



## Commentary on the Children's Amendment Bill [B18-2020] Adoptions

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### Topic:

Date:	26 November 2020
Topic or Bill:	Children's Amendment Bill [B18-2020]
Name of Committee:	Portfolio Committee, Social Development

### Detail of organisation making submission:

First and Surname	Katinka Pieterse
If you have been nominated to represent an organization	✓
Name of organization (if nominated to represent an organisation)	National Adoption Coalition of SA (NACSA)
Your position in the organization	Elected Chairperson

<p>Aims of the organization</p>	<ul style="list-style-type: none"><li>✓ Promote and build awareness and understanding of adoption.</li><li>✓ Build partnerships and collaboration across the adoption community.</li><li>✓ Share best practice and build capacity (training &amp; development), in support of the Department of Social Development.</li><li>✓ Lobby government and regulators on behalf of the adoption community.</li><li>✓ Supporting the Department of Social Development in their regulation of industry standards and code of conduct.</li><li>✓ To lead the change needed in our society, to embrace adoption as the best permanent alternative solution for children, outside of their family.</li><li>✓ For more detail on the organization please visit: <a href="https://adoptioncoalitionsa.org/">https://adoptioncoalitionsa.org/</a></li></ul>
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How many people belong to the organization:	The organization has 117 registered members, including member organisations and individuals
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**Contact Details:**

Postal Address:	P O Box 1675 Bramley 2018
Street Address:	20 Leigh Ave, Fairvale Ext. Johannesburg South Africa
Province:	National
Tel No:	n/a
Cell No:	082 940 1035
Fax:	n/a
E-Mail:	<a href="mailto:katinka@abbaadoptions.co.za">katinka@abbaadoptions.co.za</a> and or info@adoption.org.za

**We would like the opportunity to address the committee in person:**

Yes

**Names of people that wish to appear before the committee:**

Name	Role
Katinka Pieterse	Chairperson NACSA
Sue Krawitz	Co-Chairperson NACSA
Morgan Courteney	Legal Advisor
Elke Day	Adoption Social Worker
Cassandra Nonhlanhla Moodley	Adoptee
Kgomotso Mgibe	Birthparent
Tumi Setshwaelo	Adoptive Parent & Board Member DCPO
Nadene Grabham	Operations Director C&YCC Door of Hope
Robyn Wolfson Voster	Children's rights activist
Dee Blackie	Children's rights activist

Yours Sincerely



Katinka Pieterse  
Chairperson NACSA

## **1. Introduction**

The submission is made on behalf of the National Adoption Coalition of South Africa. As the National Adoption Coalition, we have a mandate to be a collective voice of the adoption community. If you speak to anyone in the community about adoption, the immediate response tends to be that they have heard that the process is long and difficult. While we acknowledge the need for a rigorous process to be in place to ensure that the permanent placement of a child is done with the utmost of care, we find that there are many “road blocks” along the way which could be eliminated. Slow bureaucratic processes rob a child of the window of opportunity that exists in the first 1000 days of life, to establish the foundation of their physical, emotional, and psychological wellbeing that has an impact into adulthood. By creating more accountability in the system for time frames and prioritising children being placed into a family environment as soon as possible, we can minimise the trauma experienced by adopted children.

## **2. Context**

Section 28(1)(b) of the South African constitution states that every child has the right to parental care or to appropriate alternative care when removed from the family environment. It is clear that the preferred form of care for a child is by parents or family members. Not all children will benefit from adoptions and the Children’s Act and relevant policy stipulates when a child would be adoptable and indicates that there should be a process to determine if a child could be placed in the care of family before the child could be considered for adoption. However family care is not always possible for all children. Adoption is a key service to be considered for a child who does not have the prospects of permanent care by his or her biological parents and or family.

In South Africa, the Children’s Act (38 of 2005) and the Adoption Policy Framework and Strategy (DSD, 2010a) prioritises adoptions as a preferred form of permanent alternative care for young adoptable children in line with the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the

Child. The purpose of adoption is to protect children and to promote the goals of permanency by providing stable permanent alternative family care. The emphasis is on the fact that children have a right to grow up in permanent and stable families, and that adoption should be based on the child's best interest and rights. Adoption is particularly evidenced to be the best option for children who have been abandoned and who have no family or kin network to provide care.

The number of children that could potentially benefit from adoptions appears to be increasing. While there are no formal abandonment statistics (<https://www.dailymaverick.co.za/opinionista/2020-10-21-the-truth-behind-sas-shocking-child-abandonment-statistics/>), anecdotal reports and figures from Baby Homes show an increase in the number of children who have been abandoned without any indication of family relationships and would therefore be in need of permanent unrelated family care. Despite this, adoption numbers remain relatively low when compared to other forms of alternative care, and sadly the numbers show a consistent decline. During the 2010/11 financial year there were 2436 adoptions registered in SA, compared to only 1186 registered during the 2017/18 financial year. These numbers are inclusive of the number of related or family adoptions.

The Table below provides statistics of children by care placement arrangement for 2017, 2018 and 2019. This information confirms the low number of adoptions compared to other forms of care.

**Children according to childcare placement, 2012, 2017/18 & 2019**

Number of children in foster care 2019	Estimated number of children in residential care facilities 2018	Number of adoptions registered in SA 2017/2018
386 019	21 000	1 186 (Most recent statistics requested from the Department of Social Development but not yet made available)

Source: De Vries (2019); Flash report: Amendment Bill (2019) Draft White Paper for Social Development (2019)

According to research, the decline in the adoption rate can be contributed to various factors, including:

- Shortage of social workers and available adoptive parents to meet the increasing pool of children in need of adoption.
- Poor understanding of the need for and benefits of adoption, and a lack of understanding of when adoption should be considered as the most appropriate form of care.
- Inconsistencies in legal processes, systemic or procedural delays and a lack of specialised training of stakeholders and cultural and social obstacles.
- There is also no additional financial support or adoption grant for adoptive parents, as is the case with foster care. Adoptive parents could potentially access the Child Support Grant if they pass the means test because they have an income lower than R4500/month if single or R9000 if a couple, at R440 per child per month, the quantum of the Child Support Grant is less than half of the Foster Care Grant which is currently R1040 per child per month.

Although adoption is positioned as an integrated part of child protection, it can be set apart from other forms of alternative care based on four distinctive characteristics, namely:

- Adoption involves making a permanent decision regarding a child.
- An adoptable child is not necessarily a child “in need of care” as a consequence of a child’s parents consenting to his or her adoption. The provisions relating to “a child in need of care” are therefore not an automatic consequence of a child’s parents consenting to his or her adoption. It is also important to keep in mind that **not all** the different types of adoptions, like step-parent and family adoptions involve children that are in need of care and protection.
- Unlike foster care and general child protection, adoption is a specialised area in the field of childcare and protection according to the Social Service Professions Act (110 of 1978). The Children’s Act (38 of 2005), the Children’s Second Amendment Act (18 of 2016) and the Social Service Professions Act prescribe who may legally provide adoption services. Adoption services may **ONLY** be provided by:

- Accredited adoption social workers in private practice who have a speciality in adoption services and are registered in terms of the Social Services Professions Act, 1978 (Act No.110 of 1978) to render adoption services.
  - Designated and accredited Child Protection organisations (“DCPO’s”).
  - Social Workers in the employment of the Department of Social Development (“DSD”) who have a speciality in adoption services and are registered in terms of the Social Services Professions Act, 1978 (Act No.110 of 1978) to render adoption services.
- The Children’s Act (Act 38 of 2005) prescribes consideration and professional fees in relation to adoption.

The Children’s Act currently provides processes and procedures for both National and Intercountry adoptions aimed at ensuring that adoptions take place in a manner that protect the rights of the child. In view of the important role that adoptions can play in providing permanent family care, it is crucial that the Children’s Act and the manner in which we regulate adoption, should safeguard the rights of the child without being too restrictive and as such creating barriers for children to be placed in an expedient manner with forever loving and stable families.

The Children’s Amendment Bill proposes significant changes to some of the key sections dealing with adoptions. Not only do these proposed amendments raise concerns, but they also fail to address some key problems with the adoption process in South Africa that is resulting in such small numbers of adoptions.

It is the experience of many that in more recent years procedural delays have been the major factor impacting the low number of adoptions that are being recorded annually. With efficient implementation of prescribed processes in accordance with minimum norms and standards, an average adoption process should take approximately 9-12 months to finalise. Yet in recent years the average time to complete the adoption process has increased to an estimated period of 12 to 24 months.

The serious delays that are being experienced and problems with the process can be summarised as follows:

- Delays with the statutory placement of children into the care of adoptive families: Child Protection organisations need to apply for the variation of the child's placement through regional DSD canalisation panels. Most children are already older than 6 months at this stage and have been placed in temporary safe care pending their placement with the prospective adoptive family. These orders are needed to move the child into the legal care of the adoptive family, but due to procedural challenges, Provincial and Regional inconsistencies and delays, this process can take months to complete, resulting in children remaining in institutional care even though they have a screened fit and proper adoptive family waiting for the placement.
- Section 239(1) (d) of the Children's Act (38 of 2005) requires the Head of the Department of the Provincial Department of Social Development to provide letter of recommendations to the Court regarding each prospective adoption. Neither the Act nor Regulations provide for a specific timeframe in which this letter must be issued, although according to the National DSD Standard Operations Procedures the letter should be issued within 7 days after the recommendation has been made. This function is delegated in most Provinces and currently in some Provinces this process can take up to 6 months. This also blocks the movement of the child into the care of the adoptive family or delays the legal finalisation of adoptions.
- Delays in the issuing of Form 30's by the National Department of Social Development for prospective adoptive parents verifying that their names do not appear on the Child Protection Register ("CPR"). Screening of prospective adoptive parents and the matching of an adoptable child cannot be finalised unless the form 30 has been issued. Huge delays are experienced which impacts on children's right to family care.
- A lack of permanency planning for abandoned and adoptable children which leads to abandoned children and children without permanent family care options remaining in Institutions for years, rather than being considered for adoption. Child & Youth Care Centres often report being overfull and children are deprived of placement into permanent alternative care.
- Infringement on the rights of birth mothers and fathers when they choose to place a child up for adoption. This infringement includes unlawful interference in their decisions; and forcing adoption social workers to inform the parents of birth mothers of the pregnancy, birth and adoption of their children, even where birth mothers have chosen to keep this decision private from their parents.

This submission aims to provide factual information and guiding considerations pertaining to the key issues identified. The key issues requiring legislative reform, and which will be addressed in this submission relate to:

1. Prevention of improper financial gain and regulating of professional fees
2. Addressing who may provide adoption services and consistent reference in this regard
3. Prevention of procedural delays and ensuring that adoptable children's placement into family care is done in an expedient manner.

The submissions will be structured as follows in relation to each of the key issues identified above:

- Areas of Concern
- Supporting Arguments
- Submissions

## **2. Prevention of improper financial gain and regulating of professional fees**

### **2.1. Section 249: No consideration in respect of adoptions:**

The section providing for certain professional fees to be charged for adoptions has been highlighted and allegations have been made about adoptions being used for trafficking or that exorbitant fees are being charged. Very little evidence has been provided or made public in this regard. In addition, there are very stringent legal requirements and procedures for adoptions and the service is subject to ongoing monitoring and evaluation from DSD and the Courts. Any concerns should be addressed by adequate monitoring and evaluation and the appropriate response to cases of trafficking should be initiating criminal proceedings and in case of charging exorbitant fees and unethical practices it should result in professional sanctions.

Most accredited DCPO's charge a nominal adoption fee based on this provision. The income derived from these fees enables DCPO's to employ (and retain) experienced social workers, and to cover general operating costs. Although the State pays partial subsidies for the rendering of child protection services, not all DCPO's that are accredited to provide adoption service receive a subsidy for rendering child protection and adoption services. Accredited adoption social workers in private practice do not get any subsidies and must cover their costs and be remunerated for their professional time through charging of fees. Adoption fees are also already regulated and capped for DCPO's and intercountry adoptions.

According to the Children's Act <sup>1</sup>(38 of 2005) no person may- "give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child; or induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16".

The following categories are however exempted <sup>2</sup>from this prohibition:

- (a) the biological mother of a child receiving compensation for reasonable expenses incurred for medical care and or counselling,
- (b) a lawyer, psychologist or other professional person receiving fees and expenses for services provided in connection with an adoption;
- (c) the Central Authority of the Republic contemplated in section 257 receiving prescribed fees;
- (d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;
- (e) a child protection organisation accredited to provide inter-country services receiving the prescribed fees;
- (f) an organ of state; or
- (g) Any other prescribed persons.

It is further regulated through Regulation 107 of the Act which sets fees for professional services rendered by DCPO's in an adoption. According to Section 249 and Regulation 107 a prohibition is placed on receiving consideration in respect of an adoption or inducing a person to give a child up for adoption. It does however allow for the mentioned categories of professionals to charge for expenses and services. This section is an important safeguard in ensuring that improper financial gain in relation to the adoption of a child is prevented.

The draft Children's Act Amendment Bill ("CAB") gazetted for comment on 29 October 2018 proposed to remove the provision that exempted those in categories (b) to (g) from this prohibition.

According to that proposal it would have, consequently, been illegal for ANYONE to receive fees for professional services rendered in respect of an adoption or to be reimbursed for any expenses incurred in connection with an adoption. Accredited Child Protection Organizations, accredited adoption social workers, lawyers, psychologist and all other professionals would no longer be able to charge for any expert or specialist service rendered to adoptable children and or adoptive families, not even for reimbursement of travelling expenses, medical testing etc.

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<sup>1</sup> Section 249(1)(a) of the 2005 Children's Act

<sup>2</sup> Section 249(2) a-g of the 2005 Children's Act

The rationale provided by the Department for this proposed amendment in the 2019 Memorandum of Objects attached to the Children's Amendment Bill <sup>3</sup>was:

- A perception that the issues of fees created challenges where the best interest of children were compromised because not enough efforts are made to retain children within their families of origin.
- To make adoptions more accessible.
- To prevent commodification of children.
- Adoptions should be the same as other forms of alternative care, and there are no differences justifying inclusion of professional fees in the Children's Act.
- Not to prohibit charging of professional fees by social workers, lawyers, psychologist and other professionals in private practice. Rather it aimed to remove the regulating of fees by such professionals from the Children's Act, suggesting regulating of fees by respective professional councils. This point was perceived to be in contradiction with the proposed amendment, since the deletions resulted in section 249 prohibiting the charging of fees by professionals.

The Bill was gazetted for comments at the end of 2018. NACSA did not support the proposed amendment which expressly prohibited anyone from charging for provision of adoption services. A submission was done proposing that professional fees charged by accredited adoption social workers and organisations should be allowed , **supporting that it be regulated as provided for by the Children's Act (38 of 2005). The motivation for that submission being:**

- This previous proposed amendment would have seriously limited the number of children that could find permanency through legal adoption placements. The potential consequence would have been that DCPO's and adoption social workers and other professional practitioners who are at present mainly responsible for services in this area of child protection would have been disempowered, and the majority would not have been able to continue to render these services.
- This proposal would not have made adoption services more accessible to all, which was one of the rationales provided for the proposed deletion. It is our position that it would makes adoption services more restrictive and less accessible since the majority of the current service providers would be dispositioned and cut off from rendering these services due to potential financial sustainability challenges.

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<sup>3</sup> Pages 57-58 of the 2019 version of the MOO for the Children's Amendment Bill

- People's right to choose to pay for services would have also been removed. We support the inclusion of social workers in the employ of DSD who will be able to offer these services without charging a professional fee. However, people should have the right to choose their service provider. Nor should adoption become the primary burden of the state.
- There is a wide range of different types of adoptions and in certain instances there is the need for specialist adoption social worker service providers and allied professionals, which may include lawyers, psychologists and medical practitioners. The previous proposed amendment would have prohibited those service providers from charging their fees too, which would not serve the interest of the children. It is in fact quite impractical because it would restrict services which the court may need in making a decision about an adoption.
- The competency, expertise and capacity that experienced adoption social workers and other professionals bring to the sector will be lost to a large extent. This will have a negative impact on the sector and we foresee that the current challenges and delays experienced in the system will in fact intensify.
- Lastly, on average, a national adoption costs between R11,000 and R13,000 to complete and that organisations charge adoption fees on an income-dependent sliding scale, ranging between R1,500 (for adoptive parents earning less than R5,000 per month) to R23,000, as the upper threshold for those earning above R30,000 per month. Fees drop even further when organisations get partial government subsidies. Adoptions are free to those who can't pay and on average cost between R9,000 and R12,000. Should there be any issues regarding unreasonable fees that are charged in relation to an adoption, there are mechanisms in place via the Council, DSD and courts to monitor, regulate and to take corrective action. These should be implemented.

The tabled Children's Amendment Bill dated 26 August 2020, now seeks to delete section 249 in its entirety. According to the Memorandum on the objects of the Children's Amendment Bill 2020, this amendment is intended to delete reference to all fees that may be charged for adoptions.

The deletion of section 249 addresses concerns about a prohibition on fees. During consultations with the Department the rationale for the proposed deletion of section 249 was discussed and it was confirmed that the Children's Act is not necessarily the appropriate vehicle for regulating fees for adoption services, and that it would be more appropriate for the respective professional councils to do this regulation. **The sector does not oppose**

**charges for professional services being regulated elsewhere, but it has some concerns about the removal of the provisions in its entirety, since it could result in unintended consequences, potentially allowing for the exploitation of mothers and children.**

The problem with the proposal is that it could effectively open the door for unscrupulous individuals to profit from adoption. The Act, at present, expressly provides that “no person may ... give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child ...” There is, accordingly, an absolute prohibition subject to the listed exceptions. If a person contravenes this section, they may be held criminally responsible and if convicted subject to a fine and/or imprisonment (section 305 of the Act). The provision thus dissuades people who do not fall within the exception from becoming involved in adoption, and thereby limits the possibility of exploitation.

It should further be cautioned that the proposed regulation of fees by Professional Councils’ could take years given that it can take some years for a professional body to finalise a new code or regulation. Should the tabled Bill repeal Section 249 in its entirety, this would in effect leave the space unregulated for some time.

**Submission:**

Clause Commented on	Proposal	Motivation
<p><b>Section 249</b> <b><i>No consideration in respect of adoptions</i></b></p>	<p>1. Instead of deleting the section 249</p> <p>2. Amendment of subsection (2)(c), (d) and (e) by deleting the words: <i>“Receiving the prescribed fees”</i>.</p> <p>3. Amendment of subsection (d) by including: <u>“a child protection organization or an adoption social worker in private practice accredited in terms of section 251 to provide adoption services”</u></p>	<p>Removal of section 249 in its entirety will not be recommended since it could allow for criminal exploitation.</p> <p>By deletion of the words “receiving the prescribed fees” the objective aimed at removing the regulating professional fees for adoption services from the Children’s Act will be achieved, since it will not place a complete prohibition on the charging of fees.</p> <p>Professional fees charged will however still be regulated by the relevant respective professional bodies and councils as per the Memorandum of objects to the Amendment.</p> <p>Insertion of an <u>adoption social worker in private practise under subsection (3) (d)</u> will extend the list of those exempted from the no consideration clause to adoption social workers in private practise.</p>

## **2.2. Section 259(3) (a): Accreditation to provide intercountry adoption services and receiving prescribed fees**

The Hague Convention on Intercountry Adoptions (“HCCH”) which South Africa has acceded to recognises that intercountry adoption offers a permanent family to a child for whom a suitable family could not be found in a country of origin.

Intercountry adoption has become a well-accepted legal placement option for adoptable children that could not be placed in permanent family care in their country of birth. According to the Register on Adoptable Children (“RACAP”) an estimated 350 children, at any given time, are not matched with fit and proper national adoptive parents and therefore should be eligible to benefit from intercountry adoptions (DSD, 2017). It is also worth mentioning that feedback from accredited organisations suggests that children presenting with specific special needs and older children are rarely adopted nationally, but often find adoptive parent’s through intercountry adoptions. “CYCCs report a disproportionately high number of disabled children, 30%, which is about three times the national average. For these children, family care would provide an opportunity for a better life.” The number of children placed for intercountry adoptions from SA also remains low and for the year 2017/18 a total of 152 intercountry adoptions were recorded.

Intercountry adoptions are facilitated and monitored within approved working agreements between SA Central Authority and 15 countries, Canada, Denmark, Finland, Germany, Netherlands, Norway, Sweden, Austria, Luxembourg, Belgium, USA, UK, France, Australia, and Ireland. The only sending country (a country that sends children to South Africa for adoption) is India.

Only 10 DCPO’s in SA are accredited to render intercountry adoptions. The operations of these organisations are subject to stringent monitoring and evaluation by DSD and the South African Central Authority (“SACA”). In accordance with established SACA approved working agreements, these organisations may receive professional fees which are prescribed and regulated by the HCCH and the Children’s Act and which has been capped at an amount of R35 000 by SACA in 2012. The strict regulations of these operations are further underscored by the fact that every intercountry adoption requires written approval from SACA prior to being proposed, therefore leaving very little room for illicit practices as is often being alleged.

The concern that is raised here is that the Amendment Act proposes to delete subsection (3) therefore no longer making provision for the regulating of DCPO's to receive professional fees for services rendered in relation to an intercountry adoption.

The removal of subsection (3) will not result in a prohibition on charging of professional fees by said organisation, rather it will only delete reference to charging of fees in the Children's Act. The Hague convention on intercountry adoptions in Article 2 allows for the payment of professional services rendered for intercountry adoptions. Organisations have costs that must be met, such as operating costs and salaries.

The concern here is similar to concerns about deletion of Section 249, since if this is not regulated it could open the door for potential abuse. The costs of intercountry adoptions should continue to be regulated in accordance with the Hague Convention. The Central Authorities should continue to regulate and monitor fees and ensure that DCPO's in SA accredited to render intercountry adoption services comply with the principles of non-profit and prevention of improper gain.

**Submission:**

Clause Commented on	Proposal	Motivation
<b>Section 259(3)(a)</b>	Reinstating subsection (3)(a) and amending subsection (3)(a) by deleting the words: "Receiving the prescribed fees"	<p>To ensure that it is aligned to proposed amendments to Section 249</p> <p>The Hague convention on intercountry adoptions in Article 2 allows for the payment of professional services rendered for intercountry adoptions. NACSA's proposal will ensure that the Children's Act is aligned to the Hague Convention on intercountry adoptions, and it will address the need to remove the prescribing of fees from the Children's Act, which is in line with the Departments proposal.</p> <p>Fees charged by organisations accredited for intercountry adoptions should continue to be regulated by the South African Central Authority.</p>

## **2.3 Addressing who may provide adoption services and consistent reference in this regard**

### **2.3.1 Section 239 (1) (b) & Section 250(1): Definition of an adoption social worker and who may provide adoption services**

Adoptions can be described as legally and ethically complex and are therefore viewed as an area of speciality requiring a high standard of experience and competence from adoption social workers. Adoption requires extensive screening and court procedures because it results in permanent termination of parental rights. Subject to meeting the high standards and requirements of a registered speciality, the inclusion of DSD social workers in the rendering of adoption services was welcomed and supported by the sector. The Children's Second Amendment Act (18 of 2016) however clearly states that only Social workers in the employ of DSD who have registered a speciality in adoptions, thus meeting specific requirements, may render adoption services.

This implies that not all social workers in the employ of DSD will be able to render adoption services and in view of their historical exclusion from rendering specialised adoption services, it is important that only the social workers with speciality registration are utilised to render adoptions services within appropriate mentoring and supervision structures. In view of this it is also not recommended that adoptions become the sole domain of DSD and that an inclusive approach is taken where the experience, competencies and expertise of the existing adoption services providers are still encouraged and supported. It is therefore crucial that in view of the specialised nature of adoptions any reference to persons who may render adoptions services should be consistently aligned to the definition of an adoption social worker in the Act.

The definition of adoption social worker, in Section 1 of the Act "adoption social worker" means-

- A social worker in private practice- 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 who is accredited in terms of section 251 to provide adoption services; or
- A social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services;
- A social worker employed by the Department who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978)

**Proposed Amendments to section 239(1) (b) and section 250(1) deals with who may provide adoption services**

The concerns are that the following proposed amendments will create confusion since they do not consistently refer to an adoption social worker, and it may provide a loophole to utilise social workers excluded from the definition in rendering of adoption services:

***The proposed Amendment to Section 239(1) (b) proposes that the section replaces reference to an adoption social worker with “a social worker responsible for adoptions”***

The definition of adoption social worker in the Act is comprehensive and inclusive of social workers in private practise, DCPO's and social workers in the employ of the Department with a registered speciality in adoptions, *this amendment proposes that adoption social worker as defined by the Act be substituted by a social worker responsible for adoption.*

This creates confusion on who may render adoption services as defined by the Act. The definition does not refer to a social worker rendering adoption services and the amendment should be aligned with the definition, therefore referring consistently to *an adoption social worker.*

***Proposed Amendment to Section 250 which deals with persons allowed to render adoption services seeks to an insertion, subsection (1)(e) A social worker employed by the Department or a Provincial Department of social development who provides adoption services.***

This amendment aims to include adoption social workers employed by the Department of Social Development who are currently excluded from this provision. According to the Children's Second Amendment Act (18 of 2016) social workers in the employment of DSD who have a speciality in adoption services and are registered in terms of the Social Services Professions Act, 1978 (Act No.110 of 1978) may render adoption services.

The proposed amendment refers to a social worker rendering adoption services. In order to be consistent and to avoid confusion, it should refer to an **adoption social worker** employed by the Department as per the definition in the Act.

**Submission:**

Clause Commented on	Proposal	Motivation
<p><b>Section 239(1)(b)</b></p>	<p><b>Section 239</b>  <b>That Section 239(1)(b) remain unchanged</b></p> <p>"(b) be accompanied by a report, in the prescribed format, by an adoption social worker</p>	<p>The definition of adoption social worker in the Act is comprehensive and inclusive of social workers in private practice, DCPO's and social workers in the employ of the Department.</p> <p>This amendment proposes that adoption social worker as defined by the Act be substituted by" a social worker responsible for adoption." This creates confusion on who may render adoption services as defined by the Act.</p> <p>The definition does not refer to a social worker rendering adoption services and the amendment should be aligned with the definition, therefore referring consistently to an "adoption social worker."</p>

Clause Commented on	Proposal	Motivation
<p><b>Section 250(1)</b>  Only certain persons allowed to provide adoption services</p>	<p>Amendment of section 250 by insertion in subsection (1) after paragraph (d) of the following paragraph:  "(e) a social worker employed by the Department who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978)</p>	<p>The proposed amendment refers to a social worker rendering adoption services. In order to be consistent and to avoid confusion, it should refer to an <b>adoption social worker</b> employed by the Department as per the definition in the Act</p>

## **2.4 Prevention of procedural delays and ensuring that adoptable children's placement into family care is done in an expedient manner.**

### **2.4.1 Section 239 (1) (d): Application for and Adoption Order & Letter of recommendation**

Section 239 (1) (d) of the Children's Act (38 of 2005) calls on the HOD of the Provincial Department of Social Development to provide letter of recommendations to the Court regarding each prospective adoption. Neither the Act nor Regulations provide for a specific timeframe in which this letter must be issued. This area has also been characterised by various cases of litigation due to delays caused through this process which causes serious delays in children's right to placement in permanent family care. Most recently the High Court judgement (NACSA v HOD, Department of Social development and others, KZN) handed down declared that the current process followed in respect of consideration section 239 applications, is infringing various constitutional rights of the adoptable children, the birthparents and prospective adoptive parents. It also provided for tight timelines for the DSD to process adoptions within 30 days.

Most provinces make use of adoption panels to consider the s239 (1) (d) applications. The panels should function in accordance with the SOP developed by the Department. The existing guidelines aim to address the purpose, functions and objectives of the panels.

Despite guideline stipulations there are huge differences in how these panels operate and function. We acknowledge that the role of the DSD is of critical importance in the care of children, especially those vulnerable children removed from their families, and are not opposing their involvement in recommending the adoption of a child. However, it is crucial that the process should not unnecessarily delay the placement of children in adoptions.

As a result of the delays until the court order is given, children are often not yet placed in permanent care with their adopted family, and are unable to start building lifelong relationships. In many instances these children are in baby homes and Child and Youth Care Centres. Due to the crucial period in the life of a child, delays can cause actual harm, including the future ability to bond, study and even secure employment as research has revealed. Other more specific harms occur too due to these delays. For instance, a premature and gravely ill baby, although in the care of prospective adoptive parents, cannot be placed on medical aid until the adoption is finalised. This delay compromises care and is potentially life threatening.

**Submission:**

Clause Commented on	Proposal	Motivation
<p><b>Section 239 (1)(d)</b></p>	<p>s239(1)(d) be accompanied by a letter by the provincial head of social development [recommending] <u>confirming compliance with the requirements in terms of this Act regarding the adoption of the child:</u>  <u>(1) Provided that when the provincial head does not issue the letter within 30 days of it being requested, the provincial head must report the reason for such failure to the children’s court within 14 days from the date on which the letter was due; and</u>  <u>(2) if the provincial head fails to provide the report required in subsection (1), the letter may be dispensed with;</u></p>	<p>Huge delays in adoption process are being created due to failure on the part of some Provincial DSD offices when it comes to issuing section 239 letters of recommendation.</p> <p>These delays in many instances prevented adoptions from proceeding by the Departments failure to make a decision within a reasonable timeframe and preventing the Children’s Court from considering the adoptions.</p> <p>In some provinces this process can take up to months contravening the policy which states that the letter of recommendation should be issued within seven (7) working days after the panel meeting.</p> <p>The proposal for the amendment of this section will help to resolve the delays experienced in getting these letters and it will then comply with the current case law that the letter may be dispensed with due to unreasonable delay to deliver.</p> <p>It will further address the purpose of the s239 (1) d) clause, which is to assess legal compliance with the requirements of the Act.</p>

**2.5 Children in need of care and protection - Section 150 (1) (a)**

Section 150(1) (a) defines when an orphaned or abandoned child will be considered by social workers and the court to be “in need of care and protection” and therefore able to be placed in foster care, receive supervision and a foster care grant. For this reason it is considered the ‘gateway’ clause for foster care.

Section 150(1) (a) currently reads as follows:

‘150(1) A child is in need of care and protection if, the child -

(a) has been abandoned or orphaned and does not have the ability to support himself or herself and such inability is readily apparent;’

This wording means that all orphaned and abandoned children in the care of relatives should be considered in need of care and protection because no child is able to support him or herself. The proviso in section 150(1) (a) therefore does not help to clarify which orphaned or abandoned children need care and protection. It has been agreed by civil society and the Department of Social Development that orphaned or abandoned children who are in the care of family members, should not automatically be considered to be children in need of statutory care and protection.

The Amendment Bill therefore proposes to change section 150(1) (a) as follows:

‘150(1) A child is in need of care and protection if, the child -

(a) has been abandoned or orphaned and **[does not have the ability to support himself or herself and such inability is readily apparent]**; has no parent, guardian, family member or care-giver who is able and suitable to care for that child;’

This wording makes it clear that abandoned or orphaned children who are in the care of the other parent, a legal guardian, family member or caregiver are not in need of care and protection, unless that current caregiver is not able or suitable.

We support the intention behind this amendment. We believe that this amendment, combined with an adequate replacement grant in the form of the CSG Top-Up, will reduce the number of children referred to the foster care system. This will reduce the high foster caseload being borne by social workers and courts and free them up to provide better quality protection and care services to children who have been abused, neglected or exploited (orphans and non-orphans).

However, we have two concerns to be raised. Firstly, we are concerned that the amendment goes too far because it implies that even babies abandoned on the side of the road may be excluded from the protection of section 150(1) (a). We would recommend that only children who are already in the care of a family member should be excluded, and not children who may have a suitable and able caregiver that is yet to be located and approached. With the wide ambit of the proposed wording, there is a danger that children found abandoned or orphaned will be placed in temporary safe care for long periods of time while a family member is being located and persuaded to take the child. Or they could be placed informally by social workers with a distant relative that they do not know and there will be no trace of the child in the system or follow up support or supervision.

There is a substantial difference from a child rights perspective between an existing caregiver that the child knows and is attached to and has already bonded with, versus a new caregiver that the child has no bond with. Therefore if a previously uninvolved and relatively unknown distant relative is found in another province and they indicate they are able to care for a child that has been recently orphaned, that placement should be a foster care placement to enable the state to supervise and monitor the placement for the first two years. If the child and relative are both happy with the arrangement, it could be converted to guardianship after the first two years.

We therefore recommend that section 150(1) (a) be worded slightly differently to focus on the question of whether or not the child is already in the care of a family member and not whether they 'have' such a family member:

Secondly, we recommend that the words 'suitable and able' be removed because they are unnecessary. The Act already covers situations where a child's caregiver is not suitable or able to care for the child in the other sub-sections in section 150(1). For example, if a child is found by a social worker to be in the care of a relative and the social worker finds that the relative is not suitable or able to care for the child because the relative is addicted to drugs, the social worker would need to open a child protection inquiry based on one of the other grounds listed in section 150(1) eg. '(f)the child lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;' or '(h) the child is in a state of physical or mental neglect;

Clause Commented on	Proposal	Motivation
<p><b><i>Children in need of care and protection – Section 150(1)(a)</i></b></p>	<p>'150(1) A child is in need of care and protection if, the child - (a) has been abandoned or orphaned <u>and is not in the care of a family member as defined in section 1;</u>'</p>	<p>In view of the importance of placing an abandoned baby into permanent family care within the shortest timeframe possible, it is preferable that only children who are already in the care of a family member should be excluded, and not children who may have a suitable and able caregiver that is yet to be located and approached.</p> <p>With the wide ambit of the proposed wording, there is a danger that children found abandoned or orphaned will be placed in temporary safe care for long periods of time while a family member is being located and persuaded to take the child. Or they could be placed informally by social workers with a distant relative that they do not know and there will be no trace of the child in the system or follow up support or supervision.</p>



### 3. Conclusion

“The SA Constitution in Section 28(2) states that a child’s best interests must be of paramount importance in any decision concerning the child. The National Adoption Coalition believes that every child has the right to permanent family care and that adoption is the best form of care when family care is not available. Every day spent in an institution, no matter how well run, is one day too many in the life of a child whose optimal long term mental and emotional development is so impacted by the nurturing attachment figures in their lives.

With the covid pandemic and the increased burden of poverty and gender based violence, both of which are linked to the abandonment of children, the country faces a challenge. More children without obvious family connections will be in need of care and protection. The National Adoption Coalition of South Africa believes that adoption is the primary choice of placement for these abandoned children.

Streamlining the adoption processes will minimise cost to the state, as children in institutional or foster care are the state’s responsibility and many are lingering in institutions when there are families ready to care for them. Any process that responsibly facilitates the movement of children out of state funded care will increase budget available for services in other areas.

While legislation is imperative to ensure children are safe and that any new placements have been thoroughly screened and vetted, the bureaucratic delays that impede adoption at every step of the process need to be minimised. Legislation needs to ensure that the parties involved in facilitating adoptions are held accountable so that children can be placed into their family as soon as possible.

**The goal of legislative changes should be upholding children’s best interests, facilitating permanent family care and allowing children to be placed in that care as early as possible, specifically in the first thousand days of life to optimise attachment and the child’s ongoing physical, emotional and social development. This is especially true in instances where children have experienced the trauma of abandonment.**

**4. The following additional people/ organisations also support our submission**

Name	Capacity
SAASWIPP	Professional Association (Private Practitioners)
Door of Hope	Child and Youth Care Centre / Baby Home
Botshabelo	Child and Youth Care Centre / Baby Home
Wandisa	Child Protection Organization
Elke Day	Adoptive Parent & Adoption Social Worker in Private Practice
Angels Baby Sanctuary	Child and Youth Care Centre / Baby Home
Engo	Child Protection Organization
Robyn Shepstone	Private Adoption Social Worker
Zoe Cohen	Adoption Specialist
Jewish Community Services	Accredited Child Protection Organization
Belinda Lamprecht	Adoption Support & Adoptive Parent
Thandi Nkomo	Adoptive Parent
Christa Maree	Social Worker
Ronelle Fick	Adoptee
Adoption Coalition of Nelson Mandela Metropole	Provincial Adoption Coalition
Marietjie Bezuidenhout	Private Adoption Social Worker
Procure	Private Adoption Social Workers
Sanet Viljoen.	Interested Party
Child Welfare South Africa	National Child Welfare Organization

Willie Sapsford	Social worker
Corlia Heystek	Adoptive Parent
Professor Gail Fincham	Adoptive Parent
Jon Geidt	Adoptive Parent
Brian Day	Adoptive Parent
Ilse Fouche	Interested Party
Azura Courtenay	Interested Party
Gareth Morgan	Interested Party
Michael Wilter	Interested Party
Jennifer McQuillan	Interested Party
Judy Hurrie	Interested Party
Mackenzie, Margaret	Adoptive parent
Venter, Sophia	Volunteer PCC
CMD Durban	CPO
Grimsley, Zeldene	Adoptive parent
Ellett, Angi	Adoptive parent
Douglas-Henry, Denise (Abba Adoptions)	Social Worker
McGregor, Roslyn	Social Worker
Breshears, Diana	Academic & AP
Smit, Marilise	Adoptive parent
Steyn, Lelanie	Volunteer CYCC
Wills, Nicole	Adoptive parent

Jacobs, Carien	Social Worker
Ububele	Alex clinic- Support to new mothers
We Adopt	Adoptive parent
Knight, Marieta	Adoptee
Dwyer, Paula	Birth Mom
Cape Town Adoption Support Group	Adoption Support Group
Adoptree -Jenny Tanesse	Adoptive parent/ Adoption Support
Burnett, Kirsten	Volunteer
Fick , Ronelle	Adoptee
Gerrand, Priscilla	Academic (Adoption Research)
Kolesky, Lisle	Social Worker
Moolman, Juanita	Adoptive parent
Robinson, Kelly	Academic (Adoption Research)
Life Choices Benoni	Crisis Pregnancy Centre
Matchbox Babies	Child and Youth Care Centre / Baby Home
Geral, David	Adoptee
Mpshe, Puleng	Adoptive parent
House of Hope Community Life Development	Crisis Pregnancy Centre
Hearts Wide Open	Adoption Support NPO
Adopt Mom (Mandy Hain)	Adoptive parent
Blackie, Dee	Academic (Adoption Research)

Kruger, Hannes & Karin	Adoptive parent
Thandi Nkomo	Adoptive parent
Ithemba Lethu	Child and Youth Care Centre / Baby Home
Chanan54	Advocacy Group
Itshekeng Mogotlhe	Birth Mom
Abrahams, Thabitha	Adoptee
Mtyhalela, Belinda Bongiwe	Adoptive parent
Dolamo Thabitha / Kids Emporium	Adoptive Parent
Kindler, Stacey	Adoptee and Birth mother
Ulutho Orphans and Vulnerable Children Trust	Crisis Pregnancy Centre
Plight Crisis Pregnancy Centre	Crisis Pregnancy Centre
Childline Gauteng	National Crisis Line
Thusanani Childrens Foundation	Medical Support to Children's Homes
Child Welfare South Africa	Child Protection Organisation
Bethany Pregnancy Crisis ACFL	Crisis Pregnancy Centre
Hotel Hope Ministries	Child and Youth Care Centre / Baby Home
New Beginning	Child and Youth Care Centre / Baby Home
Child & Family Welfare Society, Pinetown-Highway	Child Protection Organisation
Africa Cares for Life	National Crisis Pregnancy Centre
Domino foundation	Child and Youth Care Centre / Baby Home
Door of Hope Children's Missions - Babies & Village	Child and Youth Care Centre / Baby Home

FACT (Dr Louise Aucamp)	Social Worker
Ikhohwa Community Services	Child and Youth Care Centre / Baby Home
Umephi-AFM	Child and Youth Care Centre / Baby Home
Touch Community Network	Crisis Pregnancy Centre
Botshabelo	Child and Youth Care Centre / Baby Home
Hearts of Hope (Ithemba)	Child and Youth Care Centre / Baby Home
Refilwe (El Roy Baby Home)	Child and Youth Care Centre / Baby Home
Arise Cape Town	Family Support and Adoption Support
Ignite South Africa <i>ACFL</i>	Crisis Pregnancy Centre
TLC Children's Home	Child and Youth Care Centre / Baby Home
Dr Kruger, Marie	Adoption Social Worker in Private Practice
Holtzhauzen, Marlize	Adoption Social Worker in Private Practice
Nathanson, Joan	Adoption Specialist (Retired)
van Emmenes, Melanie	Adoption Social Worker in Private Practice
Free State Care in Action	Provincial Child Protection Organisation
Child Welfare Kimberley	Child Protection Organisation
Commerford, Sophia	Adoption Social Worker in Private Practice
Munsamy, Glenda	Adoption Social Worker in Private Practice
Strydom, Marietjie	Adoption Social Worker in Private Practice
Child Welfare Johannesburg	Child Protection Organisation

Catholic Women's League Adoption Society	Child Protection Organisation
Engelbrecht, Elsabe Linda	Adoption Social Worker in Private Practice
Kruger, Martha	Adoption Social Worker in Private Practice
Viljoen, Marlise	Social Worker
Van Dyk, Annemarie	Adoption Social Worker in Private Practice
Bosman-Sadie, Hester Maria	Adoption Social Worker in Private Practice
CMR North	Child Protection Organisation
Wandisa Specialist Adoption and Child Protection	Child Protection Organisation
Cohen, Zoe	Adoption Social Worker in Private Practice
Hawke, Heather	Adoption Social Worker in Private Practice
ACVV PE Suid	Child Protection Organisation
CMR Oos/ Gauteng East	Child Protection Organisation
Child Welfare Durban and District	Child Protection Organisation
Child Welfare Pietermaritzburg	Child Protection Organisation
Child Welfare: Richards Bay Family Care	Child Protection Organisation
Bezuidenhout, Marietjie	Adoption Social Worker in Private Practice
Van Zyl, Linda	Adoption Social Worker in Private Practice
Day, Elke	Adoption Social Worker in Private Practice
Morgenrood, Elise	Adoption Social Worker in Private Practice
Orelowitz, Janys	Adoption Social Worker in Private Practice

Van der Walt, Dalene	Adoption Social Worker in Private Practice
Wasserman, Susan	Adoption Social Worker in Private Practice
Shepstone, Robyn	Adoption Social Worker in Private Practice
Bekker, Dr. Greta	Adoption Social Worker in Private Practice
Le Roux, Sunette/ Susanna (Procare)	Adoption Social Worker in Private Practice
Loots, Eloise	Adoption Social Worker in Private Practice
Malherbe, Wilna	Adoption Social Worker in Private Practice
CMR Humansdorp	Child Protection Organisation
CMR Port Elizabeth	Child Protection Organisation
Engo Adoptions	Child Protection Organisation
Child Welfare Tshwane	Child Protection Organisation
Impilo	Child Protection Organisation
Jewish Community Social Services	Child Protection Organisation
RATA Social Services	National Child Protection Organisation
CMD Christian Social Services Vryheid	Child Protection Organisation
CMR Mpumalanga	Child Protection Organisation
Abba Specialist Adoption & Social Services	National Child Protection Organisation
SAVF Delareyville	Child Protection Organisation
SAVF North West Provincial Office	Child Protection Organisation
Badisa -Magdalenahuis Counselling Centre	Child Protection Organisation
NORSA Community Care	Child Protection Organisation
Potgieter, Susan	Adoption Social Worker in Private Practice

