

# MEMORANDUM OF OBJECTS

# **MEMORANDUM ON THE OBJECTS OF THE CHILDREN'S AMENDMENT BILL, 2019**

## **1. PURPOSE OF THE AMENDMENT BILL**

The Children's Amendment Bill, 2019 ("the Amendment Bill") seeks to address critical gaps and challenges in the underlying child care and protection system. Furthermore, it identifies several strategies to address these challenges efficiently and effectively. For example, the Amendment Bill provides for intersectoral implementation of the Children's Act, 2005 (Act No 38 of 2005) ("the Act") and coordinated provision of care and protection services to children.

## **2. BACKGROUND AND RATIONALE FOR THE AMENDMENT BILL**

2.1 The Amendment Bill requires all role-players to prioritise:

- strengthening collaboration and coordination across multiple sectors;
- strengthening families and empowering parents;
- creating a supportive and enabling environment that prohibit all forms of harm of children, including violence, abuse, neglect and exploitation.

2.2 Similarly, in the case of preventative programmes, the Amendment Bill commits the country to pursue the following strategies:

- a life-course approach to the provision of services, using differentiated age-appropriate programmes and community-based delivery platforms;

- strengthening families and empowering parents;
- systematisation to scale up community-based prevention and early intervention services; and
- measures to remedy gaps and deficiencies in the enabling and protective policy framework.

2.3 To strengthen the suite of responsive protective services, the amendment commits to, inter alia:

- the development of a strategy for child protection;
- establishing procedures for the designation of child protection services;
- strengthening quality assurance measures for child protection services; and
- maintaining a National Child Protection Register.

2.4 There are multiple reasons for the inadequacy of the care and protection services across the continuum. A common cross-cutting reason is that the child care and protection system is weak at critical points. These weaknesses should be addressed to strengthen the developmental child care and protection system to ensure a sound systemic framework.

2.5 It is anticipated that with the amendments in the Amendment Bill the Department will provide the comprehensive legal solution in respect of foster care challenges as directed by the Gauteng Division of the High Court in Pretoria in the *Centre for Child Law v Minister of Social Development and Others*, 2017 case.

2.6 The Department further took a broad and holistic approach towards the amendment of the Act and thus seeks through this Amendment Bill, to resolve other areas of defect in the Act. The clauses inserted in the Bill

are informed by an analysis of the problem impacting on foster care that relate to human resources, financial resources and legislative provisions that provide a mechanism to manage the validity of foster care orders.

2.7 The clauses will put the mechanisms and strengthen the critical points of the child care and protection system, diversifying the options to respond to various needs that children may present with. These clauses will benefit the foster care programme by providing various options to be accessed by children minimising the likelihood of some children being placed in foster care unnecessarily, ensuring that the constitutional right to inclusiveness is adhered to by the Bill, putting in place mechanisms for strengthening the child protection system that will have a positive effect to the improvement of quality foster care services and putting mechanisms for the management of the duration of foster care orders in a sustainable manner.

### **3. OBJECTS OF THE BILL**

3.1 The objects of the Bill are to:

- further promote and protect the child's right to physical and psychological integrity;
- to further regulate the position of unmarried fathers;
- to extend the children's court jurisdiction to hear applications for guardianship;
- to provide for matters relating to the provision and funding of early childhood development programmes;
- to strengthen provisions relating to the National Child Protection Register; to further regulate the initiation of care and protection proceedings;
- to further regulate the medical testing of children for foster care and adoption purposes;
- to clarify procedures for children in alternative care;

- to further regulate matters relating to adoption and inter-country adoption;
- to expedite the hearing of child abduction matters and to provide for legal representation of children;
- to adjust the criteria relating to surrogate motherhood and to provide for related matters;
- to align the Act with the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, and the Jurisdiction of Regional Courts Amendment Act, 2008;
- to align the Act with court judgments; to strengthen provisions relating to children with disabilities; to empower the Minister to make additional regulations; to remove certain inconsistencies; and
- to provide for matters connected therewith.

#### **4. CLAUSE BY CLAUSE EXPLANATION**

##### **Clause 1: Definitions**

The Amendment Bill provides for new and amended definitions. The rationale is to ensure that the current legislation is properly administered and implemented in line with current developments in the sector. The newly inserted amendments are:

- “early childhood development centre”;
- “regional court”;
- “separated migrant child”; and
- “unaccompanied migrant child”.

### **Ad Clause 2: Amendment of section 6**

- (a) Clause 2 seeks to substitute section 6 at subsection (2) for paragraph (d) in order to include the grounds of nationality as a ground to protect a child from unfair discrimination. This amendment is intended to protect migrant children from undue discrimination.
  
- (b) Clause 2 seeks to further amend section 6 subsection (2) for paragraph (f) is substituted in order to delete the word enabling and insert the words accessible and inclusive environment. This amendment is intended to create an environment that would allow children with disabilities to be included and involved in proceedings, actions and decisions that concern them.

### **Ad Clause 3: Insertion of section 6A**

Clause 3 seeks to insert section 6A by the insertion to address the high incidents in society of children's information being divulged and their privacy being infringed causing them immense embarrassment and humiliation. This clause intends to protect children from such actions.

### **Ad Clause 4: Amendment of section 7**

Clause 4 seeks to amend section 7 by the insertion after subsection (1)(n) of the following subsection any special needs that a child may have. This phrase is added as a factor that must be taken into account whenever the best interest of the child standard is applied. This amendment is intended to create a platform whenever any provision in the Act requires the best interests of the child standard to be applied, the child's special needs must be taken into consideration.

### **Ad Clause 5: Amendment of section 8**

Clause 5 seeks to amend section 8 by the addition of the subsection that this Act applies to every child in the Republic of South Africa. This amendment is intended to clarify that the Act applies to all children in the Republic including those children that are not citizens.

### **Ad Clause 6: Amendment of section 12**

Clause 6 seeks to amend section 12 by the deletion of the words “circumcision” and “female”. This amendment is intended to align the prohibition of genital mutilation with the new definition which includes elements of circumcision of female children. It is therefore not necessary to retain reference to the phrase “circumcision of female children” because the meaning of the term is contained in the amended definition of genital mutilation. The clause further prohibits any marriage between a child and another child and an adult person.

### **Ad Clause 7: Amendment of section 13**

Clause 7 seeks to amend section 13 by the substitution of subsection (2) to replace the word “disabled” with the words “children with disability”. This amendment is intended to align the Children’s Act with the globally accepted terminology including the use of the terminology in the United Nations Convention on the Rights of the Child and the White Paper on the Rights of Persons with disabilities.

### **Ad Clause 8: Amendment of heading of Part 1**

Clause 8 seeks to amend the heading of Part 1 to delete the words “acquisition and loss” and replace it with the words “automatic acquisition” so that the heading now reads as Automatic acquisition of parental responsibili-

ties and rights”. This amendment is intended to align this section with the findings of the Constitutional Court in the matter of *Fraser vs Naude and Another* (CCT14/98)1998 ZACC 13,1991(1)SA which confirmed the rights of unmarried biological parents in respect of the adoption of their children.

#### **Ad Clause 9: Amendment of section 19**

Clause 9 seeks to amend section 19 by the substitution of subsection (2) (b) in order to provide clarity that the biological father of the child does not have guardianship in respect of the child in terms of section 20 or 21. This amendment is intended to clarify that the biological father of that child does not have guardianship in terms of section 20 or 21 but full parental responsibilities and rights.

#### **Ad clause 10: Amendment of section 21**

- (a) Clause 10 seeks to amend section 21 by the substitution in subsection (1) for paragraph (a) clarifying that the father does not have to be in a permanent life-partnership with the mother, but if at the time of the child's conception, or any time between the child's conception and birth, he was living with the mother he may acquire full parental responsibilities and rights in respect of the child. This amendment is intended to clarify that a father who is not married to the mother and was living with her at any time between the child's conception or birth, automatically acquires parental responsibilities and rights in respect of the child.
- (b) Clause 10 seeks to further amend section 21 by the substitution in paragraph(b) for subparagraph (ii) and (iii) to clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of the child. This amendment is intended to delete references to the phrase “in good faith” and “ for a reasonable period” in order to create certainty in law and not open up the circumstances to in-



terpretation.

- (c) Clause 10 seeks to further amend section 21 by the insertion of subsection 1A 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) This amendment is intended to clarify under what circumstances a family advocate may issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights.
- (e) Clause 10 seeks to further amend section 21 by the substitution of subsection (3) in order to use the term social service practitioner and not social worker. This amendment is intended ensure the consistent usage of the term social service practitioner.
- (f) Clause 10 seeks to further amend section 21 by the deletion of subsection (3)(b) which refer to any party to the mediation may have the outcome of the mediation reviewed by a court.

#### **Ad Clause 11: Insertion of the heading Part 2 after section 21**

Clause 11 seeks to insert a new Part 2 comprising of section 22 to 29 This amendment is intended to group the sections addressing acquisition and loss of parental responsibilities and rights together.

#### **Ad Clause 12: Amendment of section 22**

- (a) Clause 12 seeks to amend section 22 by inserting a new clause after subsection 2. The amendment is intended to give the child who is the subject of a parental responsibilities and rights agreement, if of sufficient age, ma-

turity and stage of development, an opportunity to express his or her views regarding the contents of such agreement.

- (b) Clause 12 further seeks to amend section 22 by substituting subsection (4) for paragraphs (a) and (b). The amendment is intended to cater for application in the prescribed manner for a parental responsibilities and rights agreement to be registered with the family advocate and at paragraph (b) it intends to correct that reference to the divorce court and substitutes it with the regional court.
- (c) Clause 12 further amends section 22 by substituting subsection (6). The amendment intends to clarify that a parental responsibilities and rights agreement registered by the family advocate may be amended or terminated by the family advocate on application in the prescribed manner.
- (d) Clause 12 further amends section 22 by the deletion of subsection 7 so as to delete the reference to the High Court.

#### **Ad Clause 13: Amendment of section 23**

- (a) Clause 13 seeks to amend section 23 by by the substitution in subsection (1) for the words preceding paragraph (a). This amendment intends to delete the obsolete reference to the divorce court and substitute it with regional court in divorce matters granting to the applicant contact with the child; or care of the child.
- (b) Clause 13 further amends section 23 by the substitution of subsection (3) in order to clarify that the parties must inform the court of any other proceedings that are pending in any other court in respect of the child and the court.

#### **Ad Clause 14: Amendment of section 25**

Clause 14 amends section 25 by substitution. The amendment intends 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.

#### **Ad Clause 15: Amendment of section 28**

Clause 15 seeks to amend section 28 by the substitution in subsection (1) for the words preceding paragraph (a) to remove all references to the now obsolete divorce courts and replacing it with the regional court in a divorce matter.

#### **Ad Clause 16: Amendment of section 29**

- (a) Clause 16 seeks to amend section 29 by the substitution of subsection (1) to remove all references to the now obsolete divorce courts and replacing it with the regional court.
- (b) Clause 16 seeks further to amend section 29 by the insertion after subsection (1), subsection 1A. This amendment intends to prescribe that any party to an application for parental rights and responsibility agreement made an order of Court in accordance with section 22 (4) (b), assignment of contact and care to interested person by court order in terms of section 23, person claiming paternity in terms of section 26 (1) (b) or any application for termination, extension, suspension or restriction of parental responsibilities and rights in terms of section 28 may in the prescribed manner refer the matter to the family advocate for an investigation.

#### **Ad Clause 17: Amendment of the heading of Part 2**

Clause 17 seeks to substitute the heading of Part 2 with Part 3 which will ad-

dress the issue of co-exercise of parental responsibilities and rights from section 30 to 35.

#### **Ad Clause 18: Insertion of section 30A**

Clause 18 seeks to insert a new section 30A after section 30 of the principal Act. This new insertion intends to address the issue of the residence of the child where the parents are not living together.

#### **Ad Clause 19: Deletion of the heading of Part 3**

Clause 20 seeks to delete the heading “Parenting Plans”. This amendment seeks to synchronise the amendments made to Part 2.

#### **Ad Clause 20: Amendment of section 34**

Clause 20 seeks to amend section 34 by the insertion of subsection 4A after subsection 4. The amendment seeks to address the issue of an application made by co-holders of parental rights and responsibilities for the amendment or termination of the parenting plan.

#### **Ad Clause 21: Amendment of section 35**

- (a) Clause 21 seeks to amend section 35 subsection (1) to include parenting plan as a document recognised when considering parental responsibilities and rights. It also seeks to amend terminology to ensure the consistent use in the sector. The amendment seeks to make provision for 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, to seek recourse.

- (b) Clause 21 further seeks to amend subsection 2 paragraph (a) to include parenting plan and ensure consistent use of terminology.

#### **Ad Clause 22: Amendment of section 40**

Clause 22 seeks to amend section 40 of the principal Act by the substitution of the heading to now read as artificial fertilisation, all reference to “married person” has been changed to “birth mother” and “spouse and husband” to “partner”. The amendment seeks to amend terminology to align it with the contemporary use of terminology and lifestyle.

#### **Ad Clause 23: Insertion of section 41A**

Clause 23 seeks to insert a section on regulations that the Minister for Justice and Constitutional Development, may make. This amendment seeks to empower the Minister for Justice and Constitutional Development with regulation-making powers.

#### **Ad Clause 24: Amendment of section 44**

Clause 25 seeks to amend section 44 subsection by the addition of subsection (3). The amendment intends to allow jurisdiction of a court in a matter where a matter may be transferred from one children's court to another in accordance with the prescribed procedure if such transfer would be in the best interest of the child who is the subject of such matter.

#### **Ad Clause 25: Amendment of section 45**

- (a) Clause 26 seeks to amend section 45 subsection (1) by adding to the list of matters that a children's court may adjudicate "guardianship of an orphaned or abandoned child".
- (b) Clause 26 further seeks to amend section 45 by the deletion in subsection (1) paragraph (j) of the word "shelter or" from the list of matters that a children's court may adjudicate. The amendment intends to exclude matters arising in a shelter from being adjudicated by the children's court. A shelter is now referred to as a child and youth care centre.
- (c) Clause 26 further seeks to amend section 45 by the insertion after paragraph (1)(j) to the list of matters that may be adjudicated by the children's court, unaccompanied or separated migrant child or the child of an asylum seeker or refugee as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998).
- (d) Clause 26 further seeks to amend section 45 by the substitution of subsection (2) to allow a children's court 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.

- (e) Clause 26 further seeks to amend section 45 by the substitution of subsection (3) to remove all references to the now obsolete divorce courts and replacing it with the regional court. It also serves to clarify that the children's court and the High Court have jurisdiction over guardianship of a child. Secondly the High Court, children's court and regional court have jurisdiction over assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.

#### **Ad Clause 26: Amendment of section 46**

Clause 26 seeks to amend section 46 by the insertion after paragraph (1)(c) of an additional order that the children's court may make. These being an order relating to the assignment, exercise, extension, restriction, suspension or termination of parental responsibilities and rights in respect of a child. This amendment intends to specify a corresponding order to the new addition in section 45 regarding matters that the children's court may adjudicate.

#### **Ad Clause 27: Amendment of section 49**

Clause 27 seeks to amend section 49 by the substitution of paragraph (1)(a) to delete the social service professional from the list of persons that a court may order to mediate over a matter as a lay forum to hear a matter in an attempt to settle the matter out of court. This amendment intends to restrict the list of professionals who may conduct mediation to those who are trained and qualified to mediate.

#### **Ad Clause 28: Amendment of section 52**

Clause 28 seeks to amend section 52 by the substitution of subsection (2)(b) to include sign language, speech and tactile interpreters to be used. This amendment intends to ensure that people with disabilities are adequately catered for.

**Ad Clause 29: Amendment of section 57**

Clause 29 seeks to amend section 57 of the principal Act by the substitution of subsection (1) to delete reference to the word “another” and replacing it with “an” and in subsection (2) to delete the reference to “physical control” and substituting it with the word “care”. This amendment intends to ensure consistent use of terminology.

**Ad Clause 30: Amendment of section 62**

Clause 30 seeks to amend section 62 of the principal Act by the substitution of subsection (1) by the deletion to reference to the word “under” and replacing it with “in” and word “control” and replacing it with “care”. The amendment intends to correct grammatical errors and ensure the consistent use of terminology.

**Ad Clause 31: Amendment of section 63**

Clause 31 seeks to amend section 63 by the substitution thereof to include family counsellor as part of the list of persons from whom a written report is deemed as admissible evidence of the facts stated in the report. This amendment intends to explain that a family counsellor may provide an opinion on the circumstances of a child and produce a report which may be admissible in court as evidence.

**Ad Clause 32: Amendment of section 66**

Clause 32 seeks to amend section 66 by the substitution of subparagraph (d). This amendment is a consequential amendment to cross reference to the new section 6A.



### **Ad Clause 33: Deletion of section 74**

Clause 33 seeks to amend section 74 of the principal Act by repealing it. It is now covered by the insertion of section 6A which regulates the issue of the child's privacy and the child's privacy of information.

### **Ad Clause 34: Amendment of section 75**

- (a) Clause 34 seeks to amend section 75 adding paragraph (1) (bA). The amendment intends to give the Minister the power to make regulation regarding the procedures for determining the age of a child.
- (b) Clause 34 further seeks to amend section 75 by deleting the word "and" at the end of paragraph (1)(j) and inserting a new paragraph (1)(jA). The amendment intends to give the Minister the power to make regulation regarding the responsibility for defraying costs relating to investigations and reports contemplated in section 62.
- (c) Clause 34 further seeks to insert a new regulation which allows the Minister to make regulations on costs relating to investigations and reports.

### **Ad Clause 35: Amendment of section 76**

- (a) Clause 35 seeks to amend Section 76 of the principal Act by the substitution in subsection (1) for the words preceding paragraph (a) to change the reference to "more than six " to read as more than five. The definition is saying, when you take care of more than six children. It is confusing because the thinking is that when you have six children and above and some will say its seven and above. The practice is six and more and to include the word "guardians as part of the list of persons who will enter into agreement with the provider of the service. The amendment seeks to clarify that a guardian may enter into an agree-

ment with a person to take care of a child on his or her behalf.

- (b) Clause 35 further seeks to add subsection (3) to allow for a partial care facility managed by the national and provincial departments of social development.
- (c) This amendment further intends to cater for a department of Correctional services in order to include children of incarcerated mothers to register and operate a partial care facility, where there is a need and not being able to reach the required number of six children.

#### **Ad Clause 36: Amendment of section 77**

Clause 36 seeks to amend section 77(3) by the substitution thereof to delete the word “the necessary” information and replace it with “such” information as prescribed. The amendment intends to allow the Minister to make regulations relating to provincial profiles for partial care facilities so as to have a standardized format and processes for compiling information.

#### **Ad Clause 37: Amendment of section 78**

- (a) Clause 37 seeks to amend section 78 by the substitution of subsection (3) to delete superfluous wording in the phrase “The owner or manager of a partial care facility or provider of a partial care service and replacing it with the term “A partial care facility”. This amendment makes it easier to read and understand and funding is for the facility and not the owner to avoid funding privately owned facilities.
- (b) Clause 37 further seeks to amend section 78 by inserting section (3A) which allows funding for a conditionally registered partial care facility notwithstanding only partial compliance with the prescribed national norms

and standards to qualify for funding. This amendment is necessary to

allow the provincial head of social development to provide support for a conditionally registered partial care facility to enable it to comply with national norms and standards so as to acquire full registration status.

(c) Clause 37 further seeks to further amend subsection (4) by enabling an MEC to prioritise the funding of partial care facilities as prescribed.

(d) Clause 37 further seeks to amend subsection (4) paragraph (a) by qualifying that the MEC may prioritise and fund poverty declared wards.

**Ad Clause 38: Amendment of section 79**

(a) Clause 38 seeks to amend section 79 by the substitution of subsection (1) to delete reference to the Minister consulting with interested persons. It specifies that the Minister must consult with any other relevant Ministers, relevant stake-holders and relevant civil society organisations.

(b) Clause 38 further seeks to amend section 79(3)(c)(iii) by the deletion of the word “basic” before therapeutic interventions so as to remove any misconceptions about what basic therapeutic interventions mean

(c) Clause 38 further seeks to amend section 79(4) by the insertion of the words “and functional needs”. This thereby clarifies that a partial care facility may offer programmes appropriate to the developmental and functional needs of the children in that facility, including children with disabilities and chronic illnesses.

### **Ad Clause 39: Amendment of section 81**

Clause 39 seeks to amend section 81 by deleting reference to application for conditional registration or for reinstatement of registration. This amendment intends to delete all inferences to an application for conditional registration. Conditional registration should be a consequence of application for registration.

### **Ad Clause 40: Amendment of section 82**

- (a) Clause 40 seeks to amend section 82 by the substitution of subsection (4) to remove reference to a social service professional and conditional registration. The reason for this amendment is to ensure the consistent usage of the term social service practitioner and deleting all references to an application for a conditional registration as conditions to a registration is a consequence of application for registration.
  
- (b) Clause 40 further seeks to amend section 82 by the substitution of subsection (5) to make provision for a provincial head of social development to assist a person operating a partial care facility who has conditional registration to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed. The amendment is necessary to assist conditionally registered partial care facilities to comply with the national norms and standards so as to acquire full registration status.

### **Ad Clause 41 : Amendment of section 83**

- (a) Clause 41 seeks to amend section 83 by the substitution of the heading to read “Conditions relating to registration” rather than conditional registration. This amendment intends to specify the conditions relating to partial care facilities and services, that must be complied with when

applying for registration.

**Ad Clause 42: Amendment of section 85**

Clause 42 seeks to amend section 85 by the addition of subsection (5) to make provisions for alternative arrangements to be made for the children in a partial care facility that is ordered to stop operating. This ensures that children are catered for when a partial care facility stops operating by timely notification to the parents.

**Ad Clause 43: Amendment of section 87**

Clause 43 seeks to amend section 87 to allow that partial care facilities be monitored even in circumstances where such monitoring or inspection is conducted unannounced. The amendment seeks to ensure compliance with the norms and standards at all times.

**Ad Clause 44: Amendment of section 88**

Clause 44 seeks to amend section 88 by the substitution thereof to ensure the consistent use of the term social service practitioner. This amendment is necessary to maintain consistency with the new terminology in the social sector.

#### **Ad Clause 45: Amendment of section 89**

Clause 45 seeks to amend section 89 by the substitution of subsection (1) to delete the initiating of an investigation of a child is seriously injured or abused while in partial care or following an occurrence at a partial care facility, to provide a report to the provincial department of social development in accordance with the provisions of section 110(5). This amendment is necessary to allow for the protection of the child by ensuring the safety and wellbeing of the child, assessment and investigation of the report and initiation of proceeding for the protection of the child. To keep the amendment as it is in the gazetted Bill.

#### **Ad Clause 46: Amendment of section 90**

Clause 46 seeks to amend section 90 to allow Minister to make regulations regarding inspections and monitoring of partial care facilities and services and the assignments of functions to municipalities. This amendment intends empower the Minister to make regulations relating to the new norms and standards for inspection and monitoring of partial care facilities and services; as well as assignment of functions to municipalities.

#### **Ad Clause 47: Amendment of section 91**

- (a) Clause 47 seeks to amend section 91 to substitute the definition of early childhood development to cater for children with disabilities. This amendment is necessary to accommodate and cater for children with disabilities and special needs.
- (b) Clause 47 further seeks to delete subsection (2) as early childhood development services are adequately covered in the new definition inserted.

- (c) Clause 47 further seeks to amend section 91 subsection (3) to provide a description of what early childhood development programmes entail and that the operations thereof will be prescribed

#### **Ad clause 48: Amendment of section 92**

- (a) Clause 48 seeks to amend section 92 so as to insert that the Minister must after consultation “with any other relevant Ministers, relevant stake-holders and relevant civil society organisations develop a comprehensive national strategy aimed at securing a properly resourced, co-ordinated, managed and inclusive early childhood development system. This amendment intends to clarify that the Minister must consult all relevant stakeholders, when determining norms and standards for early childhood development. This will allow stakeholders that will be affected the norms and standards to actively participate in the process of determining them. Furthermore that MECs must ensure the inclusion of the national strategy in their provincial strategy.
- (b) Clause 48 seeks to further amend section 92 subsection (2) for paragraph (a) to require the MEC for social development to maintain a record of registered early childhood development programmes in the province with specific mention of inclusive programmes. The amendment seeks to direct the MEC to disaggregate data in respect of programmes that offer services and include children with disabilities and special needs.
- (c) Clause 48 further seeks to amend section 92 subsection (2) for paragraph (b) to provide that the provincial strategy must have an inclusive early childhood development system. This amendment is necessary to accommodate and cater for children with disabilities and special needs when developing a provincial strategy for early childhood development.

### **Ad Clause 49: Amendment of section 93**

- (a) Clause 49 further seeks to insert after subsection (3A) that a conditionally registered early childhood development programme qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards. The amendment is necessary to assist conditionally registered early childhood development programmes to comply with the national norms and standards so as to acquire full registration status.
- (b) Clause 49 further seeks to amend the words in section (4) preceding paragraph (a) to provide that the MEC may prioritise and fund early childhood development programme in poverty declared wards. This amendment intends to assist in correct targeting of under-serviced and poor areas for the provisioning and funding of early childhood development programmes.
- (c) Clause 49 further seeks to insert after subsection (4) for paragraph (a) that the funding of early childhood development programmes may. The list to be part of regulations, guidelines or financing strategy
- (d) Clause 49 further seeks to amend subsection (5) for paragraph (a) to include a non-centre-based setting. This amendment intends to that an early childhood development programme may be provided in an environment other than a physical infrastructure or centre.
- (e) Clause 49 seeks to further amend section 93 subsection (6) to include that the Department, provincial department of social development or municipality may provide early childhood development programmes. This amendment is necessary to include the national or provincial department of social development, as well as a municipality to provide an early childhood development programme as they were previously ex-



cluded.

#### **Ad Clause 50: Amendment of section 94**

- (a) Clause 50 seeks to further amend section 94 subsection (2) for paragraph (c) to include that the norms and standards must include the word 'protection' when caring for children. This amendment intends to clarify that children need to be protected whilst attending early childhood development programmes.
- (b) Clause 50 further seeks to regulate that the norms and standards must provide for relevant qualification, skills and training required for early childhood development. This amendment is necessary to regulate the skills, training and qualifications of persons providing early childhood development programmes, so as to ensure quality services.

#### **Ad Clause 51: Amendment of section 96**

Clause 51 seeks amend section 96 by deleting reference to application for conditional registration for reinstatement of registration. This amendment intends to delete all inferences to an application for conditional registration. Conditional registration should be a consequence of application for registration.

#### **Ad Clause 52: Amendment of section 98**

- (a) Clause 52 seeks to amend the heading of conditional registration to conditions relating to early childhood development programme and consequential amendments.

### **Ad Clause 53: Amendment of section 100**

Clause 53 seeks to add subsection (2) which provides that a person providing an early childhood development programme who has been instructed to stop the provision of that programme, must ensure that he notifies the parents of the affected child to make alternative arrangements. This clause intends to provide clarity on what needs to happen should an early childhood development programme be stopped.

### **Ad Clause 54: Amendment of section 102**

- (a) Clause 54 seeks to amend section 102 (1). It seeks to clarify the conditions under which MEC of social development may, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99 and 100 to the municipal manager. It intends to clarify that the MEC may assign such functions if he or she is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned and also adds that the relevant officials have the necessary early childhood development expertise.
- (b) Clause 54 further seeks to in subsection (3) substitute the term “professional with practitioner. This amendment intends to ensure that there is consistent use of the term practitioner in the Act.
- (c) Clause 54 further seeks to substitute in subsection (8) for paragraph (a) that the provincial head of social development must monitor and evaluate the performance of the functions assigned in terms of this section. This amendment intends to ensure compliance of early childhood development programmes with national norms and standards

### **Ad Clause 55: Amendment of section 103**

- (a) Clause 55 seeks to amend paragraph (c) to ensure that the Minister also has the power to make regulations regarding the procedure to be followed in connection with the lodging and consideration of applications for registration including of registration including suspension, cancellation or renewal.

- (b) Clause 55 further seeks to amend section 103 by adding to the powers that the Minister has to make regulations, the powers to regulate early childhood development programmes, lodging an appeal, assessment and monitoring of the programmes and assignment of functions to municipalities. This amendment is necessary as a consequential amendment to the norms and standards.

**Ad Clause 56: Amendment of section 104**

Clause 56 seeks to amend section 104 by the substitution of subsection (1) to include any other relevant Ministers, relevant stake-holders and relevant civil society organisations as part of the stakeholders the Minister must consult with when developing a national strategy for the national child child protection system. The MEC for social development must ensure that the provincial strategy must include the national strategy. This amendment is intended to ensure alignment between the strategies in the two spheres of government and to enhance intersectoral collaboration.

**Ad Clause 57: Amendment of section 105**

Clause 57 seeks to add more regulations regarding the provision of designated child protection services by ensuring that provision is made that the Department must ensure that a quality assurance process is conducted, in the manner and at the intervals as prescribed, in respect of all child protection services contemplated in this section. This clause addresses one of the contributory factors to backlogs in the foster care system that includes lack of monitoring and quality assurance of the child care and protection services (i.e. alternative care) to non-compliance with the legislative provisions for management of alternative care orders. It seeks to strengthen the quality assurance mechanism to improve the quality of child care and protection services and accountability regarding the provision of child care and protection services. This contributes to a comprehensive legal solution as required by the order of the Gauteng Division of the High Court.

### **Ad Clause 58: Amendment of section 106**

Clause 58 seeks to add the following to the list of what the national norms and standards for child protection and adds that it must have rehabilitation and habilitative services for children with disabilities; and quality assurance. The habilitative services will ensure the improvement of the daily functioning of an individual. This is to ensure the child protection is inclusive and what is quality assured through monitoring and evaluation if done correctly gets done.

### **Ad Clause 59: Amendment of section 107**

- (a) Clause 59 seeks to substitute subsection (1) by clarifying that the Director General may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform all or any specific designated child protection services on the one hand and Clause 65 further seeks to insert a clause 1A allowing the provincial head of social development, on written application, may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform all or any specific designated child protection services in the relevant province. The latter amendments seek to remove any ambiguity in understanding who is responsible in the different spheres of government to designate a child protection organisation.
  
- (b) Clause 59 further seeks to effect the consequential amendments in subsections (2) and (4) by inserting the reference to the new subsection 1A.

### **Ad Clause 60: Amendment of section 109**

- (a) Clause 60 seeks to substitute subsection (1) to insert the words as the case may be that either the Director-General or provincial head of social development, may withdraw the designation of a child protection organisation. It further inserts a cross reference to section 107 which deals with the designation of a child protection organisation. The reason for this amendment was that there were challenges in terms of implementation as the principal Act was not specific and did not prescribe specific time frames.
- (b) Clause 60 further seeks to add subsection (3) and (4) to allow for an appeal where a child protection organisation is aggrieved by a decision of the Director-General in relation to the national child protection organisations or a provincial head of social development in relation to provincial child protection organisation, to withdraw its designation and subsequent review thereof to the Minister, respectively. The amendment is intended to give effect to the Promotion of Administrative Justice Act, 2000(Act No. 3 of 2000).

### **Ad Clause 61: Amendment of section 110**

- (a) Clause 61 seeks to substitute subsection (1) by inserting officer of the court to the list of persons that must report an abused or neglected child or a child in need of care and protection. This clause also seeks to substitute the words social service professional with social service practitioner and deletes reference to social worker from the list. The clause further replaces the word conclude with reasonable belief. The benefit of this is to enable further investigation to reach a conclusion.
- (b) Clause 61 further seeks to substitute in subsection (5) for the words

preceding paragraph (a) to include that reports be submitted to the provincial head of social development to whom a report has been made in terms of section 89 (1), 178 (1) or 226 (1).

**Ad Clause 62: Amendment of section 111**

Clause 62 seeks to amend section 111 by the addition of the subsection (3) which requires the Director-General to delegate an official within the Department as the Registrar of the National Child Protection Register. A Registrar is required to manage the National Child Protection Register.

**Ad Clause 63: Amendment of section 114**

- (a) Clause 63 seeks to retain shelter as children is not restricted only to Child and Youth Care Centres but also referring to other shelters such as homeless where the person takes a child with, or for Victim Empowerment programme shelters.
- (b) Clause 63 further seeks to substitute subsection (2) in paragraph (a) for subparagraph (viii) to ensure the consistent use of terminology. Hence the words and protection are added to the phrase “a child in need of care” to complete it

**Ad Clause 64: Amendment of section 117**

Clause 64 seeks to amend section 117 by substituting the reference in subsection (2) and (3) to Director-General and replacing it with registrar of the National Child Protection Register. This is a consequential amendment to section 111.

**Ad Clause 64: Insertion of section 117A**

Clause 65 seeks to insert a new section which clarifies what must be done to

remove a child or persons name from Part A of Register particularly if it is made in error.

**Ad Clause 66: Amendment of the heading of section 117**

Clause 66 seeks to amend the heading. The heading has been amended to clarify that Part B of the National child Protection Register deals with persons unsuitable to work with children.

**Ad Clause 67: Amendment of section 119**

Clause 67 seeks to add subsection (2) which is aimed at excluding 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.

**Ad Clause 68: Amendment of section 122**

Clause 68 seeks to amend the section 122 to delete all reference to the Director-General and substitute it with the Registrar of the National Child Protection Register.

**Ad Clause 69: Amendment of section 123**

Clause 69 seeks to amend section 123 by substituting the term “welfare” with care and protection and deleting the term “shelter” as these words no longer apply in the sector. Clause 72 seeks to amend section 123 subsection (1) for paragraph (d) and subsection (4) to clarify that a person in the employ of SAPS whose name appears in Part B of the Register may not work with children. This amendment intends to harmonise the Bill with Child Care Policy in so far as the change in terminology is concerned and to ensure that the Bill recognises that some words are of no relevance in the sector currently.



#### **Ad Clause 70: Amendment of section 124**

Clause 70 seeks to amend section 124 to delete all references to the term shelter and welfare throughout the section for the sake of consistency. To substitute paragraph (c) to indicate that a person who works the South African Police Service in a capacity that brings him or her into contact with children, and his or her name is entered in Part B of the Register, must disclose that fact to the South African Police Service.

#### **Ad Clause 71: Amendment of section 125**

Clause 71 seeks to amend section 125(1) by adding to the list of persons who may access Part B of the Register, the Registrar of the National Child Protection Register.

#### **Ad Clause 72: Amendment of section 126**

Clause 72 seeks to amend section 126 to delete all references to the term shelter and welfare throughout the section for the sake of consistency. To substitute paragraph (c) to indicate that the South African Police Services must establish whether such person's name appears in Part B of the Register before a person commences employment with them. To also delete by substituting all references for enquiries about the Child Protection Register from the Director-General to the Registrar of the National Child Protection Register.

#### **Ad Clause 73 Amendment of section 127**

Clause 73 seeks to substitute section 127 subsection (3) by deleting all references to the Director-General substituting it with the Registrar of the National Child Protection Register and provides 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 en-

try.

**Ad Clause 74: Amendment of section 128**

Clause 74 seeks to amend section 128 by deleting all references to the Director-General and substituting it with the Registrar of the National Child Protection Register as a consequence of the delegation by the Director-General of this function to the Registrar of the National Child Protection Register.

**Ad Clause 75: Amendment of part preceding section 129**

Clause 75 seeks to amend by the substitution of the part preceding section 129 to substitute the reference of the sections in Part 3 to read as (ss 129-134).

**Ad Clause 76: Amendment of section 131**

Clause 76 seeks to amend section 131 by substituting reference to HIV testing with medical testing including HIV-testing for foster care or adoption purposes.

**Ad Clause 77: Amendment of part preceding section 135**

Clause 77 seeks to amend by the substitution of the part preceding section 135 to substitute the reference of the sections in Part 3 to read as (ss 135-141).

**Ad Clause 78: Amendment of section 135**

Clause 78 seeks to amend section 135 to substitute subsection (1) to substitute reference to divorce court with regional court to align it with the amendments to the Divorce Act.

**Ad Clause 79: Amendment of section 137**

Clause 79 seeks to amend section 137 by including that child headed households be supervised by child and youth care worker. The amendment intends to clarify that community-based child and youth care workers are trained and qualified to act as supervisors and to provide support for child headed households.

**Ad Clause 80: Amendment of section 141**

Clause 80 seeks to amend section 141 by making it a responsibility of any person to report instances of child labour and exploitation and not only the social worker or social service professional.

**Ad Clause 81: Amendment of section 142**

This clause provides a mechanism to strengthen the provision of quality child care and protection services within the continuum of care, that will contribute toward the comprehensive legal solution as required by the order of the Gauteng Division of the High Court by ensuring professional assessments, improved prevention and early intervention services that may in turn minimise the number of children put through the foster care system. It will also benefit the alternative care system ensuring the provision of quality alternative care services. It will also ensure the appropriate placements of children in foster care. It also seeks to put the mechanisms required for strengthening child care and protection services that is inclusive of alternative care services (i.e. foster care).

**Ad Clause 82: Amendment of section 144**

Clause 82 amends section 144 by substituting paragraph 2(b) to indicate that prevention and early intervention programmes may include empowering fami-

lies to obtain such necessities for themselves as well as their children.

**Ad Clause 83: Amendment of section 146**

- (a) Clause 83 seeks to amend section 146 subsection (3) to delete the word “only” when referring to the qualification of a service provider for funding and instead qualifying that they are eligible for funding if the programmes substantially comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.
- (b) Clause 83 further seeks to amend section 146 so as to also insert as an area for prioritised funding for children below and up to school-going age.

**Ad Clause 84: Amendment of section 146**

Clause 84 seeks to amend section 146 to make provision for funding of prevention and early interventions programmes that substantially comply with the prescribed national norms and standards.

**Ad Clause 85: Amendment of section 147**

- (a) Clause 85 amends section 147 subsection (1) by in requiring that the determination of norms and standards for prevention and early intervention programmes must be consulted with any other relevant Ministers, relevant stake-holders and relevant civil society organisations. This amendment intends to broaden inter-sectoral collaboration
- (b) Clause 85 amends section 147 by substituting the requirements that the norms and standards must relate to in subsection (2). This amendment intends to enhance the provision of prevention and early

intervention programmes for the purpose of standardisation.

- (c) Clause 85 amends section 147 by adding subsection (3) which provides that the norms and standards contemplated in subsection (1) should promote understanding of prevention and early intervention approaches. This amendment intends to enhance the provision of prevention and early intervention programmes for the purpose of standardisation.

#### **Ad Clause 86: Insertion of section 149(A)**

Clause 86 seeks to insert a new section that provides for the Minister to make regulations regarding any matter necessary to facilitate the implementation of this Chapter. This amendment intends to make sure that the services are standardised and enforce.

#### **Ad Clause 87: Amendment of section 150**

- (a) Clause 87 seeks to amend section 150 to add to the list of the child that needs care and protection an unaccompanied migrant child from another country; a victim of trafficking as defined in section 1; or has been sold by a parent caregiver or guardian.

#### **Ad Clause 88: Amendment of section 155**

Clause 88 seeks to amend section 155 by substituting subsection (1) to correct the cross referencing and subsection (2) to delete the reference to “Before the child is brought before the children's court” the subsection now requires a designated social worker must investigate the matter and within 90 days compile a report in the prescribed manner on whether the child is in need of care and protection. To effect consequential amendments by deleting the terms “under whose control” and replacing it with “in whose care” through-

out the Bill. To also regulate that a Children’s Court may not postpone a matter for more than 30 days. This section intends to ensure consistency

**Ad Clause 89: Amendment of section 156**

Clause 89 seeks to amend section 156 by the deletion in subsection (1) to reference to the word “under” and replacing it with “in” and word “control” and replacing it with “care”. The amendment intends to correct grammatical errors and ensure the consistent use of terminology. By inserting a new paragraph that provides an additional order that a Children’s Court may now make. This clause also substitutes subsection (1) paragraph (e) subparagraph(ii) by substituting reference to “a group of persons or an organisation operating” with “an identified foster parent who is part of”\_a cluster foster care scheme”.

**Ad Clause 90: Amendment of section 157**

Clause 90 seeks to amend section 157 by substituting subsection (1) to include guardians to the child’s parents or care giver to ensure that the court orders are aimed at securing stability in a child’s life and by substituting subsection (3) to substitute the term “very young” child with a child “less than three years of age” to create certainty in law. This clause is supported by the UN CRC and the first thousand days and the attachment theory.

**Ad Clause 91: Amendment of section 159**

Clause 91 seeks to amend section 159 by substituting subsection (3) to allow presiding officer the discretion to extend lapsed court orders or issue interim orders. This clause seeks to provide recourse for alternative care orders left to lapse due to administrative shortfalls that infringe the constitutional rights of such children to maintain their legal status of being in alternative care. It further minimises the risk of children who were found to be in need of care and protection being cared for by a person other than their biological parents without a valid legal documentation in the event that these orders lapse. 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.

#### **Ad Clause 92: Amendment of section 167**

- (a) Clause 92 seeks to amend section 167 by substituting subsection (1) for paragraph (b) to reflect that a child is in alternative care if the child is placed in a child and youth care centre following an order of this Act. Reference to s 29 or Chapter 10 of the Child Justice Act, 2008 is now deleted. The amendment is intended to clarify that a child who is placed in a child and youth care centre in terms of the Child Justice Act is not a child in alternative care and the provisions of alternative care do not apply to him or her.
- (b) Clause 92 further seeks to amend section 167 by substituting subsection (2) to now reflect that a child may not be placed in temporary safe care for more than 72 hours without a court order, furthermore that a child may not be placed in temporary safe care for longer than 6 months unless a court grants permission but that in any case the stay should not exceed 12 months. The amendment intends to clarify the duration of placement of a child in temporary safe care. It further obligates a designated social worker to place a child in temporary safe care with a court order or if not possible to ensure that the court order is obtained and provided to the temporary safe care provider within 72 hours. This amendment will protect children against unauthorised and unlawful placements.
- (c) Clause 92 further seeks to amend section 167 by substituting subsection (3) to direct now that the provincial head of social development must approve a person who may also be a family member of the child concerned instead of “facility, place or premises” for purposes of temporary safe care in the prescribed manner. This amendment is intended to simplify the subsection because a child is placed in a facility, premises or place in the



care of a person and that person must be approved by the provincial head of social development in the prescribed manner.

- (d) Clause 93 further seeks to amend section 167 by substituting subsection (4) to provide a clear timeframe of two year as the period the approval of a person, place or premises is valid as contemplated in subsection (3). The amendment is intended to clarify that it is not necessary to approve a person, place or premises every time a child is placed in temporary safe care. Their approval will be for a period of two years and children may be placed in their care provided their approval is still valid.

#### **Ad Clause 93: Amendment of section 170**

- (a) Clause 93 seeks to amend section 170 by substituting subsection (3) with subsection (4) and expressing at paragraph (a) that the designated social worker instead of the police officer must now ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk. Paragraph (b) now makes provision for instances where the police must now ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk and includes as the step taken where a child has absconded from alternative care to the return of the child to the centre or person in whose alternative care the child was before absconding until such time as the matter appears before a children's court as contemplated in subsection (5) or an assessment of the child has taken place as contemplated in subsection (5A). The amendment intends to clarify the different roles and responsibilities of the police and the designated social worker in respect of a child who absconds from alternative care.

- (b) Clause 93 seeks to amend section 170 by the substitution of subsection (5) to provide a timeframe of 48 hours from abscondment and what must be done where a child is apprehended within 48 hours or returns. The amendment is intended to allow the designated social worker rather than the children's court to assess the circumstances of a child who absconds

from alternative care and is apprehended or returns within 48 hours.

- (c) Clause 93 seeks to amend section 170 by inserting a new subsection 5A to indicate that where a child has absconded and returns to the facility or the person in whose alternative care the child was before absconding, a social worker must immediately establish the reason for the abscondment and provide such reason to the provincial head of social development and recommend the possible transfer of the child or take no further action. The amendment is intended to allow the designated social worker rather than the children's court to assess the circumstances of a child who absconds from alternative care and is apprehended or returns within 48 hours.

#### **Ad Clause 94: Amendment of section 178**

Clause 94 seeks to amend section 178 subsection (1) by substitution and instead of the head of department causing an investigation to occur where a child placed in alternative care has sustained serious injuries, for the head of Department to now act in accordance with the provisions of section 110(5). The amendment intends to ensure that cases of serious injury or abuse of children in alternative care are investigated and followed up.

#### **Ad Clause 95: Amendment of section 179**

- (a) Clause 95 seeks to amend section 179 by substituting in subsection (1) paragraph (a) and (b) all reference to "facility, place or premises for and replacing it with "with whom a child is to be placed in. Paragraph (d) is also amended to include in the regulation making power of the Minister the manner in which children in alternative care must be granted leave of absence. The amendment is necessary to allow the Minister to prescribe requirements, processes and procedures to follow when a child in alternative care is granted leave of absence.

- (b) Clause 95 seeks to amend section 179 by inserting new regulations

making powers which include fees payable to a person with whom a child is placed in temporary safe care; the manner in which the provincial head of social development may grant written approval for children in alternative care to leave the Republic; and the form in which an appeal against a decision taken in terms of this Chapter must be lodged with the MEC for social development. This amendment is necessary to simplify administrative procedures related to temporary safe care fees, processes and procedures to be followed when a child in alternative care leaves the republic and to prescribe a form to be used when lodging an appeal. An additional regulation needs to be inserted regarding the “transitional programmes for children who are to disengage from alternative care. “

#### **Ad Clause 96: Amendment of section 181**

Clause 96 seeks to amend section 181 by the substitution of paragraph (b) to clarify the purpose of foster care by deleting the phrase intended to last a lifetime and substituting paragraph (c) to now reflect that the purpose of foster care is to promote and respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity. The amendment is necessary to simplify the purpose of foster care which reads more like a principle in the principal Act.

#### **Ad Clause 97: Amendment of section 183**

- (a) Clause 97 seeks to amend section 183 by the substitution of paragraph (a) to delete reference to a non-profit organisation. This amendment is intended to clarify that a cluster foster care service is a child protection service, which can only be provided by a designated child protection organisation not a non-profit organisation.
- (b) Clause 97 further seeks to amend section 183 by inserting a new paragraph providing that the provincial department of social development or a

designated child protection organisation must manage and operate a cluster foster care scheme in the prescribed manner. The amendment is necessary as the principal Act does not make provision for the department of social development to operate and manage cluster foster care schemes. The function is currently confined to non-profit organisations.

#### **Ad Clause 98: Amendment of section 185**

Clause 98 seeks to amend section 185 by the substitution of subsection (3) to now require that not more than six 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 well cared for and the caregiver is not overburdened.

#### **Ad Clause 99: Amendment of section 186**

- (a) Clause 99 seeks to amend section 186 with regards to the duration of foster care by deleting the power of the children's court despite the provisions of section 159 (1) to place a child in foster care with a family member for more than two years, extend such an order for more than two years at a time and that a children's court may order that further supervision services be provided. This is because courts are very reluctant to grant a two-year order without supervision. This clause seeks to make provision for monitoring and supervision of long-term foster placements. It also seeks to strengthen the presiding officers to undertake their oversight role requiring periodic reports on these placements. This provision aims to promote increased utilisation of this section to minimise the number of orders issued for 2 years that require periodic extension of orders posing a risk of these orders lapsing.
- (b) Clause 99 seeks to amend section 186 by substituting subsections (2) and (3) to delete reference to a social service professional and replace

with social service practitioner.

- (c) Clause 99 seeks to amend section 186 to add a new subsection that clarifies that the provisions of this section do not apply to a cluster foster care scheme contemplated in section 183.

#### **Ad Clause 100: Amendment of section 188**

Clause 100 seeks to amend section 188 by substituting subsection (2) paragraph (a) to include any disability in the factors that must be taken into account when any views and wishes expressed by the child.

#### **Ad Clause 101: Amendment of section 191**

- (a) Clause 101 seeks to amend section 191 by the substitution in subsection (1) for paragraph (a) to require that a child and youth care centre must be registered and paragraph (e) by deletion of the term prison and replacing it with correctional facility.
- (b) Clause 101 further seeks to amend section 191 by the substitution of subsection (2) to include that a registered child and youth care centre in addition to offering a therapeutic programme must also offer a developmental programme designed for the residential care of children outside the family environment.
- (c) Clause 101 further seeks to amend section 191 by the substitution of subsection (2) paragraph (b) to clarify that parent or other person having responsibilities also has rights with regards to the reception, care and development of children on a shared basis.
- (d) Clause 101 further seeks to amend section 191 subsection (2) by adding to the list of programmes that a child and youth care centre must

provide firstly the reception, development and secure care of children with disruptive behaviour disorder; and secondly a developmental programme to assist a person prior to leaving a child and youth care centre and to provide after care services. The intention was to add programmes for after care services and disruptive behaviour disorders

- (e) Clause 101 further seeks to amend section 191 subsection (2) paragraph (j) to correct the cross referencing.
- (f) Clause 101 further seeks to amend section 191 subsection (2) paragraph (k) by deleting reference to street children in paragraph (b) and replace it with children living or working on the street.
- (g) Clause 101 further seeks to amend section 191 by deleting subsection (3) paragraph (e) which deals with having a programme to deal with transition when a child leaves the centre.

### **Ad Clause 102: Amendment of section 192**

Clause 102 seeks to amend section 192 by the substitution of subsection (1) to include any other relevant Ministers, relevant stake-holders and relevant civil society organisations as part of the stakeholders the Minister must consult with when developing a national strategy for child and youth care centre. The MEC for social development must ensure that the provincial strategy must include the national strategy. This amendment is intended to ensure alignment between the strategies in the two spheres of government and to enhance intersectoral collaboration.

### **Ad Clause 103: Amendment of section 193**

- (a) Clause 103 seeks to amend section 193 by substituting subsection (1) and (3) to delete reference to an accredited organisation operating with a registered child and youth care centre.
- (b) Clause 103 further seeks to amend section 193 by the addition of the subsection 3A after subsection (3) with regards to the provision of child and youth care centres: A conditionally registered child and youth care centre qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards”.

### **Ad Clause 104: Amendment of section 194**

- (a) Clause 104 seeks to amend section 194 by the substitution of subsection (1) to include any other relevant Ministers, relevant stake-holders and relevant civil society organisations as part of the stakeholders the Minister must consult with when determining norms and standards.
- (b) Clause 104 further seeks to amend section 194 to insert an additional requirement for the national norms and standards which relates to ac-

cess to rehabilitation services for children with disabilities.

**Ad Clause 105: Amendment of section 197**

Clause 105 seeks to amend section 197 by the substitution in subsection (1) for the words preceding paragraph (a) to delete the word accredited when referring to an organisation that any national or provincial state department may establish and operate a child and youth care centre provided that the centre.

**Ad Clause 106: Amendment of section 199**

- (a) Clause 106 seeks to amend section 199 by the substitution of subsection (1) for the words preceding paragraph (a) to delete the application of conditional registration.
- (b) Clause 106 seeks to amend section 199 to delete incorrect reference to a partial care facility and replace it with a child and youth care centre.

**Ad Clause 107: Amendment of section 200**

Clause 107 further seeks to amend section 200 by substituting subsection (5) to include that a provincial head of social development may assist the person or organisation operating a child and youth care centre, who have conditional registration, to comply with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.

**Ad Clause 108: Amendment of section 201**

Clause 108 seeks to amend section 201 by the substitution of the conditional registration to conditions relating to registration. Conditional registration may be a result of an application and is not a category of application.



### **Ad Clause 109: Amendment of section 205**

- (a) Clause 109 seeks to amend section 205 by the substitution for the words preceding paragraph (a) to indicate that within 90 days of closure a department, municipality or organisation operating a child and youth care centre and not a holder of registration of a child and youth care centre must comply with certain requirements. The amendment is a consequential amendment allowing the department and a municipality to operate and manage a child and youth care centre. Secondly seeks to clarify that children in a child and youth centre that is to be closed, must be transferred 90 days before the closure.
  
- (b) Clause 109 seeks to further amend section 205 to add that where there is voluntary closure of a child and youth care centre a report must be submitted to the provincial head of social development that details the arrangements made for children who had been resident at the child and youth care centre. The amendment seeks ensure the safety, protection and wellbeing of children in a facility that is closed.

### **Ad Clause 110: Amendment of section 208**

- (a) Clause 110 seeks to amend section 208 substituting subsection (2) for paragraph (a) by deleting reference to the MEC and replacing it provincial head of social development or a municipal manager must appoint the board. The amendment intends to improve administrative process for the appointment of board members.
  
- (b) Clause 110 further seeks to amend section 208 subsection (2) for paragraph (b) to delete reference to the registration holder in consequence of the amendments made earlier.

### **Ad Clause 111: Amendment of section 209**

Clause 111 seeks to amend section 209 by the substitution in subsection (1) for the words preceding paragraph (a) by deleting reference to a person and now inserts that the management board in addition to the child and youth centre must also appoint or designate staff. The amendment intends to specify responsibility thereby creating legal certainty.

### **Ad Clause 112: Amendment of section 211**

Clause 112 seeks to amend section 211 by the substitution of subsection (2) paragraph (d) to create a discretionary provision as opposed to the previous mandatory one and to indicate that where appropriate the team not connected to the centre may appoint a mentor to oversee implementation of the plan by the management of the centre.

### **Ad Clause 113: Amendment of section 213**

- (a) Clause 113 seeks to amend section 213 which deals with drop-in centres by substituting subsection (1) to clarify by adding the words 'non-residential facility' that a drop-in centre is a non-residential facility. The amendments intend to distinguish between child and youth care centres and drop in centres, that drop-in centres are not residential care facilities like child and youth care centres.
- (b) Clause 113 seeks to further amend section 213 by inserting in subsection (2) to the basic services that must be offered 'psychosocial service'. The amendment intends to accommodate a drop-in centre that provides psychosocial services only to be able to register.
- (c) Clause 113 seeks to amend section 213 by substituting subsection (3) subparagraph (a) so that it reads guidance and counselling only. Psycho-

social; support was deleted. This is a consequential amendment as a result of amendment of paragraph (2)

- (d) Clause 113 seeks to amend section 213 by inserting as subsection (3) subparagraph (aA) the programme of 'cognitive and spiritual'. The amendment intends to extend the list of programmes that a drop-in centre may provide.
- (e) Clause 113 seeks to amend section 213 by substituting subsection (3) subparagraph (h) is also substituted to correct the consistent use of a social service practitioner as opposed to social service professional.

#### **Ad Clause 114: Amendment of section 214**

Clause 114 further seeks to amend section 214 by the substitution of subsection (1) to include any other relevant Ministers, relevant stake-holders and relevant civil society organisations as part of the stakeholders the Minister must consult with, with regards to the development of the national strategy concerning drop in centres . It also requires that MEC for social development to ensure that the national strategy is incorporated in the departmental strategy.

#### **Ad Clause 115: Amendment of section 215**

- (a) Clause 115 seeks to amend section 215 which regulates the provision of drop-in centres by the insertion after subsection (3A) a clause allowing a conditionally registered drop-in centre to qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards. This amendment intends to prioritise funding for drop in centres.
- (b) Clause 115 further seeks to amend section 215 by substituting subsection

(4) by requiring the MEC to exercise his discretion in prioritising funding for drop-in centres.

- (c) Clause 115 further seeks to amend subsection (4) paragraph (a) by qualifying that the MEC must prioritise and fund poverty declared wards and in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children.

**Ad Clause 116: Amendment of section 218**

- (a) Clause 116 seeks to amend section 218 by the substitution of subsection (1) to delete an application for conditional registration.
- (b) Clause 116 seeks to further amend subsection (1) for paragraph (a) to include that the procedure for the application for registration of a drop-in centre must be prescribed. This amendment intends to ensure compliance with the norms and standards.

**Ad Clause 117: Amendment of section 219**

- (a) Clause 117 seeks to amend section 219 by the substitution of subsection (4) to ensure the consistent use of the word social service practitioner.
- (b) Clause 117 seeks to amend section 219 by the substitution of subsection (5) to make provision for a provincial head of social development to assist a person providing drop in centre who have conditional registration to comply with the prescribed national norms and standards. This amendment intends to ensure compliance with the norms and standards.

**Ad Clause 118: Amendment of section 220**

Clause 118 seeks to amend section 220 by the substitution of the subsection (1) so that a distinction is drawn between conditional registration and the conditions for registration and deleting subsection (2)

#### **Ad Clause 119: Amendment of section 224**

Clause 119 seeks to amend section 224 which regulates the record and inspection of and provision of drop in centres so as to ensure that monitoring of drop in centres are conducted. This amendment is intended to ensure the monitoring is undertaken so as to ensure compliance with the norms and standards.

#### **Ad Clause 120: Amendment of section 225**

- (a) Clause 120 seeks to amend section 225 subsection (1) to empower the MEC and not the head of Department to assign functions to a municipality.
- (b) Clause 120 seeks to amend section 225 subsection (3) so as to ensure that there is consistent use of the term social service practitioner.

#### **Ad Clause 121: Amendment of section 226**

Clause 121 seeks to amend section 226 which regulates the procedure to be followed when serious injury, abuse or death of a child in a drop-in centre occurs. The amend seeks to substitute section (1) which required for an investigation to be conducted and replaces it with the requirement that when a child is seriously injured or abused while in a drop-in centre the person operating the drop-in centre or a person employed at the drop-in 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)." The amendment intends to ensure that cases of serious injury or abuse of children in drop in centres are investigated and followed up.

### **Ad Clause 122: Amendment of section 232**

- (a) Clause 122 seeks to amend section 232, which regulates the register on adoptable children and prospective adoptive parents, by adding that the purpose of the register is for matching adoptable children with prospective adoptive parents. The amendment intends to clarify that adoptable children who are already matched with prospective adoptive parents be removed from the register. This amendment intends to avoid unnecessary retention of names in the register after successful matching and subsequent adoption.
- (b) Clause 122 further seeks to amend section 232 subsection (4) for paragraph (b) and 5(c)(iv) to clarify that a person who qualifies to be registered adopt must not only be a citizen or permanent resident, but a citizen or permanent resident residing in the Republic. The amendment intends to clarify that a citizen or permanent resident of the Republic not residing in the republic, may not be registered.
- (c) Clause 122 further seeks to amend section 232 subsection (6) for paragraph (b) to also add that the Director-General may allow access to RACAP to a social worker in the employ of the Department or provincial department of social development, or a child protection organisation as well as a social worker in private practice accredited in terms of section 251 or 259 to provide adoption services. This amendment intends to clarify that all adoption social workers may have access to the adoption register.

### **Ad Clause 123: Amendment of section 233**

- (a) Clause 123 seeks to amend section 233 which regulates consent to adopt by the substitution in subsection (1) for paragraph (a) to allow the court to dispense with the assistance of the guardian of a parent

who is a child with due regard to the best interests of the adoptable child and parent. The amendment seeks to promote the best interests of a child in the event that the guardian of the parent of the child is not available to give consent for the adoption of the child.

- (b) Clause 123 seeks to amend section 233 by the substitution in subsection (6) paragraph (b) for subparagraph (i) that where consent is given in terms of subsection (1) it must be prescribed. This amendment is necessary to allow the Minister to prescribe a form that may be used when relevant parties provide the necessary consent for the adoption of a child.
- (c) Clause 123 seeks to amend section 233 by substituting subsection (8) to indicate that a person referred to in subsection (1) who has consented to the adoption of the child may withdraw the consent within 60 days after having signed the consent, after which the consent is final, irrespective of the period of any delay in finalising the adoption. The amendment intends to clarify that if there is a delay in finalising the adoption, the person/s whose consent is required should not be asked to give consent afresh and wait another 60 days.

#### **Ad Clause 124: Amendment of section 234**

Clause 124 seeks to amend section 234 which regulates post adoption agreements by the substitution of subsection (1) to include 'or a family member' to the current list which includes parent or guardian, to enter into post adoption agreements before or during an application. To add subsection 4A which empowers a court in the course of an application in terms of section 239 concludes that a post adoption agreement would be in the best interests of the child concerned, it may direct the parties to consider such agreement, including through mediation if necessary. This amendment intends to allow a family member to enter into a post adoption agreement, when that family member has been formally recognized as a caregiver to the child to be adopt-

ed.

**Ad Clause: 125: Amendment of section 236**

- (a) Clause 125 seeks to amend section 236 regulates the circumstances when consent is not by the substitution in subsection (1) for paragraph (a) to include that where a person is incompetent to give consent due to mental illness as well as a mental health disability as supported by a report from a suitably qualified person. The amendment intends to confine the conclusion that a person has a mental disability and cannot give consent, to a suitably qualified person who can make that conclusion.
  
- (b) Clause 125 seeks to amend section 236 the addition of the following paragraph dispensing with consent from the biological father following an allegation by the mother of the child, finds on a balance of probabilities that the child was conceived as a result of the mother being a victim of human trafficking: Provided that such a finding shall not constitute a conviction for the crime of human trafficking. This amendment is necessary to clarify that the consent of a father is not required, for a child born as result of the mother being a victim of trafficking, which in one way or another involves the father.

**Ad Clause 126: Amendment of section 239**

- (a) Clause 126 seeks to amend section 239 by the substitution of word “recommending” with the words “indicating compliance with the requirements in terms of this Act regarding” and the insertion of the words “:Provided such a letter may be dispensed with if not furnished by such provincial head within 30 days of it being requested” at the end of the subsection (10(d). The amendment intends to provide a presiding officer discretion to dispense with the letter and not wait indefinitely if the provincial head of social development fails to provide the letter



and reasons for failure to do so.

- (b) Clause 126 seeks to further amend section 239 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 of the sentence. This is a technical amendment necessary for ease of reading.

#### **Ad Clause 127: Amendment to section 243**

- (a) Clause 127 seeks to amend section 243 by the insertion of the words in the prescribed form” in subsection (1). This amendment is intended to allow the Minister to prescribe a form to be used when an application for rescission of an adoption order is made.
- (b) Clause 127 seeks further to amend section 243 by insertion of subsection (cA) and subsection (Cb) which provides for the notice for rescission of an adoption order to be given to the adoption registrar and relevant provincial head of social development. This amendment is intended to prescribe the manner in which a high court or children’s court may rescind an adoption order application and to which offices must the notice for rescission of an adoption order be given.

#### **Ad Clause 128: Amendment of section 249**

- (a) Clause 128 seeks to amend section 249 by the deletion of subsection (2) for paragraph (b), (c), (d),(e);(f) and (g). This amendment is intended to delete reference to all fees that may be charged for adoption. The amendment provides that adoption is one of the designated child protection services as stipulated in section 105(5) Act. Therefore no fees should not be charged for adoption because it is not a business but a child protection measure.
- (b) The state is already taking financial responsibility of all designated child

protection services which must include adoption services. There is no reason why adoption services should be isolated and receive special focus.

- (c) Adoption service should not be commodified but be viewed as a means of protecting the best interests of children by placing them with permanent and suitable families. This is supported by Section 229 of the Act, which provides the purposes of adoption as being, to protect and nurture children by providing a safe, healthy environment with positive support; and to promote the goals of permanency planning by connecting children to other safe and nurturing family relationships intended to last a lifetime.
  
- (e) The issue of fees for adoption created challenges where the best interests of children were compromised because not enough efforts were made to consider other alternative care options catered for in the Act, to retain children within their families of origin, such as family reunification, parental and family care, foster care and adoption by family member, guardianship, parental responsibilities and rights, before adoption of a child by a person outside the child's family can be considered.
  
- (f) The removal of adoption fees does not mean that the department is prohibiting social workers, lawyers, psychologist and other professionals in private practice are prohibited to render relevant services in relation to the adoption of children. Such services may be rendered the same way like in all other areas in the Children's Act where such services are required. The charging of fees is simply not be legislated herein, but will be left to the respective professional councils to regulate. This relates to Section 22 of the Constitution of the RSA 1996 which does allow for the regulation of how one can exercise his or her profession.

- (g) The designated Child Protection Organisations rendering adoption services may apply for funding for designated child protection services from the Provincial Department of Social Development in terms of Section 105 (1) The allocation of funding will be based on availability of funds from the provincial office.
- (h) Due to the foster care challenges we promote national adoption and fees can be a stumbling block.

#### **Ad Clause 129: Amendment of section 250**

- (a) Clause 129 seeks to amend section 250 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 provide adoption services”. This insertion is intended to add to the list of persons who may provide adoption services.
- (b) Clause 129 further seeks to amend section 250, by repealing subsection (2) and (3) which provided exceptions to professional persons and organisations not listed in subsection (1) but can still provide adoption services. The repeal of this subsection is necessary to remove the repetition, because its context is contained in section 249 (2) (b).

#### **Ad Clause 130: Amendment to section 251**

Clause 130 seeks to insert section 1A in section 251 of the Act, in order to provide for the prescribed manner in terms of which the Director-General may withdraw an accreditation to provide adoption services”. The amendment is necessary to allow the Director-General discretion to withdraw the accreditation of an adoption service provider, if the service provider does not comply

with the legal and accreditation requirements.

#### **Ad Clause 131: Amendment to section 252**

Clause 131 seeks to amend section 252 by the substitution of subsection (1)(b) to replace the words “a child protection organisation accredited to provide adoption services” with the words “an adoption social worker”. It also deleted all references to an advertisement and replaces with a notice. The amendment intends to clarify that an adoption social worker, not an organisation, may issue notice for the purposes of recruitment. The reason for the deletion of the term “advertisement” is due to the fact that advertisement is for marketing purposes and it is expensive. A notice is considered a general communication that is usually cheaper to publish. An advertisement seeks to entice a consumer to a purchase action while a notice limits itself to pure factual information

#### **Ad Clause 132: Amendment to section 253**

Clause 132 seeks to amend section 253 by the substitution of subparagraph (e) and (f) to replace the word “welfare” with the word “protection”. This section authorises the Minister after consultation with the Minister for Justice and Constitutional Development in respect of regulations dealing with court orders, may make regulations. This amendment is intended to keep consistency with the contemporary terminology. It also amends that the Minister may make regulations for prescribing guidelines for the notice to recruit prospective adoptive parents instead of an advertisement.

#### **Ad Clause 133: Amendment of section 258**

Clause 133 seeks to amend section 258 subsection (2) by making cross reference to subsection (2) of section 261, subsection (2) of section 265 of the Act. This amendment is intended to ensure that, if the central authority of the convention country concerned is satisfied that the applicant is fit and proper to

adopt, it shall prepare a report on that person and transmit the report to the Central Authority of the Republic.

**Ad Clause 134: Amendment of section 259**

- (a) Clause 134 seeks to amend section 259 by the insertion of the words “of the Republic” subsection (1) for paragraph (a) following “the Central Authority”. This amendment intends to clarify that it is the Central Authority of the Republic who grants accreditation for a local organisation to provide intercountry adoption services.
- (b) Clause 134 further amends section 259, by repealing subsection (3). And the insertion of subsection 3A permitting the central authority in terms of a prescribed process to withdraw an accreditation to provide inter-country adoption services.

**Ad Clause 135: Amendment of section 260**

- (a) Clause 135 seeks to amend section 260 subsection (1) by the insertion of the words “recognised organisation or” before the words “accredited adoption agency”. The proposed amendment seeks to provide an alternative to such accredited adoption agency of another country by providing an alternative of “equivalent organisation” of a child protection organisation accredited in terms of section 260.
- (b) Clause 135 also seeks to amend section 260 in subsection (2) for paragraph (a) by the insertion of the words, “of the Republic” following the words “must provide Central Authority”. This amendment intends to clarify that it is the South African Central Authority who must receive copies of the adoption working agreement entered into by a South African accredited child protection organisation and an adoption agency in a foreign country.

- (c) Clause 135 seeks to further amend section 260 by the insertion of subsection (3) which provide for the Central Authority of the Republic to enter into an adoption working agreement with the central authority of another convention country. This amendment intends to allow the South African Central Authority to enter into an adoption working agreement with the central authority in another convention country. Currently, the Children’s Act only makes provision for child protection organisations to enter into working agreements, not the Central Authority.

**Ad Clause 136: Amendment of section 261**

- (a) Clause 136 seeks to amend section 261 by the substitution of subsection (2) to replace the word “shall” with the word “must”. This amendment is intended to align the Act with the international standard of drafting legislations. The amendment intends to maintain consistency in terminology.
- (b) Clause 136 seeks to amend section 261 in subsection (3) by the insertion of the word “inter-country” before the word “adoption” and the words “of the Republic” after Central authority. This amendment intends to distinguish between the SA Central Authority and the one of a foreign country
- (c) Clause 136 seeks to amend section 261 in subsection (4) by the substitution of the word “will” with the word “must” and the words “of the Republic” after Central authority. The amendment intends to maintain consistency in terminology.
- (d) Clause 136 seeks to amend section 261 in subsection (5) for paragraph (e) by the insertion of the words “and has not withdrawn consent” at the end of subsection to clarify the status of the signed consent. This

amendment intends to clarify the status of the signed consent.

- (e) Clause 136 further seeks to amend section 261 in subsection (5) for paragraph (f) by the insert the words “and has not withdrawn consent” at the end of subsection but before the word “and”. The amendment intends to clarify that the court may issue an adoption order if the requirements are met and is satisfied that the Central Authority of the convention country has agreed to the adoption of the child and has not withdrawn consent.
- (f) Clause 136 further seeks to amend section 261 in subsection (6) for paragraph (a) by the substitution of the words “within a period of 140 days from the date on which it has consented to the adoption” with the following words “at any time before the order of adoption is granted by the court. The amendment intends to remove reference to 140 days as it is arbitrary and not linked to any provision in the Convention. This period is replaced by a provision allowing the Central Authority to withdraw its consent at any time before the court order in respect of an inter-country adoption is granted. This would imply that consent cannot be withdrawn after the court order. , Thereby rendering the current provisions of subsections (6)(b) and (7) obsolete, which provisions should be omitted.
- (g) Clause 136 further seeks to amend section 261 by deleting subsection 6 for paragraph (b), subsection 7 and 9. This amendment is necessary to align with the amendment in section 261 (6) (a).
- (h) Clause 136 seeks to amend section 261 by substituting subsection 8, which provides 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 may be dealt with in the prescribed manner as an inter-country adoption: provided that the Central Authority of the Republic may dispense with one or more of the formal requirements of inter-country adoption if it is in the best interest of the child concerned in the context of a specific case. The amendment intends to 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.

**Ad Clause 137: Amendment of section 262**

- (a) Clause 137 seeks to amend section 262 in subsection (2) by the substitution of the word "shall" with "**must**". The amendment intends to maintain consistency in terminology.
- (b) Clause 137 seeks further to amend section 262 in subsection (3) by the insertion of the word "inter-country" before the term adoption, by the insertion of the words "of the Republic" after the words "Central Authority and substitute the term "will" with "**must**" immediately after the inserted words of "of the Republic" in subsection (3) and (4) making it obligatory. The amendment intends to maintain consistency in terminology.
- (c) Clause 137 further seeks to amend section 262 in subsection (5) for paragraph (e) by the insertion of the words "and has not withdrawn consent" at the end of the subsection. The amendment intends to clarify that the court may issue an adoption order if the requirements are met and is satisfied that the competent authority of the non-convention country has agreed to the adoption of the child and has not withdrawn consent.
- (d) Clause 137 further seeks to amend section 262 in subsection (5) for paragraph (f) by the insertion of the words "and has not withdrawn con-



sent” at the end of subsection. The amendment intends to clarify that the court may issue an adoption order if the requirements are met and is satisfied that the Central Authority of the Republic has agreed to the adoption of the child and has not withdrawn consent.

- (e) Clause 137 also seeks to amend section 262 in subsection (6) by the substitution of the words “within a period of 140 days from the date on which it has consented to the adoption” with the following words “at any time before the order of adoption is granted by the court,”. The amendment intends to remove reference to 140 days. This period is replaced by a provision allowing the Central Authority of the Republic to withdraw its consent at any time before the court order in respect of an inter-country adoption is granted. This would imply that consent cannot be withdrawn after the court order; thereby rendering the current provisions of subsections (6)(b) and (7) obsolete, which provisions should be omitted.
- (f) Clause 137 further seeks to amend section 262 by deleting subsection (6) for paragraph (b), subsection 7 and 9. This amendment is necessary to align with the amendment in section 262 (6) (a).
- (g) Clause 137 seeks to amend section 262 by substituting subsection 8, which provides 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 may be dealt with in the prescribed manner as an inter-country adoption: provided that the Central Authority of the Republic may dispense with one or more of the formal requirements of inter-country adoption if it is in the best interest of the child concerned in the context of a specific case. The amendment intends to allow the Minister to make regulations regarding the adoption of a child by a fam-

ily member or a person adopting the child together with the child's parent, who resides in a non-convention country.

#### **Ad Clause 138: Amendment of section 263**

Clause 138 seeks to amend section 263. The proposed amendment seeks to remove the discretionary power of the Central Authority when issuing the compliance certificate, by replacing the term "may" with "must" and inserting the following words "of the Republic must" immediately after the words Central Authority. The amendment 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.

#### **Ad Clause 139: Amendment of section 264**

(a) Clause 139 seeks to amend section 264 by the substitution of subsection (1) by the insertion of the words "of the Republic" after the words Central Authority. The amendment intends to clarify that a person who is resident in the Republic and who wishes to adopt a child habitually resident in a convention country must apply to the Central Authority of the Republic.

(b) Clause 139 further seeks to amend section 264 by the substitution of subsection (2) and (3) by the substitution of the word "shall" with "must", and to insert the words "of the Republic" immediately after the words Central Authority. The amendment intends to maintain consistency in terminology.

(c) Clause 139 further seeks to amend section 264 subsection (4) by inserting the words "of the Republic" immediately after the words Central Authority and the substitution of the word "will" with "must". The

amendment intends to maintain consistency in terminology.

#### **Ad Clause 140: Amendment of section 265**

Clause 140 seeks to amend section 265 by the substitution of subsection (1), (3) and (4) by the insertion of the words “of the Republic” at the end of the words Central Authority of the Republic. Clause 155 seeks further to amend section 261 by the substitution of subsection (2), (3) and (4) of the word “shall” with “must”. The amendment intends to maintain consistency in terminology.

#### **Ad Clause 141: Amendment of section 266**

- (a) Clause 141 seeks to amend section 266 by the substitution of subsection (1), (2) and (5) of the word “shall” with “must”. The amendment intends to maintain consistency in terminology.
- (b) Clause 141 seeks to amend section 266 by inserting the words “of the Republic” immediately after the words Central Authority in subsection (3) and “in the prescribed form”. This amendment is intended to prescribe the manner in which the Central authority of the Republic may issue a declaration recognising the adoption, if an adoption compliance certificate was not issued by the relevant convention country, hence the insertion of the words “in the prescribed form” at the end of the sentence in subsection (3).
- (c) Clause 141 further seeks to further amend section 266 by the addition of subsection (6) which provides for the adoption order made in another country may be recognised in the Republic irrespective of whether the adopted child is an adult at the time of the application for recognition: provided that the adoption is in accordance with and has not been rescinded under the law of the country in which the adoption order was made. The amendment intends to allow the Central Authority of the Republic to recognise an adoption order made in another country irre-

spective of whether the adopted child is an adult at the time of application for recognition.

**Ad Clause 142: Amendment of section 268**

- (a) Clause 142 seeks to amend section 268 by inserting subsection 1 and by the insertion of words “of the Republic” immediately after the words Central Authority of the Republic and prescribing the manner in which the Central Authority of the Republic may issue a declaration recognising the adoption of a child in a non-convention country. The amendment intends to clarify that it is the Central Authority of the Republic who must issue a declaration in a prescribed form, if the adoption is in compliance with the law and has not been rescinded.
  
- (b) Clause 142 seeks to amend section 268 by inserting section 2 which provides for 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 issued in the non-convention country where the adoption was granted is in force for the adoption. This insertion intends to allow the Central Authority of the Republic to recognise the adoption of a child habitually resident in a non-convention country by a person habitually resident in another non-convention country and finalised in the country where the child resides, if a compliance certificate or an equivalent thereof has been issued by that country.

**Ad Clause 143: Amendment of section 271**

Clause 143 seeks to amend section 271 by the insertion of subsection (1A) that regulates that when an adoption application is refused by a children’s court the child must be returned to the country of origin. It also proposes that the process to do that be prescribed. The clause also adds of subsection (3) which provides that where guardianship is not equivalent to adoption as rec-

ognised by the central authority in the republic, the matter must be referred to a competent court for determination. The addition is intended to protect a child whose guardianship is not recognised as an adoption in the Republic.

#### **Ad Clause 144: Insertion of section 278A**

Clause 144 seeks to insert section 278A in Chapter 17 to expedite proceedings concerning children is not in the best interest of the child.

#### **Ad Clause 145: Amendment of Section 279**

- (a) Clause 145 seeks to amend section 279 subsection (1) by the deletion the words “subject to section 55,” with regard to a legal representative of the child, in all applications in terms of the Hague Convention on International Child Abduction. The new procedure will now be provided by the subsequent amendment to subsection (2).
- (b) Clause 145 seeks to add subsection (2), which provides that on the day of the application in terms of this Chapter for the return of a child, the central Authority of the Republic must bring the application to the attention of the judge president of the relevant division of the high court for the appointment of a legal representative for the child.

#### **Ad Clause 146: Amendment of section 292**

- (a) Clause 146 seeks to amend section 292 by the substitution in subsection (1) for paragraphs (c), (d) and (e) to replace the word “domiciled” with the words “habitually resident”. Clause 153 further seeks to amend section 292 by the deletion of the words “domiciled or” in subparagraph (e). This amendment is intended to replace the word “domicile” with the term ‘habitually resident’ which is used in other parts of

the Act and is better understood.

**Ad Clause 147: Amendment of section 294**

- (a) Clause 147 seeks to amend section 294 by the deletion of the word “No” and replacing it with the words “Subject to subsection (2)”.
- (b) Clause 147 further seeks to amend section 294 by the addition of subsection (2), which provides that the High Court may, upon application and on good cause shown, deviate from the provision of section 294(1). The amendment intends to allow the court discretion to deviate for the genetic link requirement between the commissioning parent and a child born out of a surrogate motherhood agreement, in exceptional cases.

**Ad Clause 148: Amendment of section 295**

- (a) Clause 148 seeks to amend section 295 by the substitution of subparagraph (ii) in both paragraph (b) and (c) to insert the words “including health and age”. This amendment is intended to include the consideration of health and age prior to the court confirming surrogate motherhood.
- (b) Clause 148 seeks to amend section 295 by the repealing subparagraph (vi) and (vii) in paragraph (c).
- (c) Clause 148 seeks to further amend section 295 by the insertion of subparagraph (dA), which provide for the agreement that is accompanied by a report from a psychologist containing an assessment of all parties, in the case involving an agency, to file an affidavit by such an agency.
- (d) Clause 148 further seeks to amend section 295 by repealing sub-

paragraph (e).

**Ad Clause 149: Amendment of section 297**

Clause 149 seeks to amend section 297 by the substitution of sections in subsection (1) paragraph (e) to provide for new cross referencing.

**Ad Clause 150: Insertion to section 303A**

Clause 150 seeks to insert section 303A dealing with regulations. This amendment is intended to authorise the Minister after consultation with the Minister for Health, to make regulations regarding any matter necessary to facilitate the implementation of the new Chapter 19.

**Ad Clause 151: Amendment of Section 304**

- (a) Clause 151 seeks to amend the heading of section 304 by deleting the word “shelter” as well as in subsection (1), subsection (1)(a), subsection 2(b) and subsection (3)(a). Section 304 provides a person authorised by the Director-General, a provincial head of social development or a municipality may enter any child and youth care centre, partial care facility, or drop-in centre or any place which on reasonable suspicion is being used as an unregistered child and youth care centre, partial care facility, or drop-in centre. This amendment is intended remove reference to the now obsolete term “shelter”.

**Ad Clause 152: Amendment of section 305**

- (a) Clause 152 seeks to amend the heading of section 305 by the insertion of the words “and penalties” after offences.

- (b) Clause 152 further seeks to amend section 305 by substitution of subsection (1) for paragraph (b) to cross referencing to section 6A and deletion of the cross reference to section 74.
- (c) Clause 152 further seeks to amend section 305 by substitution of subsection (1) for paragraph (f) to correct the cross referencing.
- (d) Clause 152 further seeks to amend section 305 by substitution in subsection (1) for paragraph (q) of the words “divorce Court” with the words “regional court” i; and the deletion of the word “shelter” in subsection (2) for paragraph(a).

**Ad Clause 153: Amendment of section 306**

- (a) Clause 153 seeks to amend section 306 by the insertion of the cross reference to section “41A”, “149A” and “and 303A” in subsection (1). This amendment is intended to authorise the Minister after consultation with the Minister for Health, to make regulations regarding any matter necessary to facilitate the implementation of the Act.
- (b) Clause 153 further seeks to amend section 306 by the deletion of the word “shelter” in subsection (1) (c) and (d); subsection (2)(a)(iii); and subsection (2)(b)(iii).

**Ad Clause 154: Amendment of section 312**

- (a) Clause 154 seeks to amend section 312 by inserting subsection (1A) to provide that the MEC for social development subject to any provincial strategic plan, to enter into an agreement with a designated child protection organisation or a person on an agency basis in the relevant province.



- (b) Clause 154 seeks to further seeks to insert the words “or relevant MEC, as the case may be, in subsection (2).

(c)

#### **4. PERSONS OR BODIES CONSULTED**

The Bill was published for public comments from 29 October to 29 November 2018. The Bill was further consulted with provincial Heads of departments of social development and National Child Care and Protection Forum stakeholders which includes representatives from National Departments, provincial DSD and Civil Society organisations.

The following stakeholders submitted written comments and a matrix report of the comments and the responses from the Department in respect of each comment is available

##### **National Departments**

Department of Cooperative Governance and Traditional Affairs

Department of Home Affairs

Department of Justice and Constitutional Affairs

##### **Civil Society organisations**

National Adoption Coalition of South Africa

Wandisa

Cause for Justice

Centre for Child Law

Child Welfare South Africa

CINDI

Eastern Cape Adoption Coalition

ENGO Free State province

Language Environment and Educational Trust

Equal Education Law Centre

Family Literacy Project  
Freedom for Religion South Africa  
Global Initiative to end Corporal punishment  
National Association for Child and Youth Care Workers  
Ilifa la Bantwana  
Life Choices pregnancy crises centre  
Mamelani projects  
Nelson Mandela Children's Fund  
Refugee Legal and Advocacy Centre  
South African Council for Social Service Professions  
South African Catholics Bishops Conference  
South African Federation of Waldorf Schools  
The Peace Centre  
UNHCR

### **Individuals**

561 submissions were received from individuals and church organisations in relation to the proposed amendment to section 7 on discipline of children. Furthermore four submissions were received from individuals in relation to adoption matters.

## **5. FINANCIAL IMPLICATIONS FOR THE STATE**

- 5.1 The Amendment Bill envisages services that are the same or similar to services already required and provided in terms of the Children's Act. The government therefore has an existing obligation to provide these services. They are therefore not new obligations and the costs associated with their delivery are not new costs that can be attributed to Amendment Bill. The Amendment Bill restates these obligations, with some shift in emphasis on areas that must be improved. However, there are areas or amendments that may require reprioritisation or new allocations.

- 5.2 The Department together with National Treasury is currently involved in a costing process that will culminate in the comprehensive costing of social welfare services, of which child care and protection services constitutes 60%. The process will be completed within the next 18 months.
- 5.3 The Department is the primary department responsible for child care and protection in the country. Some of the measures contained in the Amendment Bill are already catered for in the current Departmental budgets. The total provincial and national DSD budget allocation for services to children and families for the 2018/19 financial year is R8 476 884.00.
- 5.4 Relevant departments responsible for the realisation of the objectives of the policy, where necessary, need to reprioritise their finances to ensure delivery of services as required by the Amendment Bill.

## **6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers and the Department of Social Development are of the opinion that the Bill should be dealt with in terms of the procedure prescribed by the provisions of section 75 and 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Welfare Services” which is a concurrent competence.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18 (1) (a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

6.3 Further, the relevant Socio-economic Impact Assessment (SEIAS) has been approved.

DATED .....

MINISTRY OF SOCIAL DEVELOPMENT