

Your Ref: Ms Lindiwe Ntsabo  
Our Ref: Sipesihle Mguga

27 November 2020

For Attention Ms Lindiwe Ntsabo  
Per email: [childrens-amendment-bill@parliament.gov.za](mailto:childrens-amendment-bill@parliament.gov.za)

## **SUBMISSIONS ON THE CHILDREN'S AMENDMENT BILL 2020 REGARDING EARLY CHILDHOOD DEVELOPMENT**

### **I INTRODUCTION**

1. On 31 August 2020, the Minister of Social Development introduced the Children's Amendment Bill 2020 ("the bill") to parliament and called for public comment. One of the purposes of the bill is "*to further provide for funding of early childhood development programmes...*". This submission by the Legal Resources Centre (LRC) on behalf of the Makhanda Early Childhood Development Forum (the Forum) focuses on the proposed amendments relating to Early Childhood Development (ECD), and matters connected therewith.
2. The LRC is a public interest law firm focused on assisting vulnerable groups to enjoy their human rights. We have offices in Cape Town, Johannesburg, Durban, and Makana (formerly Grahamstown). The LRC undertakes evidence-informed action to advance the transformation of South Africa as a democratic society. We use the law as an instrument to remove persistent and pervasive structural obstacles to human rights –

with a targeted focus on, inter alia, education rights. We have a lengthy track record of working in the education and children's rights sectors.

3. This submission is made on behalf of the Makana Early Childhood Development Forum, a non-profit organization in Makhanda Eastern Cape. The forum was established in 2014 to ensure that the voices of ECD practitioners in Makhanda are heard and to offer each other support. It currently has a membership of 80 ECD practitioners who meet monthly. From its inception the practitioners have faced challenges with registration, a lack of support and communication from the Department of Social Development, and the haphazard way the Department pays subsidies. The Forum welcomes the opportunity to comment on the bill.
4. These submissions are structured as follows:
  - 4.1 Importance of ECD and the State's Undertakings – Expand the definition of the right to basic education
  - 4.2 Migration of ECD from the Department of Social Development (DSD) to the Department of Basic Education (DBE)
  - 4.3 Shortcomings of the Bill:
    - 4.3.1 The Bill does not streamline the complicated registration process
    - 4.3.2 Infrastructure Support is not clarified
    - 4.3.3 ECD to poor communities does not remain compulsory
    - 4.3.4 Simpler, adequate health and safety programme standards

## **II ECD's Importance and State's Undertakings**

5. The National Integrated Early Childhood Development Policy (2015) emphasises that ECD is a critical part of a child's development and is

beneficial for the child, the child's family, and society. The policy highlights the government's recognition of ECD's importance:

*"Government recognises early childhood development as a fundamental and universal human right to which all young children are equally entitled without discrimination. The Government's recognition of early childhood development as a universal and inter-dependent body of rights has long been recognised in a host of policies and laws dating back to 1995."*

6. More recently, in the 2020 State of the Nation Address (SONA), President Ramaphosa stressed the value of ECD, highlighting that *"the investment the country makes now in Early Childhood Development (ECD) and early school learning will yield great economic benefits in the next two decades and beyond."* While our clients do not subscribe to the purely utilitarian approach of the President, the provision of ECD to all children in South Africa clearly needs to be a top priority for the state.
7. Basic Education Minister Angie Motshekga announced during the SONA debate earlier this year *"that it would now be compulsory for children to attend ECD for two years. This being essential to equip children to succeed in education, work and in life as ECD is possibly the single most important factor in overcoming poverty, unemployment, and inequality"*.
8. In October 2020, Deputy Minister for the Department of Social Development, Mrs Hendrietta Bogopane-Zulu, during a virtual handover of 5 ECD centres to communities in the Western Cape Province confirmed that *"Early Childhood Development is declared a public good and prioritising its expansion to all children will be part of Government's first 1000 Days Campaign"*.

9. The government's policies and public statements clearly indicate that access to quality ECD is a right which all children must have. The legislative reforms proposed by the bill, however, do not reflect this. The experiences of the Forum's practitioners, discussed below, highlight the need for amendments to the bill if the government's stated aim of recognising and fulfilling the right of every child in South Africa to access quality ECD are to be achieved. As of 2018, it was estimated that as many as 1,9 million children in South Africa were not attending any ECD facility.<sup>1</sup>
10. In light of the government's pronouncements on the importance of ECD, the Forum submits that the definition of the right to basic education should be expanded to include a child's right to a minimum of two years of state funded ECD prior to beginning Grade R. Regardless of when the legislative reform takes place to reflect ECD's migration from DSD to DBE (discussed below), the bill should include a provision (or it should be set out in the preamble) stating that ECD is part of the right to a basic education as provided for in section 29 of the Constitution.

### **III Migration of ECD**

11. Despite the migration of ECD from DSD to DBE being at an advanced stage, there is absolutely no reflection of this major shift reflected in the bill. An over-arching problem with the bill is the noticeable absence of new functions for the DBE. As recently as 20 October 2020, DBE and DSD made a joint presentation to parliament's Portfolio Committee on Basic Education regarding the migration of ECD. At page 20 of the presentation they indicated that the "function shift" would be concluded by April 2021. This is a mere five months away. The presentation also reports that the departments have "*reviewed the draft proclamations to determine whether the correct/all relevant provisions of the Children's Act are included to ensure the ECD function to be transferred from Social Development to*

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<sup>1</sup> S Fobosi, *Education Expenditure Tracking Report*, Public Service Accountability [2018]

*Basic Education gives effect to the stated intention and the transferring responsibility.”*

12. It appears certain that a major overhaul of the Children’s Act in relation to ECD will be necessary very soon. Alternatively, a new piece of legislation will need to be created specifically for ECD, or the Schools Act will require amendments. It is evident that the bill has not taken cognisance of the migration of ECD from DSD to DBE as the bill still assigns responsibilities to DSD instead of DBE. Whatever legislative route is decided upon, the decision not to make the necessary legislative reforms now appears to be a serious oversight. Our clients would like to express their misgivings about the approach taken and the lack of communication regarding the legislative reform necessary to reflect the imminent migration of ECD from DSD to DBE.

#### **IV Shortcomings of the bill**

##### The Bill does not streamline the complicated registration process

13. Many ECD centres operate in poor communities and the practitioners running them do not have access to resources. Submitting documents for registration or compliance purposes is challenging. The bill in its current form makes no effort to streamline the registration process and it does not take cognisance of the fact that many practitioners have limited access to the resources necessary to compile the applications.

14. Ms Pamela Sandi is an ECD practitioner and member of the Forum who works at Luzuko Pre-School in Makhanda. She says that

*“One of the most challenging experiences as an ECD practitioner is registration. It is a daunting task that we wish was simpler and more sympathetic to our realities. To operate an ECD centre a practitioner needs to register for three things: Non - Profit Organisation status; a partial care certificate; and Early Childhood Development Program certification. We need a one-step registration process for ECD providers. The partial care registration and the ECD programme registration are almost identical. For example, when applying for both partial care and the ECD programme you have to submit the qualifications of all staff members, the Constitution of the Centre, the Business plan, the NPO Certificate, financial documents, CVs of all board members and the programme of your school. I spend about R300 for both applications and I also must spend money on taxi fare. I end up having to use money I do not have. We do not have resources and the Department offers no support and yet they expect so much from us. They are so removed from our realities.”*

15. Ms Nomfundo Gonqa is also an ECD practitioner and is chairperson of the Forum. She started Boy Boy Mginya Primary School in 2004 but had serious challenges getting registered.

*“It took me four years to get the NPO registered and the officials at our local DSD office did not offer any assistance. I finally got the certificate in 2008. I struggled with drafting the business plan and the constitution. The Department needs to offer workshops to educate practitioners on how to register as an NPO, how to register as a partial care facility and how to register an ECD program. I also do not understand why we must submit the same documents for partial care and ECD program. I believe that should be one process. The way officials work with us is devoid of care and diligence. I*

*wish that the government could recognise us and the importance of our work.”*

16. The Forum proposes that the legislation should clearly oblige the state to support ECD providers in poor communities to meet and complete the registration requirements, and the organ of state responsible for providing this support must be clearly identified.

#### Infrastructure Support is not clarified

17. The Act currently fails to give effect to the ECD infrastructure provisions in the National ECD Policy. At chapter 9 of the policy it is explicitly stated that *“an adequate and accessible physical environment and infrastructure is required to support scaled up and effective delivery of inclusive, quality early childhood development programmes and services.”* The Act and the proposed amendments provide no guaranteed infrastructure support to ECD centres in poor areas in order to meet the aims of the policy.
18. Even more problematic is the bill’s proposed exclusion of funding for infrastructure at partial care facilities if they are *“...private homes of registered non-profit organisations, private homes in general, business properties or properties not owned by a non-profit organization”* (section 35(e) of the bill). The majority of ECD centres that are members of the Forum operate on privately owned land and require funding and support for their infrastructure needs. Appropriate toilets for small children and secure fencing are examples of infrastructure needs. Many of them rent premises from private owners. The exclusion of funding for infrastructure where the ECD centre is on private land introduced by the Bill must be rejected. It should be made explicit that ECD programmes, including those on private land, shall receive infrastructure support.

19. The Forum proposes that the legislation clearly outlines government duties, and the specific organ of state responsible for providing and maintaining sufficient and appropriate ECD programme infrastructure. If there is a real concern that the infrastructure provided to an ECD centre on private property will be lost to the private owner should the ECD centre close or move premises, appropriate agreements can be entered into between the state entity providing the infrastructure, the ECD centre and the private owner to protect the interests and property of the state.

ECD to poor communities does not remain compulsory

20. In its current form the Act requires that funding for partial care facilities in poor communities be prioritised. Section 78 (4) of the Act provides:

*“The funding of partial care facilities must be prioritised –*

*(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children.”*

21. The Forum is extremely concerned that the bill proposes changing this requirement into a discretionary power. They submit that this obligation to prioritise poor communities must remain mandatory. Clause 35 (c) of the Bills seeks to amend section 78. Clause 35 (c) states that it seeks *“to clarify that the MEC may prioritize and fund partial care facilities in poverty-declared wards.* By diluting the obligations of the state to support children in need, much needed funding and resources will not be available to support ECD centres such as those that are part of the Forum. The Forum believes that the Act should be amended to clarify that all children in need shall qualify for an ECD subsidy.



Simpler, adequate health and safety programme standards

22. In its current form the Act is not clear about who is responsible for developing health and safety standards for ECD programmes and ensuring compliance with them. Municipalities often have their own requirements that are inaccessible to practitioners.

23. In Makhanda municipal officials visit ECD centres once every two years when it is time to renew the centres' partial care registration and ECD Program registration. The health and safety standards they use to assess the centres are not distributed to the schools and they only become aware of these standards when the officials visit their centres to assess them. The Forum proposes that the bill be amended to include provision of clear health and safety standards, and that they be made available in all official languages.

24. The proposed changes in the Bill do not address the challenges of the ECD sector. With these submissions our clients respectfully request that the committee takes their submissions into consideration and bring real form to the sector, particularly in the areas that have been discussed above, a one-step registration process for ECD providers, that ECD centres' infrastructure needs are supported, that the obligation to prioritise poor communities remains mandatory, and that there are simpler, adequate health, safety and programme standards in place that are assessed through one process.

Thank you for this opportunity. The Forum would also like an opportunity to make oral submissions to parliament at the appropriate time.

Yours faithfully,

**LEGAL RESOURCES CENTRE**  
**Per: SIPESIHLE MGUGA**