

PART B: COMMENT BY THE SAOU ON THE BELA Bill

Note: The SAOU comment is annotated in “blue” and “red” in close proximity to the relevant text.

REPUBLIC OF SOUTH AFRICA

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**BASIC EDUCATION LAWS  
AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 45601 of  
6 December 2021)  
(The English text is the official text of the Bill)*

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(MINISTER OF BASIC EDUCATION)

[B 2—2022]

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## GENERAL EXPLANATORY NOTE:

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_                Words underlined with a solid line indicate insertions in existing enactments.

# BILL

To amend—

- the South African Schools Act, 1996, to insert and amend certain definitions; to provide that attendance of grade R is compulsory; to amend the penalty provision in the case where the parent of a learner, or any other person, without just cause, prevents a learner who is subject to compulsory attendance from attending school, and to create an offence in respect of the interruption, disruption or hindrance of school activities; to enhance the authority of the Head of Department in relation to the admission of a learner to a public school, after consultation with the governing body of the school; to provide that the governing body of a public school must submit the admission and language policies of the public school to the Head of Department for approval; to provide that the South African Sign Language has the status of an official language for purposes of learning at a public school, and that the Head of Department may direct a public school to adopt more than one language of instruction, where it is practicable to do so, and that, if the Head of Department issues such a directive, he or she must take all necessary steps to ensure that the public school receives the necessary resources to enable it to provide adequate tuition in the additional language of instruction; to provide the Minister with the authority to appoint a person, an organisation or a group of persons to advise on curriculum and assessment-related matters; to provide that the code of conduct of a public school must take into account the diverse cultural beliefs, religious observances and medical circumstances of learners at the school and to provide for the inclusion of an exemption clause in the code of conduct and for disciplinary proceedings to be dealt with in an age-appropriate manner and in the best interests of the learner; to refine the provisions relating to the possession of drugs on school premises or during school activities and to provide for conditions under which liquor may be possessed, sold or consumed on school premises or during school activities; to refine the provisions relating to suspension and expulsion from public school by inserting a definition of serious misconduct; to provide for the prohibition of corporal punishment at school activities and at hostels accommodating learners of a school; to prohibit initiation practices during school activities; to provide for the designation of a public school as a public school with a specialised focus on talent; to further regulate the merger of public schools; to provide for the reasonable use of the facilities of a school for education-related activities without the charging of a fee or tariff; to provide for centralised procurement of identified learning and teaching support material for public schools; to further regulate the withdrawal of the functions of governing bodies; to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the composition,

- and related matters, of governing bodies of schools for learners with special needs; to provide for the membership of a governing body of a public school that provides education with a specialised focus on talent, sports and performing or creative arts; to provide that the Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions; to provide that a member of a governing body must declare a direct or indirect personal interest that he or she or his or her family member may have in the recruitment or employment of staff at a public school, or in the procurement of goods and services for a public school, and that the member of the governing body must recuse himself or herself from a meeting of the governing body under such circumstances; to provide further clarity regarding the prohibition of the remuneration of members of governing bodies; to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the election of members of governing bodies of public schools; to provide that, where reasonably practicable, only a parent member of a governing body who is not employed by the public school may serve as chairperson of the finance committee; to make a technical amendment in regard to the status of learners serving on governing bodies of public schools; to extend and refine the provisions relating to the closure of a public school; to provide that lease agreements relating to a school's immovable property must be submitted to the Member of the Executive Council for approval and that, in the case of a lease for a period not exceeding 12 months, the approval of the Member of the Executive Council is not required; to further regulate and refine matters relating to the budget of a public school; to further regulate the circumstances under which a governing body may pay additional remuneration, or give any other financial benefit or benefit in kind, to a state employee; to provide that, where the parent of a learner applies for exemption from the payment of school fees and information cannot be obtained from the other parent of the learner, the parent may submit documentary evidence in the form of an affidavit or court order in relation to the other parent; to provide for financial record-keeping by the governing body of a public school, for the drawing up of financial statements, and for the presentation of these to a general meeting of parents; to extend the powers of the Head of Department to conduct an investigation into the financial affairs of a public school and to provide that the governing body of a public school must submit quarterly reports on all income and expenditure to the Head of Department; to increase the penalty provision in the case where a person establishes or maintains an independent school and fails to register it; to empower the Member of the Executive Council to determine conditions when granting a subsidy to an independent school and to provide for financial reporting, by such subsidised independent schools; to further regulate home education; to create an offence where a parent supplies a public school with false or misleading information or forged documents when applying for the admission of a learner or for exemption from the payment of school fees; to provide for a dispute resolution mechanism in the event of a dispute between the Head of Department or the Member of the Executive Council and a governing body; to further regulate the liability of the State for delictual or contractual damages; to extend the power of the Minister to make regulations and to provide for offences to be created in regulations made by the Minister; to amend the Preamble; and to provide for matters incidental thereto; and
- the Employment of Educators Act, 1998, so as to amend certain definitions; to exclude further education and training centres, adult basic education centres and institutions, from the ambit of the Act; to prohibit an educator from conducting business with the State and to create an offence in relation thereto; to extend the powers of the Minister to make regulations; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 84 of 1996, as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002, section 1 of Act 24 of 2005, section 4 of Act 31 of 2007 and section 4 of Act 15 of 2011**

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1. Section 1 of the South African Schools Act, 1996, is hereby amended—

(a) by the insertion in subsection (1) before the definition of “*Constitution*” of the following definitions:

“*basic education*” means *grade R* to grade 12, as evidenced in the National Curriculum Statement; 10

“*benefit in kind*” means any benefit offered or afforded to an employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is not a monetary benefit, including, but not limited to—

(a) exclusive private usage or ownership of a vehicle; 15

(b) free accommodation;

(c) free phone, including a cell phone;

(d) free holiday;

(e) groceries to the benefit of the employee; or

(f) garden services; 20

**basic education.** To limit the definition to what appears in the National Curriculum Statement may in the longer term prove to be counter-productive. Possibly a more substantive definition could be considered.

“*competent assessor*” means an *educator* registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), or a person or body registered with the South African Qualifications Authority as defined in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);” 25

**competent assessor.** No comment.

(b) by the substitution in subsection (1) for the definition of “*Constitution*” of the following definition:

“*Constitution*” means the Constitution of the Republic of South Africa, 1996 [(Act 108 of 1996)];” 30

**Constitution.** No comment

(c) by the insertion in subsection (1) after the definition of “*Constitution*” of the following definition:

“*corporal punishment*” means any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes, but is not limited to— 35

(a) hitting, smacking, slapping, pinching or scratching with the hand or any object;

(b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; and

(c) forcing children to stay in uncomfortable positions, forced ingestion, washing children’s mouths out with soap, denying meals, heat and shelter, forcing a child to do exercise or denying or restricting a child’s use of the toilet;” 40

**corporal punishment.** The SAOU has no comment on the actions/activities proscribed. There is a question about the use of the term “child”. Given that the Act is the context, the use of the term “learner” might be more appropriate.

(d) by the insertion in subsection (1) after the definition of “*dangerous object*” of the following definitions:

“*Department of Basic Education*” means the national department 45

established in terms of section 7(2), read with Schedule 1, of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for *basic education*;

**Department of Basic Education. No comment**

‘*drug*’ means any— 50

- (a) intoxicating or stupefying substance that has a psychological or physiological effect;
- (b) substance that has the effect contemplated in paragraph (a) and that is possessed contrary to the code of conduct of a *school* or contrary to the laws of the Republic; 55
- (c) substance, the possession or use of which, or the dealing in which, is prohibited without a medical prescription or legal authorisation; or
- (d) performance-enhancing drug, prohibited performance-enhancing substance, dependence-producing substance, dangerous dependence-producing substance, undesirable dependence-producing substance, unlawful substance, prohibited substance, illicit substance, illicit drug, or scheduled substance, contemplated in any South African legislation that deals with the control of medicines and related substances, with drug trafficking, substance abuse in general, and with substance abuse in sport and in any 5 programmes or policies aimed at curtailing social and sport-related substance abuse, and in any international instruments that deal with such matters and to which South Africa subscribes or is a party;” 60

**Drug. No comment.**

- (e) by the insertion in subsection (1) after the definition of “*education department*” of the following definition: 10  
“‘*education district*’ means a district in an area of a province which is demarcated by the *Member of the Executive Council* for administrative purposes;”;

**education district.** It is noted from the clause-by-clause analysis furnished by the compilers of the Bill that the definition is inserted “to facilitate matters relating to a school’s admission and language policies”. The admission and language policies of a public school are primarily the responsibility of the SGB. In its discussion of the relevant Clause the SAOU will object to the inclusion of this definition.

- (f) by the insertion in subsection (1) after the definition of “*grade*” of the following definition: 15  
“‘*grade R*’ means the Reception grade;”;

**grade R.** The SAOU welcomes the inclusion of Grade R as a part of the formal public schooling system. The reservations expressed at Part A para 10 above are, however, material. We note that Grade R will form an integral part of the Foundation Phase.

- (g) by the insertion in subsection (1) after the definition of “*Head of Department*” of the following definition: 20  
“‘*home education*’ means a purposeful programme of education for a *learner*, alternative to *school* attendance, which—  
(a) is provided under the direction of the *learner’s* parent, primarily in the environment of the *learner’s* home;  
(b) may include tutorial or other educational support, if necessary, secured by the *parent* on specific areas of the curriculum followed by the *learner*; and 25  
(c) meets the requirements for *home education* contemplated in section 51 of *this Act*;”;

**home education.** The SAOU supports the inclusion of the definition.

- (h) by the deletion in subsection (1) of the definition of “*illegal drug*”;

deletion of term. No comment.

- (i) by the insertion in subsection (1) after the definition of “*learner*” of the following definition: 30

“***liquor*** means liquor as defined in section 1 of the Liquor Act, 2003 (Act No. 59 of 2003);”;

**liquor.** No comment.

- (j) by the substitution in subsection (1) for the definition of “*loan*” of the following definition:

“***loan*** means any financial obligation based on agreement, which 35  
obligation renders a *school* liable for making payment, in one or more  
instalments, in favour of any person, but does not include the payment of  
employees appointed by the *governing body* in terms of section 20(4) or  
(5), or operational costs as determined in the annual budget contemplated  
in section 38;”;

- (a) **loan:** It must be considered that schools participate in the economic activities in communities and must from time to time make loans to comply with its obligations towards learners and the community. The absolute prohibition of loans without the permission of the MEC, is with respect non-sensical and not in touch with the realities within which a modern school needs to function.

- (k) by the insertion in subsection (1) after the definition of “*officer*” of the following definition:

“***other financial benefit*** means any benefit of a monetary nature, including, but not limited to—

- (a) exemption from the payment of *school fees* to the *school* in respect of the child of an employee, but excluding exemption in terms of the provisions of sections 39 to 41; 45  
(b) a credit card linked to an employee for his or her personal use; or  
(c) a petrol card linked to an employee for his or her personal use not related to any *school activity*;”;

- (b) **other financial benefit.** No comment.

- (l) by the substitution in subsection (1) in the definition of “*parent*” for paragraph (c) of the following paragraph:

“(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the *learner’s* education [at *school*];”;

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Substitution “parent”. The SAOU supports the substitution in sub-(c).

- (m) by the insertion in subsection (1) after the definition of “*registrar of deeds*” of the following definition:

“***required documents*** for *learners* shall have the following meaning in relation to the following categories of *learners*:

- (a) Where at least one or both biological or adoptive *parents* of a 60  
*learner* are South African citizens, the following documents:  
(i) An unabridged birth certificate of the *learner*;  
(ii) the South African identity documents or cards of the *learner’s*  
*parents*; and  
(iii) where either or both *parents* are deceased, the relevant death  
certificates; 5  
(b) where both *parents* of the *learner* are foreign nationals and hold  
either permanent residence permits or temporary residence visas,  
the following documents:  
(i) the *learner’s* foreign issued birth certificate;  
(ii) the *learner’s* passport; 10  
(iii) a study visa or permanent residence permit issued to the  
*learner*;  
(iv) the *parents’* passports; and

- (v) the *parents'* temporary residence visas or permanent residence permits; 15
- (c) where the *parents* of the *learner* are refugees or asylum seekers, the following documents:
  - (i) the *parent's* asylum seeker or refugee visa;
  - (ii) the *learner's* asylum seeker or refugee visa;
  - (iii) the *learner's* birth certificate if the *learner* was born in the Republic; and 20
  - (iv) where asylum seeker visas are provided, a refugee or long term study visa must be provided within three years of admission of the *learner*; and
- (d) where the *learner* is in alternative care, the following documents: 25
  - (i) the relevant court order granting guardianship or custody; and
  - (ii) the *learner's* unabridged birth certificate.’’.

**required documents.** The SAOU supports the inclusion of this definition and is of the view that especially sub-(b) and sub-(c) will address an extensive need in some schools.

### Amendment of section 3 of Act 84 of 1996

2. Section 3 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 30
    - “(1) Subject to *this Act* and any applicable provincial law, every *parent* must cause every *learner* for whom he or she is responsible to attend [a] *school*, ~~[from]~~ starting from *grade R* on the first *school* day of the year in which such *learner* reaches the age of ~~[seven]~~ six years and not leaving school until the last *school* day of the year in which such 35
    - learner* reaches the age of ~~[fifteen]~~ 15 years or ~~[the ninth]~~ will complete grade nine, whichever occurs first: Provided that a learner who will turn six after 30 June must start attending grade R the following year.’’;

The SAOU supports the provision. It is unfortunately an aspirational provision to the degree that there are areas where there is inadequate provision for learners in Grade R. It can be noted that the effect of the provision will be to reduce the schooling level reached by learners at age 15 from the current aspirational Grade Nine to Grade Eight.

- (b) by the substitution for subsection (6) of the following subsection: 40
  - “(6) Subject to *this Act* and any other applicable law—
  - (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1)[,] is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding ~~[six]~~ 12 months, or to both a fine and such imprisonment; or

The SAOU notes the reasoning furnished in the explanatory memorandum (page 36) and endorses the reasons therefor. However, it should be noted that there will be parents who because of a lack of provision will be unable to send their children to a Grade R class. Possibly the provision could be softened to enable cases of this kind to be addressed.

- (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending [a] *school*[,] is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding ~~[six]~~ 12 months, or to both a fine and such imprisonment.’’; and 45 50

The SAOU endorses the provision

(c) by the addition of the following subsection:

“(7) Any person who, unlawfully and intentionally interrupts, disturbs or hinders any *school* activity, or hinders or obstructs any *school* in the performance of the *school’s* activities, is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”

The provision is strongly endorsed in the light of the explanation furnished in the explanatory memorandum.

### Insertion of section 4A in Act 84 of 1996

3. The following section is hereby inserted in the South African Schools Act, 1996, after section 4:

#### “Monitoring learner attendance

4A. (1) The *educator, principal* and *governing body* are responsible for promoting and monitoring the attendance of *learners* at *school*.

(2) The *governing body* must ensure that the code of conduct for *learners* contains rules dealing with punctuality and regular *school* attendance.

(3) If a *learner* is absent for three consecutive *school* days without valid reason, the class teacher concerned must report the absence to the *principal*.

(4) The *principal* must, within 24 hours after being informed of the absence, investigate the matter by making a reasonable effort to contact the *parent* of the *learner* by whatever means are suitable for the circumstances of the *school* and the family concerned and report the matter to the *governing body* of the *school* for further intervention.”

This Clause potentially makes for a good deal of extra administration by the school, especially in those cases where a SGB is dysfunctional or almost so. The Act makes it possible for learners who have reached the age of fifteen years or Grade Nine to leave school. The SAOU supports in principle the notion that pupil attendance should be monitored. There may be grounds for debating whether learners who are no longer required by law to attend school should be followed up in this way. The SAOU recommends that the current wording be re-considered.

### Amendment of section 5 of Act 84 of 1996, as amended by section 2 of Act 50 of 2002

4. Section 5 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 20

“(1) A *public school* must admit, and provide education to, *learners* and must serve their educational requirements for the duration of their school attendance without unfairly discriminating in any way.”;

[5(a)] The intention of the proposed Section 5(a) is endorsed. The wording is of such a nature that it might not be possible for a school to give effect to the provision for example in an instance where a learner is blind it might not be possible for an ordinary public school to provide meaningful schooling in the absence of the necessary equipment (e.g. Braille reader) or of appropriately trained educators.

(b) by the insertion after subsection (1) of the following subsections:

“(1A) In facilitating the admission of *learners* to *public schools*, the *Minister* must establish a National Intergovernmental Committee within 12 months after the commencement of the Basic Education Laws Amendment Act, 2022.

(1B) The *Member of the Executive Council* must establish a Provincial Intergovernmental Committee within 18 months after the commence-

ment of the Basic Education Laws Amendment Act, 2022.

(1C) The function of the Provincial Intergovernmental Committee is to provide assistance to *public schools* that refer cases of *learners* who have not submitted the required documents to the *school*, and such assistance shall include acquiring the missing *required documents* in respect of such *learners*. 35

(1D) The function of the National Intergovernmental Committee is to monitor and evaluate the progress of the Provincial Intergovernmental Committee in obtaining documents for *learners* and to provide assistance where necessary. 40

(1E) The National Intergovernmental Committee and Provincial Intergovernmental Committee will include representatives at the level of Chief Director from Departments, including the—

- (a) *Department of Basic Education*;
- (b) *Department of Social Development*;
- (c) *Department of Home Affairs*;
- (d) *Department of Justice and Constitutional Development*;
- (e) *South African Police Services*;
- (f) *Department of Employment and Labour*;
- (g) *Department of International Relations and Co-operative Affairs*;
- (h) *Department of Health*;
- (i) *National Treasury*; and
- (j) *Department Statistics South Africa*. 45

(1F) The meetings of the National Intergovernmental Committee must be chaired by the Director-General, or by a person designated by the Director-General, and the meetings of the Provincial Intergovernmental Committee must be chaired by the *Head of Department*, or by a person designated by the *Head of Department*. 50

(1G) Any *learner* whose *parent* or guardian has not provided any *required documents*, whether of the *learner* or such adult person acting on behalf of the *learner*, during the application for admission, shall nonetheless be allowed to attend *school*, and the *principal* of the *school* must advise the *parent* or guardian to secure the *required documents* and alert the Provincial Intergovernmental Committee thereof. 5

The proposed establishment [5(b)] of the Provincial or National Intergovernmental Committee with regard being had to undocumented learners may alleviate a situation which is difficult especially in border provinces where there are undocumented learners who present themselves at the schools. Given the functions and composition of the proposed Committee (there will be ten of these Committees) it is suggested that (1A) be amended to read *in facilitating the admission of undocumented learners*. A particular problem relates to candidates for the NSC who are undocumented, and to their registration for the examination. The provision in (1G) that the pupil must be allowed to attend school while the application for documents is pending should be subject to a time provision: for the pupil to receive instruction and then to be informed that he/she cannot be registered for the NSC is not equitable.

(c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) The admission age of a *learner* to a *public school* to *grade R* is age four turning five by 30 June in the year of admission: Provided that, if a *school* has limited capacity for admission in *grade R*, preference must be given to *learners* who are subject to compulsory attendance.”; 10

[5(c)] highlights a phenomenon of which the Act will have to take cognisance. The developmental milestones achieved by young children aged 4-5 and those to be achieved by children aged 5-6 are not the same. The ECD community points out that to combine a 4-5 grouping with a 5-6 grouping is unfair to both age groups. Those admitted at age 4-5 would have to be admitted to a Grade RR grouping, and not to Grade R.

- (d) by the substitution for subsection (5) of the following subsection:
- “(5) Subject to *this Act* and any applicable provincial law, the admission policy of a *public school* is determined by the *governing body* of such *school*: Provided that—
- (a) the *Head of Department*, after consultation with the *governing body* of the *school*, **has the final authority**, subject to subsection (9), to admit a *learner* to a *public school*; 20
  - (b) the *governing body* must submit the admission policy of a *public school* and any amendment thereof to the *Head of Department* for approval;
  - (c) the *Head of Department* may approve the admission policy of a *public school* or any amendment thereof, or may return it to the *governing body* with such recommendations as may be necessary in the circumstances, together with reasons for such recommendations; 25
  - (d) the *Head of Department*, when considering the admission policy or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the needs, in general, of the broader community in the *education district* in which the *public school* is situated, and must take into account factors including, but not limited to— 30
    - (i) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution*, and equity; 35
    - (ii) whether there are other *schools* in the community that are accessible to *learners*;
    - (iii) the available resources of the *school* and the efficient and effective use of state resources; and 40
    - (iv) the space available at the *school* for *learners*; and
  - (e) the *governing body* must review the admission policy determined in terms of this section every three years or whenever the factors referred to in paragraph (d) have changed when circumstances so require, or at the request of the *Head of Department*.”; 45

The SAOU has emphasised the principle of co-operative governance, and has stressed that the Courts at various levels have endorsed and reinforced this principle. It needs to be reiterated that the best interests of a larger collective and those of a minority within that collective are not necessarily compatible.

- (a) The proposed sub-section subjects a third-level political body to administrative review.
- (b) The effect of the provision is to remove from the purview of the Governing Body a significant political function and to subordinate it to an administrative official. This authority will in practice lie at the level of the district office as the reality is that the HOD will delegate this authority to a lower level.
- (c) The proposed sub-section, while making provision for interaction and consultation, leaves no doubt as to where the final decision-making authority will rest. As stated here above, it will lie in reality at the level of the district office.
- (d) The interests of a broader education district may be incompatible with the interests of an individual school. The proposed sub-section gives no indication of how the interests of minorities within an education district are to be dealt with and does not lay down directives in this regard.
- (e) A triennial review of an admission policy will need to bear in mind the election sequence for a Governing Body. The SAOU is not convinced that a new and relatively inexperienced Governing Body will have the

capacity to deal adequately with this matter. Possibly the requirement for a triennial review should be re-considered.

Note:

1. The numerical reality that approximately 24,000 public schools' admission policy will have to be considered in terms of the principles of a just administrative action/decision as contemplated in the Promotion of Administrative Justice Act, has not been considered. Undoubtedly, school communities that are not satisfied with the decision of the local district office, or the HOD, will take such decisions on formal review. It is our contention that the proposed amendment will lead to unnecessary litigation and conflict.
2. The Constitutional Court has scrutinised the current formulation of Sec 5 in regard to the admission of learners to schools in light of Sec 29 of the Constitution. The phrase here above, i.e. that the HOD *has the final authority*, is not acceptable. The Constitutional Court has pronounced on the validity of the current formulation in the case *MEC for Education Gauteng v Governing Body of the Rivonia Primary School (2013)*. The envisaged unnecessary veto power provided to the HOD unnecessarily opens the door for constitutional contestation.
3. The formal, and urgent plea, is that the current formulation should be retained. The proposed amendment, as stated here above, will lead to unnecessary litigation in the form of constitutional contestation.

(e) by the insertion after subsection (5) of the following subsections:

“(5A) The *governing body* of each *public school* must, within 30 days after the commencement of the Basic Education Laws Amendment Act, 2022, submit the admission policy of that *public school* to the *Head of Department* for approval. 50

(5B) The *Head of Department* must respond to the *governing body* as contemplated in subsection (5)(c) and subsection (5A) within 60 days after receiving the admission policy, failing which the admission policy will be regarded as having been approved by the *Head of Department*.

(5C) When a *public school* has, as contemplated in subsection (5)(b) 55 and subsection (5A), submitted its admission policy to the *Head of Department*, such admission policy will be regarded as the valid admission policy of the *school* during the 60-day period referred to in subsection (5B), or, if the *Head of Department* responds to the *school's* request for approval of the admission policy before the end of the 60 day 60 period, until the earlier date on which the *Head of Department* responds.

(5D) The *governing body* of each *public school* must, after the commencement of the Basic Education Laws Amendment Act, 2022, submit any amendment to the admission policy to the *Head of Department* for approval, and the *Head of Department* must respond within 30 days after receiving the amendment, failing which the amendment will be regarded as having been approved by the *Head of Department*.”; 5

(5A) The directive to a Governing Body will have to be sent out by the education administration, either nationally or in the province. The SAOU is of the view that the timescale proposed places constraints on the authorities which they will not be able to overcome.

(5B) In provinces with a large number of schools it may be almost impossible for the 60 day response deadline to be met.

(5C) The proposed sub-section gives no indication of what the nature of the response of the authorities should be if an admission policy is not submitted in accordance with the timescale laid down.

(5D) The turn-around time is noted. The strengthening of the capacity of the education authority to deal with these matters will probably be a necessary consequence of this provision.

- (f) by the substitution for subsection (9) of the following subsection:  
 “(9) Any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council within 14 days of receiving the notification of the refusal of admission to the public school.”; and 10
- (g) by the addition of the following subsections:  
 “(10) If an appeal contemplated in subsection (9) has been received, the Member of the Executive Council must, within 14 days after receiving such an appeal, consider and decide on the matter and inform the learner or the parent of the learner of the outcome of the appeal. 15  
 (11) If the governing body is not satisfied with the decision of the Head of Department as contemplated in subsection (5)(c), the governing body may appeal against the decision to the Member of the Executive Council within 14 days after receiving the decision of the Head of Department. 20  
 (12) If an appeal contemplated in subsection (11) has been received, the Member of the Executive Council must, within 14 days after receiving such appeal, consider and decide on the matter and inform the governing body of the outcome of the appeal. 25  
 (13) While the Member of the Executive Council considers the appeal, the admission policy shall remain valid and applicable, and only the provisions that are the subject of the appeal shall be suspended pending the finalisation of the appeal process.”.

#### Amendment of section 6 of Act 84 of 1996

5. Section 6 of the South African Schools Act, 1996, is hereby amended— 30
- (a) by the substitution for subsection (2) of the following subsection:  
 “(2) The governing body of a public school may, subject to subsection (13), determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law: Provided that the language policy of a public school must be limited to one or more of the official languages of the Republic as provided in section 6(1) of the Constitution.”; 35

The provision that the Governing Body may determine the language policy of the school is rendered nugatory by the provisions of the proposed sub-sections (5) and (13).

- (b) by the substitution for subsection (4) of the following subsection:  
 “(4) [A recognised] South African Sign Language has the status of an official language for purposes of learning at a public school.”; and

The SAOU notes the provision.

- (c) by the addition of the following subsections: 40  
 “(5) The governing body must submit the language policy of a public school and any amendment thereof to the Head of Department for approval.

(5) The SAOU is opposed to this provision, which removes one of the pillars of the public school system and effectively results in the establishment of a State school system in which schools are subject to administrative review and decision-taking.

**Note:** The proposal is that the current formulation of Sec 6 of the Act in regard to language policy in public schools should be retained. The reason being that the Constitutional Court has interpreted the current formulation in *Head of Mpumalanga Department of Education and Another v Hoërskool Ermelo and Others (2010)*. The current formulation has thus passed constitutional scrutiny

and the provision of any more powers to the provincial department is superfluous. The proposed amendment will in all probability lead to unnecessary constitutional contestation.

(6) The *Head of Department* may approve the language policy of a *public school* or any amendment thereof, or may return it to the *governing body* with such recommendations as may be necessary in the circumstances, together with reasons for such recommendations. 45

(6) The use of the term “recommendations” should be re-considered. In the context and with regard being had to related provisions, the responses of the authorities will in effect be “directives”.

**Note:** As stated here above in regard to the admission policy, the numerical reality of considering the language policies of public schools, in excess of 24,000 has not been considered, unless the consideration will only be aimed at certain language communities.

(7) The *Head of Department*, when considering the language policy of a *public school* or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the language needs, in general, of the broader community in the *education district* in which the *public school* is situated, and must take into account factors including, but not limited to— 50

- (a) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity; 55
- (b) section 6(2) of the *Constitution*;
- (c) section 29(2) of the *Constitution*;
- (d) the changing number of *learners* who speak the language of learning and teaching at the *public school*;
- (e) the need for effective use of classroom space and resources of the *public school*; and 60
- (f) the enrolment trends of the *public school*.

(7) The proposal gives no direction as to how the interests of minority language-speakers are to be dealt with. The SAOU has indicated elsewhere that the interests of a specific school community may be incompatible with the needs of a broader community as defined. The movement to a State-school model raises the difficulty that a centralised authority lacks the capacity and also the capability to interact meaningfully with specific needs in a particular school community or a section thereof. As stated here above, we can respectfully come to no other conclusion but to deduce that the proposed amendment is aimed at certain language communities.

(8) The *governing body* must review the language policy determined in terms of this section every three years or whenever the factors referred to in subsection (7) have changed, when circumstances so require, or at the request of the *Head of Department*. 5

(8) A triennial review of a language policy will need to bear in mind the election sequence for a Governing Body. The SAOU is not convinced that a new and relatively inexperienced Governing Body will have the capacity to deal adequately with this matter. Possibly the requirement for a triennial review should be re-considered. The wording of the sub-section implies that even more frequent review of a language policy might be required. It is doubted whether the composition and capacity of a Governing Body would make this possible, especially in a situation where whatever action the Governing Body

proposes is subject to bureaucratic review.

**Note:** The numerical reality in regard to the consideration process in terms of the Promotion of Administrative Justice of more than 24,000 public schools, has not been considered. If all schools' language policy has not been considered, but that such consideration was only on a selective basis, the constitutionality of the decisions will undoubtedly be contested.

(9) The *governing body* of each *public school* must, within 30 days after the commencement of the Basic Education Laws Amendment Act, 2022, submit the language policy of that *public school* to the *Head of Department* for approval.

(9) The provision is not supported by the SAOU.

(10) The *Head of Department* must respond to the *governing body* as contemplated in subsection (6) within 60 days after receiving the language policy, failing which the language policy will be regarded as having been approved by the *Head of Department*.

(10) The provision is noted.

(11) When a *public school* has, as contemplated in subsection (5) and subsection (9), submitted its language policy to the *Head of Department*, such language policy will be regarded as the valid language policy of the *school* during the 60-day period referred to in subsection (10), or if the *Head of Departments* responds to the *school's* request for approval of the language policy before the end of the 60-day period, until the earlier date on which the *Head of Department* responds. 20

(11) The provision is noted.

(12) The *governing body* of each *public school* must, after the commencement of the Basic Education Laws Amendment Act, 2022, submit any amendment to the language policy to the *Head of Department* for approval, and the *Head of Department* must respond within 30 days after receiving the amendment, failing which the amendment will be regarded as having been approved by the *Head of Department*. 25

(12) The provision is noted.

(13) Notwithstanding the provisions of subsection (2), the *Head of Department* may, where it is practicable to do so and subject to subsection (7), direct a *public school* to adopt more than one language of instruction. 30

(13) The provision is noted and interpreted in terms of the provisions of (14) and the following sub-sections.

(14) The *Head of Department*, in determining whether it is practicable for a *public school* to have more than one language of instruction, must take into account factors including, but not limited to—

- (a) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity; 35
- (b) the changing number of *learners* who speak the language of learning and teaching at the *public school*;
- (c) the need for effective use of classroom space and resources of the *public school*; and
- (d) the language needs, in general, of the broader community in the *education district* in which the *public school* is situated. 40

(14) It is noted that a function is assigned to the Head of Department which in

a public school system could effectively be carried out by the school community. In its discussions with Language Boards in other countries where multi-lingualism in the public school system is a reality (e.g. the city of Orlando in the State of Florida USA has to take cognisance of almost 100 languages and dialectic variants) the SAOU has noted that top-down approaches to the language of teaching and learning are not successful, or only partially so.

- (15) The *Head of Department* may not act in terms of subsection (13) unless he or she has—
- (a) in writing, informed the *school* and the *governing body* of his or her intention to act as contemplated in subsection (13) and his or her reasons therefor; 45
  - (b) notified the *parents* associated with the *school*, and the community in which the *school* is situated, of his or her intention so to act and the reasons therefor—
    - (i) by means of a notice in at least one newspaper circulating in the area where the *school* is situated, if any newspapers circulate in that area; 50
    - (ii) by causing the *principal* of the *school* to—
      - (aa) hand to every *learner* a notice containing the relevant information; and 55
      - (bb) instruct the *learners* to hand the notice to their *parents*; and
    - (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible; 60
  - (c) granted the *school*, the *governing body*, the *parents* associated with the *school*, and the community in which the *school* is situated, a reasonable opportunity to make representations to him or her in relation to such action;
  - (d) conducted a public hearing, on reasonable notice, to enable the community to make representations to him or her in relation to such action; and
  - (e) given due consideration to any such representations received.

(15) The SAOU endorses the provisions of this sub-section.

- (16) The *Head of Department* must— 5
- (a) inform the *school* and the *governing body* of his or her decision contemplated in subsection (13) and his or her reasons therefor; and
  - (b) by means of the methods listed in subsection (15)(b), notify the *parents* associated with the *schools*, and the communities in which the *schools* are situated, of the decision. 10

(16) The sub-section should require notice to be given of a date of implementation. The practical requirements of implementing an additional language of learning and teaching require an adequate timescale for planning and preparation.

- (17) If the *Head of Department* acts in terms of subsection (13), he or she must, before his or her directive is implemented, take all necessary steps to ensure that the *public school* concerned receives the necessary resources, including, but not limited to—
- (a) *educators*; and 15
  - (b) learning and teaching support material, to enable that *public school* to provide adequate tuition in the additional language or languages of instruction.

(17) The resources referred to relate to the new language to be introduced. Experience has shown that undertakings as to additional resources tend not to be sustained over a period of years after the implementation of the new language. In this regard the sub-section should be expanded to make

reference to the time-scale during which additional resources will be made available.

(18) If the *governing body* is not satisfied with the decision of the *Head of Department* as contemplated in subsection (6), or with a directive contemplated in subsection (13), the *governing body* may appeal against the decision or the directive, as the case may be, to the *Member of the Executive Council* within 14 days after receiving the decision or the directive, as the case may be. 20

(18) The SAOU notes the provisions of this sub-section.

(19) If an appeal contemplated in subsection (18) has been received, the *Member of the Executive Council* must, within 14 days after receiving such appeal, consider and decide the matter and inform the *governing body* of the outcome of the appeal. 25

(19) The SAOU notes that the Member of the Executive Council is usually dependent on the line department for advice and that in cases of appeal the advice given is formulated by a person or persons who took the original decision. The SAOU is of the view that the provision would be strengthened by a stipulation that in adjudicating any appeal the MEC must be assisted by a person or persons who has no conflict of interest in the matter.

(20) While the *Member of the Executive Council* considers the appeal, the language policy shall remain valid and applicable, and only the provisions that are the subject of the appeal shall be suspended pending the finalisation of the appeal process. 30

(20) The SAOU notes the provisions of this sub-section.

As stated here above, the SAOU contends that the current formulation of Section 6 has passed constitutional scrutiny and unnecessarily opens the door for constitutional contestation.

#### Amendment of section 6A of Act 84 of 1996, as inserted by section 3 of Act 50 of 2002

6. Section 6A of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection: 35

“(3) The Minister may, in writing, appoint a person, an organisation or a group of persons to advise him or her in regard to the determination contemplated in subsection (1).”.

The SAOU does not endorse this provision. The educator profession is the body principally charged with the implementation of all policy and other requirements as they apply to the classroom, and is usually best positioned to furnish comment on what is practicable in classrooms and schools, and what is not. The Union notes that the justification given for this provision as set out in the explanatory memorandum is that the provision will allow the Minister to obtain inputs from a broader spectrum of people. The proposal as it is worded allows for the appointment of a person, or an organisation or a group of persons to advise the Minister. It is difficult to imagine that the appointment of one person, or one organisation, constitutes “a broader spectrum of people”. The SAOU is of the view that the means available to the Minister at the present time do not warrant the creation of a possibility that a limited group could dominate matters relating to the curriculum. The SAOU is strongly of the opinion that this provision is unnecessary and that it

should not be included.

**Amendment of section 8 of Act 84 of 1996, as amended by section 4 of Act 50 of 2002, and section 6 of Act 31 of 2007**

7. Section 8 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the Constitution, this Act and any applicable provincial law, a *governing body* of a *public school* must adopt a code of conduct for the *learners* after consultation with the *learners, parents* and *educators* of the *school*.”;

(a) The SAOU endorses the principle of the proposed amendment.

(b) by the substitution for subsection (2) of the following subsection:

“(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful *school* environment, dedicated to the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs, religious observances and medical circumstances of the *learners* at the *school*.”;

(b) The expression “medical circumstances” is vague, and is capable of wide range of interpretation.

(c) by the substitution for subsection (4) of the following subsection:

“(4) (a) Nothing contained in *this Act* exempts a *learner* from the obligation to comply with the code of conduct of the *school* attended by such *learner*.

(b) Despite paragraph (a), the code of conduct must contain an exemption provision in terms of which a *learner*, or the *parent* of a *learner*, may apply to the *governing body* for exemption of that *learner* from complying with certain provisions of the code of conduct on just cause shown.

(c) On receiving an application contemplated in paragraph (b), the *school governing body* must communicate its decision to the *learner*, or the *parent* of the *learner*, as the case may be, within 14 days after receiving the application, and must in the case of a refusal provide written reasons for the refusal.

(d) A *learner*, or the *parent* of a *learner*, who has been refused exemption as contemplated in paragraph (c) may, within 14 days of receiving the notice of the decision, appeal to the *Head of Department* against the decision of the *governing body*, and the *Head of Department* must, after considering the reasons for the appeal and the reasons for the refusal by the *governing body*, communicate his or her decision to the *learner* or the *parent* of the *learner*, as the case may be, and to the *governing body*, within 14 days after receiving the appeal, and must provide written reasons for his or her decision.”; and

(c) It is recommended that this expression be reconsidered and replaced with a term which would embody greater precision with a view to enabling SGBs to give adequate effect to the spirit of the provision.

(d) by the addition to subsection (5) of the following paragraph:

“(c) The disciplinary proceedings referred to in this subsection must be age-appropriate, must be conducted in the best interests of the *learner*, and must adhere to the principles of natural justice, fairness and reasonableness prescribed by the *Constitution*.”.

**Amendment of section 8A of Act 84 of 1996, as inserted by section 7 of Act 31 of 2007**

8. Section 8A of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) (a) Unless authorised by the *principal* for legitimate educational

purposes, no person may bring a *dangerous object* or **[illegal] a drug** 30  
 onto *school* premises or have such *dangerous object* or *drug* in his or her  
 possession on *school* premises or during any *school* activity.

(b) No person may bring *liquor* onto *public school* premises, or have  
*liquor* in his or her possession, or consume or sell *liquor* on *public school*  
 premises, or during any *public school activity*. 35

(c) Notwithstanding the prohibition contemplated in paragraph (b)—  
 (i) the *Head of Department* may, upon application from the *governing*  
*body* to supplement the resources of the *school*, permit the  
 possession, consumption or sale of *liquor* during any *school*  
*activity*, whether it is held on or away from the *school's* premises; 40  
 and

(ii) the *governing body* of a *public school* may, upon receipt of an  
 application from any person and in consultation with the *Head of*  
*Department*, permit the possession, consumption or sale of *liquor*  
 during any private or religious function held on the *school's* 45  
 premises: Provided that such possession, consumption or sale may  
 not take place during *school* hours: Provided further that the  
*governing body* of a *public school*, in consultation with the *Head of*  
*Department*, may attach certain restrictions to the granting of such  
 permission. 50

(d) The permission contemplated in paragraph (c) relates to—

(i) fund-raising activities of the *school* by the *governing body*;  
 (ii) the letting of the *school's* premises to members of the community  
 for private functions, church services and the like, in order to  
 augment the *school* fund; 55

(iii) functions held for the staff of the *school*; and

(iv) instances where staff members live on *school* premises in living  
 quarters provided by the *school*: Provided that the *governing body*  
 of the *public school*, in consultation with the *Head of Department*,  
 may attach to the possession and consumption of *liquor* in the living 60  
 quarters of staff members, such restrictions over and above those  
 contemplated in paragraph (c).

(e) In deciding whether or not to grant permission as contemplated in  
 paragraphs (c) and (d), and whether or not to attach restrictions as  
 contemplated in paragraph (c), the *governing body* of a *public school*, in 5  
 consultation with the *Head of Department*, must take into account at least  
 the following factors:

(i) Whether the *school* will be able to provide a staff member delegated  
 by the *principal*, or a person delegated by a *governing body*, to  
 monitor the function so as to ensure that *liquor* is not consumed 10  
 irresponsibly and is not served to already intoxicated persons, and  
 that the restrictions contemplated in this paragraph and in para-  
 graphs (c) and (g)(ii) are adhered to;

(ii) whether children will be present at the function; and

(iii) if children will be present, whether the organisers are willing to give 15  
 a written undertaking to ensure that *liquor* will not be available to  
 children.

(f) In all decisions taken in terms of paragraphs (c), (d) and (e), the best  
 interests of the child must remain paramount and the principle to be  
 applied is that of protecting children from exposure to harmful practices 20  
 such as the irresponsible consumption of *liquor*.

(g) The possession, consumption or sale of *liquor* as contemplated in  
 this section is subject to—

(i) the Liquor Act, 2003 (Act No. 59 of 2003), and any conditions  
 imposed in terms of that Act; and 25

(ii) any restrictions imposed by the *governing body* of a *public school*,  
 in consultation with the *Head of Department*, as contemplated in  
 paragraph (e).”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsection (3), the *principal* or his or her delegate may, 30  
 at random, search a *learner* or any group of *learners*, or the property of  
 a *learner* or group of *learners*, for any *liquor*, *dangerous object* or  
**[illegal] drug**, if a fair and reasonable suspicion has been established—  
 (a) that *liquor*, a *dangerous object* or **[an illegal] a drug** may be found  
 on *school* premises or during a *school activity*; or 35  
 (b) that one or more *learners* on *school* premises or **[during] at a school**

activity are in possession of liquor, dangerous objects or **[illegal] drugs.**”;

- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 40  
 “(5) Any liquor, dangerous object or **[illegal] drug** that has been seized must be—”;
- (d) by the substitution for subsection (6) of the following subsection: 45  
 “(6) If the police cannot collect the liquor, dangerous object or **[illegal] drug** from the *school* immediately, the *principal* or his or her delegate must—  
 (a) take the liquor, dangerous object or **[illegal] drug** to the nearest police station; and  
 (b) hand the liquor, dangerous object or **[illegal] drug** over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”;
- (e) by the substitution for subsection (7) of the following subsection: 55  
 “(7) The police officer who receives the liquor, dangerous object or **[illegal] drug** must issue an official receipt for it to the *principal* or to his or her delegate.”;
- (f) by the substitution for subsection (8) of the following subsection: 60  
 “(8) The *principal* or his or her delegate may at random administer a urine or other non-invasive test to any learner or group of *learners* that is on fair and reasonable grounds suspected of using liquor or [illegal] drugs, after taking into account all relevant factors contemplated in subsection (3).”;
- (g) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:  
 “(9) A *learner* contemplated in subsection (8) may be subjected to a urine or other non-invasive test for liquor or [illegal] drugs only if—”;
- (h) by the substitution for subsection (12) of the following subsection: 5  
 “(12) A *learner* may be subjected to disciplinary proceedings if—  
 (a) liquor, a dangerous object or **[illegal] any drug** is found in his or her possession; or  
 (b) his or her sample tested positive for **[an illegal] liquor or any drug.**”;
- (i) by the substitution in subsection (14) for paragraph (a) of the following paragraph: 10  
 “(a) a search contemplated in subsection (2) was conducted and liquor, a dangerous object or **[illegal] any drug** was found; or”.

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| <p>(a) The SAOU welcomes the recognition that there are occasions on which the use of liquor on school premises is defensible.</p> <p>(b) The use of the word “child” rather than “learner” requires further consideration. Fund-raising activities at schools not infrequently involve both children of the general public and learners at the school.</p> <p>(c) Possibly consideration should be given to separating the provisions relating to the use of alcohol at school-related functions, and the wider concerns related to the possession and use of intoxicating or habit-forming substances which go beyond fund-raising functions held on school property or under the aegis of the school. It is the view of the SAOU that these two focal points, although related, require diverging approaches and make different demands of the parties involved.</p> <p>(d) The SAOU refrains from expressing a view on search-and-seize issues, and matters relating to the work of officers of the SAPS.</p> |
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**Amendment of section 9 of Act 84 of 1996, as amended by section 7 of Act 48 of 1999, section 2 of Act 24 of 2005 and section 7 of Act 15 of 2011**

9. Section 9 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) (a) The *governing body* may, on reasonable grounds and as a precautionary

measure, suspend a *learner* who is suspected of serious misconduct from attending *school*, but may **[only]** enforce such suspension only after the *learner* has been granted a reasonable opportunity to make representations to it in relation to such suspension. 20

(b) Serious misconduct by a *learner* is defined as—

- (i) physical assault of a *learner*, employee, or other person related to the *school*, with the intention to cause grievous bodily harm, or the imminent threat to commit such an act, while on *school* premises or during any *school activity*, or 25 in any circumstance that could reasonably be connected to the *school*;
- (ii) any form of harassment, including sexual harassment of a *learner*, employee or other person related to the *school*, including via electronic and social media;
- (iii) repeated offences related to bullying, or the imminent threat to commit such 30 an act;
- (iv) the illegal possession of a *drug* or *liquor*;
- (v) the repeated disruption of the *school* programme, or the imminent threat to commit such an act;
- (vi) serious transgressions relating to any test, examination or examination paper; 35
- (vii) fraud;
- (viii) theft or any other dishonest act to the prejudice of another person;
- (ix) the possession of a *dangerous object* while on *school* premises, or during any *school activity*, or in any circumstance that could reasonably be connected to the *school*; 40
- (x) the possession or distribution of pornographic material;
- (xi) engaging in sexual activity on *school* premises or committing an act of sexual assault, or the imminent threat to commit such an act; and
- (xii) any other serious act contemplated in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that prejudices the constitutional rights of 45 *learners, employees or other persons related to the school.*”.

- (a) The SAOU welcomes the proposal to include a definition of serious learner misconduct in a revised and updated SASA.
- (b) It is noted that the replacement of sub-section (1) removes items (1A) to (1E) of the existing Section 9(1). The SAOU requests that if this matter is an oversight it be rectified, and if not, that consideration be given to the reinstatement of the relevant provisions.
- (c) The general principle of the proposal is endorsed.
- (d) The current approach to learner disciplinary matters is that more rights are afforded to the rights of perpetrators instead of the constitutional rights of the silent majority of learners and their right to a disciplined school environment that will provide safety and promote a culture of learning and teaching.

#### Amendment of section 10 of Act 84 of 1996

**10.** Section 10 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) **[No]** Corporal punishment is abolished and no person may [administer] 50 inflict or impose corporal punishment [at a school] to a learner at a school, during a school activity, or in a hostel accommodating learners of a school.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a **[sentence which could be imposed for assault] fine or to 55 imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.**”.

The SAOU endorses the provision, which it considers to be justifiable and necessary. With regard being had to the definition of *corporal punishment* and the provisions with regard to the *Code of Conduct* as proposed at Clause 7, the question arises as to whether the State should be providing guidelines furnishing methodologies for dealing with misconduct and serious misconduct of learners, given the abolition of all forms of corporal punishment.

The following should also be considered, i.e.

- Learner misconduct under the present regime provided for by SASA already constitutes one of the major sources of educator demotivation, tension and related socio-physical conditions.
- The State as employer has a duty to address these issues by way of guidelines and norms and standards for learner conduct.
- As stated here above, the rights of the silent majority are subjected to the rights of the perpetrators. That is unacceptable.

**Amendment of section 10A of Act 84 of 1996, as inserted by section 5 of Act 50 of 2002**

11. Section 10A of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person may not conduct or participate in any initiation practices against a learner at a school, during a school activity, or in a hostel accommodating learners of a school.”

The SAOU endorses the provision. A question which arises is whether, and if so to what extent, off-site induction/initiation processes/behaviours should be referred to in those instances where they can be demonstrated to constitute some form of initiation.

**Amendment of section 12 of Act 84 of 1996, as amended by section 8 of Act 15 of 2011**

12. Section 12 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsections:

“(3A) The governing body of a public school may, in writing, apply to the Member of the Executive Council for the public school to be designated as a public school with a specialised focus on talent as contemplated in subsection (3)(a)(iii).

(3B) The Head of Department may, after consultation with the governing body of a public school, identify the school and recommend to the Member of the Executive Council that the school should be designated as a public school with a specialised focus on talent as contemplated in subsection (3)(a)(iii).

(3C) The Member of the Executive Council may, in writing, designate a public school from which an application contemplated in subsection (3A) has been received, and a school identified and recommended as contemplated in subsection (3B), as a school with a specialised focus on talent as contemplated in subsection (3)(a)(iii), if it is in the interest of education in the province and if the school complies with the norms and standards determined by the Minister in terms of subsection (3)(b).

(3D) Before designating a public school as a school with a specialised focus on talent as contemplated in subsection (3)(a)(iii), the Member of the Executive Council must—

- (a) give written notice to the school in question, and to its governing body, of the intention to designate the public school as a school with a specialised focus on talent and of the reasons therefor;
- (b) notify the parents associated with the school, and the community in which the school is situated, of the intention to designate the public school as a school with a specialised focus on talent and of the reasons therefor—
  - (i) by means of a notice in at least one newspaper circulating in the area where the school in question is situated, if any newspapers circulate in that area;
  - (ii) by causing the principal of the school in question to—
    - (aa) hand to every learner at the school a notice containing the relevant information; and
    - (bb) instruct the learners to hand the notice to their parents; and
  - (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;
- (c) give the school in question, and its governing body, and any other interested persons, an opportunity to make representations within a period of not less

than 90 days from the date of the notices and communication referred to in paragraph (b);

- (d) give due consideration to any such representations received; and  
 (e) be satisfied that the employers of staff at the *public school* have complied with their obligations in terms of the applicable labour law.” 50

The SAOU endorses the provision. The SAOU is of the view that attention should be given to timescales in the following categories:

- (i) (3B) Within what period after application should the consultation envisaged take place and a recommendation be made to the MEC;  
 (ii) (3C) Within what timeframe should the MEC carry out the functions envisaged;  
 (iii) (3D) (a), (b) and (c) should take place according to a fixed timescale; and  
 (iv) (3D) (d) should fall within a specified timescale.

With regard being had to the making of an application by the SGB and the complexity of the processes envisaged, there may be merit in indicating by what date the SGB should make an application with a view to receiving a timeous answer

**Amendment of section 12A of Act 84 of 1996, as inserted by section 8 of Act 48 of 1999**

13. Section 12A of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) Before merging two or more *public schools*, the *Member of the Executive Council* must— 55

- (a) give written notice to the *schools* in question, and to their *governing bodies*, of the intention to merge them and of the reasons therefor;  
 (b) **[publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated]** notify the *parents* associated with the *schools*, and the communities in which the *schools* are situated, of the intention to merge the *schools* and of the reasons therefor— 5  
 (i) by means of a notice in at least one newspaper circulating in the area where the *schools* in question are situated, if any newspapers circulate in that area; and  
 (ii) by causing the *principals* of the *schools* in question to—  
 (aa) hand to every *learner* at each *school* a notice containing 10  
 the relevant information; and  
 (bb) instruct the *learners* to hand the notice to their *parents*;  
 and  
 (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible; 15  
 (c) give the **[governing bodies of the]** *schools* in question, and their *governing bodies*, and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the **[notice]** notices and communication referred to in paragraph (b); 20  
 (d) **[consider]** give due consideration to any such representations received; and  
 (e) be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law.”; 25

- (b) by the insertion after subsection (2) of the following subsection:

“(2A) (a) The *Member of the Executive Council* must, within 30 days after receiving the representations referred to in subsection (2)(c), take a decision on whether or not to go ahead with the merger, and—  
 (i) in writing, inform the *schools* in question, and their *governing bodies*, of the decision; and 30  
 (ii) by means of the methods listed in subsection (2)(b), notify the *parents* associated with the *schools*, and the communities in which the *schools* are situated, of the decision.  
 (b) If the *Member of the Executive Council* fails to act in terms of 35  
 paragraph (a), the contemplated merger will be deemed to have lapsed.

- (c) If the decision of the *Member of the Executive Council* is to go ahead with the merger, he or she must ensure that the merger is proceeded with within 30 days after giving notice as contemplated in paragraph (a).”;
- (c) by the substitution for subsection (4) of the following subsection: 40  
 “(4) (a) If the *Member of the Executive Council* decides to merge the *public schools* in question, he or she must, after consultation with the *governing bodies* of the *public schools* that are to be merged, determine, by notice contemplated in subsection (1)— 45  
 (i) the date of establishment of the *public school*;  
 (ii) the name of the *public school*; and  
 (iii) the physical location and official address of the *public school*.  
 (b) The single *school* contemplated in subsection (1) must be regarded as a new *public school*.”;
- (d) by the substitution for subsection (6) of the following subsection: 50  
 “(6) (a) [The] After the notice as contemplated in subsection (4)(a) has been published, the *governing bodies* of the *schools* that are to be merged must have a meeting [before the merger] to constitute a single interim *governing body* comprising [of] all the members of the *governing bodies* concerned, which single interim *governing body* will govern the new *school* for a period not exceeding three months. 55  
 (b) The interim *governing body* must—  
 (i) elect office bearers;  
 (ii) decide on the budget [and]; 60  
 (iii) reach consensus about differences in codes of conduct and *school fees*[,] and, if applicable, about contractual obligations and the utilisation and disposal of movable assets; and make recommendations to the *Head of Department* on personnel matters, as well as on any issue that is relevant to the merger or which is prescribed in terms of *this Act*,  
 until a new *governing body* is constituted in terms of sections 23 and 28.  
 (c) The *Member of the Executive Council* may extend the period referred to in paragraph (a) once for a further period not exceeding three months.”;
- (e) by the addition of the following subsections: 5  
 “(8) A merger contemplated in subsection (1) does not affect the liability of any person to be disciplined or prosecuted for any 10 misconduct, crime or offence.  
 (9) A *learner* is subject to the code of conduct applicable to the new single *public school* as from the date of the merger contemplated in subsection (1), but if any proceedings in respect of a charge of 15 misconduct had been instituted or commenced before the date of the merger, such proceedings must continue in terms of the code of conduct relevant to the *public school* immediately before the merger.  
 (10) The new single *public school* or the *Head of Department*, as the case may be, may undertake rationalisation or redeployment of its workforce according to operational requirements in accordance with 20 sections 189 and 189A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the Employment of Educators Act, 1998 (Act No. 76 of 1998), and any ratified collective agreement that deals with the rationalisation or redeployment of a workforce.  
 (11) If two or more *public schools* are merged into a single *public school* in terms of subsection (1), the new single *public school* continues with all academic programmes offered by the former *public schools* under the programmes applicable to the respective *public schools* immediately before the date of the merger, until such programmes are amended or restructured by the *governing body* or education department, 30 where applicable.”.

The SAOU notes the proposal and the arrangements proposed.

The SAOU endorses the principle of the proposal. It is noted however that while reference is made at sub-section (10) of the processes to be followed with respect to the labour force, (11) requires a continuation of all programmes until these are amended or re-structured by the governing body or the education department where applicable. This in effect implies a

continuation of services in the immediate term. It is recommended that this aspect be re-considered with a view to ensuring security and continuity for the staff members concerned.

**Amendment of section 18A of Act 84 of 1996, as inserted by section 6 of Act 50 of 2002**

14. Section 18A of the South African Schools Act, 1996, is hereby amended— 35  
by the insertion after subsection (4) of the following subsection:
- “(4A) The code of conduct referred to in subsection (1) must provide that all members of a *governing body* must disclose on an annual basis, all his or her financial interests and the financial interests of his or her spouse, partner and immediate family members, including but not limited to the following:
- (a) Shares and other financial interests in an entity; 40
  - (b) sponsorships;
  - (c) gifts, hospitality, sponsorship or other benefit received from an entity or person conducting business with the *public school*;
  - (d) immovable property; and
  - (e) any matter of financial interest.” 45

The proposed amendment is in all probability in conflict with the provisions of the Protection of Personal Information Act (POPI). POPI is relevant and in all probability will be invoked by a member of a SGB.

The Union believes that the proposed amendment will discourage competent and knowledgeable SGB members to make themselves available. If the intention is to curb conflicts of interest and possible corruption, the proposed approach will not prevent such behaviour as the school or the local provincial office does not have the infrastructure, access and knowledge to compare the validity of the data provided by the SGB members of 24,000 public schools.

**Amendment of section 20 of Act 84 of 1996, as amended by section 6 of Act 100 of 1997, section 4 of Act 53 of 2000, section 3 of Act 57 of 2001, and section 9 of Act 31 of 2007**

15. Section 20 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (k) of the following paragraph: 50
- “(k) at the request of the *Head of Department*, allow the reasonable use under fair conditions determined by the *Head of Department*, of the facilities of the *school* for [educational programmes not conducted by the *school*] education-related activities, without the charging of a fee or tariff: Provided that, in determining the conditions, the *Head of Department* must consult with 55 the *governing body* of the *school*, which consultation must include the matter of the payment of necessary and reasonable expenses arising from the use of the facilities;”.

The SAOU notes that in the explanatory memorandum it is stated that “in many towns and villages the public school is the only venue that a provincial education department can use for educational purposes”. During school terms the facilities are in use at least for five working days of the week, if not the weekend, and the proposal seems to suggest that the facilities could be available during weekends.

The question arises as to what supervision of the facilities and protection of property would be necessary and as to whether or not the school would be expected to provide these. The SAOU is not able to endorse the proposal in its present form.

**Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999**

16. Section 21 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) Notwithstanding the provisions of subsections (1)(c) and (3) and section 22, the *Head of Department* may, in consultation with the *governing body*, centrally procure identified learning and teaching support material for *public schools* on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.”

The SAOU does not endorse central procurement as an approach. Economies of scale almost always do not materialise, while delays with procurement and delivery render very difficult the smooth operation of schools. It is also demonstrable that items which are centrally procured not infrequently cost more than the same product acquired from local suppliers.

In light of the negative experiences in regard to the central procurement of PPEs during the Covid lockdown period, the SAOU recommends that this provision not be included

**Substitution of section 22 of Act 84 of 1996**

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17. The following section is hereby substituted for section 22 of the South African Schools Act, 1996:

**“Withdrawal of functions [from] of governing [bodies] body”**

**22.** (1) The *Head of Department* may, on reasonable grounds, withdraw **[a function] one or more functions** of a *governing body*. 15

(2) The *Head of Department* may not take action **[under] in terms of** subsection (1) unless he or she has—

(a) in writing informed the *governing body* of his or her intention so to act and the reasons therefor;

(b) granted the *governing body* a reasonable opportunity to make representations to him or her relating to such intention; **[and]** 20

(c) given due consideration to any such representations received; **and**  
(d) informed the *governing body* of his or her final decision, in writing.

(3) In cases of urgency, the *Head of Department* may act in terms of subsection (1) without prior communication to such *governing body*, if the *Head of Department* immediately thereafter— 25

(a) furnishes the *governing body* with written reasons for his or her actions;

(b) **[gives] grants** the *governing body* a reasonable opportunity to make representations to him or her relating to such actions; 30

(c) duly considers any such representations received; and

(d) informs the *governing body* of his or her final decision, in writing.

(4) The *Head of Department* may for sufficient reasons reverse or suspend his or her action in terms of subsection (1) or (3). 35

(5) **[Any person aggrieved by a decision of] If** the *Head of Department* acts in terms of **[this section may appeal against the decision to the Member of the Executive Council]** subsection (1) or (3), he or she must appoint sufficiently qualified persons to perform the withdrawn function or functions, as the case may be, for a period not exceeding three months. 40

(6) The *Head of Department* may extend the period referred to in subsection (5) by further periods not exceeding three months each, but the total period may not exceed one year.

(7) The persons contemplated in subsection (5) must, within the period of their appointment, build the necessary capacity to ensure that the *governing body* will thereafter be able to perform the functions that it previously failed to perform. 45

(8) The persons contemplated in subsection (5) shall have exclusive voting rights and decision making powers on any function that they have been appointed to perform. 50

(9) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal against the decision to the *Member of*

the Executive Council, and the Member of the Executive Council must communicate his or her decision to the aggrieved person within 30 days after receiving the appeal and must provide written reasons for his or her **55** decision.”.

The Governing Body of a school is a third-level political body, elected by a constituency to perform its functions. The Head of Department is not the politically accountable officer for the education system and the schools in the province. This duty is performed by the Member of the Executive Council (MEC). A matter as serious as the withdrawal of functions should be dealt with at the highest political level in the province.

**Amendment of section 23 of Act 84 of 1996, as amended by section 11 of Act 48 of 1999**

18. Section 23 of the South African Schools Act, 1996, is hereby amended—  
by the substitution for subsection (6) of the following subsection:

“(6) A governing body may co-opt a member or members of the community, or **5** persons from outside the community, with the relevant expertise, to assist it in discharging its functions.”.

The SAOU endorses the provision.

**Amendment of section 24 of Act 84 of 1996, as amended by section 7 of Act 100 of 1997**

19. Section 24 of the South African Schools Act, 1996, is hereby amended— **10**  
(a) by the substitution for subsection (2) of the following subsection:

“(2) Subject to *this Act*, the [*Member of the Executive Council*] *Minister* must, by notice in the [*Provincial*] Gazette, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every *public* **15** *school for learners* with special education needs [*within his or her province*].”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) The [*Member of the Executive Council*] *Minister* must consider all such submissions, and thereafter may alter the notice contemplated in **20** subsection (2).”.

The SAOU endorses the provision.

**Insertion of section 24A in Act 84 of 1996**

20. The following section is hereby inserted in the South African Schools Act, 1996, after section 24:

**“Membership of governing body of public school with specialised **25** focus on talent, including sport, performing arts or creative arts**

**24A.** (1) The provisions of section 23, excluding subsection (5), will apply to a *governing body* of a *public school* that provides education with a specialised focus on talent, including sport, performing arts or creative arts, as contemplated in section 12(3)(a)(iii). **30**

(2) The authority to co-opt a member or members of the community as contemplated in section 23(6) includes the authority to co-opt relevant experts in the specialised focus of the *public school*, whether from inside or outside the community.”.

The SAOU endorses the provision.

**Substitution of section 25 of Act 84 of 1996, as amended by section 4 of Act 57 of **35** 2001**

21. The following section is hereby substituted for section 25 of the South African Schools Act, 1996:

**“Dissolution of governing body**

25. (1) The *Head of Department* may, on reasonable grounds, dissolve a *governing body* that has ceased to perform its functions in terms of *this Act* or any provincial law. 40

(2) If the *Head of Department* acts in terms of subsection (1), he or she must appoint sufficiently qualified persons to perform all the functions of the *governing body* for a period not exceeding three months. 45

(3) The *Head of Department* may extend the period referred to in subsection (2) by further periods not exceeding three months each, but the total period may not exceed one year.

(4) The persons contemplated in subsection (2) shall have exclusive voting rights and decision making powers on all the functions of the *governing body*. 50

(5) The *Head of Department* may not take action in terms of subsection (1) unless he or she has—

(a) in writing, informed the *governing body* of his or her intention so to act and the reasons therefor;

(b) granted the *governing body* a reasonable opportunity to make representations to him or her relating to such intention; 5

(c) given due consideration to any such representations received; and

(d) informed the *governing body* of his or her final decision, in writing.

(6) If the *Head of Department* has dissolved a *governing body* as contemplated in subsection (1), he or she must ensure that a new *governing body* is elected in terms of *this Act*, within a year after the appointment of the persons contemplated in subsection (2). 10

(7) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal against the decision to the *Member of the Executive Council*, and the *Member of the Executive Council* must communicate his or her decision to the aggrieved person within 14 days after receiving the appeal and must provide written reasons for his or her decision.”. 15

No comment.

**Substitution of section 26 of Act 84 of 1996**

22. The following section is hereby substituted for section 26 of the South African Schools Act, 1996: 20

**“Recusal by member of governing body**

(a) a person living with that member as if they were married to each other, namely a life partner; |

(b) a relative who resides permanently with that member; and

(c) any other relative who is dependent on such member.”.

The SAOU is in agreement with the general principles enunciated in the proposed Section. The question which arises is the same question as that which has arisen elsewhere where actions against a Governing Body or a member are contemplated. Should the Head of Department perform the functions envisaged in (5)(a) and (5)(b)?

**Amendment of section 27 of Act 84 of 1996**

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23. Section 27 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No member of a *governing body* may be remunerated in any way for the performance of his or her duties or for the attendance of meetings and school activities.”. 10

The SAOU endorses the provision.

**Amendment of section 28 of Act 84 of 1996**

24. Section 28 of the South African Schools Act, 1996, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:  
 “Subject to *this Act*, **[and any applicable provincial law, the Member of the Executive Council]** the *Minister* must, by notice in the **[Provincial]** Gazette, 15 determine—”.

The SAOU endorses the principle proposed. The practical implications of such a proposal deserve careful consideration, however.

**Amendment of section 29 of Act 84 of 1996, as amended by section 12 of Act 48 of 1999**

25. Section 29 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection: 20  
 “(2) (a) Only a *parent* member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the *governing body*.  
 (b) Where reasonably practicable, only a *parent* member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the finance committee of that *public school*.”. 25

The SAOU endorses the provision.

**Amendment of section 32 of Act 84 of 1996**

26. Section 32 of the South African Schools Act, 1996 is hereby amended—  
 (a) by the substitution for the heading of the following heading:  
 “**Status of [minors] learners on governing bodies of public schools**”;  
 (b) by the substitution for subsections (1), (2) and (3) of the following subsections: 30  
 “(1) A member of a *governing body* who is a **[minor] learner** may not contract on behalf of a *public school*.  
 (2) A member of a *governing body* who is a **[minor] learner** may not vote on resolutions of a *governing body* which impose liabilities on third parties or on the *school*. 35  
 (3) A member of a *governing body* who is a **[minor] learner** incurs no personal liability for any consequence of his or her membership of the *governing body*.”; and  
 (c) by the addition of the following subsection: 40  
 “(4) A member of a *governing body* who is a *learner* may not take part in meetings at which recommendations for the appointment of staff to the *school* are decided on, or form part of interview panels relating to the appointment of staff, whether *educators* or non-educators, or in any other way be involved in the appointment of staff to the *school*.”. 45

The SAOU endorses the provision.

**Substitution of section 33 of Act 84 of 1996**

27. The following section is hereby substituted for section 33 of the South African Schools Act, 1996:

**“Closure of public schools**

33. (1) The *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school*. 50  
 (2) The *Member of the Executive Council* may not act **[under]** in terms of subsection (1) unless he or she has—  
 (a) **in writing** informed the *school* and the *governing body* **[of the school]** of his or her intention so to act and his or her reasons therefor; 5  
 (b) **[granted the governing body of]** notified the *parents* associated with the *school*, **[a reasonable opportunity to make representations to him or her in relation to such action]** and the community in which the *school* is situated, of his or her intention so to act and the reasons therefor— 10  
 (i) by means of a notice in at least one newspaper circulating in

the area where the *school* is situated, if any newspapers circulate in that area;

- (ii) by causing the *principal* of the *school* to—
  - (aa) hand to every *learner* a notice containing the relevant information; and
  - (bb) instruct the *learners* to hand the notice to their *parents*; and
- (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;

- (c) **[conducted a public hearing on reasonable notice, to enable]** granted the *school*, the *governing body*, the *parents* associated with the *school*, and the community in which the *school* is situated a reasonable opportunity to make representations **[to him or her]** in relation to such **[actions] action; [and]**
- (d) conducted a public hearing, on reasonable notice, to enable the community to make representations in relation to such action; and
- (e) given due consideration to any such representations received.

(3) (a) Notwithstanding the provisions of subsection (2), the *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school* in his or her sole discretion if no *learners* are registered at that *school*.

(b) The *Member of the Executive Council* may not act in terms of paragraph (a) unless he or she has verified, by means of a site inspection by an official nominated by him or her, that no *learners* are registered at that *school*.

(4) (a) The *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school* if, in the case of a primary *school*, 135 or fewer than 135 *learners* are registered at that *school*, and, in the case of a secondary *school*, 200 or fewer than 200 *learners* are registered at that *school*: Provided that the provisions of this subsection do not apply where the *Member of the Executive Council* has, before the commencement of the Basic Education Laws Amendment Act, 2022, acted in terms of subsection (2).

(b) The *Member of the Executive Council* may not act in terms of paragraph (a) unless he or she has—

- (i) given written notice to the *school* and the *parents* of the *learners* of that *school*;
- (ii) by means of a notice in at least one newspaper circulating in the area where the *school* is situated, if any newspapers circulate in that area, and by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible, given notice of his or her intention to close the *school* and invited comment;
- (iii) consulted with the *parents* of the *learners* of the *school* and afforded them an opportunity to make representations within a period of not less than 30 days from the date of the notice or communication referred to in subparagraphs (i) and (ii); and
- (iv) considered any representations and any comments received after publication of the notice or communication referred to in subparagraphs (i) and (ii).

- (5) After the consultation contemplated in subsections (2) and (4)(b), the *Member of the Executive Council* must decide whether or not to go ahead with the closure of the *school* and must—
- (a) inform the *school* and the *governing body* of his or her decision; and
  - (b) by means of the methods listed in subsection (2)(b), notify the *parents* associated with the *school*, and the community in which the *school* is situated, of the decision.
- (6) If the decision is to go ahead with the closure, the *Member of the Executive Council* must, where applicable and before the closure takes place, make alternative arrangements for the *learners* of the *school* to attend another *school* that is able to accommodate those *learners* and, where appropriate, make arrangements for the transport of qualifying *learners* to that *school*.
- (7) If a *public school* is closed in terms of [subsection (1)] this section, all assets and liabilities of such *school* must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the *Member of the Executive Council* and the *governing body* of the *school*.
- (8) The *Member of the Executive Council*, in determining whether to act under subsection (1) or (4), must take into account—
- (a) the needs, in general, of the broader community in the *education district* in which the *public school* is situated; and
  - (b) factors including, but not limited to—
    - (i) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution*, and equity;
    - (ii) whether there are other *schools* in the community that are accessible to *learners*; and
    - (iii) the efficient and effective use of state resources.”.

The SAOU notes the intention of the provision but expresses no opinion on it.

**Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001 and section 12 of Act 15 of 2011**

28. Section 36 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
 

“(2) Despite subsection (1), a *governing body* may not, without the written approval of the *Member of the Executive Council*, enter into any loan, lease or overdraft agreement [so as to supplement the school fund, without the written approval of the *Member of the Executive Council*] for any purpose.”;
  - (b) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph:
 

“(i) [lease,] burden, convert or alter immovable property of the *school* to provide for *school activities* or to supplement the *school fund* [of that *school*], or lease such property for such purpose: Provided that such approval is not required for a lease of a period not exceeding 12 months; and”.

The proposed formulation will hamper the efficacy of well-functioning schools to always approach the MEC for approval. There are numerous examples when schools participate in the economic activities of society, e.g. to lease photo copying machines, WiFi-routers, IT software and hardware, etc. that will unnecessarily restrict schools.

**Amendment of section 37 of Act 84 of 1996, as amended by section 6 of Act 57 of 2001**

29. Section 37 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) The *governing body* of a *public school* must establish a *school fund* and administer it in accordance with [directions] directives issued by the *Head of 50 Department*.”.

The SAOU endorses the provision.

**Amendment of section 38 of Act 84 of 1996, as amended by section 7 of Act 57 of 2001 and section 7 of Act 50 of 2002**

30. Section 38 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection: 55
- “(3) **[The] When notice is given to the *parents* as contemplated in subsection (2) [must also inform]**—
- (a) the budget, together with a document explaining the budget, must be made available to the *parents* by means of the existing communication channels of the *school*; and
- (b) the *parents* must be informed that the document and the budget will be available for inspection at the *school* at least 14 days prior to the meeting.”; and 5
- (b) by the addition of the following subsections:
- “(4) If a *governing body* finds it necessary to—
- (a) deviate from the initial budget that has been approved as contemplated in subsection (2), and the deviation will be 10 per cent or 10 more of the initial budget; or
- (b) reallocate funds for use for a purpose different to that which was approved by the *parents* as contemplated in subsection (2), the *governing body* must present such deviation or reallocation to a general meeting of *parents* convened specifically for that purpose, on at 15 least 14 days’ notice, for consideration and approval by a majority of *parents* present and voting.
- (5) When notice is given to the *parents* as contemplated in subsection (4)—
- (a) a document explaining and providing reasons for the deviation or 20 reallocation must be made available to *parents* by means of the existing communication channels of the *school*; and
- (b) the *parents* must be informed that the document will be available for inspection at the *school* at least 14 days prior to the meeting.
- (6) A quorum of 10 per cent of *parents* is required for the general 25 meetings of *parents* contemplated in subsections (2) and (4).
- (7) If the quorum contemplated in subsection (6) is not reached at the general meeting of *parents*—
- (a) the chairperson shall determine the date, time and place for the second meeting of the general meeting and notify *parents* 14 days 30 prior to such meeting;
- (b) the *principal* shall, at least seven days prior to the date of the second general meeting, distribute a copy of the notice to every *learner* at the *school* with an instruction to hand the notice to the *parents*; and
- (c) there shall be no quorum required at the second general meeting.” 35

The SAOU endorses the provision.

**Amendment of section 38A of Act 84 of 1996, as inserted by section 2 of Act 1 of 2004**

31. Section 38A of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 40
- “(2) A *governing body* may apply to the employer for approval to pay a state employee any **[payment contemplated in subsection (1)]** remuneration, or to give to a state employee any *other financial benefit, or benefit in kind.*”;
- (b) by the substitution for subsection (3) of the following subsection: 45
- “(3) Such application must be lodged in writing in the office of the employer and must state—
- (a) full details of the nature and extent of the **[payment] remuneration, other financial benefit, or benefit in kind;**
- (b) the reasons for the remuneration, other financial benefit, or benefit in kind; 50
- (c) if practicable, the monetary value of the remuneration, other financial benefit, or benefit in kind;
- (d) the process that will be followed and the resources that will be used to compensate or remunerate the state employee; and
- (e) the extent of compliance with section 20(5) to (9).”;
- (c) by the substitution for subsection (6) of the following subsection: 55
- “(6) An employer **[must] may** not unreasonably refuse an application

- [contemplated] referred to in subsection (2).”; and
- (d) by the substitution for subsection (8) of the following subsection:
- “(8) The [payment] remuneration, other financial benefit, or benefit in kind contemplated in subsection (1) must be reflected in the school’s budget, as presented to the general meeting of parents as contemplated in section 38(2), and in such reflection in the budget, any remuneration, other financial benefit, or benefit in kind must, if practicable, be accorded a monetary value.”.

The SAOU notes that an intention of the provision is “to reduce the financial burden on parents who pay substantial fees at fee-paying schools”. It can be pointed out that at some non-fee-paying schools additional remuneration is also offered to employees of the State. The SAOU does, however, concur with the notion that the suggested wording will provide greater clarity. The SAOU endorses the provision.

**Amendment of section 41 of Act 84 of 1996, as amended by section 5 of Act 24 of 2005** 5

32. Section 41 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsections:

- “(2A) Notwithstanding subsection (2), a parent may submit to the governing body an affidavit, as proof that the other parent of the learner—
- (a) is untraceable;
  - (b) is unwilling to provide the first-mentioned parent with particulars of his or her total annual gross income;
  - (c) has failed to provide the first-mentioned parent with particulars of his or her total annual gross income despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned parent that he or she do so; or
  - (d) has provided the first-mentioned parent with incomplete or inaccurate particulars about his or her total annual gross income and has refused to rectify the deficiency or has failed to do so despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned parent that he or she do so.
- (2B) Although the affidavit contemplated in subsection (2A) constitutes sufficient proof, a parent may also submit to the governing body a court order or any other documentary evidence that would support the proof contemplated in subsection (2A).”.

The SAOU endorses the provision.

**Substitution of section 42 of Act 84 of 1996** 25

33. The following section is hereby substituted for section 42 of the South African Schools Act, 1996:

**“Financial records and statements of public schools**

42. The governing body of a public school must—
- (a) keep records of all investments, donations and funds received and spent by the public school and of its assets, liabilities and financial transactions; [and] 30
  - (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements reflecting all the investments, donations and funds received and spent by the public school in accordance with the guidelines determined by the Member of the Executive Council; 35
  - (c) present the financial records and statements to a general meeting of parents; and
  - (d) inform the parents that the financial records and statements will be available for inspection at the school at least 14 days prior to the meeting referred to in paragraph (c).”.

The financial records of a school over a period of a year are in some cases voluminous, and the presentation of these at a general meeting of parents could present logistical and other difficulties. The presentation of audited financial statements could be considered as

adequate for purposes of transparent reporting. It should be adequate to indicate that the audited financial records of the previous year are available for inspection by appointment at the school. The SAOU endorses the principle of the provision.

**Amendment of section 43 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007**

34. Section 43 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively: 45

“(4) If the [~~Member of the Executive Council~~] Head of Department deems it necessary, on just cause shown, he or she may—

- (a) authorise suitably qualified officers to conduct an investigation into the financial affairs of a *public school* and, where necessary, after consultation with the *governing body*, access documents relevant for the purposes of the investigation; 50
- (b) request the Auditor-General to undertake an audit of the records and financial statements of a *public school*; or
- (c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a *public school*.

(5) A *governing body* must submit to the *Head of Department* [,~~]~~—

- (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure in accordance with directives issued by the *Head of Department*; and 5
- (b) within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.”.

The governance structure of a school is an elected political body. The SAOU believes that the existing provision in SASA which empowers the MEC to authorise an investigation is correct in terms of protocol. The SAOU can therefore not endorse the proposal that this function be transferred to the Head of Department. The remainder of the proposal can be endorsed

**Amendment of section 46 of Act 84 of 1996**

35. Section 46 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection: 10

“(4) Any person who contravenes subsection (1) is guilty of an offence and liable, upon conviction, [~~liable~~] to a fine or to imprisonment for a period [~~of three~~] not exceeding 12 months, or to both a fine and such imprisonment.”.

The registration of independent schools requires that all parties to the registration interact timeously and in pursuit of a common purpose. Any failure or delay on the part of the registering authority can have material consequences for the applicant. The addition of an additional requirement (a) requiring the registering body to furnish a response to the applicant within a given period of time, and (b) indicating the reasons for any refusal of registration, would strengthen this clause and give greater clarity on a frequent bone of contention in the independent schooling system.

**Amendment of section 48 of Act 84 of 1996**

36. Section 48 of the South African Schools Act, 1996, is hereby amended— 15

(a) by the substitution for subsection (2) of the following subsection:

“(2) The *Member of the Executive Council* may, out of funds appropriated by the *provincial legislature* for that purpose, grant a subsidy to an *independent school*, subject to conditions determined by the *Member of the Executive Council*.”; and 20

(b) by the addition of the following subsection:

“(6) An *independent school* must submit to the *Head of Department*—  
(a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure relating to the subsidy contemplated in subsection (2), in accordance with directives issued by the *Head of Department*; and 25

- (b) within six months after the end of each financial year, a copy of the audited or examined annual financial statements relating to the subsidy contemplated in subsection (2).” 30

The SAOU endorses the provision.

### Substitution of section 51 of Act 84 of 1996

37. The following section is hereby substituted for section 51 of the South African Schools Act, 1996:

#### “Home education

51. (1) If the *parent* of a *learner* who is subject to compulsory attendance as contemplated in section 3(1) chooses to educate the *learner* at home, such *parent* must apply to the *Head of Department* for the registration of the *learner* to receive *home education*. 35

(2) The *Head of Department* must approve the application and register the *learner* as contemplated in subsection (1)— 40

(a) if he or she is satisfied that—

- (i) education at home, as provided for in *this Act*, is in the best interests of the *learner*;
- (ii) the *parent* understands what *home education* entails and accepts full responsibility for the implementation of *home education* for the *learner*; and 45
- (iii) the proposed *home education* programme is suitable for the *learner’s* age, grade level and ability and predominantly covers the acquisition of content and skills at least comparable to the relevant national curriculum determined by the *Minister*; and 50

(b) if the *parent* undertakes to—

- (i) make suitable educational resources available to support the *learner’s* learning;
- (ii) monitor the *learner’s* academic progress; 55
- (iii) arrange for the *learner’s* educational attainment to be assessed by a *competent assessor*—
  - (aa) annually, up to the end of the year in which the *learner* reaches the age of 15 years or completes grade 9, whichever occurs first; and 5
  - (bb) against a standard that is not inferior to the standard determined in the National Curriculum Statement; and
- (iv) submit to the *Head of Department*, at the end of each phase and as evidence of the *learner’s* educational attainment, the *learner’s* assessment report, signed by the *competent assessor*. 10

(3) In considering the application, the *Head of Department* may require a delegated official to conduct a pre-registration *home education* site visit and consultation with the *parents* and *learner* to verify the information supplied in the application documentation and to provide support, where necessary, with the application process. 15

(4) If the *Head of Department* is satisfied that the *parent* does not meet the requirements set out in subsection (2), or if the outcome of the process set out in subsection (3) fails to satisfy the *Head of Department* that *home education* is in the best interests of the *learner*, the *Head of Department* must decline to register a *learner* to receive *home education*. 20

(5) If a *parent* educates a *learner* at home, and that *learner* has, at the time of the commencement of this section, not been registered as contemplated in this section, the *parent* must, within 30 days after the commencement of this section, apply to the *Head of Department* for the registration of the *learner* to receive *home education*. 25

(6) If the *Head of Department* does not respond within 60 days of receipt of an application for *home education* as contemplated in subsections (1) and (5), the application shall be deemed to have been approved, on condition that the applicant must be able, on request, to produce proof that an application for registration to receive *home education* was submitted. 30

(7) A *learner* who is registered to receive *home education* is exempted

from *school* attendance as contemplated in section 3.

(8) The *parent* of a *learner* who has been registered as contemplated in subsection (1) or (5) must notify the *Head of Department* at the end of the— 35

(a) Foundation Phase (grades R to 3);

(b) Intermediate Phase (grades 4 to 6); and

(c) Senior Phase (grades 7 to 9), 40

of his or her intention to continue educating the *learner* at home.

(9) A *parent* who wishes to continue educating a *learner* at home after the *learner* has reached the age of 15 years or has completed grade 9, whichever occurs first, or who wishes to start educating such *learner* at home at such time, is not required to apply for registration, as contemplated in subsections (1) and (5), or to notify the *Head of Department*, as contemplated in subsection (8). 45

(10) After a home-educated *learner* has completed grade 9 or has reached the age of 15 years, whichever occurs first, the *parent* may enrol the *learner* at a *public school* or an *independent school* for the completion of grades 10 to 12. 50

(11) If the *parent* of a *learner* contemplated in subsection (9) desires the *learner* to eventually write the National Senior Certificate examination, such *parent* must, before the *learner* embarks on any studies following grade 9, ensure that the *learner* complies with the requirements stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination (published under R872 in Gazette No. 31337 of 29 August 2008), for a *learner* receiving *home education*. 55

(12) The *Head of Department* must cancel a *learner's* registration to receive *home education* if, after investigation, the *Head of Department* is satisfied that *home education* is no longer in the best interests of the *learner*. 60

(13) The *Head of Department* may not decline to register a *learner*, as contemplated in subsection (4), or cancel the registration of a *learner*, as contemplated in subsection (12), before—

(a) informing the *parent*, in writing, of his or her intention so to act and the reasons therefor; 5

(b) granting the *parent* a reasonable opportunity to make representations to him or her, which opportunity must include discussions relating to such intention;

(c) giving due consideration to any such representations received; and

(d) providing the *parent* with written reasons for his or her decision. 10

(14) (a) The *parent* of a *learner* may appeal to the *Member of the Executive Council*, within 30 days of receiving notice—

(i) that the *Head of Department* has declined the application to register the *learner* to receive *home education*; or

(ii) that the *Head of Department* has cancelled the *learner's* registration to receive *home education*. 15

(b) If the *parent* of a *learner* is of the opinion that any decision of the *Head of Department* in relation to the *home education* of the *learner* in question is unreasonable, such *parent* may appeal to the *Member of the Executive Council* within 30 days of receiving notice of such decision. 20

(15) If an appeal contemplated in subsection (14) is received, the *Member of the Executive Council* must, within 30 days of receiving such appeal, consider and decide on the matter and, in writing, inform the *parent* of the outcome of the appeal.

(16) The *Minister* may make regulations relating to registration for, and the administration of, *home education*.”. 25

The provisions are comprehensive and constitute a significant improvement on the current Section 51 of SASA. It is noted that no provision is made for distance learning in the case of learners who are no longer obliged to attend school i.e. learners in Grades 10-12 who wish to enrol for the NSC. In this regard 51. (10) is considered to be too narrow in its application. It is recommended that the matter of distance education be incorporated into the proposed Section 51.

38. Section 59 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for the heading of the following heading: 30  
**“Duty [of schools] to provide information”**;
  - (b) by the substitution for subsection (2) of the following subsection:  
“(2) Every *school* must provide such information about the *school* as is reasonably required by the *Head of Department*, or by the Director-General of the [national] *Department of Basic Education* in consultation with the *Head of Department*.”; and 35
  - (c) by the addition of the following subsection:  
“(3) If, when applying for admission to a *public school* or for exemption from the payment of *school fees*, the *parent* of a *learner*, or any other person— 40
    - (a) submits or provides information which he or she knows to be false or misleading;
    - (b) submits a document which he or she knows to be forged; or
    - (c) submits a document and claims that it is a true copy of the original when in fact it is not a true copy, 45  
such person is guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”.

The SAOU endorses the proposal. Consideration could be given to including reference to POPIA provisions in the context of 59(3)(a).

#### Insertion of section 59A in Act 84 of 1996

39. The following section is hereby inserted in the South African Schools Act, 1996, after section 59: 50

#### “Dispute resolution

- 59A.** (1) If a dispute arises between the *Head of Department* and a *governing body*, the following procedure must be followed: 55
- (a) All attempts must be made by the parties to resolve the dispute informally.
  - (b) If the parties are unable to resolve the dispute informally as referred to in paragraph (a), the following steps must be taken: 5
    - (i) The aggrieved party must give the other party written notice of the dispute; and
    - (ii) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof. 5
  - (c) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in paragraph (b), each party must nominate a representative within seven days, and those representatives must meet within 14 days after their nomination in order to resolve the dispute. 10
  - (d) If the parties cannot resolve the dispute as contemplated in paragraphs (a), (b) and (c), the *governing body* may appeal to the *Member of the Executive Council* against the decision that gave rise to the dispute. 15
  - (e) If an appeal contemplated in paragraph (d) has been received, the *Member of the Executive Council* must, within 30 days after receiving such appeal, consider and decide on the matter and, in writing, inform the *governing body* of the outcome of the appeal.
- (2) If a dispute arises between the *Member of the Executive Council* and a *governing body*, the following procedure must be followed: 20
- (a) All attempts must be made by the parties to resolve the dispute informally.
  - (b) If the parties are unable to resolve the dispute informally as referred to in paragraph (a), the following steps must be taken: 25
    - (i) The aggrieved party must give the other party written notice of the dispute; and
    - (ii) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof.
  - (c) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in paragraph (b), each party must 30

nominate a representative within seven days, and those representatives must meet within 14 days after their nomination in order to resolve the dispute.

(3) This section does not apply to matters in respect of which *this Act* makes provision for an appeal process.”

The SAOU notes the proposal.

**Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999, section 12 of Act 31 of 2007 and section 14 of Act 15 of 2011**

40. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection: 40

“(4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused—

- (a) as a result of any act or omission in connection with any enterprise or business operated under the authority of a *public school* for purposes of supplementing the resources of the *school* as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business; or 45
- (b) if the provisions of section 36(2) have not been complied with.”

The SAOU notes the proposal.

**Amendment of section 61 of Act 84 of 1996, as amended by section 5 of Act 53 of 2000 and section 9 of Act 50 of 2002** 50

41. Section 61 of the South African Schools Act, 1996, is hereby amended—

- (a) by the insertion after paragraph (a) of the following paragraphs:
  - “(aA) on the management of *learner pregnancy*;
  - (aB) on the admission of *learners to public schools*;
  - (aC) on the prohibition of the payment of unauthorised remuneration or the giving of *other financial benefits, or benefits in kind* to certain employees; 55
  - (aD) on the minimum norms and standards for provincial educator development institutes and district educator development centres;
  - (aE) on the organisation, roles and responsibilities of *education districts*;
  - (aF) on a national education information system”; and
- (b) by the addition of the following subsection, the existing section becoming subsection (1): 5
  - “(2) The regulations contemplated in subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding six months, or to both a fine and such imprisonment.” 10

**Amendment of the Preamble of Act 84 of 1996**

42. The Preamble of the South African Schools Act, 1996, is hereby amended by the substitution for the second paragraph of the following paragraph:

“WHEREAS this country requires a new national system for *schools* which will redress past injustices in educational provision, provide an education of progressively high quality for all *learners* and in so doing lay a strong foundation for the development of all our people’s talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, facilitate the education of children through the promotion and protection of the right to basic education, protect and advance our diverse cultures and languages, uphold the rights of all *learners, parents and educators*, and promote their acceptance of responsibility for the organisation, governance and funding of *schools* in partnership with the State; and”

The SAOU notes that the proposed amended Preamble still includes reference to the partnership principle. The material amendments relating to governance at the local (school) level seem to gainsay this inclusion. It may be necessary for the difference

between state schools and public schools to be debated afresh as the amendments in regard to the powers of SGBs, and more specifically to reduce such powers, raises the question if schools may still be regarded as public schools that are democratic institutions and extensions of the respective communities. The SAOU believes that in the light of the proposed amendments, schools will be closer to state schools that fall under the direct authority of the various departments of education.

**Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000, section 58 of Act 16 of 2006 and section 15 of Act 15 of 2011** 25

43. Section 1 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the deletion of the definition of “adult basic education centre”;
  - (b) by the substitution for the definition of “educator” of the following definition:  
“**educator**” means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school[,] or departmental office [**or adult basic education centre**] and who is appointed in a post on any educator establishment under this Act;” and 30 35
  - (c) by the substitution for the definition of “provincial department of education” of the following definition:  
“**provincial department of education**” means a department responsible for education in a province and includes all public schools[, **further education and training institutions,**] and departmental offices [**and basic adult education centres**] in such province;”. 40

The SAOU endorses the provision.

**Amendment of section 5 of Act 76 of 1998**

44. Section 5 of the Employment of Educators Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) The educator establishment of any public school[, **further education and training institution,**] or departmental office [**or adult basic education centre**] under the control of a provincial department of education shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said school[, **institution,**] or office [**or centre**] by the Head of Department from the educator establishment of that department.”. 45 50

The SAOU endorses the provision.

**Amendment of section 7 of Act 76 of 1998**

45. Section 7 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
“(1) In the making of any appointment, [**or**] in any promotion, and in the filling of any post on any educator establishment under this Act, due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996 [(**Act No. 108 of 1996**)], and which include the following factors[], namely—];” and 5
  - (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
“(a) in a permanent capacity or in a promotion post, whether on probation or not;”. 10

The SAOU endorses the provision.

**Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999, section 11 of Act 50 of 2002, section 58 of Act 16 of 2006, and section 3 of Act 1 of 2004**

46. Section 8 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection: 15
    - “(4) A recommendation contemplated in subsection (2) shall be made within two months from the date on which a governing body [**or council**] was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.”; and
  - (b) by the substitution for subsection (7) of the following subsection: 20
    - “(7) Despite section 6(3)(a) and subsection (2), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school [**or an adult education and training centre**].” 25

The SAOU endorses the provision.

**Amendment of section 9 of Act 76 of 1998**

47. Section 9 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) another Department of Basic Education, or another department.” 30

The SAOU endorses the provision.

**Amendment of section 11 of Act 76 of 1998**

48. Section 11 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:
- “(b) on account of the abolition of the educator’s post or any reduction in, or reorganisation or readjustment of the post establishments of, departments, 35 schools[, **institutions,**] or offices [**or centres**];
  - (c) if, for reasons other than the educator’s own unfitness or incapacity, the educator’s discharge will promote efficiency or economy in the department, school[, **institution,**] or office [**or centre**] in which the educator is employed, or will otherwise be in the interest of the State;” 40

The SAOU endorses the provision.

**Amendment of section 17 of Act 76 of 1998, as amended by section 10 of Act 53 of 2000**

49. Section 17 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (e);
  - (b) by the insertion in subsection (1) of a semi-colon and the word “or” at the end 45 of paragraph (f); and
  - (c) by the addition to subsection (1) of the following paragraph:
    - “(g) committing any other act which, in any other law that applies to the educator in so far as his or her employment is concerned, is classified as serious misconduct.” 50

The SAOU endorses the provision.

**Amendment of section 18 of Act 76 of 1998, as amended by section 11 of Act 53 of 2000, and section 58 of Act 16 of 2006**

50. Section 18 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
    - “(b) wilfully or negligently mismanages the finances of the State[, ] or a school [**or an adult learning centre**];”;
  - (b) by the substitution in subsection (1) for paragraph (c) of the following 5 paragraph:
    - “(c) without permission possesses or wrongfully uses the property of the State, a school, [**an adult learning centre,**] another employee or a visitor;”;
  - (c) by the substitution in subsection (1) for paragraph (d) of the following 10

paragraph:

“(d) wilfully, intentionally or negligently damages or causes loss to the property of the State[, or a school **[or an adult learning centre]**”;

(d) by the substitution in subsection (1) for paragraph (f) of the following paragraph: 15

“(f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Basic Education, a provincial department of education, an office of the State or a school **[or adult learning centre]**”;

(e) by the substitution in subsection (1) for paragraph (g) of the following paragraph: 20

“(g) misuses his or her position in the Department of Basic Education, a provincial department of education or a school **[or adult learning centre]** to promote or to prejudice the interests of any person”.

The SAOU endorses the provision.

#### Insertion of section 19 in Act 76 of 1998 25

51. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 18 of the following section:

##### “Conducting business with State

19. (1) An educator may not—

(a) conduct business with the State; or 30  
(b) be a director of a public or private company conducting business with the State.

(2) A contravention of subsection (1)—

(a) is an offence, and any person found guilty of such offence is liable, on conviction, to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment; and 35  
(b) constitutes serious misconduct, and the employer must terminate the employment of any person who is alleged to have contravened the subsection and who, during a disciplinary process, is found guilty of such misconduct.”. 40

The SAOU endorses the provision.

#### Amendment of section 35 of Act 76 of 1998

52. Section 35 of the Employment of Educators Act, 1998, is hereby amended by the insertion after paragraph (c) of the following paragraph:

“(cA) norms and standards for district staffing”.

The SAOU endorses the provision.

#### Repeal of section 38 of Act 76 of 1998 45

53. Section 38 of the Employment of Educators Act, 1998, is hereby repealed.

The SAOU endorses the provision.

#### Amendment of Schedule 1 to Act 76 of 1998, as inserted by section 15 of Act 53 of 2000, and amended by section 12 of Act 50 of 2002

54. Schedule 1 to the Employment of Educators Act, 1998, is hereby amended by the substitution in item 1(2) for paragraph (a) of the following paragraph: 50

“(a) the extent to which the incapacity impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, public further education and training institution or public adult learning centre];”.

The SAOU endorses the provision.

#### Amendment of Schedule 2 to Act 76 of 1998, as inserted by section 15 of Act 53 of

**2000 and amended by sections 8 to 11 of Act 57 of 2001, section 13 of Act 50 of 2002 and section 6 of Act 1 of 2004**

5

55. Schedule 2 to the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in item 3(3) for paragraph (a) of the following paragraph:

“(a) the extent to which the misconduct impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, **public further education and training institution or public adult learning centre**];”;

(b) by the substitution in item 9(5) for the words preceding paragraph (a) of the following words:

“(5) The Member of the Executive Council or the Minister, as the case may be, must, within 30 days after receiving the appeal, consider the appeal, and may—”.

The SAOU endorses the provision.

**Short title**

56. This Act is called the Basic Education Laws Amendment Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

20