CENTRE FOR CHILD LAW

CENTRE FOR CHILD LAW SUBMISSIONS TO THE PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT ON THE CHILDREN'S AMENDMENT BILL [B13-2015] AND CHILDREN'S AMENDMENT BILL [B14-2015]

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Structure of written submissions:

1. Submissions on Children's Amendment Bill [B13-2015]

2. Submissions on Children's Amendment Bill [B14-2015]

3. Request to make oral submissions

CENTRE FOR CHILD LAW

SUBMISSIONS ON THE CHILDREN'S AMENDMENT BILL [B13-2015]

Amendment of section 120 and section 122 of the Children's Act 38 of 2005

Background

Clause 2 of the Children's Amendment Bill [B 13 – 2015] contains amendments to section 120(4) and (5) of the Children's Act. Section 120 must be read within the broader framework of Chapter 7 of the Children's Act dealing with the protection of children through the child protection system and the National Child Protection Register (NCPR). The amendments in clause 2 are in relation to provision on the NCPR.

The NCPR is made up of two parts; Part A contains a record of abuse or deliberate neglect on specific children and the circumstances surrounding the abuse or deliberate neglect. Part B of the register contains a record of persons who have been found to be unsuitable to work with children. The information in Part B is used to protect children against abuse from persons found to be unsuitable to work with children. Section 120 deals with how persons found to be unsuitable to work with children are placed on the NCPR, it sets out which courts and/or forums are empowered to find a person unsuitable to work with children; who can make an application to have a person placed on the register as well what types of crimes a persons must have committed against children to be placed on the NCPR.

The amendments to section 120 broaden the types of offences that cause a person to be found to be unsuitable to work with children and aim to clarify the fact that when a person is convicted of an offence referred to section, they are by operation of the law considered and deemed unsuitable to work with children.

The amendments further aim to align the Children's Act with the decision of the Constitutional Court in *J v National Director of Public Prosecutions and Another 2014 (2) SACR 1 (CC)*. The Constitutional Court declared the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 (Act 32 of 2007) unconstitutional in its requirement that the names of child offenders be automatically included on the

National Register for Sex Offenders when convicted of a sexual offence against a child or a person with disability. The Court held that automatic inclusion on the Register violated a child's right in terms of section 28(2) to have their best interests taken into account as the paramount consideration in every matter affecting the child. The Court held that the individual circumstances of children should be taken into account and that they should be given the opportunity to be heard by the sentencing court regarding the placement of their details on the Register. The Court decided that sentencing courts should be given the discretion to decide whether to place a child on the Register or not. The Court ordered Parliament to cure the offending provisions.

The amendments however do not take into account the amendments to the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 that arose as a result of the Constitutional Court judgment. On 07 July 2015 the President of the Republic assented to the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act 5 of 2015 (Act 5 of 2015). The Centre for Child Law (CCL) will make submissions below on the alignment of Clause 2 with Act 5 of 2015. The CCL aligns itself to the fact that persons who commit the offences contemplated in section 120 should not work with children. The CCL however submits that the system regulating this must be tightened and aligned to Act 5 of 2015 to ensure consistency of process.

Proposed amendments in Children's Amendment Bill [B 13 – 2015]

1. Section 120 regulates the procedure for finding persons unsuitable to work with children.

2. Section 120(4), un-amended, reads as follows:

   (4) In criminal proceedings, a person must be found unsuitable to work with children-
   (a) on conviction of murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child; or
   (b) if a court makes a finding and gives a direction in terms of section 77 (6) or 78 (6) of the Criminal Procedure Act, 1977 (Act 51 of 1977) that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was by reason of mental illness

or mental defect not criminally responsible for the act which constituted murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child.

3. The amended section 120(4) proposed in Clause 2 will read as follows:

(4) In criminal proceedings, subject to the provisions of subsection (4A), a person must be ***[found]*** *deemed unsuitable to work with children—*
(a) on conviction of murder, ***[attempted murder, rape, indecent assault or]*** *any sexual offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), assault with the intent to do grievous bodily harm,* ***[with regard to a child]*** *where a child is the victim of any such offence, or any attempt to commit any such offence, or possession of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996); or*
(b) if a court makes a finding and gives a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was by reason of mental illness or mental defect not criminally responsible for the act which constituted ***[murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child]*** *an offence contemplated in paragraph (a).";*

"(4A) Before making an order contemplated in subsection (1), in respect of a child who was under the age of 18 years when he or she committed the offence, the court must—
(a) afford the child offender an opportunity to make representations as to why such an order should not be made;
(b) have the best interest of the child offender considered of paramount importance; and
(c) on good cause shown, make an order that the particulars of the child offender not be included in the Register."; *and*
(c) by the substitution for subsection (5) of the following subsection:

"(5) Any person who has been convicted of an offence contemplated in subsection (4)(a), whether committed in or outside the Republic during the five years preceding the commencement of this Chapter, is deemed to be unsuitable to work with children."

4. Clause 2(a) of the Bill proposes amendments to the section that substitute the word 'found' in section 120(4) with the word 'deemed'. This is done to make it clear that when a person, including a child, is convicted of offences referred to in the section, they will by operation of the law be considered and deemed unsuitable to work with children. This creates the default position of child offenders being automatically placed on the register upon conviction, The CCL submits that this is not in alignment with Act 5 of 2015. Act 5 of 2015 has the default position that children are not placed on the National Register for Sex Offenders (NRSO) unless an application is made by the prosecutor, a probation officer's report considered and representations made by the child as to why they should not be placed on the NRSO. The CCL submits that the amendments should allow for placement on the register to arise as a result of an application of parties involved in the matter.

5. The CCL further submits, in relation to section 120(4), that the proposed amendments to do not contain a practical mechanism to ensure that the details of a person **deemed** unsuitable to work with children are placed on the NCPR. This is not in alignment with the Sexual Offences Act which provides, in section 50(3), that when an order is made to place a person on the NRSO the Registrar of the High Court must forward the order (and all the particulars of the person in question) to the Registrar of the NRSO. The Registrar must then immediately and provisionally enter the particulars of the person concerned. The CCL submits that provision should be made for an order that a person **deemed** unsuitable to work with children to be forwarded to the Department of Social Development.

6. Clause 2 proposes amendments to section 120(4)(a) that delete the words 'attempted murder, rape, indecent assault' and substituting them with a reference to any sexual offences contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (the Sexual Offences Act). This ensures that a wide range of sexual offences are included as grounds for placement on the register. The CCL agrees with this amendment but submits

however that 'attempted murder' should not have been deleted as it is an offence not contemplated by the Sexual Offences Act. The deletion of attempted murder would leave a gap in the legislation.

7. Clause 2(b) amends section 120 by inserting a subsection 4A, this was done to give effect to the case of *J v National Director of Public Prosecutions*. Subsection 4A makes provision for a child who has been convicted of an offence contemplated in the section and deemed unsuitable to work with children to make representations as to why they should not be placed on the NCPR; for the court to take the best interests of the child offender into account and only make an order placing the child on the NCPR if good cause is shown. The order can be made by the children's court, any other court in any criminal or civil proceedings, any forum established by law in any disciplinary proceedings concerning the conduct of that person relating to a child.[1]

8. The CCL submits that subsection 4A is problematic due to the fact that child offenders will not have legal representation in all the hearings where such an order can be made. Children will very rarely have legal representation to provide them with appropriate and necessary assistance in the Children's Court and other forums or panels. The child will however have legal representation the Criminal Courts and therefore have necessary assistance. The CCL finds this concerning as the children are given no legal assistance in a process that is likely to affect their lives long term.

9. The CCL further implores the committee to, in light of the complexities surrounding the placement of children on the NCPR, direct that placement of children should only arise out of criminal matters. Placement arising out of children's court and other disciplinary forums should only apply to adult offenders.

10. CCL further submits that subsection 4A should provide for a social worker's report to be made on the child's probability to commit another offence contemplated in section 120 and the appropriateness of placing the child on the register.

[1] Section 120(1) of the Children's Act.

POSITION IN ACT 5 OF 2015	POSITION IN THE CHILDREN'S AMENDMENT BILL
A child who commits an offence does not automatically go on the NCPR	The word 'deemed' makes automatic placement of children on the register the default position
An application to place the child on the register is initiated by the prosecutor, who makes an application to court	A children's court, any other court or forum can place a child on the register of its own volition or on application
A probation officer's report must give a report which deals with the probability of the child committing further sexual offences	No report done
The child is always legally represented and the child's lawyer would address the court on why the child's details should not be entered on the register	Children rarely have legal representation in the children's courts and disciplinary forums

11. The CCL notes that the title of section 122 has not been amended to reflect the inclusion of the word deemed. The title currently reads as follows 'Findings to be reported to Director-General'. The CCL submits that, in light of its submissions in paragraphs 4 and 5 above, the title be amended to reflect the word 'deemed.

Amendment of section 150 of Act 38 of 2005

Background

The foster care system in South Africa is in crisis. There are 500 000 children in a system designed for less than a fifth of that number. There remain 1.5 million children who are living with extended family members who may still be eligible for foster care, though most are currently accessing the child support grant. The system cannot cope with those already in it, and has no hope of being able to effectively deal with the other children that may in the future apply to enter it.

It is clear that grandmothers and aunts caring for children need to have decent financial assistance to assist them in caring for children. This amount should be more than the child support grant, and the Centre for Child Law in no way criticizes relatives caring for children who seek the larger foster child grant. They should have access to this social assistance.

The big question that must ultimately be answered is whether the foster care system is the way to get this money to them, or whether it should be made easier, by cutting out the need for the foster care system for the majority of caregivers who do a good job of caring for children.

There would still need to be checks and balances in place to ensure that children who are abused or neglected by their caregivers are dealt with as children in need of care and protection – but this can probably be effectively done using the 'Isibindi' model in which social service professionals other than social workers do the work on the ground to ensure children are linked with the necessary services.

A much larger, systemic solution to the problems must be found. In 2011 the Centre for Child Law brought an urgent application to the North Gauteng High Court to stop the foster care system from collapsing. This court application was necessary because approximately 120 000 foster child grants had fallen off the system. This was because courts and social workers could not keep up with the extending foster care orders. The court order fixed the problem temporarily, but the court ordered the Department of Social Development to come up with a systemic solution within 3 years.

The Department was not able to do so, and at the last minute, in December 2015, they rushed back to court to have that order extended for a further 3 years. The Department now has to report to the Centre for Child Law and the Court every 6 months to indicate what progress is being made in dealing with the backlog. However, this court order also only lasts for 3 years. By the end of 2018 the Department MUST have a whole new system in place that will be workable.

It is apparent, therefore, that the very minor amendments made here do not provide any systemic solutions. They might make it easier for the courts to grant foster care orders in a larger number of cases. Although this will deliver more money to more families which is not a bad thing in itself, it will continue to overburden the care and protection system because of all the legal procedures required. The danger of this is that children who are being abused and neglected will not get the attention they need because social workers and children's courts will be spending all their time on foster care.

The reason for this amendment to section 150(1)(a), according to the memorandum accompanying the Bill, is to give effect to the case of *Nono Cynthia Manana* and others, which was a judgment of the South Gauteng High Court. It is important to note that this was not a judgment of the Constitutional Court (unlike the case of *C and Others v Department of Health and Social Development, Gauteng*). Where the Constitutional Court changes the law, then it is imperative that the statute be brought in line. That is not the case with a mere 'interpretation' of the law as occurred in the *Manana* case. High Courts interpret the law on a daily basis. The legislature is not under any obligation to change the law to come in line with such interpretation.

Sometimes it is wise to do so, in order to create certainty and ensure the same interpretation throughout the country. In this case, however, it is unlikely that the words added by the amendment are going to help to clarify – on the contrary, they are more likely to confuse.

For the abovementioned reasons, the Centre for Child Law submits that it is not necessary to make the piece-meal amendments that are proposed. They will create further confusion and will add a further burden to the system. It is therefore proposed that the amendments to section 150 be rejected, and that the law remain as it is until a broader, systemic solution can be found.

These submissions now turn to a more detailed examination of the proposed amendments.

1. The Bill proposes the following:

5. Section 150 of the principal Act is hereby amended-

(a) By the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
"A child is in need of care and protection if ***[the]*** *such a child-"*

and

(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
"(a) has been abandoned or orphaned and ***[is without any visible means of support]*** *does not ostensibly have the ability to support himself or herself."*

2. The first amendment (replacing 'the' with 'such') does not change the meaning and does not have any practical consequences. Thus we do not object to it, though we do not see any reason for this amendment.

3. The second amendment (replacing the words 'is without any visible means of support' with the words 'does not ostensibly have the ability to support him or herself') is far more significant, and it is this amendment that will now be discussed.

4. The Centre for Child Law is concerned about this new wording for the following reasons:

   4.1 It introduces a 'means test' although the law has never had a means test for foster care.

   4.2 The means test applies to the child. Why should a child be expected to have 'the ability to support him or herself'? Why is that the test to decide if a child needs care and protection? Even if a child has the financial means to care for him/herself (eg because of an inheritance) the child will usually still need a caregiver so this is not a rational basis for deciding if a child is in need of care and protection.

   4.3 The only situation in which a child will have the means to support him or herself is in the case of the child having inherited money or property. However, in a recent case of the Constitutional Court known as *Wayne Coughlan NO v the Road Accident Fund* the Court said that the Road Accident Fund could not deduct the foster child grant from the amount that should be awarded for loss of earnings where the child's mother died in a road accident and the maternal grandmother had been caring for them. Refusing the foster child grant because the child has an inheritance conflicts with the finding of the Constitutional Court, and could therefore be unconstitutional.

   4.4 The word 'ostensibly' will cause further confusion, and is not going to help with getting a more equitable interpretation, as the children's courts are likely to all interpret it differently.

SUBMISSIONS ON THE CHILDREN'S AMENDMENT BILL [B14-2015]

Background

The Children's Amendment Bill [B 14 – 2015] contains two clauses amending sections 151 and 152 of the Children's Act. Section 151 and 152 must be read within the

broader framework of Chapter 9 of the Children's Act dealing with whether a child is in need of care and protection. One of the ways in which care and protection proceedings relating to a child may be started, is with the removal of the child, either with or without a court order depending on the circumstances. When a child is removed, it kick-starts the investigation into whether a child is in need of care and protection on any of the grounds set out in section 150 and whether the child is in need of alternative care or support services. Sections 151 and 152 are therefore a gateway to care and protection proceedings.

The amendments to sections 151 and 152 follows the decision of the Constitutional Court in *C v Department of Health and Social Development, Gauteng 2012 (2) 208 (CC)*. The Constitutional Court declared parts of section 151 and 152 unconstitutional because it did not allow a child or a parent to appear before the Children's Court within a short period of time to contest the removal of the child. Section 151 regulates the emergency removal of a child where the children's court authorises a designated social worker with a court order to remove a child and place the child in temporary safe care. Section 152 deals with the emergency removal of a child and placement in temporary safe care by either a policeman or a social worker, without first obtaining a court order from the children's court.

These provisions compelled the persons removing the child to give notice of the removal to the parent or caregiver, a social worker, the Children's Court and the Department of Social Development.[2] However, sections 151 and 152 did not create a mechanism that allowed automatic judicial review of the decision to remove. It also did not stipulate a requirement that the child and his or her parents must appear before a judicial officer to review the decision to remove the child. This appearance gives the parents and/or the child an opportunity to persuade the presiding officer that the removal was not necessary and should be set aside.

In addition to the lack of a review mechanism, section 155 allows the social worker 90 days from the date of removal to investigate the matter and it is only thereafter that the child will be brought before the Children's Court. This meant that the first time any of the parties, including the child, would appear in court in connection with the removal

[2] S 151(7) and s 152(2).

of the child would be after 3 months, 90 days had passed. Any questions the parents and the child may have about why the child was removed, where the child was placed and how and when the parents may have contact with the child could only be addressed after 3 months.

This was a significant departure from the procedure under the Child Care Act 74 of 1983 which was repealed by the Children's Act. The removal provisions of the Child Care Act specifically required that the child must be brought before the Children's Court after the removal for judicial review of the decision to remove. The regulations to the Child Care Act stated that this had to occur within 48 hours from the date of removal. Similar provisions were omitted from the Children's Act and there was consequently no empowering provision that allowed automatic judicial review of a decision to remove before 90 days had lapsed.

The Constitutional Court found that despite the existence of stringent conditions for removal set out in the Children's Act, the possibility exists that a removal may be made in error. There may also be situations where the discretion to remove is not carried out with sufficient investigation or consideration of whether the removal is necessary or whether there are better ways of securing the child's safety. In other words, removal procedures are utilised by social workers as the first resort instead of the last resort.

The Constitutional Court found that it is in the best interests of children that a decision by a court to remove a child, with or without a children's court order, must be subject to automatic review by a court, as a matter of course and not only after 90 days. The parents or care-givers and the child must be present at the review proceedings. It is in the best interests of children that the law that allows the removal of children also include provisions to test the correctness of the removal in the presence of the parents and the child.[3]

Due to the fact that children were being removed on a daily basis and there was an urgent need to remedy the situation, the Constitutional Court did not suspend the declaration of invalidity but read in new sections into the text of the Act.

[3] At para 79.

The proposed amendments reflect the language read in by the Constitutional Court to a large extent but there are some deviations. There is also a new section 152A proposed in the Children's Amendment Bill [B13 – 2015] which should be read with the amendments to sections 151 and 152.

Proposed amendments in Children's Amendment Bill [B14 – 2015]

1. Section 151 regulates the removal of a child with an order from the children's court authorising the removal.

2. Section 151(2), un-amended, read as follows:

   (2) A presiding officer issuing an order in terms of subsection (1) may also order that the child be placed in temporary safe care if it appears that it is necessary for the safety and well-being of the child.

3. The amended section 151(2) proposed in Clause 2 (a) will read as follows:

   (2)A presiding officer issuing an order in terms of subsection (1) may also issue an interim order ***[that the child be placed in]*** *for the temporary safe care of the child if it appears that it is necessary for the safety and well-being of the child.*

4. Clause 2(a) of the Bill proposes amendments to the section to make it clear that the first order of the children's court authorising the emergency removal and placement of the child, is an interim order. It will only become permanent if the removal is confirmed on the next court day. The amendment removes any uncertainty regarding the status of the removal order and will assist social workers in understanding the need to refer the matter to the children's court on the next court day. The CCL supports the proposed amendment.

5. Clause 2 (b) proposes a new section be included after 151(2) as 151(2A):

   (2A) The court ordering the removal of the child must simultaneously refer the matter to a designated social worker and direct that social worker to ensure that the—

   (a) order in terms of subsection (2) is placed before the children's court, for review before the expiry of the next court day following the removal; and

   (b) child concerned, and where reasonably possible the parent, guardian or care-giver, as the case may be, are present in the children's court for the purposes of assisting the court in making a decision which is in the best interest of the child.

6. The CCL supports the new section 151(2A) in its purpose to create a mechanism that ensures the decision to remove the child is reviews by the presiding officer on the next court day. The section complies with the judgment of the Constitutional Court.

7. We submit that the proviso in section 151(2A)(b), that the parents or care-giver need only be at court if it is reasonably possible, should be extended to include the child. There may be circumstances present that makes it impractical to bring the child to court. Examples would be where the child is an infant, it may negatively impact the child to miss school or where the parents or care-giver is accused of serious physical abuse or sexual abuse and it may be traumatic for the child to confront the parent or care-giver. This is a decision by the social worker who will have to provide reasons to the presiding officer why the child is not present.

8. Section 152(2) regulates removal of a child without a court order by a designated social worker. Section 152(2) places an obligation on the social worker who removed and placed the child in temporary safe care without a court order, to ensure that the matter is brought to the attention of the children's court and the Department.

9. Clause 3 proposes a number of minor amendments in section 152(2)(a) to (c). The CCL support these amendments and have no submissions in relation to these amendments.

10. Clause 3(e) proposes the insertion of a section 152(2)(d) that did not exist previously. The clause reads as follows:

(d) ensure that the—

(i) matter is placed before the children's court for review before the expiry of the next court day after placement of the child in temporary safe care; and

(ii) child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children's court.

11. In respect of the proposed 152(2)(d)(i) we submit that the words 'the removal and' should be included before the word 'placement'. This will create clarity in respect of the timeline from the time of removal to the next court day so that it is clear when the matter has to heard for review of the decision to remove. The section will read as follows:

(i) matter is placed before the children's court for review before the expiry of the next court day after the removal and placement of the child in temporary safe care; and

12. In respect of the proposed 152(2)(d)(ii), our submission in respect of the new section 151(2A)(b) – that the proviso pertaining to the presence of the parent or care-giver being reasonably possible should be extended to the child – applies here as well. This will also ensure consistency in respect of this requirement throughout sections 151 and 152.

13. Section 152(3) regulates the removal of a child, without a court order, by a member of the South African Police Service. Removal by a police officer requires an additional procedural step as the matter must be referred from the police officer to a social worker. It is only after this referral that the social worker can notify the children's court and the Department of the removal. Additional regulation in respect of the time period is therefore required.

14. The amendment in clause 3(g) reads as follows:

> *(b) refer the matter before the end of the first court day after the day of removal of the child to a designated social worker,* ***[for investigation contemplated in section 155(2); and]*** *who must ensure that—*
>
> *(i) the matter is placed before the children's court for review before the expiry of the next court day after placement of the child in temporary safe care;*
>
> *(ii) the child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children's court, unless this is impracticable; and*
>
> *(iii) the investigation contemplated in section 155(2) is conducted;*

15. The amended section 152(3)(b) ensures the police officer refers the removal of the child to a designated social worker before the end of the next court day following the day of the removal.

16. The amended section 152(3)(b)(i) to (iii) is news and regulates the process that the social worker must follow after receiving a referral from the police officer who removed the child.

17. The CCL submits that section 152(3)(b)(i) is unclear and will create confusion in respect of when the social worker must place the matter before the children's court. When the police officer removes the child, the child will also be placed in temporary safe care. The matter is then referred to a designated social worker before the end of the next court day. The reference to "next court day after placement of the child" in section 152(3)(i) makes it seem as if the social worker must ensure the matter is reviewed by the children's court on the same day as the day on which the referral from the police officer was received. Presumably, the intention was that the police officer would not place the child in temporary safe care but that the child would only be placed in temporary safe care by the social worker on receipt of the referral from the police officer. This is however

not how removal will happen practically. The child will not be kept at a police station but will be taken directly to temporary safe care by the police officer.

18. It is therefore necessary to change section 152(3)(b)(i) to reflect that the social worker must ensure the removal and placement is reviewed by the children's court before the end of the next court day following the day of the referral from the police officer to the social worker. We propose that section 152(3)(b)(i) should read as follows:

(i) the matter is placed before the children's court for review before the expiry of the next court day after the referral;

19. In respect of the proposed 152(3)(b)(ii), our submission in respect of the new section 151(2A)(b) and 152(2)(d)(ii) – that the proviso pertaining to the presence of the parent or care-giver being reasonably possible should be extended to the child – applies here as well. This will also ensure consistency in respect of this requirement throughout sections 151 and 152.

20. 'Adoption social worker' is defined in section 1 as:

(a) a social worker in private practice—

(i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978); and

(ii) who is accredited in terms of section 251 to provide adoption services; or

(b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services;

21. Clause 1(a) proposes the inclusion of social workers in the employ of the Department of Social Development, either national or provincial, in the list of social workers who are adoption social workers.

(c) a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis;

22. The CCL supports the inclusion of social workers in the employ of the Department as persons who may conclude adoptions. The inclusion of departmental social workers will improve access to adoption services in two respects:

a. It will increase the geographical accessibility of adoption services. CPO's and private social workers who are accredited to facilitate adoptions tend to be urban based and it may be extremely difficult for persons in rural areas to obtain assistance. Allowing departmental social workers to

facilitate adoptions will mean that prospective adoptive parents can approach the closest office of the Department of Social Development.

b. Expenses relating to adoption services may be prohibitively expensive to people who are in a position to care for a child but who do not have funds for the expenses related to using a private social worker or CPO. A family who has voluntarily been caring for an orphaned or abandoned child may want to adopt the child to give the child a family and permanency but may be unable to do so in light of the cost disbursements. Facilitating an adoption through DSD may cut down on costs that are necessary for CPO' and private social workers in order to be viable.

23. CCL is concerned about the fact that the proposed amendment does not include a requirement that a DSD social worker must have a specialisation and be registered in terms of the Social Service Professions Act which prescribes adoption as a specialisation.

24. Adoption is a highly specialised service and requires experienced and qualified handling in respect of counselling, matching and post-adoption services. Adoption is highly sensitive and there is at all times a risk that the adoption may break down if the appropriate services are not rendered. In addition, some adoptions become contested and highly acrimonious. It requires skilled handling to ensure the child is not harmed in the process. If all social workers providing adoption services are not required to have the same experience and qualifications it means that there will be inequality in the services provided to children.

25. The CCL should not be understood to say that DSD social workers do not have the skills and qualifications to provide appropriate adoption services. We strongly support the provision of adoption services by DSD. However, all social workers, DSD and private social workers and CPO's, must comply with the same requirements as set out in the Social Service Professions Act and the Regulations thereto.

26. A further reason why DSD social workers facilitating adoption should have registered a speciality is that it provides a measure of quality control. DSD is responsible for the accreditation of CPO's and private social workers who want to provide adoption services. In addition, DSD has oversight over all adoptions through the requirement of a letter of recommendation in terms of section 239 of the Children's Act. This means there is a high degree of scrutiny and oversight over the services provided by private social workers and accredited CPO's. If DSD social workers are not required by law to register a speciality in order to facilitate adoption, it means there will be no check on the services provided by DSD social workers. The same department will facilitate the adoption and recommend the adoption in terms of section 239. The requirement that DSD social workers must register a speciality provides a check and balance to ensure the quality of services provided by DSD.

27. We therefore propose that clause 1(a) should read as follows:

(c) a social worker who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978) in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, ;

REQUEST TO MAKE ORAL SUBMISSIONS

The Centre for Child Law requests an opportunity to make oral submissions on the Children's Amendment Bill [B13-2015]. We note that the dates for oral submissions for this bill have been set at 02 and 04 September 2015, we would like to request the opportunity to make submissions on 04 September 2015.

The Centre further requests the opportunity to make oral submission on the Children's Amendment Bill [B14-2015]. We note that the dates for oral submissions for this bill have been set at 23 and 25 September 2015.