Re: Invited Submissions to the Children’s Amendment Bill

The invited submission to parliament of the Children’s Amemdment Bill refers. This submission on the Children’s Amendment Bill is made on behalf of **Ikamva Labantu Charitable Trust.**

**DESCRIPTION OF ORGANISATION**

Since 1963, Ikamva Labantu’s grassroots work in Cape Town’s townships has focused on the most critical community-identified needs which arise out of poverty and lack of infrastructure, to enable people to live with dignity and realize their human rights. Our vision is to enable communities where people thrive. Our mission is to work with active community leaders by following their direction, while acknowledging their ownership, providing access to resources and opportunities and celebrating their success.

Our three programmes focus on 1) the improvement of early childhood education (ECD) by training teachers and principals (ECD Programme); 2) the support of afterschool centres to protect vulnerable children from violence on the streets (Afternoon Angels Programme) and 3) and the provision of care and support for senior citizens to enable dignified and active ageing (Senior Citizens Programme).

Ikamva Labantu has been working in the ECD sector since 1963 when it established community preschools and teacher training during the Apartheid regime. Since 2014, the organization has been delivering experiential practitioner training informed by our registered learning programme and a skills development programme (currently in the accreditation process) to principals. Both training programmes have an overarching outcome to improve the quality of developmental stimulation to under five year olds in order to achieve school readiness, and for principals to run sustainable businesses essential in the township economy.

**IKAMVA LABANTU’S ECD REGISTRATION HELPDESK**

Since 2013, Ikamva Labantu has been operating South Africa’s first ECD Registration Helpdesk operated by informed staff who guide and supports ECD principals to apply for registration with the Department of Social Development in order to obtain Early Learning Subsidies. Over 540 township preschools are being supported through Ikamva Labantu’s Registration Helpdesk, impacting on 18 000 children attending these ECD facilities. Ikamva Labantu provides information and practical assistance for registration which may include resources for upgrading and building plans; organizes Imbizos to inform and encourage more preschools to strive for registration; and advocates to Government for leniency in norms and standards for registration.

This submission is inspired by a broader campaign calling for Real Reform of the ECD sector supported, as at the date of this submission, by over 100 organisations and with almost 800 people signing a petition in support of the campaign ([www.change.org/realecdreform](http://www.change.org/realecdreform)). Ikamva Labantu concurs that the legislative amendments that have been proposed by the Children’s Amendment Bill are a missed opportunity to improve the lives of millions of children. The campaign has been launched to engage Government and other stakeholders on the urgent need for reform of the legal framework for ECD in South Africa. For more information visit [www.ecdreform.org.za](http://www.ecdreform.org.za)

Ikamva Labantu is supporting this campaign because it is a human rights that all South African children have access to quality ECD. For all South Africans to live with dignity and realize their human potential, and for South Africa to reach its human capital requirements for a thriving economy, it is essential that learning and nurturing in the critical window period of development - birth to seven - are optimised. During this period, essential neurological pathways are being creating for language, thinking, social and emotional development. Subsequent to this period, it is very difficult to remediate these missed developmental opportunities, leaving children with a precarious future and raising the risk of intergenerational hardship.

Ikamva Labantu would appreciate an opportunity to present our recommendations regarding the Children’s Amendment Bill to the Portfolio Committee.

Yours sincerely,

Ishreen Davids, General Manager

We can be contacted on 021 461 8338 if you require any more information.

This submission is supported by the Ilitha Lekamva Educare Organisation of Khayelitsha which represents local educares.

**SUBMISSION ON THE CHILDREN’S AMENDMENT BILL, 2020 AS IT RELATES TO EARLY CHILDHOOD DEVELOPMENT**

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# **Introduction**

According to UNICEF, “early years of childhood form the basis of intelligence, personality, social behavior, and capacity to learn and nurture oneself as an adult[[1]](#footnote-1)”. Further, a good foundation in the preschool years has a positive effect through adulthood. Educated and healthy people participate in, and contribute to, the financial and social wealth of their societies. They are more likely to be financially self-sustaining and less likely suffer from debilitating non-communicable diseases. On the contrary, children are not able to achieve their full potential if they do not receive adequate nutrition, care and opportunities to learn.

The opportunities afforded to South Africa’s preschool children vary greatly and impact on the persistent poverty and inequality that mires the country. The majority of children in South Africa do not have access to quality early childhood development services. Currently, 46.3% of preschool children receive no ECD at all. Only 11.6% of children attend registered ECDs and a massive 42% of children attend unregistered ECDs. Only 626 574 children (9%) are obtaining subsidised learning. The preschool children receiving the least ECD support come from the poorest families and are most vulnerable to health, social and economic risks and shocks.

In Ikamva Labantu’s experience managing its ECD Registration Helpdesk, the following problems hinder the registration of community preschools:

1 Norms and Standards for obtaining registration are extremely onerous and unattainable for most township preschools and even more so for preschools in informal settlements, particularly the zoning and safety requirements. They were developed based on first world norms and standards, with a “one size fits all” approach. The Norms and Standards are currently unobtainable for ECD’s in townships and even more so for ECD’s in the informal settlements. Problems include:

i. The registration documents are not always accessible to preschool principals, being too complicated and difficult to understand, as principals often have had limited formal education. Compounding this obstacle is the high number of stakeholder forms necessary to complete the process (Department of Fire and Safety, Department of Health and the Department of Land Use).

ii. The lack of financial security from potential subsidies leads to high turnover of staff and overcrowding - large numbers of children are enrolled to increase the financial gain to cover expenses.

iii. Lack of funding prevents principals from upgrading their properties to be deemed safe.

iv. Having insufficient funds to fulfill the structural requirements, building plans and resources leads to educares operating illegally and unsubsidized for many years.

This all has direct negative consequences to the children’s learning opportunities in their most critical formative years. When subsidisation is not achieved, a continuous negative chain of events perpetually exits - overcrowding, high staff turnover, employment of staff not adequately skilled in early childhood development, children not accessing the nutritious meals required to grow healthy minds and bodies, all impacting their ability to learn and develop psychosocially. This list can trail along with many more negative results ending with the more current challenges of all the violence and unemployment seen and experienced by many. **It is ironic that although of the main objects of the Children’s Act is to give effect to constitutional rights of children, the Norms and Standards have led to a situation where the rights of the children are in fact denied.**

The introduction of the Children’s Amendment Bill B18-2020 (“the Bill”) could have been an opportunity to address the regulation of ECD in a holistic, coordinated way and with the aim of facilitating universal access to quality ECD services. However, core challenges facing the ECD sector are not substantially addressed by the Bill. Instead, the Bill’s approach of simply cutting and pasting provisions relating to Partial Care under a new Part headed “Early Childhood Development Centres” reflects a fundamental failure to engage with ECD reform in a holistic and meaningful way. By adopting this approach, the Bill in fact creates additional burdens and challenges for the ECD sector.

Moreover, the Bill also fails to respond to the imminent shift of responsibilities in respect of ECD services from the Department of Social Development (“DSD”) to the Department of Basic Education (“DBE”).

The key issues requiring legislative reform, and which will be addressed in this submission relate to:

1. A simpler, one-step registration process for ECD providers;

2. Recognition of different types of ECD programme providers;

3. Inaccessible compliance standards and overlapping roles and responsibilities;

4. Assistance to ECD providers servicing poor communities;

5. The conditional registration framework; and

6. The provision of infrastructure support.

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

- Summary of current challenges in the ECD sector as perpetuated in the Children’s Act;

- How to address those challenges; and

- An assessment of the Bill’s proposed amendments in relation to these challenges and submissions on how the Bill needs to be changed.

It must be emphasised that this submission seeks to identify key overarching issues impacting on the ECD sector. This submission aims to provide guiding considerations for the comprehensive reform of the ECD regulatory framework and must be read holistically. To this end, we do not deal with each and every proposed amendment made by the Bill. A failure to deal with any specific clause in the Bill should not be read to suggest that we necessarily accept or endorse those proposed amendments.

# **2. Registration of ECD providers**

*2.1 Current challenge(s) in the Children’s Act – onerous “dual registration”*

Under the current legislation, partial care facilities that care for more than 6 children who are younger than school going age must provide an ECD programme. Practically speaking, this means that an ECD programme provided out of a partial care facility needs to register twice: first, as a partial care facility and second, as the provider of an ECD programme. Each registration process has its own regulations, norms and standards and requirements. This creates unnecessary duplication and an additional administrative and financial burden.[[2]](#footnote-2)

*2.2 How to address the challenge(s) – simplified “one-step registration”*

The sector is calling for a **one-step registration process**. All aspects of ECD such as physical space, health and safety and programmatic elements ought to be dealt with in a single registration process guided by regulations and norms and standards that allow for different types of ECD programme providers (more detail on the need for different types of ECD programme providers follows below).

In our view, a **one-step registration process will be most effective together with more holistic reforms** which a)recognises different modalities of ECD provisioning and b) ensures that registration requirements are adequate and not unduly onerous.

This holistic reform is entirely achievable; however, **the current Bill needs to be significantly reconsidered in order to achieve this**. We urge the responsible departments (including local government and the Department of Health) to, in the process of finalising this Bill, engage stakeholders on the holistic model for such reform and to consider comprehensive amendments to ensure a streamlined and effective registration process is achieved.

*2.3 The Bill’s proposed amendments and submissions on how the Bill needs to be changed*

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| **Relevant provision in Children’s Amendment Bill** | **Concerns with the Children’s Amendment Bill** | **Proposal** |
| **Amendment 55 inserting a new section 103C:**  “Any person, Department, provincial head of social development or organisation may establish or operate an early childhood development centre provided that the early childhood development centre—  (a) is registered with the provincial government of the province where the centre is situated;”  **Read together with:**  - the definition of Early Childhood Development Centre (introduced by clause 1(j) of the Bill);  - the existing provisions relating to the definition and registration of partial care (Sections 76 and 80 of the Children’s Act); and  - the provision of ECD programmes by partial care facilities (section 93(5) of the Children’s Act amended by clause 47(e) of the Bill). | The Bill not only **fails to address the challenges of the dual-registration** process but also now introduces the possibility of a **third registration requirement**.  Under the Bill, a facility which provides ECD programmes for more than six children from birth to school-going age will be considered as **both** a partial care facility and an ECD centre.  This means that such an ECD programme provider may be required to comply with **three separate registration requirements** (i.e. registration as a partial care facility, registration as an ECD centre and registration of its ECD programmes).  We note that the Bill (proposed sections 103(C)(4) and 103(C)(5)) caters for a registered partial care facility (that provides ECD programmes) being regarded as having been registered as an ECD centre for a period of 5 years from the date on which the amendments take effect.[[3]](#footnote-3) However, it is not clear that these provisions apply to partial care facilities established *after* the amendments come into effect. Moreover, after the five-year deeming period has elapsed, it would appear that the triple registration regime would apply to all facilities providing ECD programmes.  We doubt that this is the intended effect of the legislation and therefore amendments have to be made to avoid this outcome. | **a) A simplified one-step registration process is required**. In order to achieve this, drafters of the Bill must engage stakeholders on the holistic model for such reform with comprehensive amendments to ensure that a streamlined and effective registration process (inclusive of different modalities of provisioning) is achieved.  In particular, we urge that all aspects of ECD provisioning are consolidated under an integrated chapter that provides for a one-step registration process under the Children’s Act.  It also bears emphasis that the current regulations prescribed under the Act relating to ECD provisioning will need to be carefully revised in line with adopted reforms. The process of regulatory overhaul should be considered in tandem with the legislative amendment process to ensure coordinated, consistent and holistic reform.  b) The Bill, **in the least, needs to be amended to avoid the potential for triple registration**. In particular, the confusing overlap between the scope and regulation of partial care and ECD centres needs to be addressed. While this requires a holistic approach, amendments may include the following:  (i) Providing for an overarching definition of an “ECD provider” that is broad enough to include different types of ECD provisioning (and to exclude some types of provisioning where appropriate);  **and**  (ii) The removal of provisioning of ECD programmes from the scope of partial care entirely by deleting section 93(5)(a) of the Children’s Act;  **and**  (iii) Excluding the care of a child by an ECD provider (as contemplated under Chapter 6, Part II) from the scope of partial care under section 76 of the Children’s Act;  **and**  (iv) “early childhood development services” as contemplated in section 91(2) of the Act for children up to school going age needs to be removed as a type of partial care from regulation 12(1)(a) of the General Regulations regarding Children. |

# **3. Recognition of different types of ECD providers**

*3.1 Current challenge(s) in the Children’s Act – inappropriate “one-size-fits-all” approach*

The Act does not explicitly provide for different types of ECD programme provisioning. The Act does not accommodate non-centre based programmes. Under the current legislation, it has been arguable that certain modalities of ECD provisioning (e.g. sessional programmes such a playgroups) do not fall within the scope of the definition of “partial care” and should therefore not be subject to those onerous registration requirements (and need only register as an ECD programme). However, even with this approach the current Act does not adequately address the need for a fully differentiated approach to different types of ECD providers.

Non-centre based programmes can reach hundreds of thousands of children in areas where ECD infrastructure is limited, and they offer caregivers alternate early care and learning programmes which may better suit their needs. They must be recognised as distinct from partial care (or ECD centres) and ought to be registered, regulated and funded accordingly. Under the guidance of skilled service providers, these non-centre-based service providers reach large numbers of under five year olds. These children would otherwise have “fallen through the cracks” and left to roam in the streets before entering formal schooling unprepared and inclined to struggle significantly.

Further, children in these programmes are granted access to holistic stimulation, inclusive of safety and identification of challenges and referral. Making this mode of early childhood more enticing and operated by skilled personnel requires funding beyond meager parent fee contributions, noting the latter is not a consistent reality for many carers.

*3.2 How to address the challenge(s) – differentiated approach to various ECD providers*

Different types of ECD programme modalities (for example, centre-based and non-centre based which includes playgroups, toy libraries and home-based ECD) must be expressly recognized and they must have differentiated norms and standards applicable to their modality.

The Children’s Act should expressly delineate different types of providers for ECD programmes. Alternatively, the Children’s Act should expressly allow the Minister to determine different types of providers through regulations. Further, the Minister must have the power to provide for differentiated norms and standards.

*3.3 The Bill’s proposed amendments and submissions on how the Bill needs to be changed*

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| **Relevant provision in Children’s Amendment Bill** | **Concerns with the Children’s Amendment Bill** | **Proposal** |
| **Amendment 1(j) to section 1 of the Children’s Act**:  “1(j) early childhood development centre” means a centre that provides an early childhood development programme as contemplated in section 91(3) for more than six children from birth to school going age" | The introduction of a new part headed “ECD centre” by the Bill seems to focus on centre-based provisioning. The Bill therefore still fails to adequately recognise and regulate different types of ECD modalities.  Further, the provisions relating to ECD centres are simply a cut and paste from the partial care chapter, including the norms and standards framework. This leads to even more duplication and confusion in the regulation of the ECD sector. | a) The legislature must reconsider the terminology and definitions utilised in the Bill, in particular the definition “ECD centre”. This reconsideration is necessary as the current Bill insufficiently accommodates different types of ECD provisioning.  In addition, as mentioned at point 2.3 above, the definition adopted must also align with the objective of achieving a streamlined, one-step registration process.  b) The Children’s Act should expressly provide for the recognition of different types of providers for ECD programmes. This can be achieved by requiring the Minister to make regulations concerning different types of ECD programme delivery and for differentiated norms and standards in respect of these different modalities of provisioning. |

# **4. Compliance standards and overlapping roles and responsibilities**

*4.1 Current challenge(s) in the Children’s Act- inaccessible health and safety standards and duplication of local and provincial roles and responsibilities*

The Act is not clear on who is ultimately responsible for: a) developing health and safety standards; and b) ensuring compliance with health and safety standards for ECD providers. The legislation simply states that an applicant must comply with *all* prescribed requirements including those of the municipality. This creates the conditions for overlap and duplication between provincial and local government health and safety checks. The Act is also surprisingly silent on local government’s responsibilities in respect of “child care facilities” which is a competency of local government as per Schedule 4B of the Constitution.

As it stands, compliance standards for ECD providers are set out in the Children’s Act; the Health Act and various local government by-laws. This creates an untenable administrative burden on the State and on the applicant, who has to comply with multiple sets of requirements.

Further, the norms and standards that an ECD provider is required to comply with has increased significantly, with higher standards being introduced by the National Environmental Health Norms and Standards (“**NEHNS**”) in 2015. These higher norms and standards are driven by “international best practice”,[[4]](#footnote-4) underpinned by higher living standards internationally. Many of the Norms and Standards as determined under the Children’s Act are also unrealistic. Standards in South Africa have become excessive and for this reason, largely unattainable by the overwhelming majority of ECD providers who serve poor communities. According to an analysis of the General Household Survey from StatsSA, together with data from DSD, it is estimated that of the 3.7 million children who do access some form of ECD programme, two thirds access programmes that are unregulated and unregistered.[[5]](#footnote-5)

*4.2 How to address the challenge(s)- reasonable and appropriate health and safety standards and clearly defined and monitored roles and responsibilities*

National legislation must clearly define roles and responsibilities of the different levels of government in relation to ensuring a safe and healthy environment for children. Local government’s competencies in terms of the Constitution must be taken into account. The legislation should provide guidance to local government to minimize excessive and unrealistic health and safety standards as well as ensure that provinces play a role in monitoring and oversight of local government responsibilities (rather than duplicating their roles and responsibilities).

The Water Services Act 108 of 1997 offers one example of how the appropriate allocation of roles and responsibilities between different levels of government in respect of a Schedule 4B functional competency may be achieved.

Amendments to legislation in relation to health and safety standards must be accompanied by a complete overhaul of all existing regulations (including the NEHNS). Regulations concerning health, safety and programme standards must be streamlined and appropriately determined taking into account the **differing contexts** in South Africa as well as the **modality** of ECD provisioning. Ideally all children should be experience the same health and safety standards. However, the educare centre or place of operation of the out of centre programmes cannot be expected to function at extremely higher levels than the current level of human settlement for that particular area. Enforcing the current standards continues to marginalize already deprived children from a developmentally beneficial subsidized learning environment which would attract competent staff retention and access to better nutrition. The legislative and regulatory elements directly impact on children’s development at all levels. The Constitution lays the foundation for building regulations applied to early childhood development sites. This must be reworked to ensure high level standards do not prevent the marginalized communities from accessing governmental financial support.

*4.3 The Bill’s proposed amendments and submissions on how the Bill needs to be changed*

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| **Relevant provision in Children’s Amendment Bill** | **Concerns with the Children’s Amendment Bill** | **Proposal** |
| **Amendment 55 inserting a new section 103B** - norms and standards for early childhood development centres  **Read with existing sections of the Act dealing with partial care norms and standards.** | The Bill makes no attempt to clarify the roles and responsibilities of the levels of government in respect of ensuring a healthy and safe environment for children which means the requirements to comply with multiple different standards remains.  The overlap between partial care facilities and ECD centres and with the provisions of partial care simply being cut and pasted for ECD centres also creates much confusion.  The insertion of Part II in the Children’s Amendment Bill for ECD centres replicates and duplicates the existing framework for norms and standards of partial care in relation to ECD centres.  It also simply duplicates the provisions in relation to the responsibilities of government. | a) Legislation should clearly outline the duties, planning and reporting processes of *local* government. Local government duties should include the duty to ensure a healthy and safe environment for children and appropriate planning and reporting in respect thereof.  b) Legislation should clearly outline the duties, planning and reporting processes of the *provincial* and *national* government. In respect of ensuring a healthy and safe environment for children these should be limited to powers of monitoring and intervention so as to avoid duplication with local government (see Chapter 8 of the Water Services Act as an example of national legislation clearly setting out the scope of national and provincial monitoring and oversight obligations).  d) At the same time, health, safety and programme standards relating to ECD provisioning must be simplified and streamlined across all prescribed requirements.  **These reforms can only be properly achieved through a comprehensive re-evaluation of existing legislation and regulations, including the NEHNS.** |

# **5. Assistance to ECD providers servicing poor communities**

*5.1 Current challenge(s) in the Children’s Act- Failure to utilise the “power to assist” clauses to enable registration and compliance with minimum norms and standards*

Express powers exist in the current legislative framework to empower the DSD to support facilities to comply with any number of the requirements contained in various national norms and standards frameworks,[[6]](#footnote-6) as well as municipal by-laws.[[7]](#footnote-7) The DSD has the power to assist if there has been cancellation of registration and in the process of considering an application for registration.[[8]](#footnote-8) Funding or other forms of support can be provided to help with compliance when a facility or programme is in the process of registering. This power is not contingent on conditional registration. However, there is little evidence of this power being utilised over the last decade. Part of the problem is that provinces have never had to report on the use of this power and there is no provision mandating the allocation of budget to this.

*5.2 How to address the challenge(s)- Strengthen “power to assist” clauses*

The power to assist clauses must be retained, national and provincial departments must be required to consider the need to assist providers in their strategies (including allocation of budget resources) and must report to the Minister on progress achieved. This would be a huge benefit to sites being able to work towards the norms and standards while not losing the focus of quality childcare. As for the most part, the early childhood sector is privately owned with many functioning is severely impoverished settings. It is in these scenarios that the human rights of children are further impinged upon by enduring limited access to meaningful, engaging learning environments that establish a solid school readiness foundation.

*5.3 The Bill’s proposed amendments and submissions on how the Bill needs to be changed*

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| **Relevant provision the Children’s Amendment Bill** | **Concerns with the Children’s Amendment Bill** | **Proposal** |
| **Amendment 35(c) to section 78(4):**  “(4) **[The funding of partial care facilities must be prioritised]** The MEC for social development may prioritise and fund partial care facilities and services”  **Amendment 47(b) amends section 93(4) by the substitution of:**  “(4) The MEC for social development may prioritise and fund early childhood development programmes” | **De-prioritisation of poor communities**  The current law requires that the funding of ECD programmes to poor communities *must* be prioritised. The Bill turns this obligation into a discretionary power by providing that funding of partial care facilities and ECD programmes to poor communities *may* be prioritised. This undermines the realisation of the right to ECD for all children and is a regressive proposal. | **Proposals to turn the obligation to prioritise poor communities to a discretionary power must be removed.**  The following amendments should accordingly be **rejected**:  Amendment 35(c) to section 78(4).  Amendment 47(b) to section 93(4). |
| **Amendment 38(b) to section 82(5**) - “power to assist” in relation to partial care amended as follows:  “82(5) Notwithstanding section 78(3) a provincial head of social development may assist the owner or manager of a partial care facility where registration with conditions is granted, to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed."  **Amendment 35 introducing section 78(3A)** in relation to partial care facilities as follows:  “(3A) A partial care facility registered with conditions qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards.”  **Amendment 47 introducing section 93(3A)** in relation to early childhood development programmes as follows:  ‘‘(3A) A conditionally registered early childhood development programme may qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards.’’ | **Narrowing of the “power to assist” clauses**  The current legislation empowers the Department of Social Development to assist partial care facilities and programme providers to comply with prescribed norms and standards (the so-called “power to assist” clauses).  The power to assist allows for budget to be allocated for the purposes of assisting with compliance with norms and standards (including, for example, infrastructural improvements or other types of support).  The current legislation makes it clear that the provincial head of social development has the power to assist non-compliant facilities if there has been cancellation of registration and in the process of considering an application. That is, a facility does not already have to be registered in order for assistance to be provided.  The Bill reverses this position where partial care facilities are concerned and makes the use of the “power to assist” contingent on the granting of registration with conditions. This is therefore a narrowing of the powers.  Even though proposed amendments introducing clauses 78(3A) and 93(3A) appear to recognise that funding may be provided where there has been “only partial compliance with national norms and standards”, those provisions apply to *conditionally registered* facilities and programmes. Together with the ongoing confusion around the meaning of conditional registration (addressed below), these provisions do not alleviate the difficulty of ensuring that facilities and programmes that have not been able to meet registration requirements may qualify for funding assistance. | a) **The “power to assist” clauses must remain as broad as possible.**  The following amendments should accordingly be **rejected**:  Amendment 38(b) to section 82(5)  b) **In addition, the “power to assist” clauses should be strengthened.**  This can be achieved by a) strengthening reporting on the power to assist and b) incorporating the power to assist in planning.  *a) Amendments to ensure national and provincial report on utilisation of the power to assist*  Amending section 82 of the Act in order to ensure that provincial departments report on the exercise of the power to assist by inserting after subsection (5) the following section:  “(5A) The provincial head of social development must make an annual report to the Minister on progress achieved in respect of section 82(5).”  Amending section 97 of the Act by inserting after subsection (5) the following section: “(5A) The provincial head of social development must make an annual report to the Minister on progress achieved in respect of section 97(5).”  *b) Amendments to ensure that national and provincial strategies consider the need to assist facilities*  Amending section 77(1), 77(2), 91(1) and 92(2) to ensure that national and provincial strategies duly consider the need to assist facilities to comply with norms and standards and other registration requirements. This can be achieved by cross referencing the relevant “power to assist” clauses in the list of things the Minister or MECs must give due consideration to. For example:  “(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration to section 82(5) and as provided in section 11, to children with disabilities or chronic illnesses.” |

# **6. The conditional registration framework**

*6.1 Current challenge(s) in the Children’s Act- No clear distinction between “conditional registration” and registration with conditions*

The current legislation includes the possibility of “conditional registration”. This term has not been consistently understood or applied as allowing for the registration of providers who have not yet been able to meet all the requirements of registration. It is sometimes understood as only referring to the attaching of conditions to fully registered providers.

Therefore, under the current Act, the concepts of “conditional registration” and “registration with conditions” are not clearly distinguished, which leads to confusion and limits the effectiveness of conditional registration as a tool for increasing subsidised early learning and for the progressive realisation of norms and standards.

*6.2 How to address the challenge(s)- A clear “conditional registration framework”*

It needs to be clear that “conditional registration” of providers is possible prior to meeting the full requirements of registration and will therefore be granted based on lower threshold requirements. These providers should be supported to meet full registration requirements within a specified period. The conditional registration should be directly linked with the previous point on “power to assist” with a governmental budget. Many conditionally registered partial care facilities require funding to adequately remedy the gap. Repeated conditional registration does not address the need and places the site at risk of losing funding if the same status is denied in the years to come or annual funding is limited.

There should also be express recognition of “registration with conditions”, which is a distinct concept but also serves an important purpose.

*6.3 The Bill’s proposed amendments and submissions on how the Bill needs to be changed*

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| **Relevant provision in Children’s Amendment Bill** | **Concerns with Children’s Amendment Bill** | **Proposal** |
| Amendment 35(b) inserts a new s 78(3A) as follows:  “A partial care facility registered with conditions qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards."  Amendment 39 amends section 83 as follows:  “**[Conditional registration]** Conditions relating to registration—  The registration or renewal of registration of a partial care facility may be granted on such conditions as the provincial head of social development may determine, including **[conditions]**—  *(a)* conditions specifying the type of partial care that may or must be provided in terms of the registration;  *(b)* **[stating]** the period for **[which the conditional registration will remain valid**] compliance with the conditions referred to in paragraph *(a)*; and  *(c)* **[providing]** any other matter that may be prescribed**.**"  **Amendment 47 introduces section 93(3A)** as follows:  ‘‘(3A) A conditionally registered early childhood development programme may qualify for funding notwithstanding only partial  compliance with the prescribed national norms and standards.’’  Amendment 50 amends section, 98 i as follows:  "**[Conditional registration]** Conditions for registration of early childhood development programme  The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including **[conditions]**-   1. conditions specifying the type of partial care that may or must be provided in terms of the registration; 2. **[stating** **the period for which** **conditional registration will remain valid]** the period for compliance; and 3. **[providing for]** any other matters that may be prescribed.”   Amendment 55 inserts the new section 103F as follows:  “Conditions for registration of early childhood development centres  (1)The registration or renewal of registration of an early childhood development centre may be granted on such conditions as the provincial head of social development may determine, including—  (a) conditions specifying the type of early childhood development services that may or must be provided in terms of the registration;  (b) the period for compliance; and  (c) any other matters that may be prescribed.”  (Read together with references to “conditional registration” in proposed sections 103D and 103E.) | The proposed amendments do not clearly accommodate and/or differentiate between “conditional registration”; “conditions relating to registration” and “registration with conditions” and the terms are used differently in relation to partial care, ECD programmes and ECD centres. It is therefore unclear whether DSD is able to grant conditional registration if there is non-compliance with registration requirements as prescribed.  As explained above, both conditional registration and registration with conditions serve an important purpose and should be expressly accommodated. However, the Bill continues to conflate and confuse these two concepts. On the one hand, the proposed amendments seem to entrench the “narrow” interpretation that the granting of full registration is dependent on the fulfilment of all conditions. Yet on the other hand, and while not a model of clarity, the amendments to the funding provision (with the insertion of 78(3A) and 93(3A) also discussed above in relation to the power to assist, appears to envisage some form of registration being possible where there is only partial compliance with the prescribed norms and standards. These provisions are, however, not entirely clear and there is no similar provision for ECD centres.  In relation to ECD centres, proposed sections 103D and 103E make reference to “conditional registration”, however the proposed section 103F does not make provision for conditional registration at all, only “conditions for registration”.  This inconsistency and confusion is untenable. | a) **The use of conditional registration for the purposes of progressive realisation of norms and standards or relevant requirements should be made clear.**  Such clarity can be achieved, by for example:  Amending sections 83 and 98 as follows:  “(1) The registration or renewal of registration of a partial care facility (early childhood development programme) may be granted on such conditions as the provincial head of social development may determine, including conditions—  (a) specifying the type of partial care (early childhood development programme) that may or must be providedinterms of the registration;  (b) stating the period for which the conditional registration will remain valid; ~~and~~  (bB) specifying the period by which the applicant must comply with the prescribed requirements for registration; and  (c) providing for any other matters that may be prescribed.”  *Similar proposed amendments should also be made to section 103F and 103B which have been inserted in Part II of Chapter 6.*  b) **It should also be made an express provision that regulations may be issued relating to the procedure for obtaining conditional registration and progressively attaining full registration.**  Amending sections 90 and 103 of the Act as follows:  By the insertion of paragraph aA after paragraph (a):  “(aA) the procedure to be followed in connection with the granting of conditional registration and the process by which full registration may thereafter be obtained.” |

# **7. Provision of infrastructure support**

*7.1 Current challenge(s) in the Children’s Act- Failure to give effect to infrastructure provisions in the National ECD Policy*

Under the current legislation, there is no prohibition on funding of infrastructure improvements for partial care facilities located on private property. Such funding is, in fact, permissible in light of the “power to assist” clauses.

However, the current legislation fails to give effect to the ECD infrastructure provisions in the National ECD Policy. These include: the development of an infrastructure plan; local government obligations regarding the maintenance and public provision of ECD centres in poor areas and requiring the Minister to develop norms and standards for public provision of ECD centres. This hampers the proper implementation or realisation of those policy objectives.

*7.2 How to address the challenge(s)- Clear support for infrastructure needs of the sector to be legislated*

The legislation must clearly outline government duties, particularly duties of municipalities to expand access to ECD programme infrastructure; the maintenance of ECD programme infrastructure and of existing facilities on private property and ensure access to sufficient and appropriate ECD providers in poor communities.[[9]](#footnote-9) The legislation should require that an infrastructure plan be developed to ensure equitable and universal access to early childhood development programmes.[[10]](#footnote-10) If no interest free loans can be made available to poorer communities to achieve the Norms and Standards then government should budget for assistance. Without either of the two being made available, the ongoing cycle of sites not being regulated will be perpetuated. Whether or not Norms and Standards are made lenient, funds are needed to accomplish infrastructural improvements. The most vulnerable citizens being the young children in this instance will move from generation to generation reliving the same tussle with inferior school readiness preparation.

*7.3 The Bill’s proposed amendments and submissions on how the Bill needs to be changed*

|  |  |  |
| --- | --- | --- |
| **Relevant provision in Children’s Amendment Bill** | **Concerns with Children’s Amendment Bill** | **Proposal** |
| Amendment 35(e) to s 78 by the insertion after subsection (4) of the following subsection:  "(5) The funding for infrastructure of partial care facilities does not apply to private homes of registered non-profit organisations, private homes in general, business properties or properties not owned by a non-profit organisation." | Parliament ought to reject the proposed blanket ban on government investment to improve infrastructure for partial care facilities on private property as this will further marginalise mostly poor children. Any concerns government may have in respect of protecting their financial investments for their social impact goals in ECD, can be mitigated against with other checks and procedures.  The Bill makes no attempt to include key policy amendments relating to infrastructure. | a) **Existing funding provisions should be retained and amendment 35(e) must be deleted in its entirety.**  Amendment 35(e) inserting proposed section 78(5) must be **rejected**.  b) **The infrastructure needs of the sector must additionally be supported by including the following:**  Legislation should clearly outline government duties, particularly the duties of municipalities, in respect of providing for and maintaining sufficient and appropriate ECD programme infrastructure in their jurisdictions.  In addition, legislation should include the following in relation to infrastructure for ECD programmes:  (3) The Minister, in collaboration with provincial departments and local government including with the Department of Basic Education, the Department of Health and the Department of Cooperative Governance and Traditional Affairs must develop a costed national infrastructure plan to ensure equitable and universal access to early childhood development programmes. |

**Conclusion**

The early childhood development sector has been severely impacted by Covid-19, with the second NIDS-CRAM survey estimating that only 13% of children aged 0-6 years are attending ECD programmes. Many of these children have been going hungry, affecting growth, and missing out on critical development opportunities. Access to quality, holistic ECD services is one of the most significant human development interventions that can be made, and an essential investment that South Africa requires to reduce poverty and inequality, grow South Africa’s human capital and prevent the intergenerational impact of deprivation. The current state of the ECD sector poses a great risk for South Africa’s future and urgently requires a legal and regulatory system that is **enabling, providing dignity and a future for South Africa’s greatest assets, our children.**

In summary, the following is required:

* **A** **one-step registration process for ECD providers.**
* **Different types of ECD programme providers** including playgroups, toy libraries and home-based care **must be regulated differently.** A one-size-fits-all approach is not appropriate.
* **Simpler, adequate health, safety and programme standards** must be in place and must be assessed through one process.
* It must be made clear that you can get **conditional registration if you can’t meet all the registration requirements**. **MECs must support** providers servicing poor communities to meet registration requirements and they must be **required to report** to the Minister on progress achieved.
* The **infrastructure needs of the sector must be supported**. Current providers (including on private land) should be able to receive support and municipalities must be required to provide for and maintain sufficient and appropriate ECD infrastructure in their regions.

If there ever was a time to find the political will to fix these challenges, it is now. We hope that the Children’s Amendment Bill process does not become another missed opportunity. We call on all MPs to urgently ensure that real reform of the legal framework for ECD is taken seriously and that our proposed submissions are accepted.

1. https://www.unicef.org/earlychildhood/index\_40748.html#:~:text=Early%20years%20of%20childhood%20form,nurture%20oneself%20as%20an%20adult.&text=As%20adults%20they%20have%20higher,t%20have%20these%20early%20opportunities. [↑](#footnote-ref-1)
2. By way of illustration, the following regulations are duplicated across the two registration processes in the General Regulations Regarding Children, 2010 GN 261 in *GG* 33076:

   1. Particulars of the applicant: Reg 14(3)(a) and (b) are identical to Reg 24(3)(a) and (b)
   2. Programme description: Reg 14(3)(f) is very similar to Reg 24(3)(d)
   3. Clearance certificate: Reg 14(4)(e) is identical to Reg 24(3)(h)
   4. Number of children: Asked on both Form 11 and Form 16 (although more details is required on Form 16)
   5. Exposition of staff skills: Asked for on both Form 11 and Form 16

   [↑](#footnote-ref-2)
3. Clause 55 of the Bill, introducing proposed section 103C(4) and 103C(5). [↑](#footnote-ref-3)
4. Section 1 of the NEHNS. [↑](#footnote-ref-4)
5. See note 1. [↑](#footnote-ref-5)
6. As laid out in the General Regulations, the National Norms and Standards for ECD Programmes as laid out in the General Regulations, and the NEHNS. [↑](#footnote-ref-6)
7. Section 82(5) of the Children’s Act, under the title “consideration of application” and section 84(3) of the Children’s Act, under the section entitled “cancellation of registration”. Similar powers exist in respect of ECD programme registration in section 97(5) and 99(3) of the Children’s Act.

   “The provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 79, any requirements as may be prescribed or any provision of this Act where the cancellation was due to non-compliance with those national norms and standards, conditions, requirements or provision.” [↑](#footnote-ref-7)
8. Sections 82(5); 84(3); 97(5) and 99(3)) of the Children’s Act. [↑](#footnote-ref-8)
9. Clause 9.5(3)(g) of the ECD Policy. [↑](#footnote-ref-9)
10. Clause 9.5 of the ECD Policy. [↑](#footnote-ref-10)