PROPOSALS: CHILDREN'S THIRD AMENDMENT BILL [B-2018]

INPUTS FOR THE CHILDREN'S THIRD AMMENDMENT BILL

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Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 1 – **Definitions** **Abandoned**	Not supported.	Please revert to the definition in August version of the Bill.	We note that current subsection (c) seems to place the onus on the child in the sentence "who has no knowledge as to the whereabouts of the parent, guardian or caregiver". This is an onerous burden to place on a child. We recommend that subsection (c) of the August version should be utilised. It states the following "in

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			respect of whom the whereabouts of the parents are unknown". If the section reverts to the August version we will support it as this definition will be used in relation to children abandoned with relatives (the majority of abandoned children), on their own, or with strangers. Please note that the GHS (2017) and NIDS wave 4 figures indicate that 75000 children had the status of being 'abandoned'. The definition of abandoned will be used mostly with regards to s150(1) to ascertain whether a child is in need of care and protection. If found to be abandoned then the child can be placed in foster care and the caregiver can access the FCG, or be adopted or placed in a CYCC.

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			The definition will also be used in s150(2) to ascertain whether a child who has been abandoned and who is living with relatives should be screened for risk.
Corporal Punishment	This term is not defined at present	DSD could consider including a definition, and we recommend the definitions used by the CRC committee in its General Comments no 8 and no 11.	Defining it can lead to greater certainty that all forms of physical punishment, however light, is included. However, it may also be effective to leave it undefined, as definitions tend to lead to people trying to leave certain types of physical punishment out of the definition
Early childhood development centre	Supported		We support the current amendment on the condition that this is aligned with the drive to ensure that Grade R is included in the DBE schooling system. This should not have the effect of excluding children accessing Grade R through DSD.

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Early childhood development services	Supported		We support the current amendment on the condition that this is aligned with the drive to ensure that Grade R is included in the DBE schooling system. This should not have the effect of excluding children accessing Grade R through DSD.
Orphan	Supported.		The definition of orphan will be used mostly with regards to s150(1) to ascertain whether a child is in need of care and protection. If found to be orphaned by both parents then the child can be placed in foster care and the caregiver can access the FCG (or CSG Top-Up), or be adopted or placed in a CYCC. The latest figures from GHS (2017) and NIDS wave 4 indicate that there are 505 000 children who are 'double orphans' in that both parents have died.

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			The definition will also be used in s150(2) to ascertain whether a child who has been orphaned and who is living with relatives should be screened for risk. If the definition is limited to double orphans, then this will mean approx. 505 000 children would need to be screened. If extended to include children where one parent has died and the other has abandoned the child (70 000), then approx. 570 000 would need to be screened.
Separated migrant children	**Not supported** **Delete words in bold within square brackets, as shown.**	"Separated migrant child' means a child **[who is not a citizen of the Republic and]** who has been separated from both parents or from previous legal or customary	The definition in the United Nations Convention on the Rights of the Child does not include the word "citizen".

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		care-giver/s, but not necessarily from other adult family members, including a child accompanied by an adult family member.”	

Unaccompanied migrant child	**Not supported**	"Unaccompanied migrant child' means a child **[who is not a citizen of the Republic and]** who has been separated from both parents or other adult family members and is not being cared for by an adult who, by law or custom, is responsible for doing so".	The definition in the United Nations Convention on the Rights of the Child does not include the word "citizen".

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Section 6 – General Principles Section 6(2)(d)	**Supported**		The Centre supports the insertion of "nationality" into section 6(2)(d). This ensures that services provided for in the Children's Act are provided to children despite their nationality and status in South Africa.

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Section 6 – **General Principles** 6A Children's privacy	**Not supported**	Proposal A: Do not delete section 74 <u>and</u> Delete proposed s6A. **OR** Delete section 74 <u>and</u> Delete 6A in its entirety and replace it with the version that appeared in the July 2018 version of the Children's Amendment Bill (at clause 4, inserting a new section in its place), as follows: <u>(1) No person may, without the permission of a court, in any manner publish any information, including any image, or picture which reveals or may reveal the name or identity of a child who is or was a party or a</u>	We are extremely concerned to see that section 74 is deleted in its entirety and that the new clause in section 6A does not provide for the protection of privacy of children in children's court proceedings. We assume that this is simply an oversight. There are two routes to solving this problem, and DSD must take one of these, because to leave the Bill as it is will leave the identity of children in the children's court unprotected. NB! The current Bill has removed the protection of privacy for children in children's court proceedings. The July version of the Bill also removed section 74, but section 6C in that Bill covered the protection of all children, appearing in all courts.

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		witness in the proceedings of any court or who is or was subject to an order of any court: Provided that a person may waive, in writing, the protection of his or her privacy as contemplated in this section upon reaching the age of 18 years.". (2) Notwithstanding subsection (1) a designated social worker conducting an investigation for the purposes of finding that a child may be in need of care and protection or that such child may be made available for adoption publish information for identification of the child including images or pictures of the child in the prescribed manner, for the	This current version of the Bill does not so, thus leaving children in children's courts unprotected. The simplest way to solve this is to delete 6A AND Not delete s74 Alternatively, if DSD wants to try to protect the rights of all children appearing in all courts, then the wording of the July version of the Bill, clause 6C must be used.

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		purpose of tracing the child's parent(s) or family.".	
Section 8 - Application "This Act applies to all children who are citizens of the Republic,	**Not supported**	Remove reference to "citizens of the Republic". Insert one of the two options -	Essentially, the amendment introduces a provision which limits the applicability of the Children's Act to certain types of children: citizen

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including unaccompanied and separated children".		A: 'This Act applies to all children in South Africa, irrespective of nationality' Or B: 'This Act applies to all children in South Africa, including unaccompanied and separated children'	children as well as two groups of non-national children (separated migrant children and unaccompanied migrant children). Other children, such as accompanied refugee and asylum seeker children; children who are the holders of visas and permits (such as permanent residence permits) issued to them in terms of the Immigration Act 13 of 2002; and children who are here irregularly and are accompanied by an adult are impliedly excluded from the protective ambit of the Children's Act. For the sake of convenience these children shall be referred to as the "excluded children". In restricting the applicability of the Children's Act, the amendment violates a number of the excluded

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			children's constitutional rights, as the Constitution applies to every child who is in the country. Such a restriction also fails to honour South Africa's international obligations under the UNCRC, the ACRWC and the 1951 Convention Relating to the Status of Refugees ("the UN Convention"). Because of the breadth of the violations to their constitutional rights which the excluded children will face, it is not possible to exhaustively detail each violation. As a result, only one examples of these violations will be given in the framework. However, an addendum will be attached to this framework which will contain other examples of violations.

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			Example one: A documented refugee child, Mika (12 years old), is abused by her documented refugee parents. She approaches the children's court in the area in which she habitually resides. Based on her evidence, the presiding officer of the children's court orders a social worker to complete an investigation in terms of section 155(2) of the Children's Act. The social worker finds that Mika is in need of care and protection in terms of section 150 of the Children's Act. As a result of this finding, the presiding officer places her in foster care in terms of section 156(1)(e)(i) of the Children's Act. If the applicability of the Children's Act were to be limited so as to exclude Mika in the above example, then various of her constitutional

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			rights would be limited in the following way (the same holds true for all the other excluded children): <u>First</u>, Mika's constitutional right to access a court would be limited, because the envisaged amendment would have the result that she would not be able to approach a children's court in terms of section 151(1) of the Children's Act to report the abuse. In fact, *N,S and Others v Presiding Officer of the Children's Court (SGHC Case No 2184/18)* dealt with the right of irregular migrant children to access courts. In terms of section 44 of the Children's Act, a child must be ordinarily resident in the area of a children's court in order to establish that that children's court has jurisdiction. However, the respondent in *N,S* asserted that the

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			child in question could not establish jurisdiction to approach the children's court because as an irregular migrant, he was not ordinarily resident in the court's area. The court held that for the purposes of determining whether a child is ordinarily resident, it is irrelevant whether the child is in South Africa legally or illegally. The court's rationale for this finding was that any other interpretation "*would mean that foreign children who are in the country illegally (regardless of their situation and vulnerability) would be excluded from the protection of the Children's Act. Such a construction of the words "ordinarily resident" would constitute a violation of their right to access to* (sic) *court, and their rights to have their best interests considered to be of*

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			paramount importance" (our emphasis). In essence, the high court held that refusing an irregular migrant child access to the children's court would constitute a violation of their right to access courts. Second, Mika's constitutional right to appropriate alternative care when removed from the family environment would be limited. This is because the envisaged amendment would mean that she (and the other excluded children) are shut out from the procedures in the Children's Act meant to assist children in need of care and protection. These procedures include placement into appropriate alternative care. It appears that the restriction suggested in the amendment would apply regardless of whether the child

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			is a *de facto* child in need of care and protection. <u>Third</u>, Mika's constitutional right to social services would be limited. This is because the proposed amendment would restrict the services that social workers offer to abused children in terms of, at the very least, section 155(2) of the Children's Act. The social worker's report referred to in that section is crucial to the presiding officer's decision as to whether the child is a child in need of care and protection, as well as whether they should be removed from the unsafe home environment and placed into alternative care. If the proposed amendment were to go through, Mika would be excluded from the

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			social services provided to children in need of care and protection. Fourth, the envisaged amendments would violate Mika's right to be protected from maltreatment, abuse and neglect. This is because the proposed amendment would restrict the services under the Children's Act which are designed to speedily assist abused children, and other children in need of care and protection. Without access to these services, there would be no mechanisms in place to ensure that Mika is immediately removed from her abusive parent's care, and placed into safe and appropriate alternative care.

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			Lastly, all of the above would amount to a violation of her rights in terms of 28(2) of the Constitution. As is evident, a blanket exclusion of the excluded children from the ambit of the Children's Act would not pass constitutional muster. This is because a general prohibition such as the one envisaged by the amendment will inevitably include amongst those that it affects, children who require the services and regulation which the Children's Act has to offer, and which if they are unable to access, will constitute a material invasion of their constitutional rights (particularly where a purpose for the limitation, given its sweeping rather than specific nature, will not be capable of being established).

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			Further, child law, which the Children's Act falls into or is part of, demands the individual consideration of a child's case. The Constitutional Court in *AD*[1] stated that "[c]hild law is an area that abhors maximalist legal propositions that preclude or diminish the possibilities of looking at and evaluating the specific circumstances of the case". The Court went on to state that "[t]his means that each child must be looked at as an individual, not as an abstraction". This is precisely what the blanket exclusion will prevent. If the proposed amendment were to pass, it is invariable that the services which the Children's Act offers, as

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			well as the regulation it provides (such as governing the age of consent to medical procedures, governing access to contraceptives, and governing social, cultural and religious practices) would have to be replicated elsewhere, and largely under the same terms as those already provided for under the Children's Act. This will require the use of scarce state resources where the justification for limitation (and subsequent replication) is unclear. Very lastly, a restriction of the applicability of the Children's Act would constitute a failure to meet our obligations under international law, including the UNCRC and the ACRWC, which does not differentiate between children in the manner suggested by the proposed amendment.

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Section 12 - **Social, Cultural and Religious practices Discipline of children**	**Not supported**	Delete the current provision in its entirety and replace with following clause: S 12A(1) A person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child's right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution.	• SOUTH AFRICA'S CHILD CARE AND PROTECTION POLICY August 2018 as approved by Cabinet states "The Children's Act will have to be revised to prohibit corporal punishment and any other form of cruel, inhuman or degrading treatment or punishment." P 122. • Important to have explicit reference to corporal punishment – the most common form of cruel punishment – to make it absolutely clear that corporal punishment by parents/caregivers is prohibited • If no explicit mention of corporal punishment, the provision will be interpreted inconsistently with some courts arguing that 'cruel, inhuman or degrading' punishment includes corporal punishment while other courts will say the opposite.

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		(2) The common law defence of reasonable chastisement available in any court proceeding to a person contemplated in subsection(1) is hereby abolished.	• Even 'moderate' corporal punishment violates children's rights and evidence shows that it increases children's risk to experience more severe forms of physical abuse. Therefore the common law defence must be removed. • It is important to clarify that the common law defence of reasonable chastisement is removed through this Act. The South Gauteng High Court judgment is currently not in effect due to an appeal. It's unclear whether and, if so, when the Constitutional Court will rule on the matter. The law should be clear on the status of the reasonable chastisement defence.

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		(3) A parent, guardian, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to any inappropriate form of punishment, including corporal punishment, must be referred to a prevention and early intervention programme as contemplated in section 144. (4) The Department in partnership with relevant stakeholders, must ensure (a) the implementation of education and awareness-raising programmes across the Republic concerning– (i) the effect of subsections (1) and (2); (ii) positive forms of discipline;	Parents/caregivers should be referred to prevention and early intervention programmes so that they can get parenting support to develop non-violent discipline. These programmes are outlined in section 144 of the Children's Act. • DSD is responsible for protecting children from violence and assisting those children who have experienced violence. A prohibition of corporal punishment and other cruel, inhuman and degrading punishment in itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to change behaviour.

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		(b) the availability of programmes promoting positive discipline at home and in alternative care across the Republic; and (c) capacity building of all relevant government and civil society role-players to understand their role in the promotion of positive discipline (5) When prevention and early intervention services have failed, or are deemed to be inappropriate, and the child's safety and wellbeing is at risk, the designated social worker must	• The proposed subsection 12A(4)(a) will ensure that DSD budgets for and undertakes education and awareness-raising programmes. These should not only focus on the prohibition of corporal punishment, but also include information on positive discipline to inform caregivers about non-violent discipline. • The proposed subsection 12A(4)(c) emphasises that all role-players need to understand what their role is in ensuring positive discipline. The Department therefore needs to equip all relevant government and civil society role-players in promoting positive discipline in the home and alternative care. Given the widespread acceptance of corporal punishment in society, role-players

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		assess the child in terms of section 110.	need to understand the rationale behind the prohibition and their role in promoting the prohibition. In general, criminalisation of parents for using corporal punishment should be considered a last resort. There may however be instances in which it is necessary to prosecute parents/caregivers. Where corporal punishment and other degrading punishment constitutes physical abuse according to section 110(1) of the Children's Act, social workers must follow the process outlined in section 110(8) of the Children's Act and must report the possible commission of an offence to the police.

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Section 12(2)	**New proposal**	Section 12(2) must be amended to provide that minimum age of consent to marriage is 18 years without exception. The Marriage Act and the Recognition of Customary Marriages Act must be amended in so far as they provide for age of consent to marriage that is below 18 years. The Civil Unions Act already provides for the age of consent to marriage as 18 years without exception.	The African Charter on the Rights and Welfare of the Child requires that member states set the age of consent to marriage at 18 years without exceptions. Concluding Observations from the African Committee of Experts on the Rights and Welfare of the Child has urged South Africa to address the fact that the current legislation (Marriage Act and Customary Marriages Act) set the minimum age of consent to marriage very low and still differentiates between boys and girls, with the age for girls being the lowest.
Section 13 – **Information on health Care**			

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To change disabled children to "children with disabilities"	**Supported**		
Section 19 - Parental responsibilities and rights of mothers	**Supported**		
Section 21 - Parental responsibilities and rights of unmarried fathers	**Partially supported**	**Section 21(3)(b):** "(i) The parties referred to in section 21(3)(a) must follow the process set out in 21(3)(a) before the proceed to litigation (ii) Any party to the mediation who does not agree with the outcome of the mediation may approach the Children's Court, a regional court in divorce matters or High Court for relief."	**Section 21(3)(b)** This makes it clear that the onus is on the parties to first attempt to mediate before they can proceed to litigation. Mediation is made mandatory. You cannot review a mediation, but any of the parties can then approach the court for relief when mediation does not work out.
Section 22 - Parental responsibilities and rights agreements	**Supported**		
Section 23 - Assignment of contact and care to interested person by order of court	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 24 – Assignment of guardianship by court order		It is regrettable that amendments to this section have been removed and not engaged with. The Centre sees this as an opportunity to give children's courts the power to grant guardianship of all children. The Centre proposes that section 23 be amended in the following manner: (1) Any person having an interest in the care, well-being and development of a child may apply to the High Court <u>or the Children's Court</u> for an order granting guardianship of the child to the applicant. =	The Children's Court is well versed in family law and child care matters, and is an expert on adoption – which has more wide ranging implications than guardianship applications. Making guardianship applications accessible at the Children's Court will increase access to justice for the majority of people and enable caregivers to administer and protect the pensions inherited by the children in their care. Many of these pensions go unclaimed due to there being no-one representing the child's interests. Reserving guardianship for the High Court exclusively would only be in the interests of the more wealthy who have the necessary income to use High Court processes.

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Section 25 - Certain applications regarded as intercountry adoption	**Not supported**	**Applications by non-South African citizens for guardianship of a child** **25.** (1) When application is made in terms of section 24 by a non-South African citizen for guardianship of a child, the application **[must be regarded as]**, if heard in the High Court or a regional court, must be referred to a children's court having jurisdiction to be dealt with as an application for an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 16 of this Act, unless such court, including the children's court if the application for guardianship had been lodged in such court, finds that exceptional circumstances	We make the proposed amendments to this section light of our submissions in relation to section 24. We propose a new heading that to section 25 which better describes its content, see in the left column. We also suggest the inclusion of the words unless such court, including the children's court if the application for guardianship had been lodged in such court, finds that exceptional circumstances warrant the application for guardianship to be granted. This is in line with the Constitutional Court judgment in *AD v DW*, where Sachs J said that the High Court's would have jurisdiction to make guardianship orders brought by non-citizens in exceptional circumstances

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		warrant the application for guardianship to be granted. (2) The Central Authority of the Republic contemplated in section 257 (1)*(a)* must be cited as a respondent in the event of an application referred to in subsection (1).	
Section 28 - Termination, extension, suspension or restriction of parental responsibilities and rights	**Supported**		
Section 29 - Court proceedings	**Supported**		
Section 30 – Co-holders of parental responsibilities and rights	**Supported**		
Section 32 - Care of a child by a person not holding parental responsibilities and rights	**Supported, with some concerns that**		We remain slightly concerned that this empowering provision will become the default position, and that

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	can be resolved in regulations		SASSA and other service providers might start asking caregivers to bring a court order. The 'magic' of section 32 is that it provides rights without requiring a court order. The order should only be applied for when it is needed, and regulations need to capture this or we will end up tying caregivers up in endless processes. A form should be devised for the simplest process possible, which simply recognises rights that the caregiver already has. Social work reports should not be necessary.
Section 34 - Formalities	**Supported**		
Section 35 – Refusal of access or refusal to exercise parental responsibilities and rights	**Partially supported**	Section 35 should be amended to stated it only be used as a last resort after remedies in terms of the Act have been exhausted, i.e the party seeking relief has already attempted mediation or already has a court order	This provides protection for children in cases where the life of a child or care-giver is in danger when a child refuses to see the parent.

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Section 40 - Rights of child conceived by artificial fertilisation	**Supported**		
Section 41A - Regulations	**Partially supported**	"(g) the format of and manner in which a guardian application should be lodged in the children's court as contemplated in section 24"	To align with proposed amendments to section 24, this section should contain a provision on making regulations that include guidelines on what should be contained in a guardianship application to the children's court.
Section 44 - Geographical area of Jurisdiction of children's courts	**Supported**		
Section 45 - Matters children's courts may adjudicate	**Partially supported in relation to section 45(1)(bA) & 45(3A) and (3B)** **Supported in relation to insertion of 45(1)(jA)**	The amendment to enable the Children's Court to have jurisdiction in relation to guardianship should not be limited to orphaned and abandoned children only. The section should provide for all matters in relation to guardianship. There should be a	The amendment to section 45, as proposed by the current Bill, is in conflict with the Care and Protection Policy 4.4.2.2. The problems with the clause include the fact that the new definition of orphan requires that both parents are dead. As many grandmothers or aunts are caring for children even where the father of the

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		holistic approach to parental responsibilities and rights and the splitting of the jurisdiction is creating problems on the ground and has no real rational. We propose that clause 27(a) be deleted and replaced with one of the two formulations: Proposal A: (bA) guardianship Proposal B: Another possible formulation is: (bA) guardianship where the application is brought by the child's biological father or other relative of the child.	child is still alive, these applications will not be able to be dealt with through the children's court, thereby obliterating the actual benefits that the amendments were meant to achieve. The first of our two proposed wordings best aligns with 4.4.2.2. which simply states that 'Guardianship applications may be launched in the children's court or High Court'. The second proposal is made as a compromise. If DSD for some reason wishes to limit those who may bring such applications, then it can be limited to unmarried fathers and other relatives of the child.

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Section 46 - Orders children's court may make	**Supported**		
Section 49 - Lay Forum Hearings	**Supported**		
Section 52 - Rules and court proceedings	**Supported**		
Section 57 - Compulsory attendance of persons involved in proceedings	**Supported**		
Section 62 - Professional reports ordered by courts	**Supported**		
Section 63 - Evidence	**Supported**		
Section 66 - Protection of court case records	**Not supported**		The reference to 6A is not supported subject to our submissions on 6A.
Section 74 - Publication of information relating to proceedings	**Not supported**		Please see submissions in relation to section 6A.
Section 75 - Regulations	**Supported**		
Section 76 - Partial care	**Supported**		
Section 77 - Strategy concerning partial care	**Not Supported**	• 77(1)(A) The Minister must monitor the implementation of the strategy	• The rationale for the proposal is that while the Act is monitored as a whole, where a separate

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77(3)			strategy for partial care must be developed, it should also be monitored. Therefore there is a need for an express provision that provides for monitoring.
Section 78 - Provision of partial care	**Not Supported**	• 78(1) The MEC for social development "must", … • 78(4) The MEC for social development "must" prioritise, and fund partial care facilities and services.	• The rationale for the proposal is that the "may" does not give enough priority to partial care programmes. • The "may" creates the view that it is discretionary to fund partial care facilities.
Section 79 - National norms and standards for partial care	**Supported**		
Section 81 - Application for registration and renewal of registration	**Supported**		
Section 82 - Consideration of application	**Not Supported**	• 82(5) – "financially, through conditional registration or otherwise" as the means of assistance to the owner or	• Considering that the partial care facility may need financial support to be able to get full registration before the period for

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		manager of a partial care facility.	conditional registration lapsed, it may be necessary to provide funding to some of the partial care facilities based on specific criteria.
Section 83 - Conditional registration	**Supported**		
Section 85 - Notice of enforcement	**Not Supported**	85(5) - "…where necessary, with the assistance of DSD"	Onus is put on the parent and not DSD to find an alternative centre. even though DSD has a list of partial care facilities that comply with DSD standards. Provision must be made for DSD to provide support to the parentin order to serve the interests of the children affected by the closure.
Section 86 –appeal against and review of certain decisions	**New Proposal**	86 (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal	The time-frames should be shortened from 90 days to 60 days for both the lodging of the appeal and the consideration thereof.

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		against that decision in the prescribed form within 60 days with the MEC for social development, who must decide the appeal within **[90]** 60 days of receipt thereof.	
Section 87 - Record and inspection of and provision for partial care facility	**Supported**		
Section 88 - Assignment of functions to municipality	**Supported**		
Section 89 - Serious injury, abuse or death of a child in a partial care facility	**Supported**		
Section 90 - Regulations	**Supported**		
Section 91 - Early childhood development	**Supported**		
Section 92 - Strategy concerning ECD	**New proposal**	92(2)(b) within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated	The words "monitored and supported" must be added after "managed". The rationale for the proposal is that monitoring the efficacy of services and programmes

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		managed, monitored and supported early childhood development system.	for young children is critical and merits express mention.
Section 93 - Provision of ECD programmes	**Supported**		
Section 94 - National norms and standards for ECD programmes	**Supported**		
Section 96 - Application for registration and renewal of registration	**New proposal**	96(4) The proposal is that the 90 day period be reduced to 60 days	90 days is unnecessarily long and does not give priority to the nature of the services to young children.
Section 98 - Conditional registration	**Supported**		
Section 100 - Notice of enforcement	**New proposal**		DSD must assist, they have a list of available partial care facilities. The DSD has a duty to ensure that children's access to ECD is not interrupted.
Section 102 - Assignment of functions to municipality	**Not Supported & new proposal**	• 102(1) "… perform the functions concerned and has the necessary early childhood expertise."	The reason advanced for the proposal is that it is not acceptable to leave the responsibility of managing early childhood development programmes and services in the

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		• 102(6) change from 90 days to 60 days.	hands of a municipality where none of its staff have ever dealt with such programmes and services before. Early childhood development programmes and services are specialised priority services and the entity responsible should have some expertise in the field.
Section 103 – Regulations	**Supported**		
Section 104 - Strategy concerning child protection	**Not Supported**	104(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development, the South African Police Service, South African Local Government Association and the local government" …	We need to involve local government as they are the ones that deliver services to the people.
Section 105 - Provision of designated child protection services	**Not Supported**	• 105(4) designated social workers (social work practitioners) in the service of	It is recommended that the wording of section 105 be clarified to reflect that service providers may offer

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		a child and youth care centre and a municipality to be exempted from (b) (v) and (vi) because the basic function of a social worker at a child and youth care centre is to be responsible for the care of the child through the implementation of appropriate programmes for the child and his or her family and not to do other 'statutory work'. • 105(5)(d), designated social workers in the employ of a child and youth care centre or a municipality should be empowered to intervene appropriately, but NOT to remove children – this is the role of designated social workers NOT in the employ of	some but so not have to offer all of these services, and that organisations offering prevention and early intervention services are not necessarily required to register a child protection organisations. Clarity must be sought with the Department concerning the registration of child and youth care centres also child protection organisations (and the impact on social workers employed there) as well as social workers employed at municipalities.

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		a child and youth care centre or municipality	
Section 106 - National norms and standards for child protection	**Partially supported**	106(3) an agreement or Memorandum of Understanding between SALGA and DSD should be drafted to clarify the roles of social workers employed by municipalities in relation to child protection work.	So that the roles of the different social services professionals is clear and there is no confusion or overlapping.
Section 107 - Designation of child protection organisation	**Supported**		
Section 109 - Withdrawal of designation	**We support the amendment and propose and additional amendment to section 109(2).**	"<u>The Director-General or provincial head of department must conduct quality assurance in the prescribed manner on a regular basis, in order to make sure that a child protection organisation adheres to provisions and conditions of this Act</u>."	Quality assurance should happen as a regular and ongoing process. Not only before the withdrawal of a designation.
Section 110- Reporting of abused or neglected child and	**Partially Supported**	• Regulation 33(2) provides for a separate Form (23) for the purposes of reporting child	• It is proposed that the Form in current form (Form 22) is long and confusing for people other

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
child in need of care and protection		abuse and neglect to the Director General for recoding in Part A of the Register, as opposed to Form 22 which is the recoding of the Report of the abuse. Both are detailed. It is submitted that (depending on the decision on whether Form 22 is to remain unaltered, Form 23 be merged into Form 22 so that only one Form has to be filled in.	than professionals. It is noted that in practice not all people mentioned in section 110 fill Form 22 in and that there is a need for a simple form to be filled in by a reporter, and that Form 22 be then reserved for the social worker and police official. There must then also be some form of acknowledgement of the simpler form, and an assurance given to the reporter that the information will be kept confidential.
Section 111- Keeping of the National Child Protection Register	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 114- Contents of Part A of the register	**Partially Supported**	• Leave shelters in there, unless they are already included under a different heading.	• Abuse can also occur in shelters.
Section 117 - Inquiries on information in Part A of the register	**Partially Supported** **Section 117A supported**		• It is better to have s117 remain, if the problem is getting a response from the department, then the department needs to fix that.
Part B of the Register: General	**NB. We do not support the Part B of the Register**	We want to propose, in general, that Part B of the Register be removed in its entirety. In its place, there should be a section that requires all employers to check the SAPS criminal record of all persons who will work with children. If they have a relevant record, they may not be employed. This our over-riding proposal. We comment below on specific	The Register is ineffective, expensive and is unlikely to ever be fully achieved. A much simpler method is already available to us in the Criminal Records kept by SAPS where are far more comprehensive (not just sexual offences).

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		provisions regarding Part B, in case our overarching proposal is not accepted.	
Section 119 - Contents of Part B of the register	**Supported**		The proposed Amendment to section 119 is in line with the Constitutional Court's ruling in ***J v NDPP.*** Although that case was about the Sexual Offences Register, the Child Protection Registers was mentioned in a footnote. The court was of the view that child offenders should not be included on such registers, and certainly not as the 'default' position.
Section 120 – Finding persons unsuitable to work with children	**New Proposal**	• It is proposed that section 120(4)(a) and (5) be expanded to include all the new sexual offences provided for in the Criminal Law Sexual Offences Amendment Act, with the exception of those provided for in section 15 and 16. Section	• Should these new crimes not be included, people may be found to be suitable to work with children, even though would pose a real danger to them. • It is supported that the offences be aligned with the Sexual Offences Act and that attempted

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		120(4) should spell out clear that persons convicted of the specified offences must be deemed unsuitable to work with children. • It is also proposed via a private members bill currently before Parliament that 'attempts' be added to the list of offences, and that domestic violence and emotional abuse also be added. • It is proposed that section 120 be amended to include persons convicted in foreign places of safety. • *"Any person who in a foreign jurisdiction has been convicted of any offence equivalent to the commission of a sexual offence against a child; or who in any foreign jurisdiction has*	offences in relation to all mentioned offences be added. However, domestic violence and emotional abuse are not criminal offences *eo nomine* and their inclusion could raise constitutional issues related to a lack of clarity of definition (especially emotional abuse which is not covered by assault or assault with intent to commit grievous bodily harm as some forms of domestic violence are).

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		been dealt with in a manner equivalent to a direction given in terms of section 77(6) or 78(6) of the Criminal Procedure Act 51 of 1977; or whose particulars appear on an official register in any foreign jurisdiction pursuant to a conviction of a sexual offences against a child or as a result of an order equivalent to a direct given in terms of section 77(6) or 78(8) of the criminal procedure Act 51 of 1977 whether committed before or after commencement of the Act."	
Section 122 - Findings to be reported to the Director – General	**Supported**	•	•
Section 123 - Consequences of entry of name in Part B of register	**Partially Supported**	• It is proposed that section 123(1)(d) and 123(4) be amended to reflect that the South African Police Services	The differentiation between the blanket ban on working with children in any capacity- as provided for in sections 123(2); 123(3) and 123(5)-

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		may not **employ anyone in any capacity** whose name is on the Register. • Further it is proposed that such a person not be permitted to work in any health profession or in education.	and section 123(4) is not justified. Considering the role of the South African Police Services in the general protection of members of the community – including children- a person who is on Part B of the register should be employed by the South African Police Service in any capacity- period.
Section 124 - Disclosure of entry of name in Part B of register	**Partially supported**	Section 124(1)(c) must be amended in line with our aforementioned proposal in relation to sections 123(1)(d) and 123(4).	
Section 125- Access to Part B of register	**Supported**		
Section 126- Establishment of information in Part B of register	**Partially supported**	Sections 126(1)(c) and 126(2)© must be amended in line with our aforementioned proposal in relation to123(1)(d) and 123(4).	

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 127- Disclosure of names in Part B of register prohibited	**Supported**		
Section 128 - Removal of name from register	**Supported**		
Section 129	**Supported**		
Section 129- Consent to medical treatment and surgical operation	**Proposal**	The proposal that was in the August draft of the Third Amendment Bill in relation to section 129(3) must be re-inserted. It is important to recognise the rights of "child-parents" to consent to their own medical treatment and that of their own children in line with the requirements set out in section 129(3) in so far as age, maturity and mental capacity is concerned. An approach that does not allow totally ignores the	There is also a need to include a definition of "child-parent".

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		individual rights of "child-parents" and the autonomy already recognised in the very section.	
Section 131 - HIV testing for foster care or adoption purposes	**Partially Supported**		A Form should be developed to facilitate the referral of a prospective adoptive or foster child for HIV- or medical testing. A Form might make it more official and remove some of the barriers in practice being experienced by social work staff.
Section 135- Child headed household	**Supported**		
Section 137 - Child-headed households	**Supported**		
Section 141 - Child labour and exploitation of children	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 142- Regulations	**Supported**		
Section 144 - Purposes of prevention and early intervention programmes	**Supported and new proposal**	• Section 144(2)(a) should be amended to include the words "but are not limited to" after the word "include". • Section 144(2)(b) should be amended by adding the words " and their children" after "for themselves".	• The reason advanced for the proposal is that section 144(2) is not an exhaustive list of prevention and early intervention programmes and there needs to be scope for other programmes. • This will emphasise the fact that the services are delivered to the families for the benefit of children
Section 145 - Strategy for securing prevention and early intervention programmes	**Supported**		
Section 146- Provision of prevention and early intervention programmes	**Partially Supported**	An additional sub-section should be added to read as follows: 146(4)(c) "to make prevention and early intervention programmes available to children below and up to school going age".	It is opined that service delivery for young children must be prioritised in accordance with the Welfare White Paper. While children of school going age access services through schools, the majority of children under school going age are not

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
			accessing services. This is a particularly vulnerable period for future development and therefore should also be prioritised.
Section 147 - National norms and standards for prevention and early intervention programmes	**Supported**		
Section149(A) - Report to include summary of prevention and early intervention programmes and regulations	**Supported**		
Section 150- Child in need of care and protection	**Supported**		
Section 150(A)	**Supported**		
Section 155 - Decision of question whether child is in need of care and protection	**Partially supported**	155(1) – "**[A children's court must decide the question of whether]** <u>Upon notification or referral to the children's court of a child who is the subject of</u> proceedings in terms of section 47,	The majority of the problems in respect of removed children should have been cured by the judgment in ***C and Others v MEC for Social Development, Gauteng and Others***. It is now clearly mandatory

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		151, 152 or 154, a children's court must open a court file in the prescribed manner and must decide the question of whether is in need of care and protection." **Section 155(2):** 155(2) – "**[Before the child is brought before the children's court,]** A designated social worker must investigate the matter and within 90 days from the date of referral compile a report in the prescribed manner on whether the child is in need of care and protection."	that there must be a hearing at the children's court on the next court day when a child is removed. However, section 155(2) still states: "Before the child is brought before the children's court, a designated social worker must investigate the matter and within 90 days compile a report..." This was not cured by the abovementioned judgment. There is therefore still confusion in respect of removed children. In respect of children not removed but the subject of investigation to determine whether they are in need of care and protection, there is no clear procedure to open a children's court file in the act or regulations. This could be resolved through amendment to sections 155(1) and 155(2) to make it clear the court must open a file/enquiry.

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 156- Orders when child is found to be in need of care and protection	**Partially supported**	Proposed amendment to section 156(1)(e)(ii) be reversed.	This amendment seems unnecessary. The internal organisational structure and decision making procedures of a cluster foster scheme may be regulated by the scheme as long as it is within the prescripts of the Act and Regulations. The choice of placement of a child with a specific foster parent, who is part of a cluster foster scheme, can be regulated internally by the scheme. Placing the child with a specific foster parent would also be contrary to the concept of cluster foster care which allows transfer of children between foster parents without having to return to court or requesting an administrative transfer by a social worker. If a court order identifies a specific foster parent, the transfer would have to be effected through

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
			the process described in section 171 or by court order, the organisation cannot do it independently. Regulation 69(5) does require that the cluster foster scheme consider the factors set out in section 171 when transferring a child from one foster parent to another, but it does not have to be processed through DSD or the children's court.
Section 157- Court orders to be aimed at securing stability in child's life	**Partially supported**	157(3) – "A **[very young]** <u>child who is three years or younger</u> who has been orphaned or abandoned…"	This proposed amendment aligns with what is already in the Act describing such age group, see section 135(2)(c).
Section 159 - Duration and extension of orders	**Supported**		
Section 167 - Alternative care	**Amendment to section 167(1)(b) is not supported**	It is unclear what the reason is for the removal of the reference to section 29 or Chapter 10 of the	

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
	Amendment to section 167(2) Supported **Proposal in relation to section 167(3)**	Child Justice Act. This amendment has serious implications for the placement of child offenders in child and youth care centres. The provisions that relate to how children who have been found guilty of criminal offence are dealt with in CYCCs are very important and appear in this chapter on Alternative Care. The removal of the aforementioned bits means that there is no mechanism to dealt with these children in so far as their programmes and possibilities for early release are concerned. Section should be amended by the inclusion of a new subsection (c) which states that any reference to 'person' in this subsection does not	**<u>Proposed section 167(3)</u>** currently does not differentiate or have different rules for individuals, especially those who are the child's relatives or close family friend. The current law sometimes causes children to be placed in temporary safe care facilities that have already complied with all the conditions,

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		include a person who is related to the child or a person with whom the child has a close relationship, provided that, in such cases, a designated social worker has assessed the prospective temporary caregiver as being a suitable person to care for the child on a temporary basis. With regard to temporary safe care approvals being required in every case, a possible solution is to amend section 167(3)(a) to say 'and such approval is valid for the period set out in the prescribed form'. <u>Drafting implications:</u> Regulation 57 would have to be redrafted to reflect the changes to section 167 (3). Form 39 should	rather than with a suitable grandmother or aunt, simply because it is difficult to comply with the regulations pertaining to individuals on an emergency basis, which will often be the situation. There is a further concern that the requirement that temporary safe care be approved by the HOD is being interpreted by some children's courts as requiring a fresh approval for every placement. This is impractical, particularly for child and youth care centres and individual place of safety placements that are regularly used.
	Proposal in relation to section 167(4) is supported		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
		also be amended to reflect the period for which the approval is valid.	
Section 170 - Child absconding from alternative care	**Supported**		
Section 178-Serious injury, abuse or death of a child in alternative care	**Supported**		
Section 179 – Regulations	**Supported**		
Section 181- Purposes of foster care	**Supported**		
Section 183 - Cluster foster care	**Supported**		
Section 185 - Number of children to be placed in foster care per household	**Supported**		
Section 186 - Duration of foster care placement	**Supported**		
Section 188 - Responsibilities and rights of foster parents	**Supported**		
Section 191 - Child and youth care centres	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 192 - Strategy to ensure sufficient provision of CYCCs	**Supported**		
Section 193 - Provision for CYCCs	**Supported**		
Section 194 - National norms and standards for CYCCs	**Supported**		
Section 197 - Establishment of CYCCs	**Supported**		
Section 199 - Application for registration or renewal of registration	**Supported**		
Section 200 – Consideration of application	**Supported**		
Section 201 - Conditional registration	**Supported**		
Section 205 - Voluntary closure of CYCC	**Supported**		
Section 208 - Management board	**Supported**		
Section 209 - Manager and staff of CYCC	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 211 - Quality assurance process	**Supported**		
Section 212 - Regulations	**Supported**		
Section 213 - Drop in Centres	**Supported**		
Section 214 - Strategy concerning drop in centres	**Supported**		
Section 215 - Provision of drop in centres	**Supported**		
Section 216 - National norms and standards for drop in centres	**Supported**		
Section 218 - Application for registration and renewal of registration	**Supported**		
Section 219 - Consideration of application	**Supported**		
Section 220 - Conditional registration	**Supported**		
Section 224 - Record and inspection of and provision for drop in centres	**Supported**		
Section 225 - Assignment of functions to municipalities	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 226 - Serious injury, abuse or death of a child in drop in centre	**Supported**		
Section 232 - Register on adoptable children and prospective adoptive parents	**Supported**		
Section 233 - Consent to adoption	**Supported**		
Section 234 - Post adoption agreements	**Supported**		
Section 236 - When consent is not required	**Supported**		
Section 239 - Application for adoption order	**Supported**		
Section 243 - Rescission of adoption order	**Supported**		
Section 248 - Access to adoption register	**Supported**		
Section 249 - No consideration in respect of adoption	**Not Supported**	The section must be reinserted.	The deletion of the provision creates the impression that the persons who had been listed are now not allowed to charge fees for services they offer

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
			in relation to adoption. The provisions already make it clear that the only consideration persons can receive is for their professional services and such consideration is regulated by the relevant regulations that apply to the respective professions.
Section 250 - Only certain persons allowed to provide adoption services	**Supported**		
Section 251- Accreditation to provide adoption service	**Supported**		
Section 252 – Advertising	**Comment**		The section refers to an adoption social worker (thus removing reference to a child protection organisation) but then section 253 in relation to the regulations still refers to an accredited CPO that provides adoption services

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 253 – Regulations	**Comment**		The section refers to a child protection organisation (thus not using adoption social worker), but then section 252 in relation to the advertising refers to an adoption social worker
Section 258 - Performance of functions	**Supported**		
Section 259 - Accreditation to provide intercountry adoption service	**Partially supported**	Section 259(4) must be reinserted.	The deletion of the provision creates the impression that the persons who had been listed are now not allowed to charge fees for services they offer in relation to adoption. The provisions already make it clear that the only consideration persons can receive is for their professional services and such consideration is regulated by the relevant regulations that apply to the respective professions.

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 260 - Entering into adoption working agreement	**Supported**		
Section 261 - Adoption of child from republic by a person in convention country	**Supported**		
Section 262 - Adoption of child from republic by a person in non-convention country	**Supported**		
Section 263 - Issue of adoption compliance certificate	**Supported**		
Section 264 - Adoption of child from convention country by person in Republic	**Supported**		
Section 265 - Adoption of child from non-convention country by person in Republic	**Supported**		
Section 266 - Recognition of intercountry adoption of child from convention country	**Supported**		
Section 268 - Recognition of intercountry adoption of child from non-convention country	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 271- Application to the Children's Court for inter-country adoption	**Section 271(1A) Not supported** **Section 271 (3) supported**	The proposed section 271(1A) must be removed	The proposal is detrimental to the interests of a child. If the idea is to send back the child for the correct process to be followed, such a process can be undertaken while the child is in the Republic with the "adoptive parents". It is necessary to guard against irregular process, but each case must also be determined on its merits.
Section 278 – Powers of court	**Supported**		
Section 279 - Legal representation	**Supported**		
Section 292 - Surrogate motherhood agreement must be	**Supported**		

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
in writing and confirmed by High court			
Section 294 - Genetic origin of child	**Not supported**		The Constitutional Court dealt with this requirement in ***AB and Another v Minister of Social Development*** and settled the fact that the genetic link requirement must remain as it serves to protect the child to be born from the surrogate motherhood agreement.
Section 295 - Confirmation by court	**Partially supported**	The deletion of section 295(e) is not supported.	The provision is an important "catch-all" requirement that does no harm. Importantly, it reminds the parties and the courts that the surrogate motherhood agreement must only be confirmed if the best interests of the child to be conceived have, to the extent that is possible, been safeguarded. Recent judgments on surrogacy have highlighted this aspect and have led to the court not even

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
			confirming surrogate motherhoods agreements where the court was of the view that the best interests of the child to be conceived may be at risk.
Section 297 - Effect of surrogate motherhood agreement on status of child	**Supported**		
Section 299- Effect of termination of surrogate motherhood agreement	**New proposal**	Extensive relook at the section is necessary.	Section 299 needs to be revised to consider the fact that as it is it, where the surrogate agreement is terminated, puts the husband of the surrogate mother before the commissioning father- who may be the biological father of the child. The section follows section 298 and thus we assume that it only refers to where the surrogate mother is also the egg donor, but this needs to be made clear as the consequences of

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
			such termination cuts across the rights of the commissioning parents.
Section 303 - Prohibition of certain acts	**Supported**		
Section 304	**Supported**		
Section 305 – Offences	**Comment**	Section 6A (Which we do not support) is added to the list and 74 is taken out, however section 6C is not inserted.	We supported 6C- which is closer to 74 and that should be the section that is added to the list of offences. If section 74 is retained then the reference to this section must be reinserted.

Amendment of section	Supported / not Supported	Proposed amendment	Reasons / Rationale
Section 306 – Regulations	**Supported subject to our comments on specific sections that need to be addressed first before they are added to the regulations list.**		
Section 312	**Supported**		