## Introduction

The African Christian Democratic Party (ACDP) unequivocally rejects the BELA Bill in its current form. The ACDP notes the urgent need for wholesale educational reform and in particular educational law reform. Unfortunately, not only does the BELA Bill fail to enact such reform, but its provisions are rife with vague formulations as well as unresearched last minute changes. These will have unintended consequences that will hamper, rather than advance, the provision of equal and quality education in South Africa.

We, as the ACDP, have worked throughout the process to correct the flaws in the Bill. The ACDP does not want to see the BELA Bill struck down for its substantive and procedural flaws, and the millions spent in its preparation wasted. We have tried throughout to save the legislation, but our inputs were ignored, and we were even subject to attack, and to accusations that we sought to delay the Bill.

The DBE has been working on this Bill since 2013. The BELA Bill was published for public comment nearly five years ago, yet the Bill as it stands is clearly not ready to be adopted into law. These long delays by the DBE impacted parliament and parliamentary staff, who had to make heroic efforts to try and rush this Bill through. We wish it noted that insufficient attention has been paid to the organisational capacity of parliament to handle such a poorly prepared Bill within the time frames imposed. The rushed process has led to procedural flaws that will likely lead to the Bill being struck down.

The ACDP rejects the Bill on, inter alia, the following grounds:

### An "Administrative" Bill

THE DBE has admitted throughout that the BELA Bill is an "administrative bill" seeking to address "administrative" issues. When it was put to the DBE by the ACDP that the Bill needed to be child-centric, and take into account the principles of the Children's Act and applicable principles from the Child Justice Act, this was dismissed with the answer that these Acts applied to the BELA Bill already. This entirely misses the point that these Acts contain principles that must be adapted and applied in the educational context. For example, the phrase "best interests of the learner" appears twelve times in the bill and memorandum, but nowhere is it set out how these principles included in the Children's Act would apply.

The ACDP calls for a fundamental reform of educational law to make it child and family centric, and to empower parents. We believe firmly that the best interests of the child are served through their parents and families, as is clear from the preamble of the Children's Act, "Whereas children's rights leads to a corresponding improvement in the lives of other sections of the community because it is neither desirable nor possible to protect children's rights in isolation from their families and communities;".

### ECD

Initially, the Committee agreed to approach the house to broaden the scope of the Bill to incorporate not just Grade R but ECD as a whole. This proposal made by the EFF and accepted by the Committee has been quietly shelved. The R17 bn (Nearly R5bn for salaries

and R12bn for infrastructure) expenditure projected by the DBE is unrealistic, but funding can be found through cuts that must be made in ineffective and inessential programmes. This is a sector marked by educational entrepreneurship, in which especially the disadvantaged have shown the power of independent education as a job creator. Creative funding solutions will no doubt be possible, potentially through collaborative models. The Bill as it stands envisages a centralised, state-centric solution, that only caters to Grade R, this will strengthen the role of the state and secure posts for union members at the expense of the "Gogo Dlaminis" that built the sector.

No consideration seems to have been given to the legal implications of making Grade R compulsory, and therefore potentially making independent providers subject to the registration requirements of Section 29(3) of the Bill of Rights, while tens of thousands of them are unregistered. The Bill, however, increases the penalty for running an independent school to one year.

This potential oversight highlights two concerns that are procedural. The Socio-Economic Impact Assessment does not consider this issue and the Parliamentary Legal Services and the Office of the Chief State Law Advisor have not addressed these issues. One reason for the latter is the failure of the parliamentary legal services to be present throughout the public comment phase, and to address these and similar issues. The possibility of unforeseen consequences should be enough to deter the house from passing this Bill.

**Increase in Penalty**

The increase in the penalty imposed on parents who fail to ensure their children are registered for schooling is anti-progressive and anti-poor.

A number of submissions, especially those made by NGOs, questioned this section. The Legal Resources Centre stated that the reasoning behind the increase was not explained.

Section 27 stated that "The criminalisation of parents who fail to cause their children to attend school as a measure to increase school attendance is ineffective, against the best interests of children, and has the potential to disproportionately prejudice mothers. Therefore, instead of increasing the potential sanctions that may be meted out against parents, the BELA should be revised so as to fully remove the criminal penalties in the SASA for parents who fail to cause their children to attend school."

The Pestalozzi Trust provided a legal opinion as well as a criminological opinion on the appropriateness of the penalty, with the recommendation that the appropriate approach was not further criminalisation but the use of the Children's Court.

These submissions were not engaged with in any detail. A superficial argument was put forward that was in effect "other countries have penalties". But no context was given on whether these penalties were old, or recent. Just because other countries have jumped off the bridge does not mean that South Africa must do the same.

The Pestalozzi Trust opinion referenced the 2017/2018 UNESCO "Global Monitoring Report" which explained that "there is no substantial evidence to suggest that truancy laws reduce chronic absenteeism. Moreover, socio-economic factors influence truancy patterns, with disadvantaged or low-income students consistently at greater risk. Research suggests that punitive measures can impose harsh and undue burdens on disadvantaged families and students. In England and Wales (United Kingdom), severe sanctions disproportionately affected low-income families and women, who head most single parent households. Until 2013, fines of 250 US dollars could be compounded by court fees of up to 1000 US dollars in Los Angeles, United States, leading to crushing debt for poor families. The fines actually increased truancy from 5% to 28%."

On a procedural level, the above submissions have not been engaged with meaningfully by the Committee. It is also evident that the members were not aware of these submissions. The "Draft Matrix" contains no reference to these points. The "Draft Final Report" mentions them in passing but on an extremely superficial level, merely noting opposing views. This points to the weakness of these documents; they cannot be relied upon to adequately inform the members.

**School Governing Bodies**

While admission and language policies are important these, are by no means the only or even the main crisis issues facing our School Governing Bodies. The DBE should have engaged with the South African public and the sector as a whole, and this Bill should have proposed a complete reform of School Governing Bodies that would address all challenges that they face, rather than having a narrow and divisive focus.

The SAHRC, in their comment on the Bill, called for research to confirm that admission and language policies were being used to exclude learners on a racial basis. Public submissions and the experience of members indicated that this was likely the case, but there is no research to prove it, and no recommendations on the best way to address it. The approach of the Bill is a reflexive increase in the powers of the HODs. It is questionable whether, especially in the Western Cape, this will address the problems that members themselves have faced when encountering racist practices.

**Home Education**

The most glaring inconsistency on the approach of the majority of the Committee is that, based on the strong public rejection of Clause 8 (alcohol), this clause was removed, while the equally strong rejection of Clause 37 by the public was not considered sufficient to make substantial changes to the Bill. The "Final Report" notes that "[o]verwhelmingly email submissions rejected clause 37 on home education".

It was alleged by some members that home schoolers had not made detailed proposals on how to amend the bill. Home schoolers did make detailed submissions during the written submissions phase, yet members and the DBE appear unaware of this. This again points to flaws in the "Final Report" and "Matrix".

The fundamental point made by the vast majority of home schoolers was that they felt that there was lack of meaningful engagement with the DBE, a lack of research, and an inadequate SEIA, and that until this was attended to it was difficult to comment on the Bill as it did not reflect the reality of home schooling in South Africa. They spent their time addressing these fundamental issues as they were just that, fundamental, and were no doubt aware that they had made detailed submissions despite the fundamental problems with the basis of the Clause. Members did not appear to have been aware of the existence of detailed written submissions, as is mentioned above.

A double standard was also applied as a careful review of the public hearings will show that very few oral submissions contained detailed alternative formulations.

The DBE also claimed before the Committee that extensive engagement took place. Yet it was evident that the vast majority of engagements referred to were either limited to engagement on the Policy on Home Education, or were meetings of a task team convened to write the regulations that will flow from BELA Bill. These did not concern the Bill itself. The Committee also has in its possession a letter from the Pestalozzi Trust, dated the 9 June, 2023, in which the DBE narrative concerning engagement was challenged in a detailed fashion. No opportunity was given for this letter to be introduced before the Committee by members, and no mention was made of it by parliamentary staff.

The above appears to give credence to the claims made, and supported by documentary evidence, placed before the Committee: that there is a bias against home schooling. It appears that the majority of the Committee approached the home education clauses with a closed mind, and did not give fair consideration to the public's submissions.

**Additional Clauses**

The ACDP wishes to note its rejection on, Constitutional grounds, of Clause 27, which discriminates against primary schools with under 135 learners, and secondary schools with less than 200 learners.

We also object on moral grounds to Clause 41,in particular (aA) and (aB).

**Exclusions**

Furthermore, we object to the fact that, despite it being requested by the public and included in the "Final Report", no provision has been made for Independent Micro-Schools (Cottage schools), a sector in all likelihood larger than home schooling.

In addition, we object to no provision being made for the payment of stipends to SGB members.

**<u>Procedural Flaws</u>**

The BELA Bill process has been filled with procedural flaws. Attempts were made in PCBE meetings to silence the ACDP. These attempts have undermined the quality of the "Final Report". For example, the ACDP attempted to assist the Committee throughout to include

quantitative measures. By the end of the process the parliamentary staff appeared unable to produce those quantitative measures.

A careful review of the proceedings during the clause-by-clause and the subsequent minutes and A-list will show that resolutions of the Committee were not minuted, and where minuted, not all minutes resulted in changes to the A-List.

**Conclusion**

The above can only lead an unbiased observer to conclude that in compiling the final version of the BELA Bill, the majority of the Portfolio Committee has acted merely as the agent of the DBE, and not exercised the required oversight nor considered the public submissions in the required detail and attention. One example is that during the clause-by-clause process Hon. Manyi (EFF) asked that certain periods be increased to 30 days. This was unanimously agreed to and the change appears in the A-list. In the final A-list deliberations, the DBE requested this be changed back to 14 days as "every other period in bill was 14 days" or words to that effect. But this is not correct, as the period of thirty days appears in 18 other places in the Bill. Yet, this was simply agreed to.

Parliament cannot be the mere agents of the DBE, and when it acts as such we can be certain that its actions will face judicial review, and in all likelihood this Bill will be struck down.

The ACDP calls on the house to send the BELA Bill back to Committee for reconsideration. We take a solutions-based approach and are willing to examine all options to represent the Bill, in an acceptable form, to the house in the shortest possible time.