section 3 of the South African Schools Acts 1996 (Act No. 84 of 1996).” |
| Section 76(1) |  | Clause 34 in original CAB | 76.(1) [**Partial**] Subject to subsection (2), partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents, guardians or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents, guardians or care-givers and the provider of the service, but excludes the ~~full time~~ care of a child—  (a) by a school as part of tuition, training and other activities provided by the school;  (b) as a boarder in a school hostel or other residential facility managed as part of a school; ~~or~~  (c) by a hospital or other medical facility as part of medical treatment provided to the child; ***or***  ***(d) at an early childhood development programme as contemplated in Section 91.***  The inclusion of the word "full-time" is confusing. the memorundum of objects needs to clarify why this has been included.  It is suggested that ECD programmes be excluded, so that Chapter 6 solely focus on ECD programmes as per the new suggested definitions in S91.  S76 should therefore include “(d) by an ECD programme as defined in S91.” | 1. In order for ECD programmes to be dealt with under a single system (in a single chapter), they need to be removed from the scope of partial care.  2. The proposed insertion of ‘full time’ does not make sense in the context of the types of care listed. It suggests that part-time care at these types of facility *would* have to register as partial care, which is unlikely to be the government’s intention. | Included reference to guardians. Excluded reference to ‘full time’. Included new S76(d) |
| **Amendment of section 91 of Act 38 of 2005 as amended by section 4 of Act 41 of 2007** | | | | | |
| 1. Section 91 of the principal Act is hereby amended— | **91 Early childhood development**  (1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical,  social and communication development of children from birth to schoolgoing age. | (a) by the substitution for subsection (1) of the following subsection:  "(1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school going age or, in the case of a child with developmental difficulties and disabilities, until the year before the child enters school."; | **Comment:** Suggest we seek advice from inclusion expert here.  91(1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth ***to six years old*** ~~to school going age~~ ~~or, in the case of a child with develop-mental difficulties and disabilities, until the year before the child enters school~~.  We recommend the following:   1. Reconsideration of the use of the term ‘school-going age’ and instead to either define school-going age, or specify a determined or determinable age as expressed in the ECD Policy or in prevailing international law standards. 2. Deletion of the following words:   "(1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school going age ~~or, in the case of a child with developmental difficulties and disabilities, until the year before the child enters school~~." | 1. It is not clear how school-going age is deduced and it is not defined in the Children’s Act. It is likely to be inferred by reference to either:   * Section 1 of the South African Schools Act 1996 which defines a school as, ‘a public school or an independent school which enrols learners in one or more grades from grade R (Reception) to grade twelve’. Or * Section 3 on compulsory school attendance which states, ‘every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years.’   If the period of early childhood development is defined by reference to ‘school going age’ it means that if Sections 1 and/or 3 of the SASA are changed, then children fall out of the scope of ECD. However, the National Integrated ECD Policy sets out a comprehensive package of support and services for young children which goes well beyond what can be accessed in or through schools. For example, the Policy includes measures relating to support for parents, psychosocial support, housing, health, and social protection. If Grade RR was brought within the scope of Sections 1 and/or 3 of SASA (as DBE are proposing), the consequential effect is that 4-5 year-olds are taken out of the scope of ECD, and therefore they are also taken out of the scope of the wider measures and policy goals in the NIECDP. This would be highly regressive and out of step with international norms.  In order to avoid this and to create greater clarity in the law, the upper age boundary of ECD in the Children’s Act should be amended to make it absolute (i.e. a fixed age), rather than something that relates to changing definitions of ‘school’.  Children with developmental difficulties and disabilities have the right to start school at the same age as all other children, with appropriate provision to meet their needs. This government amendment suggests that these children are not the responsibility of DBE at age 5 in the same way as all other children are. If the intention of the amendment is to indicate that DSD might have ongoing responsibilities to children with difficulties and disabilities, *in addition to* DBE’s responsibilities, then this amendment should be worded differently and without reference to school.   1. Use of the term ‘school-going age’ is confusing. The term is not currently defined in any legislation or policy document. 2. All children, including with developmental difficulties and disabilities, have the right to start school at the same age as all other children, with appropriate accommodations made to meet their needs. The words we propose deleting also give public schools an excuse not to admit children with disabilities and reasonably accommodate them as required by various legislation and policies, including the Policy on Screening, Identification, Assessment and Support (SIAS Policy).   The deletion in itself however, is not enough. We recommend consulting an inclusion expert to determine appropriate wording throughout the Bill, which ensures full inclusion of all children, including children with disabilities. | Retain the original definition as it is currently in the Act.  Definition of school-going age, included in definition section. |
| (2) Early childhood development services means services  *(a)* intended to promote early childhood development; and  *(b)* provided by a person, other than a child's parent or caregiver, on a regular basis to children up to schoolgoing age. | (b) by the deletion of subsection (2); and | It proposed that we retain a definition of ECD services and use the ECD Policy definition. This is to capture the understanding that ECD services are not just about early learning or services aimed at children.  By the substitution for section (2) with the following:  ***(2) ECD services means services or support provided to infants and young children or to the child’s parent or caregiver by a government department or civil society organisation with the intention to promote the child’s early emotional cognitive, sensory, morel, physical, social and communication development.***  See amendments made to the definition of ‘ECD services’ in the definitions section above. | It is unclear why this definition is moved to the start of the Act while the definition of ECD programme remains here. | Updated S92(2) to include changes suggested in the definition section. To ensure consistency with the definition for ECD programmes, ECD services are now defined in S92(2) and reference is made to this definition in the definition section. |
| (3) An early childhood development programme means a programme structured within an early childhood development service to provide learning and support appropriate to the child's developmental age and stage.  [S. 91 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | (c) by the substitution for subsection (3) of the following subsection:  "(3) An early childhood development programme, as prescribed, is a program that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school going age. | 3) An early childhood development programme, ~~as prescribed~~, is a program**me** that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school going age  ***(3A) Different types of early childhood development programmes, include:***  ***(a) early childhood development centres;***  ***(b) home and community-based early childhood development programmes;***  ***(c) sessional early childhood development programmes; and***  ***(d) outreach early childhood development programmes.***  ***(3B) Early childhood development programmes do not include-***  ***(a) care provided in:***  ***(i) a partial care facility***  ***(ii) a child and youth care centre;***  ***(iii) a drop-in centre;***  ***(iv) a hospital or other medical facility as part of medical treatment provided to the child;***  ***(v) a homeless shelter;***  ***(vi) a women’s refuge;***  ***(b) care provided for a child by a person with parental responsibility for the child.***  91(3) An early childhood development programme~~, as prescribed,~~ is a program***me*** that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school going age.  ***(3A) Different types of ECD programmes, as prescribed, include but are not limited to:***  ***(a) early childhood development centres;***  ***(b) home and community-based early childhood development programmes;***  ***(c) sessional early childhood development programmes; and***  ***(d) outreach early childhood development programmes.***  ***(3B) Early childhood development programmes do not include-***  ***(a) care provided in:***  ***(i) a partial care facility***  ***(ii) a child and youth care centre;***  ***(iii) a drop-in centre;***  ***(iv) a hospital or other medical facility as part of medical treatment provided to the child;***  ***(v) a homeless shelter;***  ***(vi) a women’s refuge;***  ***(b) care provided for a child by a person with parental responsibility for the child.***  91(3) An early childhood development programme, as prescribed, ~~is a~~ ***any type of*** program***me*** that provides one or more forms of daily care, development, early learning opportunities and support to children from birth ~~until school going age.~~ ***to six years old.***  ***(3A) The minister may by regulation define different types of early childhood development programmes, including:***  ***(a) early childhood development centres;***  ***(b) home and community-based early childhood development programmes;***  ***(c) sessional early childhood development programmes; and***  ***(d) outreach early childhood development programmes.***  ***(3B) Early childhood development programmes do not include-***  ***(a) care provided in:***  ***(i) a partial care facility***  ***(ii) a child and youth care centre;***  ***(iii) a drop-in centre;***  ***(iv) a hospital or other medical facility as part of medical treatment provided to the child;***  ***(v) a homeless shelter;***  ***(vi) a women’s refuge;***  ***(b) care provided for a child by a person with parental responsibility for the child.***  We propose the following amendments:  91(3) An early childhood development programme~~, as prescribed,~~ is ~~a~~ ***any type of*** program***me*** that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school going age***.***  We also recommend:   * listing different types of ECD programmes that theMinister may define by regulation, such as: *early childhood development centres; home and community-based early childhood development programmes; sessional early childhood development programmes; and outreach early childhood development programmes*; and   listing clear exclusions of what early childhood development programmes do *not* include, such as: services provide in a partial care facility, child and youth care centre, drop in centre, or care provided by a person with parental responsibilities. | 1. The framing ‘any type of’ helps to make clear that these programmes will take many forms.  2. See commentary against Section 91(1) regarding age.  3. The four categories proposed in sub-section 3A cover all modalities contemplated in the NIECDP. The Act’s regulations should create legal definitions that are consistent with and fulfil the purposes of the Policy. The definitions in the regulation should relate to the characteristics of ECD programme modalities that a) distinguish them from each other, and b) are relevant for regulation. For example, the distinctions between these categories have relevance in terms of defining appropriate standards and requirements (for instance on health and safety, practitioner qualification levels and meals) and in terms of identifying the different cost drivers and therefore subsidy eligibility for different types of programmes.  This amendment also clarifies that an ECD programme is the provider, place and programme content together. The lack of clarity over whether an ECD programme is only the *programme content* (i.e. curriculum) has caused significant confusion and inconsistency in the practical implementation of Chapter 6. The NIECDP makes it clear that the term ‘ECD programme’ refers to the whole entity. In other words, ECD centres and home-based childcare can be understood both to *be* types of ECD programmes and to *provide* ECD programmes.  New subsection (3B) expands on the exclusions currently in Section 76. Partial care facilities (Chapter 5), child and youth care centres (Chapter 13) and drop-in centres (Chapter 14) all need to be clearly excluded from the definition of ECD programme in order that they are not subject to dual registration requirements. Any requirement for these types of facility to provide ECD opportunities should be framed as a requirement to provide *‘structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education*’, which is written into the respective chapters.  This broadens the definition of ‘early childhood development programme’ to encompass *all* modalities.  The proposed categories listed are ones included in the ECD Policy. The exclusions proposed make it clear that ECD programmes fall outside the scope of partial care, child and youth care centres, drop in centres, and other care facilities dealt with in the Children’s Act. This eliminates the possibility of duplication. | Agree with the need to define the modalities, but decided to define the modalities in line with Form 11 and the National Integrated ECD Policy.  ‘Reference to ‘any type of programme that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school going age”.  Also included section 3A to define the different types of programmes and 3B to exclude other partial care facilities. |
| **Amendment of section 92 of Act 38 of 2005 as inserted by section 4 of Act 41** | | | | | |
| **3**. Section 92 of the principal Act is hereby amended— | **92 Strategy concerning early childhood development**  (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government  and Transport must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, coordinated  and managed early childhood development system, giving due consideration as provided in section 11, to children with disabilities or  chronic illnesses. | (a) by the insertion after subsection (1) of the following subsections:  "(1A) The Minister must consult with the Ministers of Basic Education, Finance, Health, Higher Education and Training, Transport Corporative Governance and Traditional Affairs and any other Minister, MEC for social development, stakeholder or organisation that may have an interest in the matter before developing the national strategy contemplated in subsection (1).  (1B) The national strategy contemplated in subsection (1) must be incorporated in the departmental strategy." | This should be amended to reflect the function shift. Unclear what is contemplated in the difference between the NECD Policy (2015) and the National Strategy; and whether the strategy ought to give effect to the policy. Suggest to retain policy coherence that the strategy is specifically aimed at executing the policy.  The Minister of Basic Education must consult with the Ministers of Social Development, Finance, Health, Higher Education & Training, Transport Corporative Governance and Traditional Affairs and any other Minister, MEC for social development, stakeholder or organisation that may have an interest in the matter before developing the national strategy contemplated in subsection (1).  The proposed additions of (1A) and (1B) seem to be redundant. It is not clear what they are adding. It is also not clear why the Minister of Higher Education or ministers of Transport need to be consulted. It is suggested that these additions be rejected.  It is suggested that section 92(1) be amended as follows to **strengthen the use of the power to assist powers**:  **92(1):** “(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration ***to section 97(5) and*** as provided in section 11, to children with disabilities or chronic illnesses.  It is also suggested that the additional provisions of new section 103K (with some amendments) be merged here to make up a comprehensive strategy provision (in-line with the objective of a one-stop registration):  ***92(1A):*** **The *provincial strategy must include measures-***  ***(a) facilitating the establishment and operation of sufficient early childhood development programmes to ensure equitable and universal access to Early Childhood Development programmes in that province;***  ***(b) prioritising those types of early childhood development programmes most urgently required; and***  ***(c) liaising with municipalities on facilitating the identification and provision of suitable premises including the maintenance of ECD programmes.***  **Comment:** is the infrastructure planning required by the Policy sufficiently captured here?  It is recommended that (1A) and (1B) be rejected.  It is however suggested that section 92(1) be amended as follows to ensure use of the powers to assist as provided for in the Children’s Act:  92(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration ***to the powers provided for in section 97(5), and*** as provided in section 11, to children with disabilities or chronic illnesses. | - The proposed section 1A and 1B seem unnecessary and do not appear to be serving any purpose. | Subsection (1) updated to include “to the powers provided for in s97(5)”, as well as the new names for Departments.  Sections (1A) and (1B) deleted. |
| (2) The MEC for social development must  *(a)* maintain a record of all the early childhood development programmes registered in the province; and  *(b)* within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, coordinated  and managed early childhood development system. | (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  "(a) maintain a record of all the early childhood development programmes registered in the province with specific mention of inclusive programmes; and";  (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:  "(b) within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed inclusive early childhood development system.". | Substitute subsection (2) with the following (taken from the more comprehensive 103K but amended to refer to “programmes” and not “centres”. This is in-line with creating a one-stop process):  ***(1D) A provincial head of social development must-***  ***(a) maintain a record of all early childhood development programmes in the province, the types of early childhood development programmes and the number of each type of programme;***  ***(b) assess the adequacy of the available infrastructure; based on prescribed norms and standards;***  ***(c) compile a profile of the children in that province in the prescribed manner; and***  ***(d) conduct inspections at the prescribed intervals of early childhood development programmes in the province to enforce the provisions of this Act.***  Integrate relevant parts of 103K  We recommend that the substitution for subsection (2) the following:  ***92(2):*** ***The*** ***provincial head of social development must within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed inclusive early childhood development system."***  **(2A) The *provincial strategy must include measures-***  ***(a) facilitating the establishment and operation of sufficient early childhood development programmes to ensure equitable and universal access to Early Childhood Development programmes in that province;***  ***(b) prioritising those types of early childhood development programmes most urgently required; and***  ***(c) liaising with municipalities on facilitating the identification and provision of suitable premises including the maintenance of ECD programmes.***  ***(2B) A provincial head of social development must-***  ***(a) maintain a record of all early childhood development programmes in the province, with specific mention of inclusive programmes, the types of early childhood development programmes and the number of each type of programme;***  ***(b) assess the adequacy of the available infrastructure; based on prescribed norms and standards;***  ***(c) compile a profile of the children in that province in the prescribed manner; and***  ***(d) conduct inspections at the prescribed intervals of early childhood development programmes in the province to enforce the provisions of this Act.***  DBE: Based on the suggestion to integrate Part II into Part I, it is suggested to include the following under subsection (2): “(b) compile a profile of the children in that province in the prescribed manner; and conduct inspections at the prescribed intervals of early childhood development programmes in the province to enforce the provisions of this Act.”  DBE: It is further suggested that the following is included after subsection (2)  “(3) A provincial strategy contemplated in section 1B must include a strategy for the provision of early childhood development programmes in the province, which must include measures—(a) facilitating the establishment and operation of sufficient early childhood development programmes in that province; prioritising those types of early childhood development programmes most urgently required; and liaising with municipalities on facilitating the identification and provision of suitable premises.” | While 103K should be deleted, it contains useful elaborations on the provincial strategy which should be integrated here.  *(2) A provincial strategy contemplated in section 103A must include a strategy for the provision of early childhood development centres in the province, which must include measures—*  *(a) facilitating the establishment and operation of sufficient early childhood development centres in that province;*  *(b) prioritising those types of early childhood development centres most urgently required; and*  *(c) liaising with municipalities on facilitating the identification and provision of suitable premises.*  The suggested changes are aimed at strengthening this clause and the requirements for developing national and provincial ECD strategy. Wording in proposed section 103K (with some amendments) below was used to strengthen this section.  The addition of the words “with specific mention of inclusive programmes” and “inclusive early childhood development system” by the SAB are welcomed, but we suggest that terms such as ‘inclusion’ and ‘inclusive programmes’ be defined and that a holistic review of the SAB be undertaken by an inclusion expert – see General Comments above. | **Decision:** Integrate 103K into 92(2)  Included the suggested section on municipalities as per the inputs received by COGTA. |
| (3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information  available for the development and review of the strategies referred to in subsections (1) and (2).  [S. 92 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | [None] | - | - |  |
| **Amendment of section 93 of Act 38 of 2005 as inserted by section 4 of Act 41 of 2007** | | | | | |
| **4.** Section 93 of the principal Act is hereby amended— | **93 Provision of early childhood development programmes**  (1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund early childhood  development programmes for that province. | [None] | To be amended to reflect the Function Shift. | **Note**:  Funding of ECD services is something that must be looked at holistically and with expert input.  The ECD Policy envisages the development of a national integrated ECD funding framework to “regulate, coordinate and support the mobilisation and coordination of funds towards the attainment of national integrated early childhood development priorities” (p.99). | Proclamation will take care of the function shift. |
|  | (2) An early childhood development programme must  *(a)* be provided in accordance with this Act; and  *(b)* comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed. | [None] | Based on the suggestion to integrate Part II into Part I, it is suggested that S93(2) read “An early childhood development programme must – (a) be provided, managed and maintained in accordance with this Act; and (b) must comply with the prescribed national norms and standards contemplated in S94 and such other requirements as may be prescribed. | - | **I**nclude “managed and maintained |
|  | (3) The provider of an early childhood development programme only qualifies for funding contemplated in subsection (1) if such provider  complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed. | (a) by the insertion after subsection (3) of the following subsection:  "(3A) A conditionally registered early childhood development programme may qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards."; | The use of condition; conditionally and with conditions is not consistently used in the Act.  Supported  "(3A) An ~~conditionally registered~~ early childhood development programme may qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards.";  We recommend the following amendments:  "(3A) A***n*** ~~conditionally registered~~ early childhood development programme may qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards." | While the intention of this amendment is likely progressive, it actually narrows the wider power that currently exists in Section 97(5) – and in a sense is inconsistent with that section.  Furthermore, DSD’s recently issued 2021/22 framework for the ECD Conditional Grant makes clear that ***unregistered*** ECD programmes can receive funding for the purposes of assisting them to comply.  The proposed amendment in the SAB could have the unintended consequence of narrowing the power to assist. | Keep reference to conditionally registered, because otherwise it may contradict subsection (3). We will rather amend the norms and standards to allow for a mechanism such as the pre-registration grant. |
|  | (4) The funding of early childhood development programmes must be prioritised  *(a)* in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children;  and  *(b)* to make early childhood development programmes available to children with disabilities. | (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:  "(4) The MEC for social development may prioritise and fund early childhood development programmes—";  (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:  "(a) in poverty declared wards in the province, taking into consideration the national and provincial strategies contemplated in section 92 and in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; **[and]**";  (d) by the insertion in subsection (4) after paragraph (a) of the following paragraph:  "(aA) in rural areas; and"; | Proposed amendment de-prioritising poor communities should be deleted / rejected.  T**he proposed amendment to (4) should be rejected.** The obligation to prioritise poor communities must remain mandatory.  It is unclear what “poverty declared ward” refers to. This is undefined and a quick search shows that this is not a concept used in any other legislation. It must either be defined or removed. It is suggested that it be removed.  The proposed addition of “rural areas” is **supported**.  93(4) The MEC for social development ~~may~~ ***must*** prioritise and fund early childhood development programmes-  The obligation to prioritise poor communities must remain *mandatory* as follows:  *93*(4) The MEC for social development ~~may~~ ***must*** prioritise and fund early childhood development programmes-  The term “poverty declared ward” must be clarified or removed to avoid confusion.  The inclusion of “rural areas” is supported, but the term should also be defined for clarity.  DBE: The concern is that this provsion is not pre-emptory but gives the MEC a discretion. we propose that this be made pre-emptory in order for the MEC to take the repriotarisation seriously. | It is concerning that the government is proposing abolishing the duty to prioritise the funding of ECD programmes in poor communities. The government’s proposed amendment to section 93(4) turns the obligation to prioritise the most vulnerable ECD programmes into a discretionary action. This amendment works against the government’s overarching pro-poor goals and will also undermine progress towards universal access to ECD.  It is arguable that this amendment is impermissible because:  - It is a regressive amendment enacted without any public policy justification, and therefore will likely be unconstitutional. When the state takes away existing rights they are under an obligation to provide reasons that ought to be scrutinised at a higher threshold.  - It is anti-developmental. Any law, policy or development plan must prioritise the most marginalised and place considerable weight to the best interests of children (Government of the Republic of South Africa and Others v Grootboom and Others [2000] ZACC 19).  - The state must legislate in a manner that ensures the safety and protection of children. As children in poor communities are more likely to attend ECD programmes that are unsafe, it is incumbent on PDSDs to prioritise funding in these communities.  - It is unlawful in light of the MEC’s obligation to prioritise the needs of the vulnerable. According to case law, the MEC has a legal obligation to prioritise the needs of the vulnerable, which means this duty cannot be made discretionary.  The proposal to make the prioritsation of the poor discretionary is *regressive* and therefore unconstitutional.  The ECD Policy requires the prioritisation of “those living in poverty, under-  serviced rural areas and informal urban areas; those with disabilities; and those living in institutions”. The ECD Policy also recognises that many of the essential ECD services are not available to vulnerable groups. Accordingly, government undertakes to scale up the availability of under-provided ECD services to ensure they are universally available.  A few of the strategies to achieve this objective, include: population-based planning to assess the extent and nature of the need for ECD services, and development, implementation and funding of services that reach children and their families where they are. | **Decision:** Reject insertion before subsection (4) because funding must be prioritised.  Reject reference to poverty declared wards as this is an unfamiliar term.  Include reference to rural areas. |
|  | (5) An early childhood development programme must be provided by  *(a)* a partial care facility providing partial care services for any children up to schoolgoing age; and  *(b)* a child and youth care centre which has in its care any children up to schoolgoing age. | (e) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:  "(a) An early childhood development programme **[must]** may be provided by—"; | This proposed amendment should be rejected.  **It is proposed that 93(5)(a) should be deleted.**  ECD programme is now broadly defined to include place, care and curriculum. We will also remove ECD from Ch 5. Therefore, 93(5) becomes irrelevant and should be deleted.  ~~93(5) An early childhood development programme~~ **~~[must]~~** ~~may be provided by:~~  ~~(a) a partial care facility providing partial care services for any children up to school-going~~  ~~age; and~~  ~~b) a child and youth care centre which has in its care any children up to school-going age.~~  It is proposed that in light of the proposed comprehensive definition of an early childhood development programme, as captured in section 91(3A), this clause should be **deleted**. | This amendment ensures that partial care facilities and child and youth care centres only have to register once. The requirement for a child and youth care centre that cares for young children to provide an appropriate ECD programme should be framed as a requirement to provide ‘structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education’. This should be written into Chapter 13 and not dealt with here.  With the inclusion of a comprehensive definition of ‘early childhood development programme’, this clause becomes redundant. | **Decision**: Delete amendment |
|  | (6) Any other person or organisation not disqualified in terms of section 97 (3) may provide early childhood development programmes, provided that those programmes comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed. | (g) by the substitution for subsection (6) of the following subsection:  "(6) Any other person, organisation, Department, provincial department of social development or municipality not disqualified, in terms of section 97(3), may provide early childhood development programmes, provided that those programmes comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.". | Minor amendment suggested for clarity and readability:  "(6) Any ~~other~~ person, organisation, Department, provincial department of social development or municipality not disqualified, in terms of section 97(3), may provide early childhood development programmes, provided that those programmes comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed". | - | **Decision**: ‘other’ deleted and included new reference to Department, provincial department or municipality |
| **Amendment of section 94 of Act 38 of 2005 as inserted by section 4 of Act 41 of 2007** | | | | | |
| **5**. Section 94 of the principal Act is hereby amended— | **94 National norms and standards for early childhood development programmes**  (1) The Minister must determine national norms and standards for early childhood development programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport. | [None] | “94.(1) The Minister must determine national norms and standards for ***different types of*** early childhood development programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.”  94.(1) The Minister must determine national norms and standards for ***different types of*** early childhood development programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.  94(1) “The Minister must determine national norms and standards for ***all types of*** early childhood development programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.  ***(1A) the norms and standards determined by the Minister must include minimum requirements for conditional registration in respect of all early childhood development programmes.”*** | This amendment is proposed to make clear the presumption that the Minister will provide differentiation within the norms and standards to reflect the different circumstances and purpose of different types of ECD programmes. See also commentary against Section 91(3) above.  **Note:** The ECD Policy requires that minimum requirements linked to the norms and standards for conditional registration should be established, and that these should be supplemented with differentiated norms and standards for different forms and/or models of delivery (see p 115).  **It needs to be debated whether the proposed amendment is workable or needed at all in light of proposed amendments to section 98 below and the proposed amendment in section 94(2) below.** | Decision: Included “different types of”. Also included subsection (1A) |
|  | (2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:  *(a)* The provision of appropriate developmental opportunities;  *(b)* programmes aimed at helping children to realise their full potential;  *(c)* caring for children in a constructive manner and providing support and security;  *(d)* ensuring development of positive social behaviour;  *(e)* respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child; and  *(f)* meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children. | (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:  "(c) caring for children in a constructive manner and providing protection, support and security;"; and  (b) by the deletion of the word "and" at the end of subsection (2) (e);  (c) by the substitution in subsection (2) for paragraph (f) of the following paragraph:  “(f) meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children**[.]**; and” and  (d) the insertion in subsection (2) after paragraph (f) of the following paragraph:  "(g) relevant qualification, skills and training required for early childhood development programmes.". | 2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:  ***(a) nurturing environments that provide protection, support and security;***  ***(b) appropriate and adequately resourced environments for play and learning;***  ***(c) group size and ratios;***  ***(d) support for children with disabilities;***  ***(e) support and information for parents and caregivers;***  ***(f) record-keeping;***  ***(g) qualifications, skills and training;***  ***(h) differentiated health and safety standards for different types of ECD programmes;***  ***(2A) An early childhood development centre provided in terms of this section must provide structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education.***  ***(2B) Any other early childhood development programme that is not provided from an early childhood development centre must have due regard to the need to provide structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education.”***  It is suggested that (2) be amended to create a single set of norms and standards as per the goal of a one-stop process. The headings suggested here deal with all aspects of ECD provision including facility (health and safety), provider and curriculum as per the expanded definition of ECD programme. The duplicated provisions under “ECD Centre” Part II should therefore be deleted.  It is suggested that section (2) be substituted as follows:  “2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:  ***(a) nurturing environments that provide protection, support and security;***  ***(b) appropriate and adequately resourced environments for play and learning;***  ***(c) group size and ratios;***  ***(d) support for children with disabilities;***  ***(e) support and information for parents and caregivers;***  ***(f) record-keeping;***  ***(g) qualifications, skills and training;***  ***(h) minimum health and safety standards that include;***  ***i) proper care for children who are ill;***  ***ii) adequate space and separation of age groups;***  ***iii) safe drinking water;***  ***iv) hygienic and adequate toilet facilities;***  ***v) safe storage of anything that may be harmful to children;***  ***vi) access to refuse disposal services or other adequate means of disposal of refuse generated at the facility;***  ***vii) a hygienic area for the preparation of food for children;***  ***viii) the drawing up of action plans for emergencies; and***  ***ix) the drawing up of policies and procedures regarding health care at the facility.***  ***(i) minimum standards for the design and construction of new public early childhood development centres and additions, alterations and improvements to public early childhood development centres.***  ***(j) the minimum distance between early childhood development programmes and communities.***  ***"(k) relevant qualification, skills and training required for early childhood development programmes.”***  (2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:  ~~(a) The provision of appropriate developmental opportunities;~~  ~~(b) programmes aimed at helping children to realise their full potential;~~  ~~(c) caring for children in a constructive manner and providing, protection support and security;~~  ~~(d) ensuring development of positive social behaviour;~~  ~~(e) respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child;~~ **~~[and]~~**  ~~(f) meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children.~~    ***(a) nurturing environments that provide protection, support and security;***  ***(b) appropriate and adequately resourced environments for play and learning;***  ***(c) group size and ratios;***  ***(d) support for children with disabilities;***  ***(e) support and information for parents and caregivers;***  ***(f) record-keeping;***  ***(g) qualifications, skills and training;***  ***(h) minimum health and safety standards;***  ***(i) proper care for children who are ill;***  ***(j) adequate space and separation of age groups;***  ***(k) hygienic and adequate toilet and ablution facilities.***  ***(2A) An early childhood development centre and a home and community-based early childhood development provided in terms of this section must provide structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education.***  ***(2B) A sessional or outreach early childhood development provided in terms of this section must have due regard to the need to provide structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education.***  It is suggested that section (2) be substituted as follows:  “2) The prescribed national norms and standards contemplated in subsection (1) must relate, ***amongst other things*,** to the following:  ***(a) A safe, nurturing environment for children;***  ***(b) proper care for sick children or children that become ill;***  ***(c) adequate space and separation according to age groups;***  ***(d) group sizes and ratios per age group;***  ***(e) safe drinking water;***  ***(f) hygienic and adequate toilet facilities;***  ***(g) safe storage of anything that may be harmful to children;***  ***(h) access to refuse disposal services or other adequate means of disposal of refuse generated at the facility;***  ***(i) a hygienic area for the preparation of food for children;***  ***(j) measures for the separation of children of different age groups;***  ***(k) the drawing up of action plans for emergencies; and***  ***(l) the drawing up of policies and procedures regarding health care at the facility;***  ***(m) support for and protection of the rights of children with disabilities, including* accessible and appropriate public infrastructure applying universal design standards for identified inclusive and/or specialised centres of ECD service delivery;**  ***(n) skills, qualification and training;***  ***(o) support for parents and caregivers;***  ***(p) record-keeping;***  ***(q) standard]s for the design of and development of new, fully inclusive early childhood development centres;***  ***[(r) the granting of conditional registration?]; and***  ***(s) any other matter as may be prescribed by the Minister.*** | The amendments proposed here achieve four goals:  1. **Incorporating the proposed headings relating to ECD centres in new Part II (103(C)) to create a single set of Norms and Standards for ECD Programmes.** This ensures that requirements and standards relating to *all aspects of* ECD provision – including facility (health and safety), provider and curriculum – are dealt with together, and can be assessed together under a unified registration system.  2. **Streamlining the current headings relating to ECD programmes in Section 94**. There is significant duplication between these headings, as well as lack of clarity around scope. This is reflected in the content of the Norms and Standards, in which a number of standards are repeated or overlap.  - Key standards under current headings 94(2)(a),(b),(d),(e) and (f) can be covered under new headings (a),(b) and (e). These areas are also dealt with through new subsection (2A).  - New (b) addresses resources and the learning environment, a crucial area not covered in the current headings.  - The rights and needs of children with disabilities are not adequately addressed under the existing N&S and the introduction of new heading (d) helps to deal with this (in line with section 94(3) of the Act).  - Record-keeping is introduced as a new heading. This is currently covered in Regulation 18 but for clarity and transparency it is more appropriately situated in the norms and standards.  3. **Streamlining and amending the proposed headings in new Part II.** This will create a simpler and clearer set of norms and standards, and eliminate the legislative over-reach.  DSD’s(and in future DBE’s) central role/duty is in relation to the care and stimulation of children. While it is useful to cover basic health and safety standards here, the principle should be that the more extensive health, safety and infrastructure are dealt with in and through the mandated part of the government system – i.e. municipal by-laws. It is neither logical nor desirable for ECD programmes to have to comply with separate and parallel sets of health and safety standards in the Children’s Act, the National Health Act and local by-laws.  - Headings in 103(C) (d), (f), (g), (h) and (j) can all be covered under new (h).  - Heading 103(C)(k) is covered under (i).  - Heading 103(C)(i) is combined with (j).  4. **Properly cross-referencing DBE’s statutory curriculum frameworks.**  When the Children’s Act was originally drafted the National Early Learning and Development Standards and the Birth to Four National Curriculum Framework did not exist. These documents now provide the statutory framework for the content of all ECD programmes and as such need to be properly cross-referenced on the face of the Act. These documents also mean that there is no longer a need for the current level of detail in the Norms and Standards for ECD Programmes – particularly headings 94(2)(a),(b),(d),(e) and (f). Such detail is undesirable because it creates a third tier of regulation for precisely the same areas of oversight. This causes an unnecessary bureaucratic burden, as well as confusion.  Instead, the Act and its regulations should provide clarity on the relationship between registration requirements and curriculum requirements prescribed by the Department of Basic Education.  The amendments to this section must achieve the following:   * The clause must not represent a closed list, but must allow for norms and standards in respect of *all* required areas and differentiated norms to accommodate *all* modalities. * Streamline current headings relating to norms and standards to avoid duplication; * Incorporate some of the aspects of the current proposed Part II (103(C) in particular) relating to ECD centres to the extent that it achieves the streamlining goal and ensures that *all* aspects of ECD provisioning can be assessed in a single registration process. * Providing a category for children with disabilities. * Providing for full inclusive ECD services. * Providing for norms and standards relating to conditional registration? – **it is debatable whether separate norms and standards were envisaged by the ECD Policy or rather minimum requirements relating to the granting of conditional registration in each relevant norms and standards?**   Incorporate items referred to in the ECD Policy. | Decision: Minimum set of suggested norms and standards included. The extended list was not included as many of the items in the extended list are included in the captured paragraphs. The actual norms and standards will go into the details. Proposed subsections (2A) and (2B) also included.  Suggested paragraph 2A included, but has been amended to refer to the National Curriculum.  Since paragraph 2A refers more comprehensively to ECD programmes, there is no need for the suggested paragraph 2B. |
|  | (3) An early childhood development programme provided in terms of this section must be appropriate to the needs of the children to whom  the programme is provided, including children with a disability, chronic illness and other special needs.  [S. 94 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | [None] | We suggest the inclusion of the following:  ***(3A): An early childhood development facility must accommodate children with disabilities or chronic illnesses and must, in addition to the national norms and standards contemplated in subsection (1)-***  ***(a) be accessible to such children;***  ***(b) provide facilities that meet the needs of such children; and***  ***(c) employ persons that are trained in and provide training to persons employed at the facility on-***  ***(i) the needs, health and safety of such children;***  ***(ii) appropriate learning activities and communication strategies for such children; and***  ***(iii) basic therapeutic interventions.*** | The proposed amendments are adapted from the proposed 103C (3) in Part II. It is also an attempt to incorporate the principles of inclusion contained in the ECD Policy (see section 5.3.4 of the ECD Policy). | **Decision**: Did not include suggestion, as most ECD programmes will not be able to achieve this. Amended subsection (3) to include “where applicable” |
| **Section 95** | **95 Early childhood development programme to be registered**  (1) A person or organisation providing an early childhood development programme must*(*  *a)* register the programme with the provincial head of social development of the province where that programme is provided;  *(b)* provide the programme in accordance with any conditions subject to which the programme is registered; and  *(c)* comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be  prescribed.  (2) The Minister may by regulation exempt any person or organisation or any category of person or organisation from the requirement to  register on such conditions as may be prescribed.  (3) An early childhood development programme provided by a national or provincial state department or a municipality must comply with  subsection (1).  [S. 95 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | None | (1) ~~A person or organisation providing an early childhood development programme must~~***Any person, Department, provincial head of social development or organisation may establish or operate an early childhood development programme provided that an early childhood development programme that is attended by more than six children:*** | 1. The proposed amendment to the first part of Section 95(1) reflects the government’s proposed wording in new Section 103D.  2. The reference to ‘attended by more than six children’ is inserted because while minimum programme size is not relevant to the definition of ECD programme, it is relevant to the requirement to register. In line with the current regulatory framework, it is therefore proposed that only ECD programmes with more than six children *must* register. | **Decision**: Not included, but the reference to more than 6 children has been included in the definition of an ECD centre. |
| **Amendment of section 96 of Act 38 of 2005 as inserted by section 4 of Act 41 of 2007** | | | | | |
| **6**. Section 96 of the principal Act is hereby amended— | **96 Application for registration and renewal of registration**  (1) An application for registration or conditional registration of an early childhood development programme or for the renewal of registration  Must  *(a)* be lodged with the provincial head of social development of the province where the early childhood development programme is  provided in accordance with a prescribed procedure;  *(b)* contain the prescribed particulars; and  *(c)* be accompanied by any documents that may be prescribed. | (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words—  "(1) An application for registration **[or conditional registration]** of an early childhood development programme or for the renewal of registration must-"; and | The use of condition; conditionally and with conditions is not consistently used in the Act.  **Comment**: it has never been the case that an applicant applies for conditional registration, therefore I support this.  This amendment is supported. | - | **Decision**: Amendment kept. |
|  | (2) An applicant must provide such additional information relevant to the application as the provincial head of social development may  determine. | [None] | Provision should be amended to reflect the Function Shift. | - | Proclamation will cover this |
|  | (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. | (b) by the substitution for subsection (3) of the following subsection:  "(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.". | Provision should be amended to reflect the Function Shift.  Don’t support this amendment as I do think an applicant should be able to renew conditional registration. | Is it appropriate for applicants to be able to apply to renew conditional registration? | **Decision**: Amendment kept and 90 days amended to six months to align with 97(1)(a). |
|  | (4) The provincial head of social development must renew the registration of an early childhood development programme before the 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).  [S. 96 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | [None] | Provision should be amended to reflect the Function Shift. | - | **Decision:** 90 days amended to six months to align with 97(1)(a). |
| **Section 97** |  | None | (1) The provincial head of social development must-  (a) within ~~six~~ ***three*** months of receiving the application consider an application for registration 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; | The current time-frame for the determination of applications is too long and leaves many ECD programmes in an uncertain legal position. The long time-frame also places children at greater risk. The time-frame should therefore be reduced. | **Decision**: Not accepted. DBE is not confident to commit to three months at this stage. |
| **Amendment of section 98 of Act 38 of 2005 as inserted by section 4 of Act 41 of 2007** | | | | | |
| **7**. The following section is hereby substituted for section 98 of the principal Act- | **98 Conditional registration**  The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial  head of social development may determine, including conditions  *(a)* specifying the type of early childhood development programme that may or must be provided in terms of the registration;  *(b)* stating the period for which the conditional registration will remain valid; and  *(c)* providing for any other matters that may be prescribed.  [S. 98 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | "98. **[Conditional Registration]** Conditions for registration of early childhood development programme. -  The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including **[conditions]**—  (a) conditions specifying the type of early childhood development programme that may or must be provided in terms of the registration;  (b) **[stating the period for which the conditional registration will remain valid]** the period for compliance; and  (c) **[providing for]** any other matters that may be prescribed.". | The use of condition; conditionally and with conditions is not consistently used in the Act.  By the substitution of the heading for the following “Conditional registration ***and conditions relating to Registration****"*  By the substitution of s 98 for the following:  ***“Conditions relating to registration***  ***(1) The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including conditions—***  ***(a) specifying the type of partial care that may or must be provided in terms of the registration;***  ***(b) stating the period for which the registration with conditions will remain valid; and***  ***(c) providing for any other matters that may be prescribed.***  ***Conditional registration***  ***(2) The head of social development may grant conditional registration to an applicant who does not fulfil the requirements for registration contemplated in section 95(1)(c) and must:***  ***(a) specify which requirements have not been complied with; and***  ***(b) state the period for which the conditional registration will remain valid.***  ***(3) The Minister may publish guidelines concerning the procedure for granting conditional registration.”***  98.The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including **[conditions]**—  (a) conditions specifying the type of early childhood development programme that may or must be provided in terms of the registration;  ***(aA) measures required to achieve compliance with prescribed requirements;***  (b) **[stating the period for which the conditional registration will remain valid]** the period for compliance; and  (c)**[providing for]** any other matters that may be prescribed.  We recommend the following amendment to make a clear distinction between conditional registration and registration with conditions:  ***Conditional registration***  ***(1) The head of social development may grant conditional registration to an applicant who does not fulfil all requirements for registration and must:***  ***(a) specify the measures required to achieve compliance with prescribed requirements;***  ***(b) specify the period by which the applicant must comply with the prescribed requirements for registration; and***  ***(c) provide for any other matters that may be prescribed.***  ***Registration with conditions***  ***(2) The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including conditions—***  ***(a) specifying the type early childhood development programme that may or must be provided in terms of the registration;***  ***(b) specifying the period for which the registration with conditions will remain valid; and***  ***(c) providing for any other matters that may be prescribed.”***  ***(3) The Minister may publish regulations in terms of section 103 relating to the procedure for granting conditional registration.*** | The reference to ‘the period for compliance’ in (b) does not make sense without the insertion of (aA) which first makes clear that conditional registration can be used to draw non-compliant ECD programmes into the regulatory framework in a managed way.  Conditional registration is currently being used in this way on the ground and, in 2019, the Department of Social Development issued a framework to provinces to standardise approaches. The framework sets out a ‘Bronze, Silver, Gold’ system which envisages progressive compliance with prescribed requirements.  It is essential that Section 98 provides a clear legal footing for this approach, in order to address substantial variations between provinces in how they understand and apply conditional registration. Without this legal basis to enable and encourage inclusive approaches, government efforts towards massification of registration are likely to continue to be frustrated.  A distinction must be made between conditional registration and registration with conditions, the former being used for purposes of progressive realisation of norms and standards or relevant requirements. It must also be made clear that it “conditional registration” of providers is possible prior to meeting the full requirements of registration and will therefore be granted based on lower threshold requirements. These providers should be supported to meet full registration requirements within a specified period. | Decision: Inputs by technical team adopted. Also included definitions for “conditional registration” and “registration with conditions” in the definition section. |
| **Amendment of section 100 of Act 38 of 2005 as inserted by section 4 of Act 41 of 2007** | | | | | |
| **8**. Section 100 of the principal Act is hereby amended | **100 Notice of enforcement**  A provincial head of social development may by way of a written notice of enforcement instruct  *(a)* a person operating or managing a partial care facility or a child and youth care centre which does not provide an early childhood  development programme, to comply with section 93 (5) within a period specified in the notice;  *(b)* a person operating or managing a partial care facility or a child and youth care centre which does provide an early childhood  development programme but of a standard that does not comply with the prescribed national norms and standards contemplated in  section 94 and such other requirements as may be prescribed, to comply with those national norms and standards and other  requirements within a period specified in the notice; or  *(c)* a person who provides an early childhood development programme which does not comply with the prescribed national norms and  standards contemplated in section 94 and such other requirements as may be prescribed  (i) to stop the provision of that programme; or  (ii) to comply with those national norms and standards and other requirements within a period specified in the notice.  [S. 100 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | Section 100 of the principal Act is hereby amended by the substitution in paragraph (c) for subparagraph (i) of the following subparagraph:  (i) to stop the provision of that programme and immediately notify the parent of an affected child; or”. | “’to stop the provision of that programme and immediately notify the parents of all the affected children.”  “to stop the provision of that programme and immediately notify the parent***s or caregivers*** of ***all*** ~~the~~ affected child***ren***.”  “... immediately notify the parents ***or caregivers*** of ***all*** affected child**ren**. ***The provincial head of social development, where necessary, must ensure that suitable alternative arrangements are made for the children in such facility.***” | We would propose amendments to the enforcement sections in the long-term and have possible amendments drafted. | Decision: Suggestions included for discussion |
| **Amendment of section 102 of Act 38 of 2005 as inserted by section 4 of Act 41 of 2007** | | | | | |
| **9**. Section 102 of the principal Act is hereby amended— | **102 Assignment of functions to municipality**  (1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99 and 100 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned. | (a) by the substitution for subsection (1) of the following subsection:  "(1) The **[provincial head of]** MEC for social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99 and 100 to the municipal manager after consultation with the municipal council, if the **[provincial head of]** MEC for social development is satisfied that the municipality complies with the prescribed requirements with regards to the capacity of that municipality to perform the functions concerned."; | To be amended to reflect the Function Shift  I defer to EELC and SALGA here  It is suggested that the assignment provisions be reviewed and modelled on the provisions of section 9 of the Local Government: Municipal Systems Act, 32 of 2000. | Amendments must ensure that when national and provincial governments assign additional functions or powers to local government:   * municipalities receive adequate funding to fulfil assigned powers and functions; * the three spheres of government work in a co-ordinated way.   When the Minister or provincial head of social development wants to assign a power or function to local government, he or she must first:   * consult organised local government at a national or provincial level; * consult the Minister or MEC responsible for finance; * consult the Minister or MEC responsible for local government; and * consider the assessment of the Financial and Fiscal Commission.   If, after these consultations, the Minister or provincial head decides to assign the power of function, they must ensure that municipalities have adequate capacity and funding to fulfil the assigned function. The Minister or provincial head with the Financial and Fiscal assess how much funding should be given to municipalities to enable them to fulfil the assigned function.  We could work with SALGA on proposed wording. | Decision – SALGA and COGTA agreed to this |
| (2) The agreement must be in the prescribed form and contain the prescribed particulars. | [None] | - | - |  |
| (3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a  social service professional in the employ of the municipality. | (b) by the substitution for subsection (3) of the following subsection:  "(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service **[professional]** practitioner in the employ of the municipality."; and | Please confirm whether this provision is consistent with the law on delegation of powers and functions.  Where no delegated powers can be further delegated. | - | Decision – SALGA and COGTA agreed to this |
| (4) A delegation in terms of subsection (3)  *(a)* is subject to any limitations, conditions and directions which the municipal manager may impose;  *(b)* must be in writing; and  *(c)* does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty. | [None] | - | - |  |
|  | (5) The municipal manager may  *(a)* confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may  have accrued to a person as a result of the decision; and  *(b)* at any time withdraw a delegation. | [None] | - | - |  |
| (6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide on the appeal within 90  days of receipt thereof. | [None] | - | - |  |
| (7) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6) may  apply to the competent division of the High Court to review that decision. | [None] | - | - |  |
| (8) *(a)* The provincial head of social development must monitor the performance of the functions assigned in terms of this section.  *(b)* The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.  *(c)* If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may (i) amend the written agreement contemplated in subsection (1); or  (ii) withdraw the assignment of the functions.  [S. 102 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | (c) by the substitution in subsection (8) for paragraph (a) of the following paragraph:  "(a) The provincial head of social development must monitor and evaluate the performance of the functions assigned in terms of this section.". | To be amended in accordance with the Function Shift |  | Proclamation will cover this |
| **Amendment of section 103 of Act 38 of 2005 as inserted by section 4 of Act 41 of 2007** | | | | | |
| **10**. Section 103 of the principal Act is hereby amended— | **103 Regulations**  The Minister may make regulations in terms of section 306 concerning  *(a)* the national norms and standards that early childhood development programmes must comply with;  *(b)* any other requirements with which early childhood development programmes must comply;  *(c)* the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter  and for the renewal of such registrations;  *(d)* the assessment and compulsory monitoring of early childhood development programmes; and  *(e)* any other matter necessary to facilitate the implementation of this Chapter.  [S. 103 inserted by s. 4 of Act 41 of 2007 (wef 1 April 2010).] | (a) by the substitution for paragraph (c) of the following paragraph—  "(c) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the suspension, cancellation or renewal of such registrations;";  (b) by the deletion of the word "and" at the end of paragraph (d); and  (c) by the insertion after paragraph (d) of the following paragraphs:  "(dA) different types of early childhood development programmes that may be provided and the period for which registration is valid;  (dB) the manner in which early childhood development programmes must be managed;  (dC) procedure to be followed with regard to children in early childhood development programmes when such programme is terminated;  (dD) the procedure to be followed when lodging an appeal in terms of this Chapter;  (dE) assessment and monitoring of early childhood development programmes;  (dF) assignment of functions to municipalities;  (dH) funding criteria for early childhood development programmes; and ". | It is suggested that the following be inserted after new paragraph (dG):  “***(dH)the Minister, after consultation with the Minister of Health, may provide model bylaws for health, safety and environmental standards for ECD programmes to be used as a guide for local government”.***  In addition, it is suggested that some important parts of 103N be incorporated here as part of merging the two sections (as per the objective of a one-stop registration process):  "(c) the procedure to be followed ***and the fees to be paid*** in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the suspension, cancellation or renewal of such registrations;";  (b) by the deletion of the word "and" at the end of paragraph (d); and  (c) by the insertion after paragraph (d) of the following paragraphs:  "(dA) different types of early childhood development programmes that may be provided and the period for which registration is valid;  (dB) the manner in which early childhood development programmes must be managed;  (dC) procedure to be followed with regard to children in early childhood development programmes when such programme is terminated;  (dD) the procedure to be followed ***and the fees to be paid*** when lodging an appeal in terms of this Chapter;  (dE) assessment and monitoring of early childhood development programmes;  (dF) assignment of functions to municipalities;  (dH) funding criteria for early childhood development programmes; and ".  It is suggested that the following be inserted after new paragraph (dH):  ***(dI) the procedure to be followed for the granting of conditional registration and for early child development programmes being assisted to comply with norms and standards.*** | Proposed (dI) to be read with comments made in relation to proposed amendments to section 94(2) and section 98 dealing with conditional registration. | Decision: Suggestions adopted. COGTA guided on the best wording to use for the model bylaws, based on legislation they are currently drafting with Telecommunications. |
| **Insertion of heading after section 103 of Act 38 of 2008** | | | | | |
| **11.** The following heading is hereby inserted after section 103 of the principal Act: | [NEW] | The following heading is hereby inserted after section 103 of the principal Act:  **“PART II**  **EARLY CHILDHOOD DEVELOPMENT CENTRES”**  **Insertion of sections 103A, 103B, 103C, 103D, 103E, 103F, 103G, 103H, 103I, 103J, 103K, 103L, 103M and 103N in Act 38 of 2005** | Delete  We recommend that, except where expressly indicated, the proposed amendments in sections 103A-103N be rejected. | Not required under a unified one-step registration process  If ECD is to be regulated in a single chapter, this must be done comprehensively and not just by wholesale duplication of other provisions in the Act as is the case in section 103A-N.  As such amendments were proposed to the preceding sections which aim to:  (i) reconsider all terminology, definitions and the overall framework to be adopted in a single ECD chapter;  (ii) ensure a streamlined registration process which is inclusive of all modalities of ECD provisioning; and  (iii) ensure comprehensive, but simplified regulations and norms and standards prescribed under the Act relating to ECD provisioning | Decision: Integrate Part II into S90-S103 and delete Part II |
| **12.** The following sections are hereby inserted in the Children’s Act, 2008 (Act No. 38 of 2005) after section 103: | [NEW] | **“103A** An early childhood development centre is a centre that provides an early childhood development programme for more than six children from birth to school going age. | It is unclear how or why the power to provide and fund ECD centres here is different to the power to provide and fund ECD programmes in Section 93. Especially since ECD centres are a type of ECD programme and since these are in one Chapter. This seems to be unnecessary duplication.  Due to the fact that ECD programme is broadly defined to encompass ECD centres as well as other types of ECD modalities, it becomes unnecessary to single out one modality in Part II. The definitions of all types of modalities can be provided for in the regulations.  Delete  It is recommended that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process – already provided for in the more inclusive definition of early childhood programme above.  This section is the same as S78 and S93. The suggestion is to update S93 so that all aspects in 103A is covered in S93 (see comment in S93), and then to remove S103A. | See earlier commentary on definitions | Decision: Delete |
|  | [NEW] | **103B Provision of early childhood development centres**  (1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund early childhood development centres and services for the province, taking into consideration the national and provincial strategies contemplated in section 103B.  (2) An early childhood development centre referred to in subsection (1)-  (a) must be managed and maintained in accordance with this Act; and  (b) must comply with-  (i) the prescribed national norms and standards contemplated in section 103D and such other requirements as may be prescribed; and  (ii) the structural safety, health and other requirements of the municipality of the area where the early childhood development centre is situated.  (3) The owner or manager of an early childhood development centre or provider of an early childhood development service only qualifies for funding contemplated in subsection (1) if such owner, manager or provider complies with the prescribed national norms and standards contemplated in section 103D and such other requirements as may be prescribed.  (4) The funding of early childhood development centres must be prioritised-  (a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children;  (b) to make centres accessible to children with disabilities; and  (c) rural areas. | The National Policy 2015 forecasts universal access to early childhood development programmes. In that event, the MEC for Basic Education must provide and fund early childhood development centres and services for the province.  The powers provided for in terms of section 93 are broad enough to include the provision and funding of ECD centres. Therefore there is no need for this provision. It has become a duplication under the one-stop approach.  [Delete proposed new Section 103B]  It is recommended that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - section 93 already addresses provisioning and funding of ECD centres, though overall funding of ECD provisioning must be looked at more closely over the longer term.  This section is the same as S79 in Ch5 and S94. It is therefore proposed that the norms and standards contemplated here be integrated in S94 and that S103B is deleted. | Under a one-step registration process, proposed new Section 103B is no longer required as all of its provisions are repeated and therefore covered in Section 93. | Decision: Delete |
|  | [NEW] | **103C National norms and standards for early childhood development centres**  (1) The Minister, after consultation with interested persons and the relevant Ministers must determine national norms and standards for early childhood development centres by regulation.  (2) The national norms and standards contemplated in subsection (1) must relate to the following:  (a) A safe environment for children;  (b) proper care for sick children or children that become ill;  (c) adequate space and ventilation;  (d) safe drinking water;  (e) hygienic and adequate toilet facilities;  (f) safe storage of anything that may be harmful to children;  (g) access to refuse disposal services or other adequate means of disposal of refuse generated at the centre;  (h) a hygienic area for the preparation of food for children;  (i) measures for the separation of children of different age groups;  (j) the drawing up of action plans for emergencies; and  (k) the drawing up of policies and procedures regarding health care at the centre.  (3) An early childhood development centre for children with disabilities or chronic illnesses must, in addition to the national norms and standards contemplated in subsection (1)-  (a) be accessible to such children;  (b) provide facilities that meet the needs of such children; and  (c) employ persons that are trained in and provide training to persons employed at the facility on-  (i) the needs, health and safety of such children;  (ii) appropriate learning activities and communication strategies for such children; and  (iii) basic therapeutic interventions.  (4) An early childhood development centre must offer programmes appropriate to the developmental needs of the children in that centre as may be prescribed. | To be amended to reflect the Function Shift  And, in addition to clean the language in sub-section two:  (2) The national norms and standards contemplated in subsection (1) must relate to the following:  (a) ***minimum health and safety standards*** ~~a safe environment for children~~;  (b) proper care for ~~sick children or~~ ***children*** ~~that become~~ ***who are ill***;  (c) adequate space and ~~ventilation~~ ***separation of age groups***;  ~~(d) safe drinking water;~~  (d) hygienic and adequate toilet ***and ablution facilities;***  ~~(f) safe storage of anything that may be harmful to children;~~  ~~(g) access to refuse disposal services or other adequate means of disposal of refuse~~  ~~generated at the facility;~~  ~~(h) a hygienic area for the preparation of food for children;~~  ~~(i) measures for the separation of children of different age groups;~~  ~~(j) the drawing up of action plans for emergencies; and~~  ~~(k) the drawing up of policies and procedures regarding health care at the facility.~~  ***(d) minimum standards for the design and construction of new public early childhood development centres and additions, alterations and improvements to public early childhood development centres.***  ***(m) the minimum distance between early childhood development centres and communities.***  Under a one-step registration process, there will be a single integrated set of Norms and Standards for ECD Programmes, which include norms relating to infrastructure and health and safety including those for ECD centres. These are captured in the proposed amendments to Section 94(2) – see commentary above.  [Delete proposed new Section 103C – and move applicable norms in sub-section (2) to Section 94]  It is proposed that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - the contents of this section being incorporated into section 94(2). | Under a one-step registration process, there will be a single integrated set of Norms and Standards for ECD Programmes, which include norms relating to infrastructure and health and safety. These are captured in the proposed amendments to Section 94(2) – see commentary above. | Decision: Integrate into S94 and delete. |
|  | [NEW] | **103D Early childhood development centre to be registered**  (1) Any person, Department, provincial head of social development or organisation may establish or operate an early childhood development centre provided that the centre-  (a) is registered with the provincial government of the province where that facility 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 103D and such other requirements as may be prescribed.  (2) The Minister may by regulation exempt any person or organisation or any category of person or 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 state department or by a municipality must comply with subsection (1).  (4) As from the date on which this section takes effect an existing Partial Care facilities providing an early childhood development programme, registered or deemed to be registered in terms of this Act must be regarded as having been registered in terms of this section as an early childhood development centre.  (5) A centre 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 103L before the expiry of that period. | Under a one-stop registration process, proposed new Section 103C is no longer required as the duty to register is set out in Section 95.  [Delete proposed new Section 103D]  It is proposed that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - contents are covered in section 95.  This is exactly the same as S80 and S95. Propose to delete. | Under a one-step registration process, proposed new Section 103D is no longer required as the duty to register is set out in Section 95. | Decision: Deleted |
| **103E** | [NEW] | **103E Application for registration and renewal of registration of early childhood centre**  (1) An application for registration of an early childhood development centre or for the reinstatement or renewal of registration must-  (a) be lodged with the provincial head of social development of the province where the facility is situated in accordance with a prescribed procedure;  (b) contain the prescribed particulars; and  (c) be accompanied by-  (i) a report by a social service practitioner on the viability of the application; and  (ii) any documents that may be prescribed.  (2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.  (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.  (4) The provincial head of social development must renew the registration of an early childhood development centre before the 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). | These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101.  [Delete proposed new Sections 103E – 103J]  It is recommended that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - contents are covered in sections 96-101. | These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101. | Decision: Delete |
|  | [NEW] | **103F Consideration of application**  (1) The provincial head of social development must-  (a) within six months of receiving the application consider an application for registration or conditional registration 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;  (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  (c) state in the certificate of registration the period for which the registration will remain valid.  (2) When considering an application the provincial head of social development must take into account all relevant factors, including whether-  (a) the facility complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed;  (b) the applicant is a fit and proper person to operate an early childhood development centre;  (c) the applicant has the necessary funds and resources available to provide the early childhood development service of the type applied for;  (d) each person employed at or engaged in the early childhood development centre is a fit and proper person to assist in operating the early childhood development centre; and  (e) each person employed at or engaged in the early childhood development centre has the prescribed skills and training to assist in operating that early childhood development centre.  (3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating an early childhood development centre.  (4) The provincial head of social development must consider the report contemplated in section 103K(1)(c)(i) of a social service practitioner before deciding an application for registration, conditional registration or renewal of registration.  (5) Notwithstanding section 78(3) a provincial head of social development may assist the owner or manager of an early childhood development centre to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed. | To be amended to reflect the Function Shift.  These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101.  It is recommended that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - contents are covered in sections 96-101.  This is almost exactly the same as S81 and S96. Suggest that (d) and (e) is integrated in S96 and that S103E is deleted |  | Decision: Delete |
|  | [NEW] | **103G Conditions for registration of early childhood development centres**  (1) The registration or renewal of registration of an early childhood development centre may be granted on such conditions as the provincial head of social development may determine, including -  (a) conditions specifying the type of early childhood development centre that may or must be provided in terms of the registration;  (b) Conditions with which the early childhood development centre must comply with.  (b) the period within which the conditions for registration must be met; and  (c) any other matters that may be prescribed. | These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101.  It is recommended that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - contents are covered in sections 96-101.  Exactly the same as S83 and S98. Propose to delete. |  | Decision: Delete |
|  | [NEW] | **103H Cancellation of registration**  (1) The provincial head of social development may cancel the registration or conditional registration of an early childhood development centre by written notice to the registration holder if-  (a) the centre is not maintained in accordance with the prescribed national norms and standards contemplated in section 103D and such other requirements as may be prescribed;  (b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;  (c) the registration holder or the management of the facility contravenes or fails to comply with a provision of this Act;  (d) the registration holder becomes a person who is not a fit and proper person to operate an early childhood development centre; or  (e) a person who is not a fit and proper person to assist in operating the early childhood development centre is employed at or engaged in operating the centre.  (2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1) (a), (b), (c) or (e)-  (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and  (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.  (3) The provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 103D, any requirements as may be prescribed or any provision of this Act where the cancellation was due to non-compliance with those national norms and standards, conditions, requirements or provision. | To reflect the Function Shift  These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101.  It is recommended that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - contents are covered in sections 96-101.  Exactly the same as S84 and S99. Propose to delete. |  | Decision: Delete |
|  | [NEW] | **103I Notice of enforcement**  (1) A provincial head of social development may by way of a written notice of enforcement instruct-  (a) a person Department, municipality, provincial department of social development, or organisation operating an unregistered early childhood development centre-  (i) to stop operating that facility; or  (ii) to apply for registration in terms of section 103F within a period specified in the notice; or  (b) a person or organisation operating a registered early childhood development centre otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.  (2) A person Department, municipality, provincial department of social development or organisation operating an unregistered early childhood development centre and who is instructed in terms of subsection (1) (a) (ii) to apply for registration within a specified period, may, despite the provisions of section 80, continue operating the facility during that period and, if that person or organisation applies for registration, until that application has been processed.  (3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct an early childhood development centre, whether registered or not, to stop operating that centre.  (4) The High Court may grant an order for costs against the owner or manager of the early childhood development centre referred to in subsection (3) if so requested by the Director-General or provincial head of social development. | Reject: 4) The High Court may grant an order for costs against the owner or manager of the early childhood development centre referred to in subsection (3) if so requested by the Director-General or provincial head of social development.  This is always an option and cannot override a court’s discretion in relation to determining orders on costs.  These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101.  This section should be deleted to avoid duplication and in order to provide for a one-step registration systems and process - contents are covered in sections 96-101. |  | Decision: Delete. |
|  | [NEW] | **103J Appeal against and review of certain decisions**  (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 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.  (2) An applicant or a registration holder that is not satisfied with the outcome of an appeal referred to in subsection (1) may apply to the competent division of the High Court to review that decision. | These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101.  It is recommended that this section be deleted to avoid duplication and in order to provide for a one-step registration systems and process - contents are covered in sections 96-101. |  | Decision: Delete |
|  | [NEW] | **103K Record and inspection of and provision for early childhood development centre**  (1) A provincial head of social development must-  (a) maintain a record of all early childhood development centres in the province, the types of early childhood development centre and the number of each type of centre;  (b) compile a profile of the children in that province in the prescribed manner; and  (c) conduct inspections at the prescribed intervals of early childhood development centres in the province to enforce the provisions of this Act.  (2) A provincial strategy contemplated in section 103A must include a strategy for the provision of early childhood development centres in the province, which must include measures-  (a) facilitating the establishment and operation of sufficient early childhood development centres in that province;  (b) prioritising those types of early childhood development centres most urgently required; and  (c) liaising with municipalities on facilitating the identification and provision of suitable premises. | To be amended to reflect the Function Shift  ***“(1) The Minister, in collaboration with provincial government and municipalities including with the Department of Social Development, the Department of Health and Department of Cooperative Governance and Traditional Affairs, must develop a costed national infrastructure plan to ensure equitable and universal access to Early Childhood Development Centres;.***  (2) A provincial head of social development must—  *(a)* maintain a record of all early childhood development centres in the province;  ***(b) assess the adequacy of the available infrastructure; based on prescribed norms and standards;***  *(b)* compile a profile of the children in that province in the prescribed manner; and  *(c)* conduct inspections at the prescribed intervals of early childhood development centres in the province to enforce the provisions of this Act.  (2) A provincial strategy contemplated in section 103A must include a strategy for the provision of early childhood development centres in the province, which must include measures-  (a) facilitating the establishment and operation of sufficient early childhood development centres in that province;  (b) prioritising those types of early childhood development centres most urgently required; and  (c) liaising with municipalities on facilitating the identification and provision of suitable premises.  ***(3) Municipalities must—***  ***a) ensure, provide and maintain sufficient and appropriate ECD centres for the children in its area of jurisdiction, including the maintenance of ECD centres that are owned by registered non-profit organisations;***  ***(b) develop a municipality ECD maintenance strategy.”***  These provisions have been merged into s 92 and therefore can be deleted.  [Delete proposed new Section 103K – and move relevant provisions to Section 92]  We have recommended that the contents of this section be incorporated into section 92 and it is thus recommended that this standalone section be deleted. | See commentary against Section 92 above. | Decision: Integrate into S92 and delete. |
|  | [NEW] | **103L Assignment of functions to municipality**  (1) The MEC of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 103E 103F, 103G, 103H, 103I and 103K to the municipal manager, after consultation with the municipal council if MEC is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.  (2) The agreement must be in the prescribed form and contain the prescribed particulars.  (3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service practitioner in the employ of the municipality.  (4) A delegation in terms of subsection (3)-  (a) is subject to any limitations, conditions and directions which the municipal manager may impose;  (b) must be in writing; and  (c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.  (5) The municipal manager may-  (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and  (b) at any time withdraw a delegation.  (6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.  (7) An applicant or a registration holder that is not satisfied with the outcome of an appeal contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.  (8) (a) The provincial head of social development must monitor the performance of the functions assigned in terms of this section.  (b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.  (c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may-  (i) amend the written agreement contemplated in subsection (1); or  (ii) withdraw the assignment of the functions. | To reflect Function Shift  This proposed new section is no longer required because its provisions are repeated and therefore covered in Section 102. However, there are some changes here that relate to “after consultation with the council” that we may want to incorporate into section 102. We will be guided by SALGA here.  [Delete proposed new Section 103L]  We recommend that this clause be deleted as its content will be dealt with in the amended section 102. | This proposed new section is no longer required because its provisions are repeated and therefore covered in Section 102. | Decision: Delete. |
|  | [NEW] | **103M Serious injury, abuse or death of child in early childhood development centre**  (1) If a child is seriously injured or abused while in an early childhood development or following an occurrence at an early childhood development centre, the person operating the early childhood development centre or a person employed at the early childhood development centre must immediately report such injury or abuse to the provincial head of social development, who must act in accordance with the provisions of section 110 (5).  (2) If a child dies while in early childhood development or following an occurrence at an early childhood development centre, the person operating the early childhood development centre or a person employed at the early childhood development centre must immediately after the child's death report such death to-  (a) the parent, guardian or care-giver of the child;  (b) a police official; and  (c) the provincial head of social development.  (3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes. | To reflect Function Shift  **103M Serious injury, abuse or death of child in early childhood development ~~centre~~ *programme***  (1) If a child is seriously injured or abused while in an early childhood development or following an occurrence at an early childhood development ***programme*** ~~centre~~, the person operating the early childhood development ***programme*** ~~centre~~ or a person employed at the early childhood development ***programme*** ~~centre~~ must immediately report such injury or abuse to the provincial head of social development, ***who must cause an investigation to be conducted into the circumstances of the serious injury and in the case of abuse,* ~~who must~~**act in accordance with the provisions of section 110 (5).  (2) If a child dies while in early childhood development or following an occurrence at an early childhood development ***programme*** ~~centre~~, the person operating the early childhood development ***programme*** ~~centre~~ or a person employed at the early childhood development ***programme*** ~~centre~~ must immediately after the child's death report such death to-  (a) the parent, guardian or care-giver of the child;  (b) a police official; and  (c) the provincial head of s ocial development.  (3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.  **Comment:** Section 110 only deals with abuse. This means that the obligation to have an investigation in the circumstances of *serious injury* is not included if you simply cross refer to this section.  [Substitute all references to ‘ECD centre’ with ‘ECD programme’]  This is an important amendment and can REMAIN, subject to amendments to align terminology and concepts introduced by earlier proposed amendments. For example, reference to “early childhood development centre” must change to “early childhood development programme”. | This is an important new section and should remain, but brought into the conceptual framework proposed above by amending the terminology. | Decision: Keep amendment. ‘Centre’ replaced by ‘Programme’. Also included other suggestions. |
|  | [NEW] | **103N Regulations**  (1) The Minister may make regulations in terms of section 306 concerning-  (a) the national norms and standards that ECD centres must comply with;  (b) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter, for the renewal of such registration and for the suspension or cancellation of registration;  (c) the ECD centres that may be provided in terms of such registration;  (d) the period for which registration is valid;  (e) the requirements that the ECD centres have to comply with;  (f) the management of ECD centres;  (g) the procedure to be followed with regard to the children in ECD centre if the ECD centre is closed down;  (h) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter; and  (i) any other matter that may be necessary to facilitate the implementation of this Chapter. | Delete  Under a one-step registration process, there will be a single, integrated set of regulations for ECD programmes. The list proposed in new Section 103M are all captured through the government’s proposed amendments to Section 103.  [Delete proposed new Section 103M]  This is incorporated into section 103 and it is therefore recommended that this standalone section be deleted to avoid duplication and to ensure streamlined, integrated regulations for ECD programmes. | Under a one-step registration process, there will be a single, integrated set of regulations for ECD programmes. The list proposed in new Section 103M are all captured through the government’s proposed amendments to Section 103. | Decision: Integrated into S103 and deleted. |
| **Short title and commencement**  **13**. This Act is called the Children's Second Amendment Act, 2021 and comes into force on a date to be fixed by Proclamation by the President of the Republic of South Africa in the gazette. | | | | | |

# SUMMARY OF COMMON KEY SERVICE DELIVERY ISSUES RAISED

| KEY SERVICE ISSUES | * **DSD RESPONSE** |
| --- | --- |
| Funding should be provided to deserving organisations on time so that they can be able to function fully. | * The department makes every effort to fund organizations that meet the funding requirements to enable the delivery of services, however, the amount of administration involved in the disbursement of funds crates impediment, which creates bottlenecks in the system. This results in the Department not paying the organizations on time due to manual processing of the transfer payment. * To address the challenge outlined above, DSD developed the DSD Sector Funding Policy that guides the officials on the process of funding organizations. To eliminate a lot of time wasting on continual administrative work, the department is developing a payment system that will simplify the payment process in all the provinces. * This will assist the Department in efficiently and effectively achieving its strategic vision towards addressing the needs of the communities. |
| There is a general shortage of child and youth care centres in the country. | Provision of child and youth care centres is determined by the need of the programme within the specific environment. Child and Youth Care Centres are operated by both NGOs and government. There are about 449 child and youth care centres across the country.  * Provinces are encouraged to implement section 192 of the Children’s Act by ensuring the spread the sufficient spread in the province of properly resourced, coordinated and managed child and youth care centres. * Stakeholders are encouraged to foster children in a family environment than an institutionalised environment such as child and youth care centre. |
| 1. Children should be taught and trained on their rights and responsibilities in line with Section 28 of the Constitution. Children, for instance, need to be trained and guided on how they should view and understand advertising, particularly advertisement on alcohol.” | * Informing children on their rights and responsibilities is an obligation that every department offering a service to a child should conduct.  In addition, most departments now produce documents known as ‘child friendly’ versions – these are publications on government reports that are easy to understand and are in simplified language.  Child participation is one of the strategies for ensuring that children are aware of their rights.  Our opinion is that this matter should not be regulated through an act of parliament but guidelines on child participation offer guidance to duty barriers. |
| Family reunification process is a challenge. The child that is unified with his/her family will go back to the same family and the challenges will always be there because the family is not rehabilitated. | * As soon as the child is placed in alternative care, the Social Service Professionals should start having sessions with the family to rehabilitate them in preparation for reunification. Reunification services involve strengthening families to be able to care for and protect their family members through the implementation of a reunification care plan and permanency plan. It is a process that must be planned, implemented and monitored to ensure the success of reunifying members with their families of origin. Family reunification services refer to services delivered to the family and its members to address the risk factors that necessitated the removal of the family member. Regular contact should be established and maintained. |
| A concern was raised that drop in centres are not funded and volunteers working at these centres are appreciated and recognised. They also have to support their families. It was thus requested that they should be compensated. | * The drop-in centre must be referred to the local DSD office to ensure that the drop-in centre is registered and complies with the national norms and standards. Registered drop-in centres may be prioritised for funding by the MEC of Social Development to ensure that services are accessible to vulnerable children. |
| Adoption process is too long | The Department acknowledges that there has been challenges regarding this matter and accepts that these recommendation letters be issued within 30 days of receipt of a report.The Director General has written to the Head of Departments in this regard.The recommendation is noted, however time that lapses during the adoption process is due to compliance with various provisions of the Children’s Act. |
| Adoption of children under 2 years must be prioritised | The Department is not discriminating children on the basis of age, thus all adoptable children must be prioritized, irrespective of age. |
| There are delays in DSD issuing adoption recommendation letters. | * Proposal was made for the issuing of 239-letter confirming compliance to be issued within a period of 30 days after receiving the adoption application. Time frame will be prescribed in the Regulations. |
| Employment of social workers: Speakers proposed that at least every school should be provided with a social worker because there are cases where educators abuse children. Children are often afraid to report the abuse for the fear that educators will protect one another. Deployment of social workers at schools will thus make it easy for children to report these cases. | * The Department of Social Development in partnership and collaboration with other sector departments and some entities has developed a draft Sector Strategy for employment of Social Service Professionals which is inclusive of social work occupational category. The department is currently consulting the draft sector strategy with critical stakeholders. * The Department of Basic Education forms part of the Inter-sectoral Forum which guides and lead the development of the draft sector strategy for employment of social services professional. The need for creation of posts within various schools was identified as critical. |
| Child abuse cases are not treated with sensitivity and urgency. | In terms of the norms and standards for child protection; child abuse cases are categorised as cases that require urgent response with assessment prioritised to be done within 48 hours by designated social workers who have sufficient experience in the field of child protection or is under the supervision of a person who has at least 5 years’ experience in child protection. |
| Children who turn 18 years and have to exit alternative care (child and youth care centres) are left with nowhere to go. Most of these children end up living in the streets. The DSD should ensure that all child and youth care centres have exit plans for these children. | DSD has exit plans for children leaving alternative care.Preparing exit for children in alternative care is part of the permanency plan and amongst programmes that are in place is independent living programmes which are specifically designed to empower children exiting alternative care.There are also other Youth Empowerment programmes to accommodate young people who exited alternative care. |
| Children who exit foster care system at the age of 18 years, experience a lot of hardship because they cannot receive a foster care grant and are unable to find employment as South Africa has a high unemployment rate. | Children who reach the age of 18 years and are attending schooling including tertiary institutions are accommodated in terms of section 176 of the Children’s Act.It is important to note that unemployment is a huge problem facing the country and DSD alone cannot manage the problem. However; the department in preparation for children or persons exiting the foster placement; there is independent living programmes to build the capacity and empower young people in preparation for their exit in alternative care. Furthermore; there are other Youth Empowerment programmes to accommodate young people including children who exit alternative care. |
| The NCPR be devolved from the national Department of Social Development to the provincial Department of Social Development | Section 125 of the Children’s Act gives access to Part of the Register allowing designated social workers rendering adoption and foster care services to access Part B. The section is currently being implemented and all provinces have been trained and have access to Part B Register. |
| It takes long for the outcomes of screening to be available, up to three to months, even though the Children’s Amendment Act says it should take 21 days. It however, takes a week or two to get police clearance but the Department of Social | There was a backlog in issuing Form 30 due to impact of lockdown where there was staff rotation to ensure compliance with covid-19 protocols. Provinces relied on provision of section 126 which is a national competency; however section 125 is in operation and implemented by provinces as provinces now have access to Part B Register. |
| The termination of foster care grant for children above the age of 18 years should be reviewed; depending on the circumstances of the child | Section 176 of the Children’s Act 38 of 205 makes provision for children when they turn 18 to continue receiving FCG whilst they are attending school/tertiary institutions and in foster placement. |
| There should be strict monitoring of foster care placements to prevent abuse and neglect of fostered children as well as their foster care grant. The DSD should provide social workers with transport to conduct home visits. | Section 186 of the Children’s Act makes provision for monitoring of foster placements by social service professionals to determine if circumstances are still conducive for such placements.The current Bill also strengthened monitoring of foster placements.The current Bill also makes provision for building capacity of child protection units to meet the demands of strengthened child protection services. |
| Foster care backlog is very high; hence, applicants wait very long for their applications to be processed and cases to be heard in court. | There are a number of systemic issues impacting on the non- finalisation of foster placement. The comprehensive legal solution and putting mechanisms, systems and resources in place are amongst the measures to manage foster care backlog. |
| Foster care grants are not used for intended purposes of improving the welfare of the children. Some guardians misuse foster care grants meant for orphaned children by not spending it for the needs of these children. Parents who are alleged to misuse foster care grant should be prohibited from receiving the grant. The Department needs to strengthen its monitoring systems and visit foster families. | Where foster parents are abusing foster child grant; such acts must be reported at SASSA for investigation.There must be intensified supervision of foster placement by social service professionals as required by Section 186 of the Children’s Act 38 of 2005. |
| Most families are interested in fostering children for financial reasons, not concerned about the best interest of the child. . | Investigation and assessment of prospective foster parents is crucial to ensure that only suitable foster parents are selected. Foster parents are informed about their roles and responsibility as they are taking care of children on behalf of the state. Supervision of foster placement are also important to ensure that the placement still uphold the best interests of the child.  * Where foster children are abused or neglected, community members and any person who identifies such must report to social workers. |
| Grandparents caring for orphaned children are often required by social workers to trace the biological fathers when they attempt to apply for foster care. | The Children’s Act and its Regulations prescribes a process for tracing of biological parents through advertisements by social workers. |
| Parents that abuse substances often abuse and neglect children. | Children whose parents abuse substances and neglect them must be reported to social workers or police as required by section 110 of the Children’s Act 38 of 2005.Where it is discovered upon assessment that there is no parental capacity to care for the child; the child will be removed to alternative care. |
| Some mothers allow their children to be abused by their spouses. | Cases of abuse of children whether by mothers or close relative including any person abusing a child must be reported. Where it is discovered upon assessment that there is no parental capacity to care for the child; the child will be removed to alternative care. |
| Abuse cases have rapidly increased during lockdown and victims are afraid to report cases especially if the perpetrator is known to the child. | The department working with Childline South Africa have put in place other measures to report abuse where confidentiality is guaranteed whilst ensuring that the child receives the required support services.The toll free numbers for Gender Based Violence Command Centre is 0800 428 428; Childline South Africa funded by DSD is 116. |

**SUMMARY OF KEY ISSUES RAISED ON ECD**

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| 1. ECD    1. Lack of financial support and recognition of the ECD sector by government. As a result, some of the ECD Practitioners with vast experience have left the sector and were absorbed by local schools and other places.    2. ECD practitioners are struggling to make ends meet because they are not paid enough money and are also not paid regularly by the Department of Social Development.    3. When applying for funding ECD managers are sent from one department to the other.    4. Some ECD centres were denied funding because parents were/are employed.    5. In some instances, ECD managers apply for funding for a certain number of children (e.g. 100) but only receive funding for less children (60). Therefore, managers are forced to buy food for the remaining children out of their own money.    6. There is a need to review policy regulating the number of children that an ECD centre can accommodate. Some of the children end up not attending ECD centre due to the limited number of children that can be accommodated by an ECD centre (as per the DSD requirements). Therefore, the speaker recommended that the requirement of 40 children per centre be reviewed.    7. When assessments of the centres are conducted, ECD managers are told to do some renovations of the centre without any financial assistance. As a result, most centres are not able to do that and so do not qualify for funding.    8. Most centres in the area depend on R50 – R100 fees paid by the parents and they use it to buy food for the children.    9. There are delays from DSD in registering the centres. ECD managers have to make follow-ups with the department to no avail. This makes it difficult for them to apply for funding form private donors such as the Lottery Board.    10. Many ECD centres had applied for the ECD Stimulus Relief Fund and have not received to date. There has not been any communication from the Department of Social Development regarding the stimulus package.    11. Due to lack of infrastructure and support, most of the ECD centres are unable to comply with the coronavirus (COVID-19) regulation. Some of the ECD centres do not have the person protective equipment (PPE) and other protective tools against COVID-19. It was recommended that the Department of Social Development should assist the ECD centres with funding or COVID-19 pandemic materials in order to ensure compliance with the requirements in the centres    12. There are centres that have been operating for 10 years with no funding or assistance from government.    13. ECD sector needs to be recognised and supported by government.    14. Government should also assist ECD centres with Protective Personal Equipment (PPEs) so that they can be compliant to COVID-19 regulations.    15. ECD Practitioners need to be assisted and provided with training. One Practitioners reported that she attended training but did not receive a certificate.    16. ECD Practitioner should be paid in salaries.    17. There should be regular monitoring of the ECD centres as some of them do not to norms and standards, which puts the lives of children at risk. The DSD should also monitor ECD centres to ensure that they are properly registered and functioning.    18. DSD should also visit centres in rural areas as they are the ones that most financial and non-financial support.    19. ECD centres should be supplied with proper toilets and libraries (including toy libraries). This will ensure that children are taught how to read and write from an early age.    20. The migration of ECD sector to the Department of Basic Education gives ECD practitioners a sense of hope that the new department will recognise their efforts and contributions in the development of a child. However, there has not been any communication from the affected departments to the ECD sector. It is unclear when will the migration take place and how it will affect the ECD centres. Furthermore, this migration might also be beneficial for the ECD centres in terms of food provision for children attending in the centres. The Department of Basic Education has the school’s nutrition programme of which the Department of Social Development does not have.    21. ECD should be made compulsory to all children before the school going age. This will address the challenge of some parents that only bring their children to the ECD centres when they are about to enter Grade R. It then becomes very difficult for the child to adapt to the curriculum. | The Department of Basic Education, the Department of Social Development, COGTA, SALGA and the ECD Intersectoral Forum established a technical task team to address issues raised during public hearings on the Children’s Amendment Bill.All the concerns and submissions on ECD clauses have been addressed and incorporated into the Children’s Second Amendment Bill. The ECD migration improvement plan seeks to address structural and institutional challenges experienced by the sector.  Lastly, the ECD conditional grant and the stimulus package address some of the funding challenges. |

1. Mr Van Niekerk makes detailed submissions and recommendations. Submission will be attached as an Appendix [↑](#footnote-ref-2)
2. Please see Addendum 1 that lists the specific recommendations made [↑](#footnote-ref-3)