

ANNEXURE B

MEMORANDUM ON THE OBJECTS OF THE CHILDREN'S AMENDMENT BILL, 2020

1. PURPOSE OF THE AMENDMENT BILL

The Children's Amendment Bill seeks to-

- (a) amend the Children's Act to strengthen protective measure for children.
- (b) address critical gaps and challenges in the underlying child care and protection system and identify strategies to address these challenges efficiently and effectively.
- (c) contribute towards the comprehensive legal solution as ordered by the Gauteng Division of the High Court in Pretoria, in the matter of *Centre for Child Law v Minister of Social Development* (Case No: 72513/2017) to deal with challenges relating to the provision and administration of foster care.

The High Court, on 28 November 2017, directed the Minister amongst others, to prepare and introduce before Parliament, the necessary amendments to the Children's Act 38 of 2005 ("the Children's Act") and the Social Assistance Act 13 of 2004 and to do so within a period of 15 months from the date of the Court Order in order to produce a comprehensive legal solution regarding the foster care system. The 15 month period referred to in the court order lapsed on the 28th of February 2019.

Further the court ordered that any foster care order which, as at the date of the order, is in existence or has lapsed due to non-extension shall be deemed to be validly in place for 24 months from the date of the order or until the child, subject to the order turns 18, whichever comes first. On 26

November 2019, the High Court extended the initial 2017 order for a period of 12 months and directed the Minister to request Parliament to expedite the process for the consideration and tabling of the amendments to the Children's Act.

2. OBJECTS OF BILL

The Bill introduces the amendments as follows:

2.1 **Clause 1** seeks to amend section 1 of the principal Act by substituting and inserting new definitions i.e. "early childhood development centre"; "family counsellor", "inter-country adoption", "regional court", "separated migrant child" and "unaccompanied minor child". This will align the principal Act with current family and child law practice.

2.2 **Clause 2** seeks to amend section 6 and introduces the concept of *accessible and inclusive environment* to promote and protect the interests of children with disabilities.

2.3 **Clause 3** seeks to insert a new section 6A that provides for protection of a child's right to privacy and information.

2.4 **Clause 4** seeks to amend section 7 by making reference to "*any special needs that a child may have*". The intention is to create an additional set criterion, whenever any provision in the Act requires the best interests of the child test to be applied - the child's special needs must be taken into consideration.

2.5 **Clause 5** seeks to amend section 8 by explicitly stating that the Act applies to every child in the Republic of South Africa so that there are no interpretation difficulties and that users of the Act will know that children include non- citizens.

2.6 **Clause 6** seeks to amend section 12 which is intended to align the prohibition of genital mutilation with the new definition. The clause further prohibits any marriage of a child.

2.7 **Clause 7** seeks to amend section 13 and is intended to align the Children's Act with the globally accepted terminology including the terminology in the United Nations Convention on the Rights of the Child and the White Paper on the Rights of Persons with disabilities.

2.8 **Clause 8** seeks to provide for the substitution of the heading of Part 1 of chapter 3 for "*automatic acquisition of parental responsibilities*". This amendment is intended to align the terminology 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.

2.9 **Clause 9** seeks to amend section 19 in order to provide clarity regarding the guardianship and parental responsibilities relating to the biological father of a child.

2.10 **Clause 10** seeks to –

- (a) amend section 21 by providing clarification regarding a father who is not married to the mother and who was living with her at any time between the child's conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;
- (b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;
- (c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;
- (d) align the current terminology or definitions i.e. social service practitioner;
- (e) further delete subsection (3) (b) which provides that any party to the mediation may have the outcome of the mediation reviewed by a court.

2.11 **Clause 11** seeks to insert a new Part 1A. This amendment is intended to group the sections addressing acquisition and loss of parental responsibilities and rights together.

2.12 **Clause 12** seeks to amend section 22–

- (a) by inserting a new clause after subsection 2. This amendment is intended to give the child who is the subject of a parental responsibilities and rights agreement, if of sufficient age, maturity and stage of development, an opportunity to express his or her views regarding the contents of such agreement;
- (b) by substituting paragraphs 4(a) and (b). This amendment is intended to cater for an application in the prescribed manner i.e. for a parental responsibilities and rights agreement to be registered with the family advocate and to substitute reference to the divorce court with regional court;
- (c) by amending subsection (6). This amendment intends to clarify that a parental responsibilities and rights agreement, registered by the family advocate, may be amended or terminated in the prescribed manner;
- (d) by the deletion of subsection (7).

2.13 **Clause 13** seeks to amend section 23 –

- (a) by substituting the reference to divorce court with regional court;
- (b) to include that the parties must inform the court of any other proceedings that are pending in any other court.

2.14 **Clause 14** seeks to amend section 25 and 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.

2.15 **Clause 15** seeks to amend section 28 by substituting reference to the divorce court with the regional court.

2.16 **Clause 16** seeks to amend section 29 by-

- (a) substituting reference to the divorce court with the regional court; and
- (b) amending section 29 by the insertion of a new subsection 1A. This amendment intends to prescribe that any party to an application for parental rights and responsibility agreement, may in the prescribed manner, refer the matter to the family advocate for an investigation.

2.17 **Clause 17** seeks to insert a new section 30A which intends to address the issue of the residence of the child.

2.18 **Clause 18** seeks to delete the heading "Parenting Plans". This amendment seeks to synchronise the amendments made to Part 1A.

2.19 **Clause 19** seeks to amend section 34 by inserting a new subsection (4A) so that an application made by co-holders of parental rights and responsibilities for the amendment or termination of the parenting plan may be done in the form and manner as prescribed.

20. **Clause 20** seeks to amend section 35 by –

- (a) amending outdated terminology;
- (b) providing that a parent who is aggrieved by another parent who refuses to allow that parent contact with a child, contrary to a court order, parental responsibilities and rights agreement, or parenting plan, to seek recourse;
- (c) making provision for the inclusion of a parenting plan.

2.21 **Clause 21** seeks to amend the heading of section 40 and correct the terminology so that it is aligned with current family and child law practice.

2.22 **Clause 22** seeks to insert a new section 41A, conferring on the Minister for Justice and Constitutional Development, the power to make regulations regarding matters listed under the respective chapter, after consultation with the Minister.

2.23 **Clause 23** seeks to amend section 44 to provide for the jurisdiction of a court, where a matter is transferred from one children's court to another, in accordance with the prescribed procedure and if it is in the best interest of the child.

24. **Clause 24** seeks to amend section 45-

- (a) by extending the jurisdiction of the children's court to include "guardianship of an orphaned or abandoned child";
- (b) by excluding matters arising in a shelter from the jurisdiction of the children's court;
- (c) by including 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) under the children's court jurisdiction;
- (d) by adding to the powers of the 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) by removing all references to the divorce courts and to clarify that the children's court and the High Court have jurisdiction over guardianship of a child. The High Court, children's court and regional court have jurisdiction over assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.

2.25 **Clause 25** seeks to amend section 46 by adding to the list of specific orders that a court may make.

2.26 **Clause 26** seeks to amend section 49 by substituting the term "social service professional" with the term "social service practitioner".

2.27 **Clause 27** seeks to amend section 52 by explicitly stating that the Rules Board for Courts of Law must make rules relating to the children's court and to include sign language and speech and tactile interpreters to be used to ensure that the interest of persons with disabilities are protected.

2.28 **Clause 28** seeks to amend section 57 and are consequential amendments to ensure consistent use of terminology.

2.29 **Clause 29** seeks to amend section 62 and are consequential amendments for the consistent use of terminology.

2.30 **Clause 30** seeks to amend section 63 by including family counsellor to the list of persons from whom a written report is deemed as admissible evidence. 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.

2.31 **Clause 31** seeks to amend section 66 and is a consequential amendment to cross reference the new section 6A.

2.32 **Clause 32** seeks to delete section 74 as it is superfluous because of the new insertion of section 6A.

33. **Clause 33** seeks to amend section 75 by -

- (a) adding paragraph (1) (*bA*). The amendment intends to give the Minister the power to make regulations regarding the procedures for determining the age of a child;
- (b) 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 regulations regarding the responsibility for defraying costs relating to investigations and reports contemplated in section 62.

2.34 **Clause 34** seeks to amend section 76 by including reference to guardians and providing for the registration of a partial care facility under section 80 if there are less than 6 children.

2.35 **Clause 35** seeks to amend section 78 by-

- (a) deleting superfluous wording and by the insertion of a new subsection (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;
- (b) amending subsection (4) to enable an MEC to prioritise the funding of partial care facilities as prescribed;
- (c) amending subsection (4) paragraph (*a*) to clarify that the MEC may prioritise and fund poverty declared wards.

2.36 **Clause 36** seeks to amend section 79-

- (a) by the deletion of the word "basic" before therapeutic interventions so as to remove any misconceptions about what basic therapeutic interventions mean;
- (b) by the insertion in subsection (4) 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.

2.37 **Clause 37** seeks to amend section 81 by deleting reference to an application for conditional registration and for the reinstatement of registration. This amendment intends to delete all inferences to an application for conditional registration.

2.38 **Clause 38** seeks to amend section 82 by-

- (a) the substitution of subsection (4) in order to remove reference to a social service professional and conditional registration. The reason for this amendment is to ensure the consistent use of the term social service practitioner and to delete all references to an application for a conditional registration;
- (b) the substitution of subsection (5) to make provision for the MEC for 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.

2.39 **Clause 39** seeks to amend section 83 to specify the conditions relating to partial care facilities and services that must be complied with when applying for registration.

2.40 **Clause 40** seeks to amend section 85 by the addition of a new subsection (5) to provide for alternative arrangements to be made for children in a partial care facility that has been ordered to stop operating.

2.41 **Clause 41** seeks to amend section 87 to provide for the monitoring of partial care facilities.

2.42 **Clause 42** seeks to amend section 88 by effecting consequential amendments relating to defined terminology or phrases.

2.43 **Clause 43** seeks to amend section 89 by making reference to section 110(5) when reporting the incident. 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 proceedings for the protection of the child.

2.44 **Clause 44** seeks to amend section 90 to allow the Minister to make regulations regarding inspections and monitoring of partial care facilities and services and the assignment of functions to municipalities.

45. **Clause 45** seeks to amend section 91 by substituting the definition of early childhood development to include provision for children with disabilities and to

amend subsection (3) to provide for the prescribing of different early childhood development programmes.

46. **Clause 46** seeks to amend section 92 by-

- (a) inserting a new subsection that the Minister must, after consultation with any other relevant Ministers, relevant stakeholders 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. Furthermore, MECs must ensure that their provincial strategies are inclusive and provide for children with disabilities and special needs;
- (b) amending subsection (2) (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.

2.47 **Clause 47** seeks to amend section 93 by-

- (a) inserting subsection (3A) which provides 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) amending 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) inserting paragraph (aA) after subsection (4) (a) to provide that the funding of early childhood development programmes may be prioritised in rural areas;

(d) including that the Department, provincial department of social development or municipality may provide early childhood development programmes.

48. **Clause 48** seeks to amend section 94 to include that the norms and standards must include the word 'protection' when caring for children and that the norms and standards must provide for relevant qualification, skills and training required for early childhood development.

2.49 **Clause 49 seeks** to amend section 96 by effecting consequential amendments to align the definitions accordingly.

2.50 **Clause 50** seeks to amend section 98 and are consequential amendments.

2.51 **Clause 51** seeks to amend section 100 by providing that a person providing an early childhood development programme and who has been instructed to stop the provision of that programme, must ensure that he or she notifies the parents of the affected child to make alternative arrangements.

2.52 **Clause 52** seeks to amend section 102 by providing for the conditions under which the MEC for social development may assign the performance of some or all of the functions to the municipal manager and to effect minor consequential

amendments.

2.53 **Clause 53** seeks to amend section 103 to provide for the suspension or cancellation of registrations, powers to regulate early childhood development programmes, lodging an appeal, assessment and monitoring of the programmes and assignment of functions to municipalities.

2.54 **Clause 54** seeks to insert a new heading Part II which is early childhood development centres.

2.55 **Clause 55** seeks to insert a procedure for registration of early childhood development centres and matters related thereto: 103A-103M. It provides for the early childhood development centre to be registered; provision of early childhood development centre; national norms and standards for early childhood development centres; application for registration and renewal of registration of early childhood development centre; consideration of application; conditions for registration of early childhood development centres; cancellation of registration; notice of enforcement; appeal and review of certain decisions; record, inspection and provision for early childhood development centre; assignment of functions to municipality; serious injury, abuse or death of child in early childhood development centre and regulations for early childhood development matters.

2.56 **Clause 56** seeks to amend section 105 by providing 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.

2.57 **Clause 57** seeks to amend section 106 by providing for minor technical amendments and adding the phrases "rehabilitation services for children with disabilities" and "quality assurance".

2.58 **Clause 58** seeks to amend section 107 by providing 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.

2.59 **Clause 59** seeks to amend section section 109 by providing for matters that may be prescribed.

2.60 **Clause 60** seeks to amend section 110 by inserting "officer of the court", "an official in the employ of the Department of Home Affairs", "a ward councillor" or "any person working with children" to the list of persons that must report an abused or neglected child or a child in need of care and protection.

2.61 **Clause 61** seeks to amend section 111 by inserting a new subsection (3) which requires the Director-general to designate an official from within the Department to be the Registrar of the National Child Protection Register.

2.62 **Clause 62** seeks to amend section 114 by making minor consequential amendments so that terminology is aligned.

2.63 **Clause 63** seeks to amend section 117 by making consequential amendments as a result of the amendment under section 111.

2.64 **Clause 64** seeks to insert section 117A to provide the procedure for removal of a name from Part A of the Register.

2.65 **Clause 65** 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.

2.66 **Clause 66** seeks to amend section 119 by inserting a new subsection (2) which excludes persons, who were children during the commission of an offence against another child, from the operational provisions of sections 120 to 128 of the Act.

2.67 **Clause 67** seeks to amend section 122 by effecting consequential amendments.

2.68 **Clause 68** seeks to amend section 123 by making minor consequential and technical amendments to align terminology with the definitions.

2.69 **Clause 69** seeks to amend section 124 by effecting minor consequential amendments.

2.70 **Clause 70** seeks to amend section 125 by including the Registrar of the National Child Protection Register as a person that can access Part B of the Register.

2.71 **Clause 71** seeks to amend section 126 by effecting minor technical and consequential amendments to align the terminology with the definitions.

2.72 **Clause 72** seeks to amend section 127 by effecting minor technical and consequential amendments and providing that the Registrar must inform a person found unsuitable to work with children that that person's name and particulars are entered in Part B of the Register within 21 working days of such entry.

2.73 **Clause 73** seeks to amend section 128 in order to effect minor consequential amendments.

2.74 **Clause 74** seeks to amend section 131 by including necessary medical testing for children in need of care and protection or adoption.

2.75 **Clause 75** seeks to amend section 135 in order to effect minor technical amendments.

2.76 **Clause 76** seeks to amend section 141 by providing that any person must report instances of child labour and exploitation.

2.77 **Clause 77** seeks to amend section 142 by empowering the Minister to make regulations prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register; and the establishment of well-resourced designated child care and protection units with quality assurance units.

2.78 **Clause 78** seeks to amend section 145 to give the MEC powers to make regulations for information regarding the review of strategies.

2.79 **Clause 79** seeks to amend section 146 by effecting minor consequential amendments.

2.80 **Clause 80** seeks to amend section 147 relating to the determination of norms and standards for prevention and early intervention programmes and by inserting a new subsection (3) which provides that the norms and standards as 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.

2.81 **Clause 81** seeks to insert a new section 149A that provides for the Minister to make regulations regarding any matter necessary to facilitate the implementation of this Chapter.

2.82 **Clause 82** seeks to amend section 150 to clarify that a child who is abandoned or orphaned and has no parent, guardian, family member or caregiver

who is able and suitable to care for that child, is a child in need of care and protection. A child in need of care and protection will include "an unaccompanied migrant child from another country", "a victim of trafficking", or a child who "has been sold by a parent caregiver or guardian".

2.83 **Clause 83** seeks to amend section 155 by effecting minor consequential amendments.

2.84 **Clause 84** seeks to amend section 156 by effecting minor consequential amendments.

2.85 **Clause 85** seeks to amend section 157 by including reference to "guardian".

2.86 **Clause 86** seeks to amend section 159 by providing that a court may extend an alternative care order that has lapsed or make an interim order. Furthermore, it will be regulated to ensure the accountability of the respective officials regarding the lapsing of these orders. It forms part of the comprehensive long-term solution to foster care as a mechanism for managing foster care orders.

2.87 **Clause 87** seeks to amend section 167 by-

(a) providing that a child may not be placed in temporary safe care for more than 72 hours without a court order;

(b) providing that a child may not be placed in temporary safe care for a period longer than 6 months at a time;

(c) the insertion of subsection (3) (c) to provide approval periods for persons and

registered child and youth care centres.

2.88 **Clause 88** seeks to amend section 170 by providing that a child who absconds from alternative care and is apprehended or returns within a timeframe of 48 hours should not appear before the children's court. However, the designated social worker should assess the child to establish the reasons for the child to abscond and make recommendations to the provincial head of social development.

2.89 **Clause 89** seeks to amend section 178 by effecting minor consequential amendments.

2.90 **Clause 90** seeks to amend section 179 by making minor consequential amendments and by inserting new regulation making powers which include fees payable to a person with whom a child is placed in temporary safe care; the manner in which the MEC for 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.

2.91 **Clause 91** seeks to amend section 181

by effecting minor consequential amendments to clarify the principles relating to foster care.

2.92 **Clause 92** seeks to amend section 183 by effecting consequential

amendments.

2.93 **Clause 93** seeks to amend section 185 by the providing 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 cared for appropriately and the caregiver is not overburdened.

2.94 **Clause 94** seeks to amend section 186 by-

- (a) providing that a children's court may deem it necessary to order further supervision services and despite the provisions of section 159 (1) (a), regarding the duration of a court order, and after having considered the need for creating stability in the child's life, the court may place a child in foster care with a family member and order that the foster care placement subsists until the child turns 18 years;
- (b) effecting consequential amendments to align the Bill with the current terminology;
- (c) providing that this section does not apply to a cluster foster care scheme.

2.95 **Clause 95** seeks to amend section 188 by including a reference to disability.

2.96 **Clause 96** seeks to amend section 191 by -

- (a) providing that a child and youth care centre must be registered;
- (b) correcting the reference to prison;
- (c) including the exclusion of treatment centres from the requirement for registration as child and youth care centres in order to avoid dual registration;

- (d) providing that a registered child and youth care centre in addition to offering a therapeutic programme must offer a developmental programme designed for the residential care of children outside the family environment.
- (e) clarifying that a parent or other person having responsibilities also has rights with regards to the reception, care and development of children;
- (f) adding to the list of programmes that a child and youth care centre must provide.

2.97 **Clause 97** seeks to amend section 193 by effecting minor consequential amendments and by the addition of a new subsection (3A) which provides that the MEC for provincial social development may provide funding to a registered child and youth care centre that has only conditionally complied with the national norms and standards.

2.98 **Clause 98** seeks to amend section 194 to -

- (a) include any other relevant Ministers, relevant stakeholders and relevant civil society organisations as part of the stakeholders that the Minister must consult with when determining norms and standards;
- (b) amend section 194 to insert an additional requirement for the national norms and standards which relate to access to rehabilitation services for children with disabilities.

2.99 **Clause 99** seeks to amend section 197 by effecting minor consequential amendments.

2.100 **Clause 100** seeks to amend section 199 by deleting reference to conditional registration and to delete the reference to a partial care facility and substitute the reference with a child and youth care centre.

2.101 **Clause 101** seeks to amend section 200 by effecting minor consequential amendments and providing that the MEC for social development may assist a designated child protection organisation, where registration was granted with conditions, to comply with the norms and standards.

2.102 **Clause 102** seeks to amend section 201 by substituting the heading of "conditional registration" for "conditions relating to registration" and effecting minor consequential amendments.

2.103 **Clause 103** seeks to amend section 205 by effecting minor consequential amendments and adding the submission of a report as prescribed to the provincial head of social development that details the arrangement made for children who had been resident at the child and youth care centre.

2.104 **Clause 104** seeks to amend section 208 by effecting minor consequential amendments.

2.105 **Clause 105** seeks to amend section 209 by effecting minor consequential amendments and adding reference to the management board.

2.106 **Clause 106** seeks to amend section 211 by providing a discretionary provision 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.

2.107 **Clause 107** seeks to amend section 213 by -

- (a) substituting subsection (1) to specify that drop in centres are 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 and by adding psychosocial service under subsection (2);
- (b) inserting under subsection (3) subparagraph (aA) 'cognitive and spiritual' programme. The amendment intends to extend the list of programmes that a

drop-in centre may provide;

- (c) effecting consequential amendments.

2.108 **Clause 108** seeks to amend section 214 by including any other relevant Ministers, relevant stakeholders and relevant civil society organisations as part of the stakeholders that the Minister must consult with, regarding the development of the national strategy concerning drop in centres.

2.109 **Clause 109** seeks to amend section 215 which regulates the provision of drop-in centres by-

- (a) the insertion of a new subsection (3A) to allow a conditionally registered drop-in centre to qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards;

- (b) the amendment of subsection (4) to provide that the MEC may prioritise the funding for drop in centres;

- (c) by the amendment of subsection (4) (a) to provide 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.

2.110 **Clause 110** seeks to amend section 218 by deleting reference to conditional registration.

2.111 **Clause 111** seeks to amend section 219 by effecting consequential

amendments.

2.112 **Clause 112** seeks to amend section 220 by correcting the reference to “conditions relating to registration” and effecting minor consequential amendments.

2.113 **Clause 113** seeks to amend section 224 by providing for the monitoring of drop in centres.

2.114 **Clause 114** seeks to amend section 225 by effecting minor consequential amendments.

2.115 **Clause 115** seeks to amend section 226 which provides 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 MEC for social development, who must act in accordance with the provisions of section 110(5).

2.116 **Clause 116** seeks to amend section 232 by clarifying that the purpose of the register is for matching adoptable children with prospective adoptive parents and to effect other consequential amendments.

2.117 **Clause 117** seeks to amend section 233 that regulates consent to adoption by providing that a court may 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.

2.118 **Clause 118** 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 and to provide further that 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 recognised as a care-giver to the child to be adopted.

2.119 **Clause 119** seeks to-

- (a) amend section 236 which regulates the circumstances when consent is not required by the substitution in subsection (1) for paragraph (a) to include a person who 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) amend section 236 by the addition of the paragraph (c) in subsection (3)

dispensing with consent from the biological father following an allegation by the mother of the child, finding 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.

2.120 **Clause 120** seeks to amend section 239 by-

- (a) the substitution of the term “adoption social worker” with that of “a social worker responsible for adoption”;
- (b) 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.

2.121 **Clause 121** seeks to amend section 243 by providing for the prescribed form for the application. 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.

2.122 **Clause 122** seeks to delete section 249. This amendment is intended to delete reference to all fees that may be charged for adoption.

2.123 **Clause 123** seeks to amend section 250 by-

- (a) 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) deleting subsections (2) and (3) which provided exceptions to professional persons and organisations not listed in subsection (1) but can still provide adoption services. The deletion of these subsections is necessary to remove the repetition, because its context is contained in section 249 (2) (b).

2.124 **Clause 124** seeks to amend section 251 by inserting section 1A 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.

2.125 **Clause 125** 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 it with a notice. The amendment intends to clarify that an adoption social worker, not an organisation, may issue a 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 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

2.126 **Clause 126** 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, to make regulations. This amendment is intended to be consistent with the contemporary terminology.

2.127 **Clause 127** seeks to amend section 258 by correcting the cross references to other sections in the Act.

2.128 **Clause 128** seeks to amend section 259 by effecting minor consequential amendments and by deleting subsection (4).

2.129 **Clause 129** seeks to amend section 260 by-

(a) 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) providing 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.

2.130 **Clause** 130 seeks to amend section 261 by -

- (a) the substitution of subsection (2) to replace the word "shall" with the word "must";
- (b) the amendment of 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 one of a foreign country;
- (c) the amendment of 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) the amendment of subsection (5) (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) the amendment of subsection (5) (f) by the insertion of the words "and has not withdrawn consent" at the end of the 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 it is satisfied that the central authority of the convention country has agreed to the adoption of the child and has not withdrawn consent;
- (f) the amendment of subsection (6) (a) by the substitution for the words "within a period of 140 days from the date on which it has consented to the adoption" of 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) by deleting subsections (6) (b), (7) and (9). This amendment is necessary to align with the amendment in section 261(6) (a); and

(h) 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 to 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.

2.131 **Clause** 131 seeks to amend section 262-

(a) subsection (2) by the substitution of the word "shall" with "must". The amendment intends to maintain consistency in terminology;

(b) 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 by the substitution of the term "will" with "must" immediately after the inserted words of "of the Republic" in subsections (3) and (4) making it obligatory. The amendment intends to maintain consistency

in terminology;

- (c) in subsection (5) (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 it 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) subsection (5) (f) by the insertion of the words "and has not withdrawn consent" at the end of subsection. The amendment intends to clarify that the court may issue an adoption order if the requirements are met and it is satisfied that the Central Authority of the Republic has agreed to the adoption of the child and has not withdrawn consent;
- (e) in subsection (6) by the substitution for the words "within a period of 140 days from the date on which it has consented to the adoption" of 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) by deleting subsections (6) (b), (7) and (9). This amendment is necessary to align with the amendment in section 262(6) (a);
- (g) 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 to 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 non-convention country.

2.132 **Clause 132** seeks to amend section 263 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.

2.133 **Clause 133** seeks to amend section 264-

- (a) by the amendment 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) by the substitution in subsections (2) and (3) for the word "shall" of the word "must", and the insertion of the words "of the Republic" immediately after the words Central Authority. The amendment intends to maintain consistency in terminology;

- (c) in 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.

2.134 **Clause 134** seeks to amend section 265 by the substitution of subsections (1), (3) and (4) by the insertion of the words "of the Republic" at the end of the words Central Authority and by the substitution in subsections (2), (3) and (4) for the word "shall" of the word "must". The amendment intends to maintain consistency in terminology.

2.135 **Clause 135** seeks to amend section 266-

- (a) by the substitution in subsections (1), (2) and (5) for the word "shall" of the word "must". The amendment intends to maintain consistency in terminology;
- (b) by inserting the words "of the Republic" immediately after the words Central Authority in subsection (3) and "in the prescribed form and manner". This amendment is intended to prescribe the form and 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 and manner";
- (c) by the addition of subsection (6) which provides that 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 irrespective of whether the adopted child is an adult at the time of application for recognition.

2.136 **Clause 136** seeks to amend section 268 -

- (a) by inserting correct numbering and by the insertion of the words "of the Republic" immediately after the words Central Authority 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 the prescribed form, if the adoption is in compliance with the law and has not been rescinded;
- (b) by inserting section 2 which provides that the 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.

2.137 **Clause 137** 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 subsection (3) which provides that where guardianship is not equivalent to adoption as recognised 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.

2.138 **Clause 138** seeks to insert a new section 278A to expedite proceedings concerning the return of a child who has been abducted. This amendment is necessary to avoid delays in the judicial process. Once there are prolonged delays, a child who has been abducted adapts and adjusts to the new environment and it might not be in their best interest to be returned.

2.139 **Clause 139** seeks to amend section 279-

- (a) by the deletion of 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) 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.

2.140 **Clause 140** seeks to amend section 292 by the substitution in subsection (1) (c), (d) and (e) for the word "domiciled" of the words "ordinarily resident" and by the deletion of the words "domiciled or" in paragraph (e).

2.141 **Clause 141** seeks to amend section 295 -

- (a) by the amendment of subparagraph (ii) in both paragraphs (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) by the deletion of subparagraphs (vi) and (vii) in paragraph (c).
- (c) by the insertion of sub-paragraph (dA), which provides 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.

2.142 **Clause 142** seeks to amend section 297 by the substitution of sections in subsection (1) (e) to provide for new cross referencing.

2.143 **Clause 143** seeks to insert a new 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.

2.144 **Clause 144** seeks to amend section 304 by amending the heading of section

304 by deleting the word "shelter' and effecting consequential amendments. This amendment is intended remove reference to the now obsolete term "shelter".

2.145 **Clause 145** seeks to amend section 305 by effecting consequential amendments.

2.146 **Clause 146** seeks to amend section 306 by correcting cross references and effecting minor consequential amendments.

2.147 **Clause 147** seeks to amend section 312 by providing that the MEC for social development, subject to any provincial strategic plan, may enter into an agreement with a designated child protection organisation or a person on an agency basis in the relevant province.

3. PERSONS OR BODIES CONSULTED

3.1 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 26 National Departments, provincial departments of social development and Civil Society organisations.

3.2 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.

Furthermore, four submissions were received from individuals in relation to adoption matters.

4. FINANCIAL IMPLICATIONS FOR THE STATE

Most of the amendments proposed by this Bill relate to normal operations related to specific matters regulated under the Act. For this reason, the financial implications thereof have already been taken into account when compiling the budget for these specific matters since the Act came into operation. The Department of Social Development costed the Bill and its cost drivers and the results revealed that the overall cost of the Bill is expected to be R32 427 billion in 2020/21 increasing to R 58.353 billion in 2028/29. The amendments to provide for early childhood development centres will have a significant financial implication for the provinces.

5. PARLIAMENTARY PROCEDURE

5.1 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 76 of the Constitution.

5.2 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.

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

DATED
MINISTRY OF SOCIAL DEVELOPMENT