

Amendments to the Children's Act 38 of 2005 and the Children's Amendment Act 41 of 2007

July 15

This document is a summary of proposed amendments to the Children's Act 38 of 2005 and the Children's Amendment Act 41 of 2007 to be submitted by 15 July 2011.

NAME OF ORGANISATION/DIRECTORATE/DEPARTMENT/PROVINCE: National Alliance for Street Children

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Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
Chapter 2 new section 12	Physical and psychological integrity of a child	To be developed in consultation with the WGPD, based on Children's Amendment Bill 19B 2006, as follows: (1) A person who has care of a child, including a person who has parental responsibilities and rights in respect of the child, must respect, promote and protect the child's right to physical and psychological integrity as conferred by section 12(1)(c), (d) and (e) of the Constitution. (2) No child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way. (3) The common law defense of reasonable chastisement available to persons referred to	Children's Act as Amended is currently silent on the right to protection from corporal and humiliating punishment by parents, and has not revoked the defense of 'reasonable chastisement'.		

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		in subsection (1) in any court proceeding is hereby abolished.			
Chapter 7, part 4, new section 137	Discipline of children	<p>To be developed in consultation with the WGPD, based on Children’s Amendment Bill 19B 2006, as follows: (1) No person may administer corporal punishment to a child or subject a child to any form of cruel, inhuman or degrading punishment at a [any] child and youth care centre, partial care facility or shelter or drop-in centre.</p> <p>(2) The Department must take all reasonable steps to ensure that—</p> <p>(a) education and awareness-raising programmes concerning the effect of section 12 are implemented throughout the Republic; and</p> <p>(b) programmes promoting appropriate discipline are available throughout the Republic.</p> <p>(3) A parent, care-giver or any person holding parental responsibilities and rights in respect of a child who is</p>	Children’s Act as Amended currently silent on appropriate parental discipline of children		

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		<p>reported for subjecting such child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.</p> <p>(4) Prosecution of a parent or person holding parental responsibilities and rights referred to in subsection (6) may be instituted if this is in the best interests of the child.</p>			
Chapter 1 section 1	Interpretation	Definition of positive discipline	Children’s Act as Amended does not currently define this concept		
Chapter 1 section 1	Interpretation	Definition of positive parenting	Children’s Act as Amended does not currently define this concept		
208 (2) (b)	Management board	<p><u>Addition:</u> A definition or explanation of “the registration holder” in the case of a privately operated CYCC would be very helpful.</p> <p>The section should explain the relationship between the management board for CYCCs and the Board of the NPO under</p>	For long-standing NGOs (established over 20 years ago), nobody can remember who the registration holder was (if this means a specific individual who applied for registration). Or does it mean the current Management		

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		<p>which the CYCC is registered. Are these 2 different entities?</p> <p>Perhaps legal opinion is needed on whether this section is consistent with the NPO Act – also a piece of national legislation.</p>	Committee under the NPO Act?		
225 (1)	Assignment of functions to municipality	<p><u>Amendment</u> This section should be amended to not allow the assignment of functions to municipalities. The provision should be deleted.</p> <p>Does assignment of functions in sections 217,218,219,220,221,222 &224 which relate to registration of drop in centres, enforcement and appeals mean that municipalities would then be responsible for funding of drop in centres?</p> <p>.</p>	<p>The street children’s sector is against municipalities having any say about services to street children because street children are a political issue, and municipalities are emotional in response. Eg. “Clean up the streets approaches”. Drop in centres need to be under the control of Social Development as the lead agency in child protection. Municipalities do not have the competency to provide a consistent funding stream for drop in centres, which</p>		

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			would mean that most of them will close down and they are a great prevention and early intervention service.		