



BASHEER PARUK
MEDIATORS &
ATTORNEYS

OUR REF	BELA001
YOUR REF	B 2B-2022
DATE	31 st March 2024

TO:

WESTERN CAPE PROVINCIAL PARLIAMENT

wasiema.hassenmoosa@wcpp.gov.za

Good day;

**RE: WRITTEN COMMENTS ON THE BASIC EDUCATION LAWS AMENDMENT
BILL [B 2B-2022] (NCOP) ("BELA BILL")**

1. INTRODUCTION

- 1.1. The above matter refers.
- 1.2. We have perused the BELA BILL ("the Act"), which we understand is open to public comment.
- 1.3. Whilst our view is that the entire amendment of the Bill is vaguely drafted, and open to gross exploitation on the part of the Minister by way of an open ended discretion which the Minister will enjoy as a result thereof, the below is perhaps the most problematic clauses which the Act contains.

2. CLAUSE 2 – Compulsory school attendance at age 6

- 2.1. Accordingly:

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“any parent who, without just cause and after a written notice from the Head of Department, fails to comply with subsection (1)[,] is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding [six] 12 months” (Own emphasis added)

- 2.2. Insofar as “just cause” is concerned, the Act creates a discretionary right for the Minister, who will enjoy the ultimate decision on what constitutes as a “just cause”.
- 2.3. We find this principle in many other legislation, which may, or may not, be problematic.
- 2.4. Relative to the current instance, insofar as the child’s best interest is concerned, we strongly deny that the Minister is best placed to determine what ‘good cause’ would constitute.
- 2.5. Any parent will appreciate that only a parent can fully make a psychological determination on whether attendance at a school is in the best interest of his/her child or not. There are various reasons as to why a parent may believe that schooling would be harmful for his/her child, which include (but not limited to):
 - 2.5.1. The child’s physical development;
 - 2.5.2. The child’s mental development;
 - 2.5.3. The child’s self-confidence and susceptibility to bullying due to physical, or speech defects;
 - 2.5.4. The child’s learning ability;
 - 2.5.5. The content of the education being taught (which clause 35 seeks to regulate) being in contradiction to the parents/family’s cultural views.
 - 2.5.6. The content of the education being taught (which clause 35 seeks to regulate) being in contradiction to the parents/family’s religious views.
- 2.6. IF it is said, that the above instances may constitute as ‘good cause’ which may be argued by way of written notice, **we will say to this that** certain aspects such as the child’s self-confidence would only be able to be fairly assessed by the parents.

- 2.7. Furthermore, proving same by way of written notice may be difficult task.
- 2.8. The suggestion of psychological reports is further a purposeless exercise as such individuals, irrespective of their qualifications, are further incapable of competing with a child's parent in making a determination of a child's psychological growth/development.
- 2.9. Thus, clause 2 raises a multiplicity of issues. The solution to same will be outlined below.

3. CLAUSE 35: HOME EDUCATION

- 3.1. Accordingly:

“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,”(Own emphasis added)

- 3.2. In keeping with our first objection raised i.e., the forced attendance of schooling commencing at age 6, the alternative available to concerned parents of home schooling their children, is further limited as the Minister will be able to determine the content being compulsorily taught to children.
- 3.3. Thus, as per our paragraphs 2.5.5 & 2.5.6 mentioned above, a parent who is concerned of the nature of the content being irreligious or prematurely being imparted, is left without the recourse of home-schooling their children, as they will be forced to teach the same problematic education, albeit in the comfort of their home, which offers no reasonable alternative.

- 3.4. In terms of the CSE (Comprehensive Sexual Education) program being implemented in schools, below is an extract of an activity extracted from the official “Sexuality Education in Life Skills: Scripted Lesson Plan”, aimed at **GRADE 4** Learners:

Scenario	Who is the bully?	Who is the target of the bullying?	What is the disrespectful act?	What type of bullying is it? (verbal, emotional, physical, sexual harassment/ cyber bullying)
2. John is in the toilet when a group of Grade 6 boys approach him. They pull down his pants and take turns touching him on his bum and penis. He is terrified of the boys.				

- 3.5. Whether the above scenario is meant to educate children of the wrongfulness of same does not serve any benefit. Grade 4 learners should NOT be taught such life scenarios at such young ages as they are too young to learn such information or introduced to the possibilities of such scenarios.
- 3.6. Should the Minister or drafters of the Bill believe that children need to be taught such scenarios at young ages, they are welcome to do so, provided it is in their **own** private lives i.e., to their own children. But to make a decision that the public's children are also required to learn such scenarios at the tender age of 10, is short-sighted, to say the least.

4. CLAUSE 39: PREGNANCY

- 4.1. Clause 39 seeks to amend section 61 of the SASA (South African Schools Act) to extend the powers of the Minister to make regulations on the management of learner pregnancy.
- 4.2. As mentioned above, while majority of the clauses in the Act are vaguely drafted, clause 39, considering its implications, is shockingly, unclearly drafted.
- 4.3. It is **necessary** that the Bill qualifies exactly what is meant that the Minister will be able to manage learner pregnancy.

- 4.4. Some commentators of the bill have opined that it may mean that the Minister can grant consent to learner abortions in the absence of parental consent.
- 4.5. We will not draw such conclusions without substantial evidence. However, the doorway created by such a vaguely drafted clause is sufficient to emphasize the importance of clearly qualifying what is meant by same, and noting same in the Bill itself.

5. SOLUTION: EXEMPTION

- 5.1. The above conundrum is simply solved by way of two solutions:

A. EXEMPTION PROVISION

- 5.1.1. As found within the clause itself, in regards to learners complying with a school's **code of conduct**:

“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.”

- 5.1.2. The above highlights that any code of conduct drafted by a school, must include an exemption provision within the code itself, which would presumably include aspects such as religious freedom from complying with certain codes which the school may enforce. Example, the dress code of the school may be limited if it is incongruent with a particular faith's religious teachings.
- 5.1.3. Similarly, as in the case of the code of conduct, **the Act should have an exemption clause within the Act itself**. This would force the legislatures to create a list of instances wherein interested parties may apply for an exemption from certain clauses such as the aforementioned Clauses 2, 35, and 39.

B. EXEMPTION REGULATIONS

- 5.1.4. The alternative to an exemption provision, would be an **enacting REGULATIONS** particularly aimed at regulating the valid exemptions from the BELA BILL itself.


5.1.5. A typical example would be **“THE REGULATIONS RELATING TO THE EXEMPTION OF PARENTS FROM PAYMENT OF SCHOOL FXES IN PUBLIC SCHOOLS OF 2006”**

5.1.6. In a similar fashion, regulations can be drafted, which, firstly calls for public input, and thereafter, qualifies the instances in which interested parties would be entitled for an exemption from the BELA BILL, without granting the Minister the discretion to same.

6. CONCLUSION

- 6.1. The BELA BILL has raised many warranted concerns as the potentialities which it may give rise to, are gravely worrying.
- 6.2. The above is a short synopsis of the cause of the concern, together with a solution to remedying same.
- 6.3. We trust the above will be properly considered.
- 6.4. Should your offices conduct any workshops/discussions which participation is secured by way of a formal invite, our offices are welcome to participating in same, to ventilate our valid concerns.
- 6.5. We await your acknowledgment of this correspondence together with any comment your office may hold in response to same.

Yours Faithfully



PER: Mr B. Paruk

(Director)