

BRIDGE SUBMISSION ON THE CHILDREN'S AMENDMENT BILL (B18-2020) COVER LETTER

This submission is made on behalf of BRIDGE Innovation In Learning (BRIDGE). BRIDGE was started in 2009 and is a registered non-profit organisation. BRIDGE came about because of the realisation that a critical part of the problem in education in South Africa is that stakeholders do not sufficiently share, adopt and implement what works. Pockets of successful practice, operating in silos, have consequently failed to improve the education system in an impactful, lasting and sustained manner. In order to address this, BRIDGE focuses on three core activities:

- (i) We convene multi-stakeholder (funders, providers, government and practitioners) communities of practice across various focus areas in education, including ECD.
- (ii) We work in partnership with other programmes on education interventions.
- (iii) We document and share good practice and other resources from our community of practice members.

Motivation to submit and contract details of BRIDGE

The content of this submission is drawn from inputs at the BRIDGE National ECD Community of Practice meeting held on 20 October 2020, in which over 70 CoP attendees participated, and from BRIDGE's experience of key concerns and practical issues in the sector. In addition, 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). 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. This campaign has been launched to urgently ensure that real reform of the legal framework for ECD is taken seriously. For more information visit www.ecdreform.org.za. BRIDGE has been part of a group that initiated the campaign and we continue to support the campaign because we believe that real change in the ECD sector will be facilitated by a legislative environment that is supportive and enabling to the ECD workforce largely in service to children in poor communities.

BRIDGE is happy to present to parliament should the opportunity arise and can be contacted through the following details:

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Yours sincerely,
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SUBMISSION TO THE CHILDREN'S ACT (B18-2020)

Introduction:

We are calling for parliament to amend the Children's Amendment Bill so that it deals with ECD programmes in an inclusive and enabling way. This means a one-step registration process and a single set of simplified norms and standards which properly recognise the different contexts and characteristics of different types of ECD programmes. It also means clarifying the use of conditional registration and ensuring that provinces make proper use of their power to assist ECD programmes. Through the current Bill, we unfortunately have not been able to identify plans to advance various key government commitments such as:

'A comprehensive review and harmonisation of policy and legislation within the ECD sector moving towards universal access' (Government's Buffalo City Declaration).

'A single streamlined system of Registration – for centres, programmes and practitioners.'
(DBE presentation, March 2020)

The Children's Amendment Bill ('the Bill') is an important opportunity to fulfil these commitments and to create the inclusive and enabling regulatory framework that is urgently needed. Without this, poor children across South Africa will continue to miss out on the early learning and development opportunities that they need and deserve.

Summary of challenges presented by the Bill:

1. Potential for further duplication in registration and compliance standards:

What we identify as a key challenge presented by the Bill is that it introduces a new category entirely dedicated to ECD Centres. This is the first time in the legislation that there is a definition for an Early Childhood Development Centre, as follows:

A centre that provides an early childhood development programme for more than six children from birth to school-going age.

Because the Bill retains partial care and ECD programmes, the introduction of this new category – which includes various provisions which are very similar to partial care – seems to create some duplication, which is concerning.

2. Incongruence in the policy imperatives and legislative directives:

The Children's Act and current Bill also do not seem to espouse key principles of the National Integrated ECD Policy (NIECDP). As an example, the NIECDP recognises that in the context of South Africa, different modalities of ECD provision are key in achieving universal access but

this has not been accommodated through the Act over the past five years and certainly not in the current Bill. The policy refers to putting in place a comprehensive, age and stage appropriate quality ECD programme that should be accessible to all infants, young children and their care givers, including the following:

- A multi-sectoral, enabling policy and legal framework which includes provisioning for national, provincial and local government spheres.
- A comprehensive ECD programme (maternal and child health and nutrition, parent support, social protection, early learning and childcare, information).

The Act and the Amendment Bill do not seem to speak to ways of implementing the policy provisions. We need to move to a legislative environment that is informed by policy that speaks to the reality of the communities involved in providing care and education to young children in South Africa and this is a major gap in our regulatory environment.

3. Lack of provision of the eminent function shift from the Department of Social Development to the Department of Education:

The Bill doesn't speak about the migration of ECD services from DSD to DBE and does not seem to have been drafted with that in mind. The DBE is moving full steam ahead with crafting plans to streamline registration, take over support of ECD facilities and develop the workforce, however, there is no account of how the Children's Act and the School's Act will be revised to accommodate any of these planned changes.

As such, the specific issues and recommendations are listed as follows:

1. Lack of recognition of ECD modalities

The Act takes a one size fits all approach in terms of not recognizing different modalities such as toy libraries and parenting programmes etc. Currently these are subject to the same compliance requirements, and the Bill does not address these differences. The current regulatory framework therefore causes particular difficulties for ECD programmes which are 'non-centre based', such as playgroups, toy libraries and childminders, which often serve high poverty rural, peri-urban and informal housing areas.

These types of programmes are invisible in the Act and remain invisible in the draft Bill. It is unclear whether they would be captured by the new definition of 'ECD centre'. If it is the government's intention that these programmes should only register under Part I of Chapter 6, then this needs to be made explicit. However, a better approach would be to create a single registration system with differentiation within it.

Recommendation: The Bill should include amendments that recognise the different types of ECD programmes and define programmes as either full-time or part-time programmes (this definition should be based on the dosage of the early learning programme) in order to avoid onerous registration for each type of ECD programme – and give the minister the power to have different registration standards for different types of programmes.

How?

1. Amend Clause 45(c) of the Bill to identify different categories (full-time and part-time) of ECD programmes
2. Amend Clause 48 of the Bill to enable differentiation within the norms and standards.
3. If Part II of Chapter 6 is kept, in addition to point 5., amend Clause 55 (new Section 103B(1)) to enable differentiation within the new norms and standards for ECD centres.

2. Complexity and inaccessibility of the Registration Process

The ECD sector needs a simpler one-step registration process that can be easily used by providers and officials. The Bill will make registration more onerous and may require triple registration because:

- partial care and ECD programmes remain in the Bill
- partial care facilities that provide ECD programmes will still need to be registered twice.

What is more, there is no amendment to Chapter 5 of the Act which would remove ECD centres from the scope of partial care. Due to the overlapping definitions between partial care and ECD centres, it seems that an ECD programme provider would then also need to register as an ECD centre. The Bill introduces the possibility of a third registration requirement which we do not believe is government's intention. We therefore conclude that this is an oversight on government's part that must be rectified.

Recommendation: The Bill should create a one-step registration system, with one set of registration requirements and one set of norms and standards.

How?

- 4. Delete Clause 55 of the Bill (new Part II to Chapter 6).*
- 5. Amend Clause 34 and delete Clause 47(b) to remove ECD centres from the scope of partial care.*
- 6. Amend Clause 45(c) to create an inclusive definition of 'ECD programme' which captures all modalities and enables a unified registration and funding system under one part in Chapter 6.*

3. Complex compliance processes to meet the Norms and Standards

These need to be streamlined. The sector needs simpler, adequate health and safety standards and the process of compliance and assessment with a number of different agencies at provincial and local levels needs to be simplified. Not only does the Bill retain the onerous norms and standards, but because of the way in which it has copied certain provisions from partial care and programmes into ECD centres, it may actually result in more duplication of effort.

The nature of the types of premises and structures in which many ECD programmes operate, makes the current health, safety and infrastructure requirements of the Norms and Standards for Partial Care both inappropriate and unrealistic. They also duplicate the health and safety that are assessed through municipal Health Certificate processes. It is neither logical nor desirable for ECD programmes to have to comply with parallel sets of health, safety and infrastructure standards in the Act's norms and standards and local by-laws for the purposes of registration. This approach works against the streamlining and clarity that are needed to facilitate wider registration.

In the Bill, the norms and standards headings for partial care have simply been transferred over to the new Part II, with no attempt to review or streamline them. This means that the existing regulatory over-reach is simply being replicated and the bar will continue to be set high too high in terms of entry-level requirements for registration. This perpetuates the exclusionary nature of the existing system and shuts many programmes, and therefore children, out of the regulatory and funding system.

In addition, there is extensive duplication in the Norms and Standards for ECD Programmes. These norms and standards do not speak to the early learning curricula that have been issued by the Department of Basic Education since the Act was passed. These curricula now provide the statutory framework for content in early learning programmes and should be cross-referenced in the Act.

Recommendation: Norms and standards should focus on basic minimum standards, creating an accessible threshold that pulls as many ECD programmes as possible into the regulatory net, while safeguarding children's wellbeing. Duplication should be eliminated and there should be proper cross-referencing of the early years curricula prescriptions of the Department of Basic Education.

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How?

7. Amend Clause 48 of the Bill a) to streamline and simplify norms and standards' headings (with a view to substantial simplification of detailed standards in the regulations), and b) to cross-reference the DBE statutory framework.
8. If Part II of Chapter 6 is kept, in addition to point 7., amend Clause 55 (new Section 103B(2)) to streamline and simplify norms and standards' headings for ECD centres.

4. Inconsistent use of Conditional Registration and the power to assist

There is a need for a coherent and enabling conditional registration framework. The Children's Act is not as clear as it should be regarding the purpose and mechanism of conditional registration, which is made even worse under the Bill because the Bill uses different phrases across different sections of provision relating to ECD and partial care. We now not only have 'conditional registration', we have 'registration with conditions' and 'conditions relating to registration' all being used in various ways in different parts of the legislation. Furthermore, the Bill does not appear to allow conditional registration to be used to support progressive compliance for currently non-compliant programmes, which should be its primary purpose. This means that the Bill does not reflect DSD's progress on rolling out its new Conditional Registration Framework to provinces in 2019.

Section 97(5) of the Act gives provinces the power to assist an ECD programme to comply with regulatory requirements. This is an important lever in supporting non-compliant ECD programmes and could be further strengthened by inserting a new duty on provincial DSDs to report on the exercise of the power to assist. The Bill makes prioritising support to ECD providers in poor communities discretionary. Under the current Act there is at least a provision that says that provincial officials **must** prioritise funding to certain providers, mainly

those servicing poor communities. Under the Bill the 'must' has turned into a 'may', which is worrying because this makes it optional rather than mandatory. It also appears that assistance to partial care facilities has been narrowed because the 'power to assist' provisions that would provide support to partial care facilities are now being limited, contingent on the granting of registration with conditions.

Recommendation: The Bill should include amendments that a) make clear that conditional registration can be used to bring non-compliant ECD programmes into the regulatory framework in a managed way, and b) strengthen the power to assist. The existing obligation in the Act on MECs to prioritise funding in poor communities should remain.

How?

8. Amend Clause 50 of the Bill to clarify that conditional registration can be given to programmes that do not yet meet all the registration requirements.
9. If Part II of Chapter 6 is kept, in addition to point 8., amend Clause 55 (new Section 103G) to make the same change for ECD centres.
10. Amend Section 97(5) of the Act to require the MEC to make an annual report to the Minister on progress achieved through the exercise of the power to assist.
11. Delete Clause 47(b) of the Bill to restore the original obligation in the Act.

CONCLUSION

The problem areas that have been identified in this submission have been in existence in the sector for years. It is commonly known that two thirds of the ECD programmes that are operating in the country are unregistered, not because of lack of commitment but because of contextual barriers. The legislation needs to be enabling rather than presenting more barriers to adequate provision in the sector.

If parliament supports these changes, it will help to create a fair and inclusive regulatory system for ECD programmes. This will mean that many more programmes can get the ECD subsidy, and then use this funding to improve the quality of their programme and to protect and promote the best interests of the child.

The BRIDGE ECD Team, 27-11-2020