Basic Education Laws Amendment (BELA) Bill [B2B-2022] draft report of the written submissions to the Select committee on Education and Technology, Sports, Arts, and Culture, National Council of Provinces (NCOP) Date: 12 March 2024

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1. Introduction and brief description of the BELA Bill

The draft Bill proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1898) (the SASA and the EEA, respectively), so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996. Certain technical and substantive adjustments are also made to the SASA and the EEA to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.[1]

Proposed amendments in the Bill are as follows:[2]

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 official educational activities of a school; 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; 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 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 and financial 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

[1] South African Government (2024)
[2] Draft BELA Bill [B2B-2022]

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 formatters incidental thereto.

2. Abbreviations

BELA	Basic Education Laws Amendment Bill
SASA	South African Schools Act.
DBE	Department of Basic Education
EEA	Employment of Educators Act.
SGB(s)	School Governing Body(ies)
FET	Further Education and Training
SAPD	South African Police Department
HOD	Head of Department
LTSM	Learning and Teaching Support Material
CAPS	Curriculum and Assessment Policy Statement
UNCR	United Nations Committee on the Rights of the Child
ACPD	African Christian Democratic Party

3. Methods

3.1. Participants

The participants in the submission process were individual South Africans as well as stakeholders within the Education sector, civil society organisations, unions, and institutions supporting democracy. Upon presentation of the BELA Bill by the Department of Basic Education to the Select Committee on Education and Technology, Sports Arts and Culture, the committee embarked on a public participation process. This was done in consultation with the parliamentary legal advisors, who took the committee on the public participation process that would ensure transparency and equal opportunity for public input over the proposed Bill. Nationwide provincial public hearings were conducted in amplification or addition to the processes of the Committee.

3.2. Data collection

The BELA Bill [B2B-2022] was advertised for public input on the parliamentary website and various media platforms inviting the public to provide input on the BELA Bill.

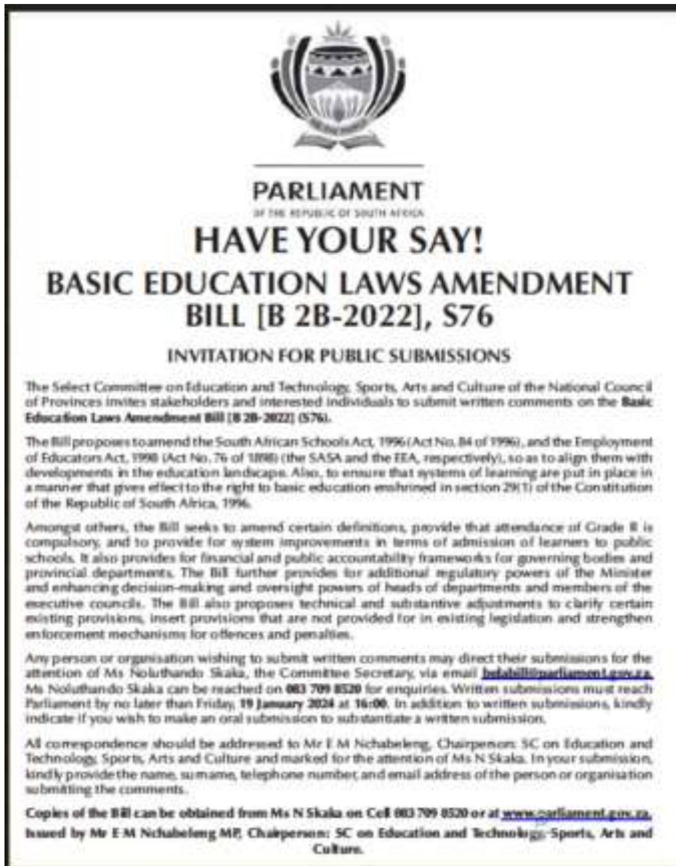
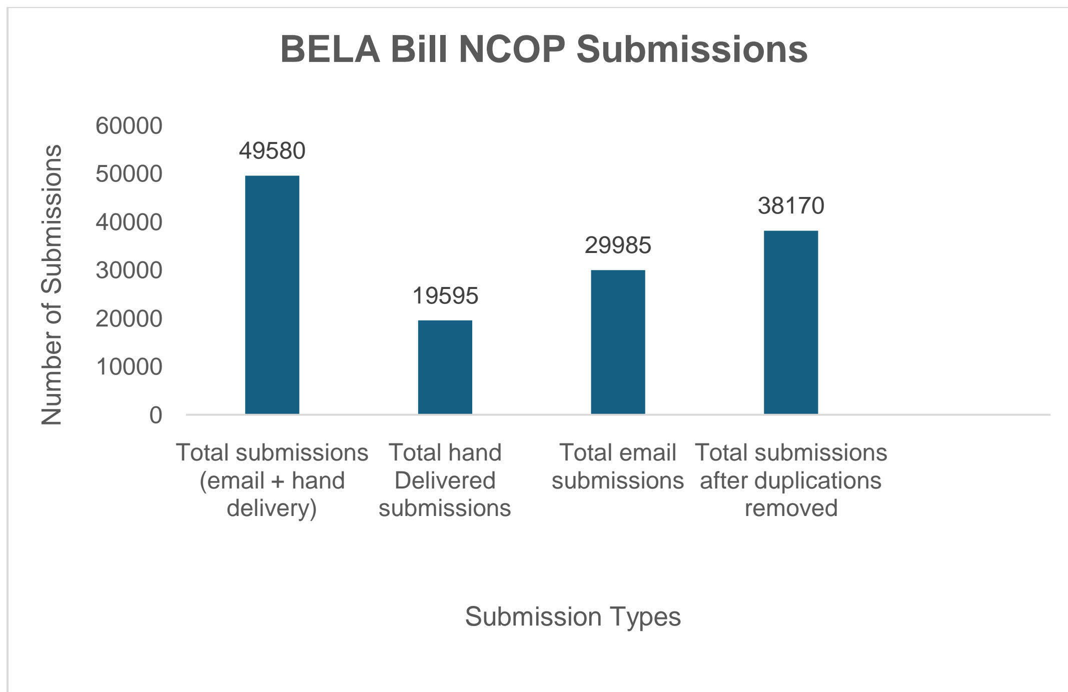


Figure 1: Sample of the media advert for the BELA Bill

An email address specifically for the BELA Bill submissions was created to receive all the public input. After the closing date of the public submissions, all the emails were exported into an Excel sheet and categorised according to submitter number, name, email address, date received, and comment. All attachments from the emails were downloaded and stored in a computer folder. The attachments were then captured in a Word document in the following format: Name, email address, targeted clause, and comment. Using the Excel sheet, all the participant's name duplications sent from the same email address were eliminated as some participants made the same submission multiple times. Upon completion of the elimination of duplications, all the submissions submitted in different languages were transcribed into English. The different comments were identified, analysed, and factored into the draft report. There were hard copy submissions also delivered to the parliament precinct for those participants who have no access to emails. The comments from the hand-delivered submissions were also captured electronically and factored into the draft report.

4. Results

4.1. Number of submissions received and processed.



4.2. Notable stakeholders that made submissions and those that the public made a high number of submissions under

- Laerskool Tygerpoort
- Dear South Africa
- Department of women, youth, and people living with disabilities
- Pestalozzi Trust
- AfriForum

4.3. Organisations that made oral submissions

Below are the organisations that made oral presentations before the Committee was the following:

- AfriForum
- Independent Schools Association of Southern Africa (ISASA)
- SA Onderwysersunie (SAOU)
- Concerned Young People of South Africa (CYPSA)
- Western Cape Forum for Intellectual Disability (WCFID)
- Federation of Governing Bodies of South African Schools (FEDSAS)
- South African Education Development Trust (SAAOT)
- ActionSA
- FW de Klerk Foundation
- Solidarity
- Equal Education and Equal Education Law Centre
- Centre for Child Law
- South African Institute of Race Relations NPC (IRR)
- Fathers 4 Justice South Africa
- Association for Homeschooling
- Gauteng Association for Homeschooling
- Skole Ondersteuning Sentrum (SOS)
- Hoer Landsbou Skool Jacobsdal
- Pestalozzi Trust
- Christian View Network
- Cape Home Educators
- Selborne Primary School SGB

- Laerskool Laeveld SGB
- Northcliff High School SGB
- Independent Micro Schools / Education First Research Group
- Section27
- Learning Kat Remedial Teaching
- Learn Free
- Home School Association South Africa (HSSA)
- Let's do it 2gether 4 EDUCATION
- The Cape Forum
- Ms Tanya Furniss (Private)

4.4. Key Themes that emerged across submissions

- Home Schooling/Home Education
- Language Policy
- Admission Policy
- Bill of Rights
- Compulsory Education
- Corporal Punishment
- Head of Department
- Competent assessor

5. Discussion

Overall, there was a mix of submitters that either supported, partially supported, or outright rejected the proposed amendments in their entirety. Of those that supported the Bill was stated that the Bill was supported because it would enhance the organizational efficiency of the basic education system to improve school governance, leadership, and accountability, transforming education services and protecting vulnerable groups to ensure learner wellbeing and access to learning. It was further stated that the BELA Bill would address challenges of deteriorating learner school performance, school dropout, misconduct in schools, malicious abuse of authority by School governing bodies that stifle transformation, and uncertainty about home education legislation. Of those submissions that partially supported the bill, mostly commented the compulsory learner attendance, schools starting with Grade R as this would enhance early childhood development, punishable offences for those that disrupt school activities. However, the majority of those who partially supported the Bill objected to the definitions of corporal punishment, competent assessor, home education, and required documents. There were objections against the powers of the Head of Department (HOD) in terms of in the Language and admission policy of the schools. There were also major objections against any regulation of home education and/or its curriculum as well as the central procurement of teaching and learning materials, and there was a general feeling that the powers of SGBs in schools were being undermined and at a threat of being diminished. Of those that rejected the Bill outright, most did not state which clauses they were objecting to but highlighted the lack of trust in the government to implement anything positive in the Education Sector. There was a feeling that the government was amending the BELA Bill to impose power over the parents and SGBs, tampering with the Bill of Rights. There were also objections from religious and faith-based organisations stating that the Bill goes against their religious principles. Section 5.1 of the Discussion section provides details on the clause-by-clause deliberations and recommendations.

5.1. Clause-by-Clause discussion

5.1.1. Clause 1 – Definitions

(a) by the insertion in subsection (1) before the definition of ‘‘Constitution’’ of the following definitions: "'Basic education' includes grades R to grade 12, as evidenced in the National Curriculum Statement

There was a proposal that "Basic Education" be defined as “pre-tertiary education and may include education in public schools, independent education, including home education, and other forms of education recognized in the legislature."

Some submitters were of the view that this definition limits and simplifies basic education to a single program enforced by one institution excluding various recognised programs and theories in education. The given definition can therefore not be in the best interest of the child. It was recommended that the definition include and recognize the different approaches to education concerning home education programs.

(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—
(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 inges
tion, washing children's mouths out with soap, denying meals, heat
and shelter, forcing a child to do exercises that are not in accordance with the curriculum applicable to the learner or denying
or restricting a child's use of the toilet;'';

It was submitted that the definition in Section 1(c) (c) of "*corporal punishment*" is vague and there was a suggestion that it be amended from "forcing a child to do exercise." It should read as, *"forcing a child to do exercise other than normal exercise as per curriculum requirements".* There were also suggestions to include verbal abuse towards learners as part of corporal punishment as it's just as harmful as physical abuse.

Recommendation: There were also recommendations that the definition of 'corporal punishment' be widened to include non-physical forms of punishment as defined by the UNCR, that have the potential to inflict fear and/or infringe upon the right of the child to human dignity.

Therefore, the definition recommendation was as follows:
• To include subsection (d) as follows under the definition: "corporal punishment" means any deliberate act against a child that inflicts pain, fear, or physical discomfort, to punish or contain the child, which includes, but is not limited to –…
(d) any other act that seeks to belittle, humiliate, threaten, induce fear or ridicule."

'***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), a recognized professional body in the field of education, 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);''

It was opined that educators in South Africa are trained only according to the CAPS model of assessment and will not be able to assess a child's homeschool modules and curricula. Being exposed to a CAPS assessor will defy the purpose of assessment and discourage children. The "competent assessor" according to the given definition will not understand the goals and model of working. It would be a fruitless, unaffordable, and disheartening exercise.
It was recommended that the definition of a "competent assessor" includes "training and experience in the variety of home education approaches such as Waldorf, Classical, Eclectic, Montessori,

Unschooling, etc.". It is also suggested that the definition of "competent assessor" be extended to "the parent who has access to user-friendly curricula with assessments included for the relevant curricula". Another suggestion was that a Competent Assessor be defined as a person or body registered with the provider of a curriculum used by the learner, a registered professional capable of performing academic assessment independent of curriculum, or a standardized testing service provider including online testing. Amend Section S51(2)(b)(iii).

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:

It was suggested that regarding the definitions of "*required documents*" in Section 1(m) the insertion of Subsection a (iv) "or a relevant court order."

g) by the insertion in subsection (1) after the definition of ''Head of Department'' of the following definition: "'Home education' means a purposeful programme of education for a learner, an 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 (c) meets the requirements for home education contemplated in section 51 of this Act;'';

The submitter suggested that Home education is not schooling at home and that every home schooler's education is different because every child's needs and capabilities are not the same. Some submissions objected to the inclusion of "requirements" concerning Section 51(2)(a)(iii) of the South African Schools Act 1996 which mentions that "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 Section 51(2)(b)(iii) "arrange for the learner's educational attainment to be assessed by a competent assessor". The argument continues from submitters that this definition will limit homeschooling to the CAPS curricula and the limited provision of the Minister which will not serve in the best interest of their children. The Minister is not in a position to consider the individual needs and circumstances nor the best interest of their children. Therefore, the definition of "home education" should rather include "a child lead process; not limited to the home; requirements related to the specific curricula of choice for each child; arranging for the learner's educational attainment to be assessed according to the requirements of the specific curricula which may include the parent or an external assessor".
There was also a submission that on Subsection (g)(a) on "learner's parent", there's a need to expand this definition to include grandparent, relative, guardian, and caregiver teaching, and homeschooling itself should be included and clearly defined based on consultation with the home-schooling sector. Scenarios other than teaching by biological parents must be permissible, to prevent a scenario where a request to home-school is denied based on the relationship of the individual who will teach to the child. A request to home-school a child should not be denied as the environment does not meet with the current definition of home education.

Independent Micro-School

There were suggestions that Section 1 of the South African Schools Act, 1996, be amended by the insertion in subsection (1) after the definition of ''home education'' of the following definition: "'Independent micro-school means an independent school of 135 learners or less registered or deemed to be registered in terms of section 46.

Inclusive Education

Recommendation: There was a submission proposing that Inclusive Education be added to the definitions to ensure the proper regulation of inclusive education for purposes of ensuring a synchronized educational system that equally responds to all learners. Currently, the Act excludes Inclusive Education, which results in it being regulated by separate policies and does not receive the necessary attention.

5.1.2. Clause 2 - Amendment of section 3 of Act 84 of 1996

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:
"(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
the learner reaches the age of [fifteen] 15 years or [the ninth] will complete
grade nine, whichever occurs first.";

…..

(c) by the addition of the following subsection:
"(7) Any person who, unlawfully and intentionally interrupts, disturbs or hinders any official educational activity of a school, or hinders
or obstructs any school in the performance of the school's official
educational activities, is guilty of an offense 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 majority of submissions suggested that the intended amendment Section 3(1) of the Act be amended and expanded upon to make provision for a child to be retained in Grade R even though he/she already reached the age of seven when a professional, educational evaluation report is made available. The current suggested amendment was supported because it would ensure that Grade R adequately prepares the children for schooling. As much as the clause supports attendance school from Grade R, there were concerns that government did not extend the required school years from Grade 9 to 12. The submission opined that large numbers of learners drop out of school at Grade 9 and/or 15 years of age and are condemned to low paying jobs with few career prospects, yet this creation of a large pool of workers with little education hampers economic growth. It was therefore suggested that the school period begins from Grage R to Grade 12.
Some participants submitted that not every child develops at the same pace and therefore it is not in the best interest of every child to start attending school during the year in which the child reaches the age of six. Ignoring the individual development, characteristics, and readiness of each child, only leads to setting the child up for failure which is detrimental to their school career. It was recommended that governmental programs need to be developed to equip parents to facilitate school readiness. It was pointed out that the best interest of the child standard is paramount in making decisions about children concerning making law.
In terms of Section 7 of the Children's Act 38 of 2005, (1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely –

> (g) the child's age, maturity, and stage of development; gender; background; and any other relevant characteristics.
> (h) the child's physical and emotional security and his or her intellectual, emotional, social, and cultural development and
> (i) any disability that a child may have;
> (j) any chronic illness from which a child may suffer.

There was a recommendation that these factors be considered in the South African School's Act and that parents be encouraged and supported to campaign and argue for the best interest of their children when approaching the reception phase of school. The South African School Act should not ignore the best interest of the child standard.
One submitter stated that the financial implication of R5.26 billion will be required in terms of the provision for Grade R, R12 billion is required to address the shortfall in classrooms. A concern was raised on how the DBE can prioritize compulsory Gr R given existing problems such as safety and sanitary conditions at schools, and shortfall of teachers and schools. It is unclear where the already struggling education system, where basic provisions such as sufficient classrooms in good repair, the provision of textbooks, stationery, and safe ablution facilities, and ailing National School Nutrition and learner transport programmes are yet to be addressed, will source the required funding to make these changes. Existing challenges to the Constitutional right to a quality basic education should first be adequately addressed, before implementation of mandatory Grade R.

There was a submission that Section 3(2) of the Schools Act be amended to eradicate the bifurcated prescription for compulsory schooling and encapsulate the prescripts of inclusive education, thereby extending compulsory schooling for children living with disabilities, considering that scores of such children do not start school within the prescribed ages for compulsory schooling. Therefore, this section requires the Minister of Basic Education to proclaim the compulsory school-going ages for children with special education needs. There were concerns that severe and profound intellectual disabilities remained at the periphery of the education system. Conditions within the learning environment should be responsive, equitable, and supportive of different learning environments. The bill must also accommodate learners with severe and profound intellectual disabilities by ensuring that the curriculum conforms and supports their mental capacity.

There was a recommendation: • To amend section 3(1) as follows:
"(1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom she is responsible to attend school. Learners at public schools must be permitted for admission starting from Grade R on the first school day of the year in which such learner reaches the age of six years and not leave school until the last day of the year in which such learner reaches the age of 15 years or will complete grade 9, whichever occurs first: Provided that a learner who will turn six after 30 June must start attending grade R the following year."

Section 3(7)
The proposed amendment to Section 3(7) was commended in the sense that there is punishment for a person who interrupts disturbs or hinders school activity, however, the unlawful and intentional disturbance must be defined more clearly as there are certain examples of where it would be acceptable to interrupt or disturb school activity, for example where learners in good team spirit decide to embark on a mass fun bunking, they, according to the strict definition act unlawful and intentionally interrupt and disturb school activity and may incur a fine or twelve-month imprisonment. Alternatively, if a political party, for example, disrupts school activity, which is not per se a lawful picketing, such may be interpreted as a disturbance or hindrance and therefore liable for imprisonment. Therefore, it was suggested that a clear definition of what is deemed to be an unlawful disturbance be outlined further. There was however submissions that suggested that the provision should be clarified that it recognises education workers' constitutional and labour rights to picket, protest and strike and that such actions are excluded from the ambit of Section 3 (C) (7).

5.1.3. Clause 3 - Insertion of section 4A in Act 84 of 1996

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 contain rules dealing with punctuality and regular school
attendance.
(3) If a learner is absent for three consecutive school days without
a 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.''.

The majority of submissions found the proposed amendment to Section 4A commendable as it would reduce the drop-out rate in schools. However, Subsection (4) must be expanded to make provision for the principal or his delegate to "within 24 hours or any reasonable time thereafter", as the 24 hours may not fall on a working day and must be extended. It was also suggested that the "further intervention", as suggested by the amendment, be defined.

5.1.4. Clause 4 - Amendment of section 5 of Act 84 of 1996, as amended by section 2 of Act 50 of 2002

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:
''(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.'';
(b) by the insertion after subsection (1) of the following subsections:
''(1A) 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.
(1B) The principal of the school must advise the parent or guardian to
secure the required documents.'';
(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.'';
(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 in line with the Constitution and relevant legislation:
Provided that—
(a) the governing body must submit the admission policy of a public
school and any amendment thereof to the Head of Department for
approval;
(b) The head of the Department may approve the admission policy of a
public school or any amendment thereof;
(c) 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—
(i) the best interests of the child, with emphasis on equality as provided for in section 9 of the Constitution, and equity;
(ii) whether other schools in the community are accessible to learners;
(iii) the available resources of the school and the efficient and effective use of state resources; and
(iv) the space available at the school for learners; and
(d) the Head of the 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; 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 (c) have changed when circumstances so require, or at the request of the Head of Department.''

The majority of submitters who objected to Clause 4 Section 5 were because of the amendment that states that the SGB must submit to the HOD for approval of the admission policy of the school and any amendment thereof. The requirement of the HOD's approval of the school's admission policy conflicts with the scheme of the Schools Act which envisages a cooperative partnership between the SGB and the HOD. Secondly, provinces cannot deal with ordinary day-to-day submissions and correspondence. With just under 24,000 public schools, and with provinces struggling to deliver on existing legislative obligations, there are concerns about how they will be able to deal with and respond to all the submitted policies. The SGB of a school is the most appropriate stakeholder to determine the school's admission policy, including whether a learner meets the requirements for admission. This is because the SGB can consider a range of interconnected factors relating to the planning and governance of the school. Therefore, the proposed amendment must be abandoned insofar as it relates to sections 5 and 6 of the South African Schools Act, which respectively regulates the admission and language policies of public schools.

The submitters further stated that far-reaching changes to section 5 of the Schools Act are regarded, by many, as a serious attack on the core principles of a public school as a community institution. The current provisions allow for Departmental oversight, but the amendments effectively allow for the governmental representatives to override the tailor-made policies adopted by an SGB after the SGB has taken the school's unique needs and circumstances into account.
There are concerns that the promulgation of BELA, insofar as it relates to sections 5 of the Schools Act, will lead to undesirable consequences which include:

a) excessive dominance by the national and provincial education departments, thereby undermining the grassroots democracy model for school governance under the Schools Act, despite the Constitutional Court's warning against such dominance in previous litigation.
b) an adverse impact on quality education achieved through the tri-partite partnership model.
c) permanent alienation of a significant portion of school and language communities; and
d) an exodus from the public school system to private institutions.

The majority of submitters further opined that this amendment also undermines the constitutional principles of a cooperative partnership between the school as a public institution and the State. The proposed amendments threaten the success and optimal functioning of public schools to provide quality education to learners. It was further stated that many schools have been successful specifically because parents have invested large amounts of money to maintain the public infrastructure of such public schools and appoint additional educators from their financial resources to improve the educator/learner ratio, in the interest of quality basic education. The submitters also stated that schools that show a high level of community involvement, are highly functional and feel that if the amendments are implemented, the high levels of community involvement will diminish, and the effectiveness of the schools will decline accordingly. They are of the opinion that strong community involvement should be encouraged as schools that show high levels of community involvement have proven themselves to be highly effective due to the vested interest the parents have in their children's education.

More submitters further opined that the provinces cannot deal with ordinary day-to-day submissions and correspondence. With just under 24,000 public schools, and with provinces struggling to deliver on existing legislative obligations, there is a lack of confidence in how provinces will be able to respond to all the submitted policies. There is also no mention of the obligation and right of a governing body to determine the capacity of a school and the obligation of consultation imposed on the Head of Department if there is a conflict between the HOD and the SGB. The HOD can therefore declare a school full without any input from the governing body. In the Rivonia case, the Constitutional court having regard to section 5A (3) of the Schools Act, determined that a governing body's admission policy may include a determination as to capacity. It was also mentioned that the learner's right to basic education is a right established against the state. Consequently, the state should make sure there are enough schools and not increase the capacity of overcrowded schools. National and provincial education departments and school governing bodies must work together to address and resolve the issue of capacity. A set of objective criteria should guide the determination of school capacity, considering the Minimum Uniform Norms and Standards for Public Schools. A formula determining a school's capacity must be prescribed by statute to prevent disputes in this regard.
There was also a submission that stated that section 58C(2) of the SASA provides that the MEC must ensure that the policy determined by the SGB in terms of sections 5(5) and 6(2) complies with the norms and standards. Therefore, there are adequate supervisory powers in the SASA to enable the HOD or the MEC to liaise with an SGB, should the admission policy not comply with any national norms and standards, the Constitution, the SASA, or applicable provincial law. The proposed consideration of the HOD when he/she is given the power to approve an admission policy to consider the needs in general of the broader community in the education district in which the school is situated, makes the provision vague and uncertain. It also negates the designated feeder zone of the school and negates the specific school community of the school which has democratically elected the SGB. It was opined that concerning the HOD approval for admission, there is a reference to the fact that one of the factors that he/she has to consider, is the space available at the school for learners. This also gives the HOD the power to consider whether there is space available without any reference to the capacity of the school as determined by the SGB.

5.1.5. Clause 5 - Amendment of section 6 of Act 84 of 1996

Amendment of section 6 of Act 84 of 1996
5. Section 6 of the South African Schools Act, 1996, is hereby amended—
(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.’’;
(b) by the substitution for subsection (4) of the following subsection:
''(4) [A recognized] South African Sign Language has the status of an
official language for purposes of learning at a public school.’’; and
(c) by the addition of the following subsections:
‘‘(5) The governing body must submit the language policy of a public
school and any amendment thereof to the Head of Department for
approval.

(6) The Head of Department may approve the language policy of a
public school or any amendment thereof.
(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—
(a) the best interests of the child, with emphasis on equality as provided
for in section 9 of the Constitution and equity;
(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
(f) the enrolment trends of the public school.
(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.
…..
(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
…
(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
(b) learning and teaching support material,
to enable that public school to provide adequate tuition in the additional
language or languages of instruction.

The power to determine a school's language policy vests in the SGB, in terms of section 6(2) of the Schools Act. Clause 5(c) of the Bill proposes amending section 6 of the Schools Act by adding subsections (5) to (20), which seek to limit the governing body's power to determine the school's language policy. The first substantive change introduced is the requirement that the SGB submit the admission policy, and any amendments thereto, to the HOD for "approval".

The majority of the rejections in Clause 5 were with regards to section 6 of the South African Schools Act, which respectively regulates the admission and language policies of public schools. It was reported that the proposed amendments appear to conflict with pronouncements of the Constitutional Court in respect of the fundamental governance structure under the Schools Act, and the recognition of the school governing body (SGB) as:

a. a democratic institution.
b. an extension of the community that it serves; and
c. a body clothed with the power to make rules and policies, which is integral to the governance of a specific School with its unique circumstances.

Some submissions stated that the proposed amendment is contrary to the judgment of the Constitutional Court in **Ermelo** where the following was said in paragraph [57]:

> *"Its primary function [i.e. that of the SGB] is to look after the interests of the school and its learners. It is meant to be a beacon of grassroots democracy in the local affairs of the school. Ordinarily, the representatives are parents of learners and of the local community and are better qualified to determine the medium best suited to impart education in all the formative utilitarian cultural goodness that comes with it."*

It was indicated that the Constitutional Court pointed out that the fundamental structure of the Schools Act envisages a tri-partite partnership model between organs of state (the National and Provincial Education Departments, and School Governing Bodies (SGBs)). Through the SGBs, it is parents, educators, and learners who assume a large degree of responsibility for the organization, governance, and funding of public schools.
In its current unamended form, the structure of the statute promotes the principles of cooperative governance. It was further stated that the departmental oversight over SGBs must nonetheless be tempered and that the SGBs must retain powers that are congruent with the responsibilities that are conferred upon them. This is particularly acute in the case of well-functioning public schools that provide high-quality education, whilst largely being funded by the communities they serve, thereby significantly lessening the burden on the state in the provision of quality education.
The submitters further stated that far-reaching changes to section 6 of the Schools Act are regarded, by many, as a serious attack on the core principles of a public school as a community institution, and thus on rights that include language rights. The current provisions allow for Departmental oversight, but the amendments effectively allow for the governmental representatives to override the tailor-made policies adopted by an SGB after the SGB has taken the school's unique needs and circumstances into account.
There are concerns that the promulgation of BELA, insofar as it relates to sections 6 of the Schools Act,
will lead to undesirable consequences which include:

e) excessive dominance by the national and provincial education departments, thereby undermining the grassroots democracy model for school governance under the Schools Act, despite the Constitutional Court's warning against such dominance in previous litigation.
f) an adverse impact on quality education achieved through the tri-partite partnership model.
g) permanent alienation of a significant portion of school and language communities; and
h) an exodus from the public school system to private institutions.

It was further stated that grave concerns arising from the proposed amendments to section 6 of the Schools Act are apparent when numerous stakeholders have indicated that they have already prepared draft court applications intending to challenge the amendments to section 6 should it be adopted in its current form. The current formulation of section 6 fully complies with the required constitutional principles and requirements as both sections have passed the strict scrutiny of the Constitutional Court in several court cases. Therefore, there is no need to tamper with the current scheme of conferring powers into the hands of school communities; Currently, the Schools Act confers certain powers on SGBs, subject to the Constitution and the Schools Act itself. The Schools Act in its current form contains certain checks and balances, including oversight. Currently, an SGB may be stripped of its powers if the powers are not exercised per the applicable principles; and there is no proper basis to interfere with the current model, which appropriately balances the need for oversight with the recognition of SGBs as bodies clothed with extensive responsibilities that demand that SGBs must be empowered commensurately to establish policies.

Clause 5 also seeks to empower the HOD to direct a public school to adopt more than one language of instruction, after taking certain prescribed factors into account. It was submitted that the proposed amendments signify an intention to increase authoritarianism and a reluctance to respect, protect, promote, and fulfil the values and provisions of the Constitution. The power granted to the HOD to "direct" the SGB regarding the language policy, creates the same difficulties as the HOD having the "final authority" to "approve" the admission policy – the delicate balance of power giving effect to cooperative governance is disturbed in favour of granting power to the HOD.
It was further stated that the proposed Section 5(c) of the BELA BILL aims to amend Section 6 of the SASA by adding Subsections (5) to (20), which seek to limit the SGB’s power to determine the school’s language policy. The requirement that the SGB submit the language and admission policy, and any amendments thereto, to the HOD for "approval", was reported to be unacceptable. Furthermore, concerning language policy, the BELA BILL's proposal that the HODs be provided the power to direct a public school to adopt more than one language of instruction in the proposed Section 6 (13) is undemocratic dictatorial and possibly unconstitutional. The submitters suggested that this amendment is particularly applicable to Afrikaans medium schools and/or other minority groups or communities. One was quoted as follows:

> *This pressure has in recent times especially been placed on single-medium Afrikaans schools and even parallel-medium schools to accommodate more English-speaking learners. This is even though Afrikaans single-medium public schools have decreased to a mere 1 187 nationally according to figures determined in 2021 by the Federation of Associations of Governing Bodies of South African Schools (FEDSAS). This represents a decrease of 87 schools and 6.8% since 2016.*

They opined that the Language policy substantially affects the functioning of all aspects of a school and that by targeting the existence of schools as cultural institutions, the minority cultural communities will be under great threat, going against Section 29(2) and 31(1) of the Constitution. It was further opined that this amendment conflicts with the SGB's vested power to determine a school's language policy, as per Section 6(2) of the SASA, and that SGBs have the right to determine and affect language policy, and not have it centralized into the hands of state officials. The submitters indicated that honourable Minister Angie Motshekga recently in parliament on 21 April 2022 underlined mother language as a means to improve academic success. A school's SGB consists of members of the very same community that serves the school and the broader community of that area and therefore they will be in the best position to make decisions regarding the medium of instruction at their school. Therefore, this is a subversion of regulations on language policies of schools as well as the guaranteed protection of language preferences of learners. Section 29(2) of the Constitution of South Africa gives everyone the right "to receive education in the official language or languages of their choice, where reasonably practicable." It was further stated that as SGB are the elected representatives of the school community, they are best placed to determine the language and admission policies of their school. Requiring that language and admission policies are first sent to the HOD of the relevant provincial department of education is an undue centralisation of power that will unquestionably adversely affect the ability of schools to provide proper education.
The submitters also indicated that the proposed amendment to Subsection (17) is also vague and embarrassing as it only refers to: *"the head of department taking all necessary steps to ensure that the public school is concerned…*". It was suggested that there must be some mandatory obligation towards the head of department to ensure that the steps taken are executed and that the language change will only be affected after such steps have been taken. The absence of these steps being executed will and can result in huge financial implications for the community and parents at the school.
The majority of the submitters who supported Clause 5, Section 6 reported that the Head of Departments' powers to approve the language policy of schools will ensure that learners are not discriminated against based on language.

5.1.6. Clause 7 - 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

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.’’;
> (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.’’;
> (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.
> ….
> (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.’’

Clause 7(c) seeks to amend section 8 of the Schools Act by providing that the code of conduct of a public school must make provision for an exemption clause, making it possible to exempt learners, upon application, from complying with the code of conduct or certain provisions thereof, on “*just cause*” shown. "*Just cause*" is simply too wide and may lead to frivolous applications for exemption. It means that governing bodies must meet to consider and deliberate on all these applications, react to them in a reasoned manner, and come to a rational decision. It was suggested that "*Just cause*" should be replaced by "*religious, cultural or medical grounds*”.

The majority of submitters who objected to this amendment opined that the proposed amendment to Section 8 of the Schools Act as set out in Section 7 of the Bela Act, specifically stating that *“…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…*" is unacceptable. It was opined that a code of conduct cannot contain certain portions for exemption as this will create a grey area for the execution of disciplinary measures. There should be no exemption. A learner and parents have the freedom to choose which school they wish to apply to and therefore can, before enrolment of a minor child peruse the code of conduct and based on that, decide whether they can comply with the code of conduct. If not, they should not enroll at such a school. Most of the submitters who supported the amendment of Section 8 of the SASA indicated that the constitution of the republic and the SASA must be considered when a public school adopts a code of conduct.
This was a submission that by referring to only the “*best interests of the learner”* provision in clause 7(d), overemphasises one particular interest and makes it absolute, which is not what the Constitution intends. The provision ignores other factors such as the interest of other learners which could be adversely affected by a breach of the code of conduct. It also ignores the interest of the school and its education imperative.

5.1.7. Clause 8 - Amendment of section 8A of Act 84 of 1996, as inserted by section 7 of Act 31 of 2007

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) Unless authorised by the principal for legitimate educational purposes, no person may bring a dangerous object or [illegal] a drug onto school premises or have such dangerous object or drug in his or her possession on school premises or during any school activity.

The majority of submissions indicated that the proposed amendment to Section 8(d) is unacceptable as the onus on the principal is reckless and severe. A principal or any other person for that matter is not allowed to drive around with a dangerous object or illegal drug under any circumstances. Therefore, it would be prudent to state that the principal secures it on the premises and awaits the SAPD to collect the same.

5.1.8. Clause 9 - 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

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:
‘‘(1) (a) The governing body may, on reasonable grounds and as a precautionary
measure, suspend a learner who is [suspected] accused 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.

The proposed amendment to Section 9 of the Schools Act states that a suspension may only be enforced after a learner has been granted a reasonable opportunity to make representations. The submitters opined that the list of serious misconduct offences as defined in the Act, lists certain acts of misconduct that would justify immediate suspension. It was therefore suggested that the Act be expanded to make provision for a temporary suspension for certain acts until a formal hearing can take place. There was a request for clarity to be provided on what constitutes an act of serious misconduct by learners.

5.1.9. Clause 13 - Amendment of section 12A of Act 84 of 1996, as inserted by section 8 of Act 48 of 1999

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—
(a) give written notice to the schools in question, and 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—
(i) using 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 the relevant information; and
(bb) instruct the learners to hand the notice to their parents; and
(iii) using any other acceptable form of communication that will ensure that the information is spread as widely as possible

The submitters indicated that they are uncomfortable with the proposed amendment of Section 13 of the BELA Act regarding the merger of schools as it does not explicitly state which schools can be selected to merge and suggest that only schools that show close geographic proximity can be selected for a merger.

5.1.10. Clause 14 - Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999

Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999
14. 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 majority of submissions objected to the proposed Section 21(3A) of the Bela Bill proposes amending Section 21 of the SASA by introducing a provision that enables the HOD to "*centrally procure identified learning and teaching support material for public schools*", notwithstanding that this function may have been allocated to an SGB under Section 21 of the SASA, and without Section 22 (which addresses the procedure for withdrawing a function from an SGB) applying. They, therefore submit that the proposed amendment is problematic because it provides a means for summarily

circumventing the carefully balanced allocation of functions between the SGBs and HODs for procurement.
Secondly, this amendment will imply that the Department will centrally procure LTSM for schools. Given certain provincial Departments' incapability to deliver books to schools, there is concern that the provincial Departments will not have the capacity to deliver quality material on time. It was suggested that in practice, this amendment can be very problematic, and the proposed subsection should be deleted.
Of the submissions that supported the central procurement of LTSM and suggested that centralisation of large-scale procurement would help to save costs, support local procurement and prevent corruption. However, it was suggested that the necessary measures be put in place to ensure that such procurement is transparent and not abused.

5.1.11. Clause 19 - Substitution of section 25 of Act 84 of 1996, as amended by section 4 of Act 57 of 2001

Substitution of section 25 of Act 84 of 1996, as amended by section 4 of Act 57 of 2001
19. The following section is hereby substituted for section 25 of the South African Schools Act, 1996:
''Dissolution of the 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.
(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.
(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.
(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 to act and the reasons thereof;
(b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention;
(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).
(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.''

Section 25 of the Schools Act makes provision for the HOD to dissolve the governing body where it has "ceased to perform functions allocated to it" or "has failed to perform one or more of such functions". The main concern about these proposed amendments is the power granted to the temporary or interim governing body in the proposed section 25(2). The power granted to the temporary or interim governing body appears to be more extensive than intended, as it grants the temporary or interim governing body "exclusive voting rights and decision-making powers on any function that they have been appointed to perform." The granting of "exclusive" decision making powers arguable ousts the powers of the HOD and Minister, thereby undermining the carefully crafted checks, balances, and accountability mechanisms in the Schools Act.
It was stated also that the difficulty with the proposed amendment lies in the periods of extension afforded to the HOD, who can extend the total period of an interim governing body to one year. Therefore, it was suggested that the underlying democratic principles of the election of a governing

body should be restored as soon as possible after the dissolution of the existing governing body and the period of governance by an interim body should not be longer than three months, within which period the election of a new governing body should take place.

5.1.12. Clause 21 - Amendment of section 27 of Act 84 of 1996

Amendment of section 27 of Act 84 of 1996
21. 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.''

About paragraph 21 of the BELA Act referring to the proposed amendment of Section 27, the majority of submitters indicated that members of the governing body should be reimbursed for reasonable expenses incurred for the attendance of meetings and school activities. Per the current amendment, it is stated that there may be no remuneration, but reference must be made to the reimbursement of expenses incurred by members, in the fulfillment of their duties.

5.1.13. Clause 23 - Amendment of section 29 of Act 84 of 1996, as amended by section 12 of Act 48 of 1999

Amendment of section 29 of Act 84 of 1996, as amended by section 12 of Act 48 of 1999
23. Section 29 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:
''(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 the finance committee of that public school.''.

The proposed amendment to Section 29 of the Schools Act states that where reasonably practical, only a parent member of a governing body who is not employed by the public school may serve as a chairperson of the finance committee of the public school. Most submitters objected to the amendment and indicated that it should, not only when reasonably practical, but always be a parent member, as the decisions made by the chairperson of a finance committee have a huge financial impact on the school and should not be left in the hands of an educator.

5.1.14. Clause 25 - Substitution of section 33 of Act 84 of 1996

Substitution of section 33 of Act 84 of 1996
25. 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.
(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 to act and his or her reasons thereof;

(b) [granted the governing body of] notified the parents associated with the school, [a reasonable opportunity to make representations to him or her about such action] and the community in which the school is situated, of his or her intention so to act and the reasons therefor—
(i) using 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) using 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, and 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 about such actions; 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, using 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).

The submitters objected to the Clause in light of a shortage of school facilities and the failure of the government to provide adequate sanitation at rural schools. Determinations to merge and close smaller schools by the Department are provided for. The proposed amendment to close down smaller schools will likely increase the distance that many learners must travel to reach school and result in an increase in the cost of transport for parents sending their children to schools further away from home. The proposed amendment, as submitters state, may even result in children not attending school at all due to the distance they are required to travel. Such smaller schools, home and private schools are normally better run, better disciplined, and produce better results, the submitters suggest. The best interest of the learner (child) principle will be violated by forcing learners from smaller schools who learn in a safer environment which is conducive to success, into a failing education system characterized by an overall lack of resources, rampant drug and alcohol abuse, poor teacher-to-learner ratios, violence and intimidation, teenage pregnancy, theft, and sexual assault perpetrated by learners and even teachers, high failure and dropout rates, as well as exposure to the sexually explicit CSE curriculum. It was recommended that instead of closing small schools and spending billions to implement Grade R, rather allow micro- and cottage schools to operate.

5.1.15. Clause 26 - 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

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 26. 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 [to supplement the school fund, without the written approval of the Member of the Executive Council] for any purpose.''; and (b) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph: ''(i) [lease,] burden, convert or alter the 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''.

Most submitters objected to the proposed amendment to Section 36 whereby the proposal that no school may enter into a loan or lease agreement without the written consent of the member of the executive council, as completely impractical. They indicated that all schools, from time to time, take out leases. For example, if a school wishes to take out a lease on a photocopier, such a school will have to first obtain written approval from the MEC, which may cause delays in receiving feedback on approval and create a lot of admin work. Therefore, it was suggested that for practical purposes, permission should be granted for certain loans or leases and a limitation on an amount may be suggested.

5.1.16. Clause 27 – Amendment of section 37 of Act 84 of 1996, as amended by section 6 of Act 57 of 2001

Amendment of section 37 of Act 84 of 1996, as amended by section 6 of Act 57 of 2001 27. 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 by [directions] directives issued by the Head of Department

The submitters propose that section 37(1) be amended to allow the Minister, and not the HOD, to determine the directions under which an SGB must establish and administer its school funds by the Schools Act. Along with their comments on the BELAB, it was also suggested that the Department review its funding model for schools (this includes the quintiles, funding model for schools, and the fee exemption tables), as well as its current staffing model. The current models inherently have, as a point of departure, that all schools are single-medium institutions. They do not sufficiently take into account the additional costs, resources, and staffing required to offer more than one medium of instruction. It was stated that there's an urgent need for a new funding and staff model for multi-language schools.

5.1.17. Clause 28 - 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

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
(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 content-
plated in subsection (2), and the deviation will be 10 percent or
more of the initial budget; or
(b) reallocate funds for use for a purpose different from 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 least 14 days' notice, for consideration and approval by a majority of
parents present and voting

Most submitters objected to Clause 28(b) which proposed that "If a governing body finds it necessary to deviate from the initial budget that has been approved as contemplated in Subsection 2, and the deviation is 10% or more of the initial budget or reallocate funds for use for a purpose different to that which was approved by the parents…" then a general meeting of parents must be convened. They opined that this will unnecessarily encumber the SGB to make necessary, and possibly urgent payments, and/or to reallocate funds for different purposes. Such measurements are deemed completely impractical as a governing body will be in no position to manage the schools' finances effectively.

5.1.18. Clause 32 - Amendment of section 43 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007

Amendment of section 43 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007
32. 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:
''(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 investigate into the
financial affairs of a public school and, where necessary, after consultation with the governing body, access documents relevant to the purposes of the investigation;
(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 by directives issued by the Head
of Department; and
(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.''.

Many submitters objected to the proposed amendment of Section 43 of Act 84 of 1996, as amended by Section 10 of Act 31 of 2007 refers. They indicated that the burden that is placed on a governing body to submit quarterly financial statements is onerous and impractical on the governing body and in any event will encumber the already heavily burdened bureaucracy as well. It was suggested that the status quo of submission of annual statements be maintained.

5.1.19. Clause 34: Amendment of section 48

Clause 34: Amendment of section 48
34. Section 48 of the South African Schools Act, 1996, is hereby amended—
(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
(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), by directives issued
by the Head of Department; and
(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).''.

Clause 34 seeks to amend section 48 of the SASA to provide that the subsidy granted to an independent school can be made subject to conditions determined by the MEC. The amendment also provides that an independent school must submit quarterly reports to the HoD on all income and expenditure relating to the subsidy, and must, within six months after the end of each financial year, provide the HoD with a copy of the audited financial statements relating to the subsidy. The proposed amendment seeks to create certainty regarding reporting and to promote open and transparent accounting for the sake of financial accountability when dealing with public funds.
Most of the submitters objected to the proposed amendment of Clause 34 because they believe that the submission of quarterly reports, apart from the annual audited financial statements, that a governing body would have to submit will place a financial and administrative burden on the governing body and the school's resources. The provision, if retained, must be individualised to instances where sufficient reasons exist for such reports. Schools already submit annual audited financial statements. If this clause were to apply exclusively to schools that did not submit their audited financial statements the previous two years or schools that did not receive qualified audits two years in a row, then the acceptance of the clause would be warranted. The additional administrative burden is again placed on the school, and there's a concern that educators will have to withdraw from classes to attend to these proposed reports.

5.1.20. Clause 35 - Substitution of section 51 of Act 84 of 1996

5. 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 parents must apply to the Head of Department for the registration of the learner to receive home education. (2) The Head of Department must approve the application and register the learner as contemplated in subsection (1)— (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 the home education for the learner; and (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 compa- able to the relevant national curriculum determined by the Minister; and (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; (iii) arrange for the learner’s educational attainment to be assessed by a competent assessor— (aa) at the end of each phase, 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 (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. (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
The department must decline to register a learner to receive home education.
(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 a home
education was submitted.
(12) The Head of the 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.
(16) The Minister may make regulations relating to registration for,
and the administration of, home education.’’.

The majority of submissions that objected against Clause 35 Section 51, were in Subsections 1,2,4,6, and 12 and stated that these sections do not respect parental rights. It was also indicated that Subsections 2(a)(iii) and 2(b)(iii) place unlawful limits on the curriculum and assessment methods that home educators make use of. It was further indicated that Subsection 16 provides the minister unlawful broad powers to make regulations without consultation with the home Educator community. The submitters stated that the Bill does not make any provision for online schooling and micro-independent schools.

Other submitters rejected Clause 35 because it allows a Provincial Education Department to set aside the decisions of parents by giving the power to HODs to decline applications for home education. They indicated that it is the parents' and guardians' constitutional rights according to the international treaties South Africa is party to, to make the best choices for the upbringing and development of their children. Therefore, the HOD cannot be given the power to set aside the decision of the parent to home-educate their children. Clause 35 unlawfully restricts the right to education to only that which covers skills and content comparable to the national curriculum, and outlaws education of a similar or higher standard that covers different skills and content. One commented as follows:

> *For religious, cultural, philosophical, and educational reasons we have decided to choose the Classical Conversations curriculum for our home education purposes. If successful, our children will obtain an American Diploma for which they can obtain a higher score than the national curriculum.*

There were rejections of Clause 35 because homeschoolers are required to have competent assessors at the end of each phase as it places unnecessary stress on a child. It was suggested that a Portfolio of Evidence should be kept and may be presented if a child returns to mainstream school or if the Department of Basic Education wants proof that a child is being educated at home. It was also suggested by several submitters that at the end of the Senior phase (grade 9) a child must be assessed by a competent assessor as they are leaving the Senior phase and this assessment can be used to enter the FET phase.
Some of the rejections of Clause 35 were submitted as follows:

- Parents indicated that they did not need permission from the government to perform their parental obligation to educate their children.
- The fact that government officials have the power to set aside the decisions of parents and refuse to register children for home education is highly problematic.
- the BELA Bill entrenches an outdated educational landscape on which the South African Schools Act of 1996 is based. It is not suitable for the current or future educational landscape. A new regulatory framework is needed to accommodate new educational forms such as cottage schools and online education.
- Many submitters objected to limiting the child's right to education by the BELA Bill's requirement that "*the proposed home education programme … predominantly [should] cover the acquisition of content and skills at least comparable to the relevant national curriculum determined by the Minister.*" This requirement essentially outlaws education programmes of a standard that is the same or higher than the standards in comparable public schools, but which cover skills and content that are not comparable to the national curriculum, without a reasonable justification. They further state that parents should also be allowed to choose any curriculum, as long as they undertake that the education provided is of a standard not inferior to that at comparable public schools.

> *My child's right to education is endangered by restricting his freedom of curriculum.*

- Some submitters felt that there was insufficient research on home education in South Africa and until this has been addressed, any new legislation is likely to fail and/or be largely ineffective.
- It was reported that the DBE has throughout this law reform process indicated that it has consulted with the home education community through meetings and round table discussions. The minutes of these meetings confirm that this consultation has been limited to a few select home education associations and/or curriculum providers who state that they represent the home education community, yet a large proportion of the home education community is not part of any home education association or curriculum provider.
- The submitters suggested that the proposed amendments to Section 3 and Section 51(7) of the SASA are ambiguous. It is left to interpretation as to whether it is an offense not to apply to the HOD for registration and/or whether the offense is to not educate the child at home.
- It was also stipulated that it's impossible to conclude that sending a parent to jail for failing to register their child for home education (even if that child is being educated) is ever going to be in the best interests of the child or that this will result in a better education outcome for that child.
- Some submitters state that the South African public school education system outcomes per learner are poor, with reading and math literacy well below international standards, and requiring home education parents to meet and be assessed against a standard that has proven to have poor outcomes is not in the best interest of the child and is probably not rational. It is submitted that all references to the national curriculum standard, national curriculum, assessments, and similar referencing be removed. Parents should have the freedom to select whatever curriculum they feel is appropriate for their children and to measure the educational attainment of their children in the manner they choose. One quoted as stating:

> *A parent of a child registered for home education must undertake to provide an educational programme suitable for the child's age and ability and ensure that the standard of education is not inferior to the standards in public schools.*

- There were also concerns that the consultation process undertaken to date by the DBE and that of the PCBE is that children/learners were not specifically consulted on the BELA Bill.
- There were some concerns that the financial cost implications of the proposed amendments to Section 51 of the SASA have not been quantified and properly considered.
- Some submitters claimed that although a Socio-Economic Impact Assessment was completed by the DBE, the assessment did not properly assess the amendments to Section 51 of the SASSA.
- Some submissions stated that the HOD's area of expertise is school education and that the parents' decision to home-educate their children was not made purely on education grounds, but involved numerous other factors, some of which include:

  - Education Quality
  - Character development
  - Exposure to the authentic Christian worldview
  - The need for time investment of parents in the active development of their children
  - Cost of quality schooling (especially for single-income families with many children)
  - Protection from premature exposure to worldview and moral codes in conflict with Christianity
  - International recognition of the academic program
- The submitters felt that neither the HOD nor any other officials are trained to deal with such matters, never mind making decisions about it.

Recommendations

- There was a recommendation to develop, fund, and implement a research programme into home education, preferably run by a third party. This kind of programme can build trust between parents and the government and can help identify the reasons behind parents' distrust of the government (leading them to not want to register their child for home education) and how best to overcome this.
- Upholding the Rule of Law: it was proposed that clear guidelines are necessary to ensure that officials respect the educational choices made by parents in the best interests of their children.
- There was a suggestion for a new, research-based regulatory framework. This should limit the powers of the Head of Department in overriding parental decisions and involve judicial oversight in disputes regarding the adequacy of home education.
- It was proposed that a framework for officials be developed to intervene in cases where home education may not serve the child's best interests, but without impinging on the rights of responsible homeschooling parents.
- There are requests for the government to recognize and address the concerns of the homeschooling community, including the perceived overreach in seeking permission for home education, the success rate of registration applications, the outdated nature of certain provisions, and restrictions on curriculum choices.
- There was a call for affirmation of the right of parents to choose curricula and educational approaches that they deem fit for their children's unique needs.
- Other submissions propose that provision be made for online schools in the BELA Bill. The registration of small schools/cottage schools should be simplified and made more affordable for many of these institutions to be able to register and be monitored and supported by the DBE.
- The provisions in the Bill should reflect the realities of alternative education based on research, that it is continuously changing and expanding, and that it may provide educational programmes that are alternative to the national curriculum.

Recommendations Specific to Section 51

Several individuals submitted the recommendations under the **Pestalozzi Trust** proposal and proposed the following wording for Clause 35 amending Section 51 of the South African Schools Act:

i. If the parent of a learner who is subject to compulsory attendance as contemplated in section 3(1) of the Act chooses to educate a learner at home, such parent must register the learner to receive home education with the Head of Department.
ii. The Head of the Department must approve the application and register the learner as contemplated in subsection (1) if the parent undertakes to: (i) Ensure that home education is in the best interest of the child.
iii. Ensure that the standards to be maintained will not be inferior to the standards in comparable public schools.
iv. Provide evidence of learning or arrange appropriate assessments for submission to the Department, if there is reason to believe that the education being received by the learner is of an inferior standard to that in comparable public schools.
v. The Head of Department may investigate cases if there is reason to believe that the education being received by the learner is of an inferior standard to that in comparable public schools.

vi. The Head of Department may advise and mediate to address cases where there is reason to believe that the education being received by the learner is of an inferior standard to that in comparable public schools.
vii. If the Head of Department has reason to believe that home education is not in the best interest of a child, then he/she may approach a court to set aside the decision of the parents to choose home education.

Some submissions made the suggestions in the Sections as follows:

Registration S51(2) and S51(2)(a)(i)(ii)

Current	**Proposed**
The **Head of Department** must approve the application and register the learner as contemplated in subsection (1) –(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;	The Head of Department must approve the application and register the learner as contemplated in subsection (1)-(a) **if the parent:** (i) undertakes to ensure that the home education is in the best interests of the learner, (ii) **removed-**, accepts full responsibility for the implementation of home education for the learner, and

5.1.21. Clause 39 - 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

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 39. 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; (aD) on the minimum norms and standards for provincial educator development institutes and district educator development centers; (aE) on the organisation, roles, and responsibilities of education districts; (aF) on a national education information system;’’; and (b) With the addition of the following subsections, the existing section becoming subsection (1): ‘‘(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 offense and liable, on conviction, to a fine or to imprisonment for a period not exceeding six months, or both a fine and such imprisonment. (3) Any regulation made under subsection (1)(aA) and (aB) must, before publication in the Gazette, be tabled in Parliament.’’.

Clause 39 seeks to amend section 61 of the SASA to extend the powers of the Minister to make regulations on the management of learner pregnancy; on the admission of learners to public schools; on the prohibition of the payment of unauthorised remuneration or the giving of other financial benefits or benefits in kind to employees; on minimum norms and standards for provincial teacher development institutes and district teacher development centers; on the organisation, roles, and

responsibilities of education districts; and a national education information system. The clause also provides for the possibility of creating offenses in the regulations made by the Minister. The amendment provides that any regulation contemplated in the section may provide that any person who contravenes a provision of the regulation or fails to comply therewith, is guilty of an offense. Furthermore, the clause provides that any regulations made on the management of learner pregnancy and the admission of learners to public schools must be tabled in Parliament before publication in the Gazette.

Some of the objections to Clause 39 were that it is too vague and that allowing an Educator to get involved in the medical care of learners will lead to misused authority. The implication that comprehensive sexual education will be implemented is a concern as it goes against the principles of most religions in the country. In this light, it was recommended that learners must be taught not to hide information from their parents and that any education on sexual content should first get the buy-in from parents.

Some submissions rejected this clause as they stated that (1) Rape cases will rise in schools, (2) Teenage pregnancy will become out of control and skyrocket in schools and communities, and (3) their culture will be tempered as a society and nation. Many submitters submitted under the umbrella of the African Christian Democratic Party (ACDP) which states the urgency and gravity of the learner pregnancy crisis in South Africa. It is their view that the current policies and the approach of the Department of Basic Education (DBE) are not only failing but are exacerbating the situation. The ACDP proposed legislative solution is built on a foundation of practical principles that prioritize family values, accountability, protection of the vulnerable, and a proactive stance against the factors contributing to learner pregnancy.

Key recommendations were as follows:

i. Comprehensive Legislative Reform: The ACDP called for the introduction of a new section in the BELA Bill, dedicated to addressing learner pregnancy through laws reflecting the principles proposed in this submission.
ii. Focusing on Family and Community: it was proposed that a shift in focus towards strengthening the family unit and community involvement as crucial pillars in preventing and managing learner pregnancy.
iii. Conscience Protection in Education: The inclusion of wide conscience protection clauses in the BELA Bill is essential to ensure that educators and school staff are not compelled to act against their moral and ethical beliefs.
iv. Diverse and Localized Approaches: Acknowledging South Africa’s diversity, the ACDP recommends that provinces develop tailored laws and regulations to address their unique challenges related to learner pregnancy.
v. Targeting the Root Causes: Policies should focus on the male impregnators, holding them accountable and addressing statutory rape and gender-based violence through specialized units and legal measures.
vi. Support for Pregnant Girls and Their Children: Ensuring that pregnant girls and their children receive adequate support, care, and alternative educational opportunities is crucial.
vii. Creating Safe Environments: Education is not enough; safe environments must be created for girls.
viii. Promoting Positive Values: The ACDP advocates for the promotion of values such as monogamy and responsible behaviour among the youth.
ix. Research-Based Solutions: There is a call for compulsory, unbiased research by government departments and independent committees to inform policies and actions.
x. Collaborative Efforts and Future Actions: The ACDP is committed to working with the Select Committee and other stakeholders to develop and implement effective, research-based solutions to the learner pregnancy crisis. It is opined that a collaborative approach, grounded in the principles outlined in our submission, is essential for creating lasting and meaningful change. Our goal is to ensure that policies not only address the immediate issue of learner pregnancy but also contribute to the creation of a safer, more supportive educational environment for all South African youth.

5.1.22. Clause 45 – Amendment of section 9 of Act 76 of 1998

Amendment of section 9 of Act 76 of 1998
45. 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;''.

The submitter needed clarity on why "another Department has been inserted.

5.1.23. Clause 49 - Insertion of section 19 in Act 76 of 1998

Insertion of section 19 in Act 76 of 1998
49. 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
(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
(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.''

There was a by one submitter that this proposal be confined to state employees as opposed to SGB appointed Educators.

5.1.24. Clause 50 – Amendment of section 35 of Act 76 of 1998

Amendment of section 35 of Act 76 of 1998
50. 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;''.

One submitter opined that this amendment encroached on the powers of Provinces as these matters are more appropriately dealt with at Provincial level.

6. Other submissions that could not be associated with any Clause.

Among some of the submissions that included comments not directed at a specific clause, some stated that this bill discriminates against religious communities, who according to their scriptures are duty-bound to guide and protect their offspring and do not impose their values on others it was indicated that religious communities have shown to raise children who are more responsible, respectful and beneficial to society.
Some submitters stated that they strongly oppose the planned covert and overt introduction of transgender ideologies (under the guise of gender equality), especially at the impressionable foundation phase.
Some submissions stated that the BELA Bill promotes obscenity, immorality, violation of religious freedom, violation of individual freedom, violation of constitutional rights, violation of parental rights and control of their children, and the injustice of the brutal measures proposed for those who will be compelled by religion and conscience to disobey any of the Satanist provisions which a godless government will seek to enforce, and the utter disregard for human rights, are shockingly appalling and lamentable.

Some stated that the government should understand that it is not a Hitler-type organization that can ride over the rights and freedom of the citizens, and pummels people into submission by brutal methods and measures which never befit a democracy.

7. Clarity Seeking questions raised during submissions.

The following reflection questions are linked to the Oral Hearings. The reflection questions are presented to offer potential engagement questions during upcoming deliberations on the BELA Bill.

- What is the rationale of the DBE for more regulations via the BELA Bill instead of less regulation to realize a decentralized model specifically in terms of increasing the formal participation of communities in public schools?
- Why are various sections of the BELA Bill formulated in such a manner that oral and written submissions emphasized that such are vague? Specifically, that it does not lead to a common understanding and/or leaves such stipulations open to potential abuse.
- Why is the BELA Bill formulated in a manner that can be interpreted to be a direct attack on Afrikaans as a language, specifically within the academic context of South Africa?
- Why does the definition of corporal punishment in the BELA Bill not include non-physical forms of punishment?
- Is it feasible to make the starting age for schooling flexible to accommodate gifted learners to start school at a younger age, especially in the independent school context?
- Why is there the perception that no procedural process and/or opportunity exists for independent schools to make representations to the HoD in sections relevant to independent schools?
- Why does ISASA find it challenging to access information linked to subsidies for independent schools?
- Does the state wish to retain SGBs as a valuable and trusted partner?
- Does the state wish to revert to a state school model, or does it wish to retain a public school model?
- The existing wording/stipulations linked to Sections 5 and 6 of the BELA Bill have passed constitutional scrutiny. Can the DBE confirm without doubt that the Amended Section 5 and Section 6 in the BELA Bill will pass constitutional scrutiny?
- How will the DBE guarantee that the proposed central procurement in the BELA Bill will not lead to the creation of ‘tenderpreneurship’?
- Why is greater autonomy not being considered for well-functioning schools that have a clean audit and comply with academic and financial performance standards?
- How will the DBE fund compulsory education from Grade R noting the financial struggles currently experienced in offering all learners a quality education in a safe and hygienic environment?
- How are parents/guardians being accommodated who keep their learners at home directly due to religious beliefs and morals-based conscientious objection, specifically in the context of a 12-month prison sentence?
- Why do submissions highlight that the wording “parents” is used exclusively, potentially excluding guardians such as grandparents and others?

- How is the DBE to determine whether homeschooling is in the best interest of a child and how will the DBE deal with a dispute from a parent who disagrees with the DBE's determination?

- What research is the DBE relying on to decide whether homeschooling is in the best interest of a child?

- Since 2015, what process has the DBE pursued to ensure that home education research in a South African context is conducted?

- Why are small schools being closed, specifically noting the need for employment opportunities in rural areas, the desire for families to stay together, and the need to travel far distances to attend formal schooling? [How is the District Development Model considering retaining small schools to enhance the economic potential of a rural area?]

- How will the suitability of study material be established in a centralized procurement system, especially noting curriculum content linked to sexually explicit themes and removing powers from SGBs?

- Why is the Bill formulated in a manner causing the perception that it encourages silent exclusion of learners with disabilities at a public school, particularly, those who attend special care centres? Noting that special care centers exist because of silent exclusion, leaving learners with disabilities with no choice but to attend such centers.

- Why is the BELA Bill perceived by some as a missed opportunity to legislate and resource/fund inclusive education (including education for children with disabilities)?

- How can the DBE take advantage of this opportunity to legislate and resource/fund inclusive education (including education for children with disabilities) specifically in terms of special care centers potentially becoming part of the public schooling system?

- What is the status of the level 5 qualification for caregivers in special centers as being developed/delivered as a partnership between DBE and UCT?

- How is the BELA Bill promoting Cooperative Governance, specifically noting the context of removing powers from SGBs?

- Why have the submissions noted to maintain Sections 5 and 6 as stipulated in the SASA during previous public involvement engagements been ignored or rejected?

- Why are there no clear guidelines to assist and guide a school to determine its capacity in terms of learner enrolment numbers instead of the focus on admission and language policies?

- Why are schools not being allowed to voluntarily opt into the process of central procurement instead of enforcing such onto all public schools?

- Why are annual reports inadequate and how will the submission of quarterly reports overcome this identified inadequacy of annual reports?

- How is the DBE planning to enhance the capacity of provincial education departments and schools to implement the proposed amendments? How can the DBE guarantee the readiness of all to implement and resource the BELA Bill's proposed amendments?

- How has the DBE ensured that an economic feasibility study was conducted concerning the implementation and additional costs linked to the BELA Bill Amendments?

- How is the DBE going to increase the trust that citizens have in government by focusing on ensuring that all schools have basic facilities such as clean, running water, flushing toilets, safe school buildings or enough and adequately trained educators and staff members, instead of redirecting funds to specific amendments as stipulated in the BELA Bill?

- Why is the definition of “Basic Education” formulated in such a manner that it is perceived as being inadequate and in need of further amendment?

- Why is the Bill perceived by some as being unclear in terms of linkages between the Grade R curriculum and the remaining curriculum of the school?

- Why is the Bill perceived as being unclear in terms of the starting age for Grade R?

- Why are oversight mechanisms over SGBs not developed further instead of formulating the proposed amendments to SGB powers?

- A central committee will be established to decide on curriculum matters and allow for "centralized procurement of identified learning and teaching support material for schools." Who will sit on this committee? What are their values, beliefs, and worldviews? How this will influence the identification of suitable materials which will then be disseminated centrally to all learners within the education system?

- How will the DBE defend against the claim that the definition of “required documents” discriminates against undocumented learners?

- How will the DBE defend against claims that the Bill is at risk of impracticality due to limited financial, structural, and human resources in the DBE?

- How is the DBE considering submissions proposing the inclusion of provisions for provincial oversight and SGB consultation on language and admission matters and urging for final decisions to rest with the SGB?

- How will the DBE consider proposals linked to the addition of definitions to clarify key concepts and to amend existing definitions as per written submissions?

- Please clarify how the DBE has considered the contextual reality of SGB teachers during the formulation of the BELA Bill. It was mentioned during oral submissions that the BELA Bill has not considered the unique inputs from SGB appointed teachers.

- Please share how the DBE is to support and develop teaching staff to meet the demands of a dual medium school within the context of clauses linked to language policies in the BELA Bill.

- Teacher marking time being considered to deliver quality education – changing admission policies means someone in an office, not in a school, will now determine who gets access to a school without considering if the teachers will be able to do the work with an increased number of learners.

- How will the DBE guarantee that contextual factors in a school include the demands placed on teachers, specifically noting the need to mark homework and scripts thoroughly, concerning admission policies within the context proposed by the BELA Bill?

- How will the DBE guarantee quality education with the amendments to admission policies as per the BELA Bill proposals? Please also include how the DBE is to overcome the potential of reducing the desire from parents to be involved or even part of a school due to reduced powers of SGBs as per the BELA Bill amendments. Please also elaborate on how the DBE is to subsidize the salaries of current SGB-appointed teachers paid from funds from parents paying school fees, if the BELA Bill amendments do cause a large exit from parents and learners from public schools.

- How will the DBE guarantee that the BELA Bill proposals promote the realization of more schools, better schools, and greater parent involvement in schools?

- The proposals in the BELA Bill linked to language and admission policies seem to solve a problem that is not there and is the core reason for Solidarity to reject the Bill. Please clarify the problem that the DBE believes will be solved by the amendments to language and admission policies within the context of stating such in a court of law to defend the linked BELA Bill clauses.

- Why do submissions argue that concerns arise regarding the Bill's departure from the Constitution's framework, values, and democratic intentions? Specifically, within the context of access to education, language, and culture. In addition, the potential of non-compliance with section 36 of the Constitution has been stated.

- How will the DBE defend identified challenges such as: (1) That the Bill is undermining democratic school governance principles; (2) Centralisation of decision-making risking inefficiency and abuse of authority; & (3) Potential chaos and conflict due to arbitrary admissions decisions?

- How will the DBE defend the claim that subsections 6(a) and 6(b) raise constitutional concerns?

- How will the DBE defend against the claim that the BELA Bill is seen as potentially reversing the 2018 ruling by the Pretoria High Court in Hoerskool Overvaal v. Panyaza Lesufi?

- How will the DBE defend against the claim that forcing single-medium Afrikaans schools to provide dual education imposes unnecessary burdens and potentially can be seen as going against promoting indigenous languages?

- According to Solidarity, the BELA Bill seems to focus only on well-functioning schools, excluding schools not functioning well, and should rather focus on enhancing and sustaining well-functioning schools and offering direct and needed support to dysfunctional schools. Please share the DBE's response to such claims.

- How will the DBE consider proposals linked to a phased approach concerning compulsory schooling (e.g. a two-year gap to implementation after the Bill is passed)? Please also share how the DBE could potentially clarify the relationship between 'school going age' and 'age of admission' as requested as a need by this stakeholder.

- How will the DBE handle the proposal that the definition of 'serious misconduct' is too broad as well as unclear, specifically within the context of consequences to learners potentially guilty of such? According to this stakeholder, learners who are excluded from school due to serious misconduct are more likely to end up in jail.

- Please share how the DBE could ensure that sexual misconduct-linked clauses incorporate teachers as offenders and not only focus on learners as guilty parties.

- This stakeholder stated that the criminalization of parents and caregivers focused clauses (2(b) and 38) seem to state that parents/caregivers are the sole reason for learner absenteeism. Please elaborate on how the DBE could amend related clauses to avoid such an interpretation being made.

- This stakeholder proposed to rather focus resources and attention on ensuring that the poorest receive adequate education. How could the BELA Bill be amended to achieve an interpretation that substantial focus is to be placed on ensuring that the poorest receive adequate education?

- This stakeholder stated that there is no regulation for the capacity of a school nor for a school that is oversubscribed. Please clarify how the BELA Bill could be amended to highlight the existence of such within the context of the admission policies of a school.

- This stakeholder urged that decision-making should remain with the SGB supported by strong and equitable oversight from the Department. Please elaborate on how the BELA Bill could be amended to maintain decision-making as far as is reasonable with the SGB and to clarify the realization of strong and equitable oversight from the Department.

- This stakeholder requested to include the terms "caregiver' and 'care' in section 1 and to remove the word 'custody' as it is not used in South African law. Is this achievable from the DBE and in line with the overall mandate and purpose of the BELA Bill from the DBE perspective?

- How will the DBE ensure that the BELA Bill amendments accommodate learners who are in guardianship, in a care institution, or living with a family member who might not have access to all relevant documents?

- Please state how the DBE responds to proposals that the Corporal punishment definition and clauses need further refinement as the period for an offense is the responsibility of the criminal justice system and not the DBE.

- Concerning school staff who are not under SACE, how will such be dealt with in terms of misconduct towards a learner in terms of the amendments linked to the BELA Bill?

- Please state the response of the DBE to the following: It is not the responsibility of a school to cater to the needs of all in the community, the Department has the responsibility to ensure adequate schools are available for all the needs of a community. Please note that this statement was linked to language policies and admission policies.

- What is the response from the DBE to statements such as: “Related appeals on the decision of a HoD should go to courts, not the MEC”?

- What is the response of the DBE to statements such as: There is no need to change SGB powers, present powers of SGBs and HoDs are clear and there is no evidence of unfair discrimination in key related court cases, although pointers noting abuses of power by the HoDs”?

- What is the response of the DBE to statements such as: "The State must fund learners/schools via tax-funded vouchers"?

- Please state the response of the DBE to statements such as: “Pregnant girls should be handled by parents. The DBE is purposefully hiding the rape of schoolgirls.”

- Please state the DBE’s response to the following request: “Requested a meeting with the DBE to engage with the matters related to Justice for Fathers.”

- What has the DBE done with submissions made by home-schooling stakeholders during previous public involvement engagements?

- Please state if the DBE agrees to amend the following definitions: "Basic education"; "Home education"; and "Competent assessor" as requested by the home-schooling community.

- Please state the response of the DBE to statements such as: “Clause 39 promotes sexual sin and abortion without parental consent – no need for government to legislate this. No policy or regulation without parental involvement/consent.”

- Please state the response of the DBE to recommendations such as: “Closure of small schools, rather give them a grant based on the number of learners that they have”.

- Please state the response of the DBE to statements such as: "Inadequate consultation/engagement by the DBE with Home Education Stakeholders since the period of drafting the BELA Bill. The claim made that no copies or discussion of the BELA Bill. No

inputs were requested about the BELA Bill or copies provided of the Bill during previous meetings. Therefore, these are noted as not serving as consultation on the Bill. The impression that the DBE had a pre-determined outcome in mind making consultation irrelevant was stated."

- Please state the response of the DBE to statements such as: “The BELA Bill is perceived as suppressing innovation in education, thereby discriminating against and depriving learners’ access to basic education”.

- An oral submission noted that the BELA Bill imposes an inappropriately severe penalty clause (Clause 2) and exposes home educators to double jeopardy (SASA and the Children Act). Why did the DBE retain this penalty clause even though submissions were made to highlight challenges linked to it? Is the DBE budgeting for court cases to enforce this stipulation and is the need to allocate resources to such the best approach to handle the associated challenges and reasons for this clause existing? Will taking parents to court lead to the delivery of quality education for all or is such not better served in the domain of social services?

- Please state the response of the DBE to statements such as: “It seems that the BELA Bill is designed in service of bureaucratic administration systems instead of to the best interest of the child in obtaining a basic education through home education and independent educational institutions. Specifically, because of the lack of research on home education in a South African context.”

- An oral submission noted that the international movement is towards decentralization of power. Why are we not following suit in terms of the BELA Bill amendments? Why are we not allowing autonomous schools to be realized in terms of the legislative framework?

- Within the context of admission and language policies, why is the focus on more learners in a school, instead of more schools for learners?

- Please state the response of the DBE to statements such as: “Provincial departments are not funding and resourcing schools as per current legal framework, this causes doubt that amendments will be funded. SGBs will be expected to take on the financial burden but might exit schools because of the reduced powers of SGBs.”

- Please state the response of the DBE to statements such as: "Centralized procurement is currently in place in EC for textbooks, the provided textbooks are inadequate and the burden to purchase textbooks is on SGBs. Currently, all quintile schools complain about the quality of stationary provided as provided via central procurement. The quality of stationery is more important than quantity. There is no trust that central procurement will provide the needed quality of resources.”

- Please state the response of the DBE to statements such as: "Communication between schools and the department is challenging. This causes doubts to emerge on the department's capacity to adhere to and implement the BELA Bill amendments."

- Please state the response of the DBE to recommendations such as: "Instead of removing SGB powers, why not permit a HOD to enhance the powers of an SGB."

- Please state the response of the DBE to statements such as: "Also the risk of causing overcrowding by building classrooms on spaces intended for recreation, school breaks, and sport. When a school is at maximum capacity, it is at maximum capacity. Overcrowding is a health and safety issue and does not lead to the delivery of quality education. Admission policy should remain in the hands of the SGB."

- Why the focus on more learners in a school, instead of more schools for learners?

- Please state the response of the DBE to statements such as: “Clause 5 – Threatens to disrupt the carefully crafted language instruction framework as envisioned by the school community”.

- Please state the response of the DBE to recommendations such as: “Clause 34 – Restrict this clause to schools that did not submit audited financial statements for the previous two years or received qualified audits two years in a row.”

- What guidelines are in place to ensure that budgetary requirements are met for all other phases due to compulsory Grade R?

- Please state the response of the DBE to statements such as: "Clause 4 – currently the department is forcing schools to register learners who do not meet admission criteria, how much more will schools be forced to enroll learners although full because of the amendments in the BELA Bill. This will lead to the overcrowding of all schools."

- Please state the response of the DBE to recommendations such as: “Clause 16 – concern that LTSM will not be delivered on time. There is a need for a clear national LTSM policy. Provinces should improve their capacity to identify and collate data on textbook needs and availability.”

- Please state the response of the DBE to recommendations such as: “Clause 3 be revised to include a provision obliging government to form intergovernmental committees on both provincial and national level.”

- Please state the response of the DBE to recommendations such as: “Clause 4 be altered - only a birth certificate or any other form of identification”.

- Please state the response of the DBE to recommendations such as: Clarify the process that must be followed if the HoD is not satisfied with a school's admission or language policy and provide reasons for such.

- Please state the response of the DBE to recommendations such as An office specializing in reviewing policies must be established to support the HoD.

- Please state the response of the DBE to recommendations such as: “Clause 7 - give SGBs guidance on what “just cause” would be in the application for exemption.”

- Please state the response of the DBE to statements such as: “SGBs are not often trained on how to perform their functions and state to greater capacitate and inform SGBs.”

- Please state the response of the DBE to recommendations such as School closure should clarify adequate infrastructure for accommodation, transport, and school uniforms. Including the reason why MEC is closing the school.

- Please state the response of the DBE to restatements such as: “Clause 37 – clause fails to provide any normative criteria as to how parties should deal with a dispute.”

- Please state the response of the DBE to recommendations such as: "Recommends that DBE urgently finalize norms and standards on the procurement of LTSM in terms of section 5A(1) (c) of the SASA.”

- Please state the response of the DBE to recommendations such as: “We recommend that the proposed criminal penalties that may be imposed on parents be removed.”

- Please state the response of the DBE to recommendations such as: “We submit that the creation of a new penalty for this in clause 2 is too broad and may negatively affect a range of constitutional rights. Remove this amendment.”

- Please state the response of the DBE to recommendations such as: "Recommends that rules regarding the search of learners should be provided in every school's code of conduct."

- Please state the response of the DBE to recommendations such as: “Clause 8 be revised to insert alcohol into the list of banned substances.”

- A Standards Commission for Independent Alternative Education Centres is proposed to assist the DBE regulate micro/cottage schools. Has such been presented and/or considered by the DBE during the process of public involvement in the BELA Bill?

- Please state the response of the DBE to recommendations such as: "BELA Bill offers us a chance to grant micro cottage centers the acknowledgment they deserve. Let's do it 2gether 4 EDUCATION requests that provision be made in the Bill for such centers to become recognized."

- Please state the response of the DBE to statements such as: “The Bill is perceived as discouraging home education.”

- Please state the response of the DBE to statements such as: “Irregularities have been experienced during the public participation public hearings in provinces.”

- Please state the response of the DBE to recommendations such as: “Proposing a separate act for Home Education.”

8. Suggested addition of Clause on independent micro-independent schools to the Bill

There was a suggestion by some submitters for the Bill to include micro-independent schools and suggested the following amendments:
Section 1 Definitions
Section 1 of the South African Schools Act, 1996, is hereby amended by the insertion in subsection (1) after the definition of ‘‘home education’’ of the following definition:
"'Independent micro-school means an independent school of 135 learners or less registered or deemed to be registered in terms of section 46;”
by the insertion in subsection (1) after the definition of ‘‘Minister’’ of the following definition:
“‘National Curriculum Statement Grades R – 12’ means a policy statement for learning and teaching in South African schools that implements this policy statement and comprises the following: Curriculum and assessment policy statement/s for each approved school subject. National policy statement/s about the programme and promotion requirements of the National Curriculum Statement Grades R – 12, and, national policy statement/s about the protocols for assessment of grades R – 12";

- by the substitution in subsection (1) of the definition of ''school'' with the following: "school" means a public school an independent school or an independent micro school which:
  (a) enrolls learners in one or more grades from grade R (Reception) to grade twelve; or,
  (b) enrolls learners to obtain pre-tertiary school level education using forms of structuring learning other than grades.

Amend Section 6A of the South African Schools Act, 1996, is hereby amended by:
the substitution of subsection (2) with the following subsection:
"(2) The curriculum and the process for the assessment of learner achievement contemplated in subsection (1) must apply to public, independent schools and independent micro-schools that implement the National Curriculum Statement."

- by the insertion after subsection (3) of the following subsection:

"(4) Independent schools and independent micro-schools, that do not follow the National Curriculum Statement, shall have their autonomy respected and are permitted to use alternative curricula, educational approaches, and assessment processes and procedures, that meet the minimum standards to be determined by the Minister.
(a) Concerning the curriculum and/or educational approach used these minimum standards shall:
  i. prescribe desired educational objectives and shall not prescribe skills and content;
  ii. be relevant to the objectives in (i) above;
  iii. be in general proportionate and specifically allow sufficient time for the chosen programme to be followed;
  iv. be determined by phase and not by grade;
  v. respect the autonomy of the educator and/or, where appropriate learner to teach and/or learn in a manner that serves the best interest of the learner;

vi. be of such a nature that they do not directly or indirectly infringe on the freedom of learners, educators, and/or the independent institution, to use alternative curricula, educational approaches, and assessment processes and procedures that give effect to their philosophical, religious or moral convictions"

Chapter 5 of the South African Schools Act, 1996, is hereby amended by:

- By the substitution of the chapter heading, with the following chapter heading: "INDEPENDENT & INDEPENDENT MICRO-SCHOOLS"
- Section 45 of the South African Schools Act, 1996, is hereby amended by the substitution of Section 45 with the following section: "Establishment of independent schools and independent micro-schools.—Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an independent school or an independent micro-school."

Section 45A of the South African Schools Act, 1996, is hereby amended by the substitution of Section 45A, and subsections (a), (b), and (c) with the following section:
"Admission age to independent schools and independent micro-schools.—(a) The admission age of a learner to an independent school or an independent micro-school to—

(i) grade R is age four turning five by 30 June in the year of admission;
(ii) grade 1 is age five turning six by 30 June in the year of admission.
(b) An independent school or an independent micro-school may admit a learner who— (i) is under the age contemplated in paragraph (a) if good cause is shown; and
(ii) complies with the criteria contemplated in paragraph (c).
(c) The Minister may, by regulation, prescribe—
(i) Criteria for the admission to an independent school or an independent micro-school at an age lower than the admission age of an underage learner who complies with the criteria;
(ii) age requirements for different grades at an independent school or an independent micro-school.

Section 46 of the South African Schools Act, 1996, is hereby amended by the substitution of sections (1),(2) and (3) with the following sections:

"Registration of independent school and independent micro-school.—
(1) No person may establish or maintain an independent school or independent micro-school unless it is registered by the Head of Department.
(2) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of an independent school or an independent micro-school may be granted or withdrawn by the Head of Department. This notice must set out a reasonable time within which the application must be processed, which period may not exceed 120 days.
(3) A Head of Department must register an independent school or an independent micro-school if he or she is satisfied that—
(a) the standards to be maintained by such schools will not be inferior to the standards in comparable public schools;
(b) the admission policy of the school does not discriminate on the grounds of race; and
(c) the school complies with the grounds for registration contemplated in subsection (2)."

Clause 33 of the Basic Education Laws Amendment Bill (2022) is hereby amended by the substitution for subsection (4) of the following subsection:
''(4) Any person who contravenes subsection (1) is guilty of an offense and liable, upon conviction, [liable] to a fine or imprisonment for a period [of three] not exceeding [12 months,] three months or to both a fine and such imprisonment.''.
Section 47 • Section 47 of the South African Schools Act, 1996, is hereby amended by the substitution of the sections with the following section:
"Withdrawal of registration of independent school and independent micro-school.—(1) No withdrawal of the registration of an independent school or an independent micro-school is valid unless—
(a) the owner of such independent school or independent micro-school has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
(b) the owner of such an independent school or independent micro-school has been granted an opportunity to make written representations to the Head of Department as to why the registration of the independent school or an independent micro-school should not be withdrawn; and
(c) any such representations received have been duly considered."

(2) The owner of an independent school or an independent micro-school may appeal to the Member of the Executive Council against the withdrawal of the registration of such independent school or independent micro-school."

Section 47(A) of The South African Schools Act, 1996, is hereby amended by the insertion after Section 47 of the section with the following section:

"Section 47(A) Best interests of the learner: Closure of an independent school or an independent micro-school.

When closing an independent school or an independent micro-school, whether registered or unregistered, or withdrawing registration of such school the best interests of the learners at the school are paramount.

1) A learner, having regard to his or her age, maturity, and stage of development, and a person who has parental responsibilities and rights in respect of that child must be informed by the Head of Department of the intended withdrawal of registration or closure of the independent school or independent micro-school.

2) A learner having regard to his or her age, maturity, and stage of development, and a person who has parental responsibilities and rights in respect of that child must be allowed to express their views on the intended withdrawal of registration or closure of the independent school or independent micro-school.

3) A learner that is of such an age, maturity, and stage of development as to be able to make representations concerning the intended withdrawal of registration or closure of the independent school or independent micro-school has the right to participate appropriately in the deliberations over the withdrawal of registration or closure and the views expressed by the learner must be given due consideration.

4) The approach adopted by the HOD must be conducive to conciliation and problem-solving and a confrontational approach should be avoided.

5) Delay in any action or decision to be taken must be avoided as far as possible."

Section 48 of the South African Schools Act, 1996, is hereby amended by the substitution of the section with the following section:

"Subsidies to registered independent schools and independent micro-schools—(1) The Minister may, by notice in the Government Gazette, determine norms and minimum standards for the granting of subsidies to independent schools and independent micro-schools after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(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 or an independent micro-school.

(3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless— (a) the owner, and learners, having regard to their age, maturity, and stage of development, and persons who have parental responsibilities and rights in respect of the learner, of such independent school and independent micro-school has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons thereof;

(b) such owner and learners, having regard to their age, maturity, and stage of development, and persons who have parental responsibilities and rights in respect of the learner, have been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and (c) any such representations received have been duly considered.

(5) The owner of an independent school or independent micro-school may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such independent school or independent micro-school.

Section 49 of the South African Schools Act, 1996, is hereby amended by the substitution of the section with the following section:

"Declaration of independent school or independent micro-school as a public school.—(1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of an independent or an independent micro-school in terms whereof such independent school or an independent micro-school is declared to be a public school.

(2) Notice of the change of status contemplated in subsection (1) must be published in the Provincial Gazette."

Section 50 of the South African Schools Act, 1996, is hereby amended by the substitution of the section with the following section:

"Duties of Member of Executive Council relating to independent schools and independent micro-schools.—(1) The Member of the Executive Council must, by notice in the Provincial Gazette, determine requirements for—

(a) the admission of learners of an independent school and an independent micro-school to examinations conducted by or under the supervision of the education department;

(b) the keeping of registers and other documents by an independent school and independent micro-school;

(c) criteria of eligibility, conditions, and manner of payment of any subsidy to an independent school and independent micro-school; and

(d) any other matter relating to an independent school or an independent micro-school which must or may be prescribed in terms of this Act.

(2) Different requirements may be made under subsection (1) in respect of different independent schools or independent micro-schools.

(3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1)."

50 (A)(1) of the South African Schools Act, 1996, is hereby amended by the insertion after Section 50 of the following section: "Dispute resolution 50 (A)(1) If a dispute arises between the Head of Department and the owner of an independent school or independent micro-school, the following procedure must be followed:

(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:

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

(d) If the parties cannot resolve the dispute as contemplated in paragraphs (a), (b), and (c), the owner may appeal to the Member of the Executive Council against the decision that gave rise to the dispute.

(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 the owner of an independent school or independent micro-school, the following procedure must be followed:

(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:

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

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

9. Recommendation

It is recommended that the committee deliberates on the content of the submissions made and considers the Bill and the public recommendations.