

# The Basic Education Laws Amendment Bill [B2-2022]

## Draft National Report



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## ABBREVIATIONS AND ACRONYMS

BELA	Basic Education Amendment Bill [B2-2022
DBE	Department of Basic Education
DHET	Department of Higher Education and Training
DSD	Department of Social Development
DHA	Department of Home Affairs
ECD	Early Childhood Development
EEA	Employment of Educators Act,
HE	Home Education
HOD	Head of Department
ICT	Information Communication Technology
LTSM	Learning Teaching and Support Materials
LSEN	Learners with Special Education Needs
M&E	Monitoring and Evaluation
PED	Provincial Education Department
PEO	Public Education Office
PDO	Parliamentary Democracy Offices
PC	Portfolio Committee
PPM	Public Participation Model
RE	Rural Education
SACE	South African Council of Educators
SGB	Schools Governing Bodies
SDG	Sustainable Development Goals
SASA	South African Schools Act

## **Purpose of the Report**

The report provides a consolidation of progress undertaken regarding the processing of the Basic Education Laws Amendment Bill. It precedes by highlighting main issues raised during the public participation process i.e., the public hearings, cites key issues from the oral submissions that were held in Parliament. The report also provides a summary of key issues raised, clause by clause analysis and recommendations made regarding the written submission's comments by the public on the Basic Education Amendment Bill [B2 2022].

## **Legislative Framework Applicable to Basic Education Sector**

In line with the National Assembly strategic objective on Law making and Oversight, the Portfolio Committee on Basic Education embarked on the legislative process to consider amendments of the Basic Education Laws Amendment Bill [B2 :2022] that may be referred to Parliament.

The Legislative mandate with the Basic Education Laws Amendment Bill, is a process that seeks to amend the South African Schools Act, 84 of 1996 and the Educators Employment Act, 76 of 1998. The process is a legacy that was carried over from the Fourth Parliament. In the Fifth Parliament, the Portfolio Committee continued to process and approve the Education Laws Amendment Bill in line with the Legislative Programme of the Department. Notwithstanding legislation carried over, the 6<sup>th</sup> Parliament Portfolio Committee on Basic Education included the BELA Bill [B2-2022} which was tabled at the National Assembly in December 2021 and referred to the Committee in February 2022

The Committee's public participation process was then guided by applicable legislation of interest to the Basic Education sector, which provides a legislative framework that strengthens the interpretation and understanding of the BELA Bill i.e.

- Constitution of RSA, 108 of 1996
- South African Schools Act, 84 of 1996
- Employment of Educators Act, EEA 1998
- Basic Conditions of Employment Act
- Health and Safety Regulations

## **AMENDING LEGISLATION**

“*Every new law in effect amends an existing law* “. In this case the Basic Education Laws Amendment Bill [B2-2022], amends the South African Schools Act, 1996.

### **Purpose of Amending Legislation:**

The Amendments are intended to:

- Change wording of a law.
- - Change scope of law
- Repeal provisions
- Add new provisions

### **Why is the BELA Bill being amended?**

The Department of Basic Education, indicated the need for amending the SASA Ac 84, 1996 , the Employment of Educators Act , 1998 aligning it into the BELA Bill. The BELA Bill seeks to transform / change some aspects in the basic education sector. Some of the proposed amendments include:

- Making Grade R the new compulsory school starting age,
- Criminalising parents who don't ensure their children are in school,
- Holding School Governing Bodies (SGBs) accountable for financial interests,
- Abolishing corporal punishment and initiation/hazing practices,
- Encouraging Home School learners to be registered,
- Allowing schools to sell alcohol outside of school hours,
- Giving government department heads power over language policies and curriculums.
- Prohibiting educators from conducting business with the state

## **AMENDMENT METHODS**

Textual method = direct

- Text of principal law changed.
- Insert, add, replace, delete, repeal, etc.

Non-textual method = indirect

Application/construction/effect of principal law changed without changing its wording.

On the Textual Method, 2 texts are involved i.e.

- **The Principal Act**

- 1) Long title : The South African Schools Act, 84 of (1996)
- 2) Employment of Educators Act , 76 of (1998)

- Short title : SASA,84 ( 1996)
- EEA , 76 ( 1998)

## **Amendment**

- Long Title: Basic Education Laws Amendment Bill [B2- 2022]
- Short Title (*BELA Bill, 2022*)

Some participants during the public hearings had referred to the Bill with several names e.g. BELA, BELA, Abortion Bill, Alcohol Bill, hate speech bill etc.

This Bill has a name, it should be referred to its official name the [ BELA Bill]

The principal law (SASA Act, 1996) and the Amending law the BELA BILL, [B2:2022], are to be reflected upon when the Committee meets for clause-by-clause deliberation to point direction towards describing on what must be changed in the principal law.

## MEMBERS OF THE PORTFOLIO COMMITTEE ON BASIC EDUCATION

Political Party	Committee Member
<b>African National Congress</b>	1. Hon. B. Mbinqo- Gigaba Chairperson
	2. Hon. N. Adoons, MP Whip
	3. Hon. R Moroasetlha MP
	4. Hon. Letsie, MP
	5. Hon. E Siwela, MP
	6. Hon. B Yabo MP
	7. Hon. L Moerane, MP
<b>Democratic Alliance</b>	8. Hon. B Nodada, MP
	9. Hon. Van Zyl, MP
	10. Hon. Van Der Walt, MP
<b>Economic Freedom Fighters</b>	11. Hon. N Mashabela, MP
	12. Hon S. Mokgothlo, MP
	13. Hon R. Madlingozi
<b>African Christian Democratic Party</b>	14. Hon. M Sukers, MP
<b>Freedom Front</b>	15. Hon Boschoff

# **BASIC EDUCATION LAWS AMENDMENT BILL NATIONAL REPORT**

## **1. INTRODUCTION**

The Constitutional mandate of RSA, Section 59 (1) (a) obligates the National Assembly to facilitate public involvement in legislative and other processes of the Assembly and its Committees, as well as to conduct its business and meetings in public. In line with this mandate, the committee must decide how it will deliberate its activities to fulfil the constitutional mandate.

The BELA Bill proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), the Employment of Educators Act, 1998 (Act No. 76 of 1898) (the SASA and the EEA, so as to align them with developments in the education landscape and to ensure that systems of learning are put in place in a manner which gives effect to the right to basic education as enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996.

## **2. BACKGROUND**

The Basic Education Amendment Bill (BELA) Bill [B2-2022] was introduced in Parliament on 15 December 2021, and subsequently referred to the Portfolio Committee on Basic Education (“the Committee”) for consideration.

The Portfolio Committee has held two (2) meetings on the BELA Bill in so far as getting a briefing by the Department of Basic Education on the BELA Bill. On 8 February 2022; and Feb. 15 In-house engagements on processing the BELA Bill took place.

To give effect to Parliament’s constitutional mandate of facilitating public involvement, the Committee commenced with an advert that was published in the national and regional newspapers, calling for written public submissions on the BELA Bill from 1 May to June 15, 2022.

The written submissions deadline date had been extended to allow the public more opportunity to participate. In line with the inclusive education approach, the advert was also made accessible and published in Braille format.



### **3. EXECUTIVE SUMMARY: PUBLIC HEARINGS VIEWS**

#### **3.1 SUPPORT FOR THE BILL**

The participants in the public hearings who supported the Bill stressed the transformative nature of the Bill particularly in language and admission policies, as historically disadvantaged children are denied access to former Model C schools due to language and admission policies. It was argued that the disclosure of financial interest will promote accountability and transparency. The compulsory attendance of school from grade R was supported as it will enhance the education system; that inclusion is necessary for Early Childhood Development and benefits Grade R teachers directly by improving their quality of life. The Bill addresses some of the challenges faced by basic education, promising to reduce drop-out rates and promote teaching and learning. It also strengthens governance and prevents misuse of school funds.

#### **3.2 NOT SUPPORTED**

Those that rejected the Bill argued that the centralization of power to determine the language and admission policy was counterproductive as it will create an unnecessary burden for the Head of Department. It was argued that the disclosure of financial interest was unacceptable and will lead to invasion of privacy and will deter parents from participating in the SGB. Furthermore, the submission of quarterly income and expenditure statements will add to the administrative burden of the school. There was strong opposition to the sale of alcohol at schools and it was argued that it will promote excessive consumption of alcohol on school premises. Many participants also expressed strong opposition to the provisions regarding home education and argued amongst others that it does not consider the individual needs of children; erodes the parents' constitutional right to make decisions about their children and overregulates home-schooling without considering individual needs.

### **3.3 PARTIAL SUPPORT**

Some participants were neither supporting nor rejecting the bill. These speakers were in favour of uniform and national measurement for SGB elections, arguing for fairness and uniformity. Others believed compulsory Grade R schooling is necessary for Early Childhood Development and will benefit Grade R teachers. Some Supporters of the Bill raised concerns about clauses 14 requiring further financial scrutiny, including the criminalization of teachers for protected strike action, which could negatively impact teaching and learning. They expressed the view that alternatives should be introduced to corporal punishment in the education system, because the current system on corporal punishment place educators at risk and disadvantage them. It was proposed that the government should conduct more research and acknowledge home education by consulting widely. Home education should be suitably regulated by the Children's Act rather than the BELA. The schools should look at alternative ways of raising funds other than selling alcohol on the school premises,

## **4. THE REPORT**

The national report is made of 3 categories that the Portfolio Committee undertook to seek public comments on the Basic Education Law Amendment Bill. These are a) Public Hearings b) Public Comments and c) Oral Hearings

### **4.1 Public Hearings**

The Portfolio Committee on Basic Education conducted provincial public hearings from 26 February – 11 June 2023 in all nine provinces. The decision of the Committee to conduct public hearings (both nationally and provincially) was premised on the general principle of the South African Constitution which asserts that South Africa is a constitutional democracy country that upholds representative and participatory democracy. Specifically, the Constitution in Sections 59(1)(a) and Section 72 (1)(a) provides that the National Assembly and the National Council of Provinces must facilitate public involvement in the legislative and other processes of the Assembly and its committees. The Committee's public participation process was also guided

by Parliament Public Participation Model, which provides a legislative framework that fortifies public participation in Parliament.

#### 4.1.2 PROVINCIAL PUBLIC HEARINGS

**Table 1: Dates and Venues of the Provincial Public Hearings**

Provinces	DATE	MUNICIPALITY & VENUE
<b>1.Limpopo</b>	24 – 26 Feb 2023	<ul style="list-style-type: none"> <li>• Thulamela Local Municipality (Makwerela Community Hall)</li> <li>• Greater Tzaneen Local Municipality (Lenyenye Community Hall)</li> <li>• Polokwane Local Municipality (Jakes Botes Hall)</li> </ul>
<b>2.Free State</b>	03 – 05 March 2023	<ul style="list-style-type: none"> <li>• Dihlabeng Local Municipality (Bohlokong New Community Hall- Bethlehem)</li> <li>• Mafube Local Municipality (Frankfort Town Hall -Frankfort)</li> <li>• Mangaung Metropolitan Municipality (Simson Sefuthi Hall - Botshabelo)</li> </ul>
<b>3.North West</b>	10 – 12 March 2023	<ul style="list-style-type: none"> <li>• Moses Kotane Local Municipality (Orbit TVET College -Mankweng Campus)</li> <li>• Lekwa-Teemane Local Municipality (Utlwanang Community Hall)</li> <li>• Maquassi Hills Local Municipality (United Reformed Church in Southern Africa)</li> </ul>
<b>4.Mpumalanga</b>	17, 18 March, completed on – 8 May 2023	<ul style="list-style-type: none"> <li>• Bushbuckridge Local Municipality (Word of Life Bible Church)</li> <li>• Nkomazi Local Municipality (Boschfontein Community Hall)</li> <li>• Dr JS Moroka Local Municipality (Kameelrivier Stadium Community Hall)</li> <li>• Gert Sibande District Municipality (Gert Sibande</li> </ul>

<b>5.Gauteng</b>	5 – 7 May 2023	<ul style="list-style-type: none"> <li>• Tshwane Metropolitan Municipality</li> <li>• West Rand District Municipality</li> <li>• City of Johannesburg Metropolitan Municipality</li> </ul> City of Ekurhuleni Metropolitan Municipality
<b>6.KwaZulu Natal</b>	12 – 14 May 2023	<ul style="list-style-type: none"> <li>• Umkhanyakude District Municipality (Jozini Hall)</li> <li>• UMsunduzi District Municipality (Granger Hall)</li> <li>• EThekweni Metropolitan Municipality (Pinetown Sports Hall)</li> </ul>
<b>7.Western Cape</b>	26 – 28 May 2023	<ul style="list-style-type: none"> <li>• George Local Municipality (Pacaltsdorp Community Hall - George)</li> <li>• Witzenberg Local Municipality (Montana Hall - Wolsely)</li> <li>• Cape Town Metropolitan Municipality (Gugulethu Indoor Spirt Complex)</li> </ul>
<b>8.Northern Cape</b>	02 – 04 June 2023	<ul style="list-style-type: none"> <li>• Dawid Kruiper Local Municipality (Tol Speelman Community Hall)</li> <li>• Ga-Segonyana Local Municipality (Thabo Moorosi Multipurpose Centre)</li> <li>• Sol Plaatje Local Municipality (Kimberley Recreational Hall)</li> </ul>
<b>9.Eastern Cape</b>	09 – 11 June 2023	<ul style="list-style-type: none"> <li>• King Sabata Dalindyebo Local Municipality (Umtata Town Hall)</li> <li>• Enoch Mgijimi Local Municipality (Queenstown Tobie Kula Indoor Sport and Recreation Centre)</li> <li>• Nelson Mandela Bay Metropolitan (Nangoza Jebe Hall)</li> </ul>

### **4.1.3 PURPOSE OF THE PUBLIC HEARINGS**

Public hearings are part of Parliament's public participation process in which members of the public are given an opportunity to give inputs on a Bill, in this case, the Children's Amendment Bill [B18 – 2020]. Members of the public may raise issues, comments, critique/challenges and make recommendations. The Committee thereafter drafts a report per province which will be used during the formal stages of the Bill when the Committee deliberates on all the inputs it received both from national and provincial public hearings.

### **4.1.4. Children and Youth Participation**

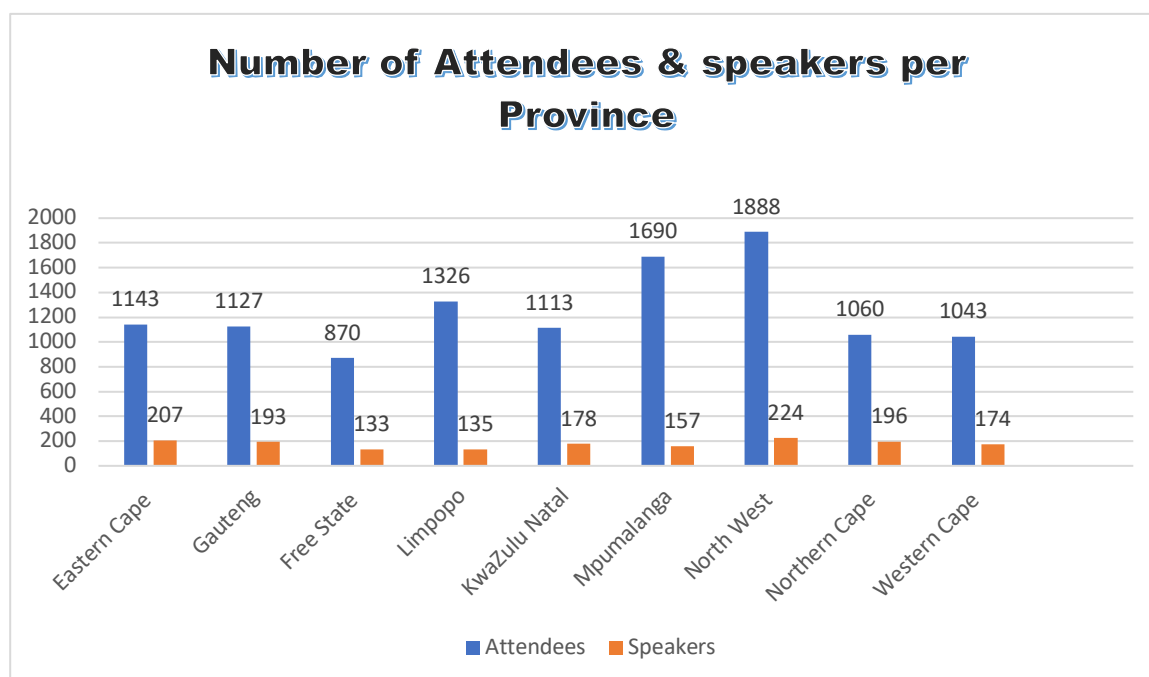
Parliament occupies an important and influential position in society. Children/Youth as citizens play a critical role to the influence Parliamentary processes, it is thus important for their voices to be heard in Parliament. Public hearings and other special consultative forums are important vehicles for participation of children /youth in decision-making. Not only does Parliament play a role of promoting the constitutional right of children and youth to participate in decision-making and policy development on matters that affect them, but it also has the potential to make invaluable contribution towards the development of a society that respects the rights of everyone, including freedom of expression. During the 9 provincial public hearings 235 children / youth participated to make oral submissions thus expressing their views on the BELA Bill

### **4.1.5 STATISTICAL ANALYSIS**

#### **4.1.5.1 Number of attendees and speakers**

Figure 1 shows the number of people who attended and those who delivered oral submissions at the public hearings per provinces.

**Figure 1: Total number of attendees and speakers Per provinces**



There were 11 264 participants who attended the public hearings across the 9 provinces of South Africa. Of the 11,264 participants, 1586 made oral submissions to the Basic Education Laws Amendment Bill, the BELA Bill. It should be noted that some of the participants handed written submissions during the public hearings, across all the provinces. Their inputs are included in the report in the section that deals with written submissions.

As shown in Figure 1, the North West had the most number of attendees (n=1888) followed by Mpumalanga at (n=1690) attendees with Limpopo featuring as the third most attended province (n=1326). The provinces that had the least number of attendees were Free State (n=870) and Western Cape (n=1043). The Eastern Cape had (n=1143), Gauteng (n=1127), KwaZulu Natal Province (n=1113) and Northern Cape at (n= 1060) attendees. It was worth noting to note that North West led in terms of most number of Attendees as well as Speakers at (n=224). Following North West on the number of speakers in descending order were the Eastern Cape at (n=207), Northern Cape (n=196), and Gauteng (n=193), KwaZulu-Natal (n=178), Western Cape (n=174), and Mpumalanga at (n=157). Two provinces with less number of speakers were Limpopo at (n=135 ) speakers and Free State as the lowest of the nine provinces at (n=133) speakers .

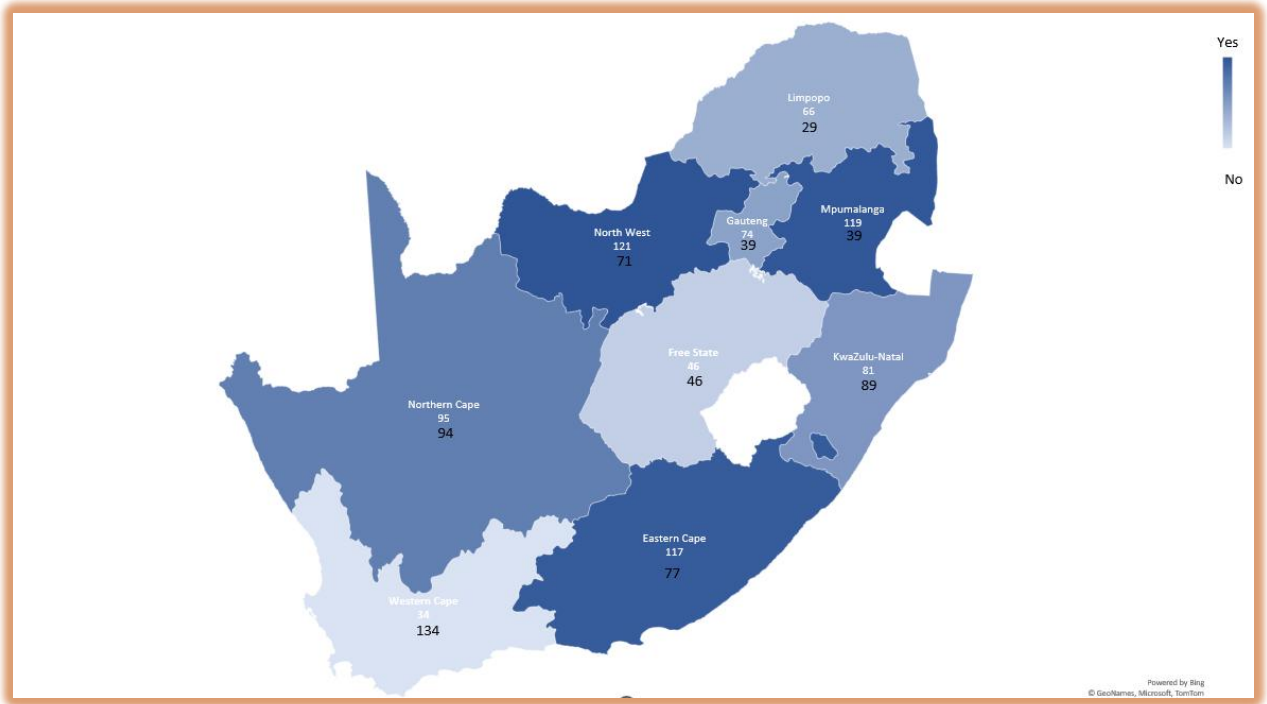
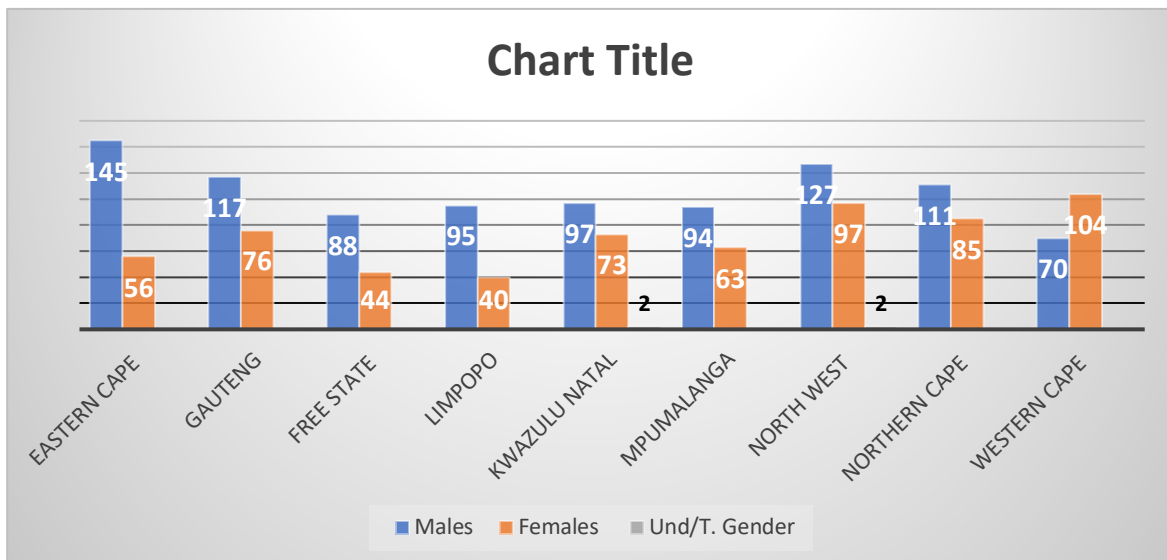


Figure 2: Map with number of Attendees and Number of Speakers across 9 Provinces

#### 4.5.1.2 Speakers by Gender

Figure 3 below shows the gender representation of speakers at the public hearings across the 9 provinces of the country.

Figure 3: Number of speakers by gender at the public hearings across the provinces

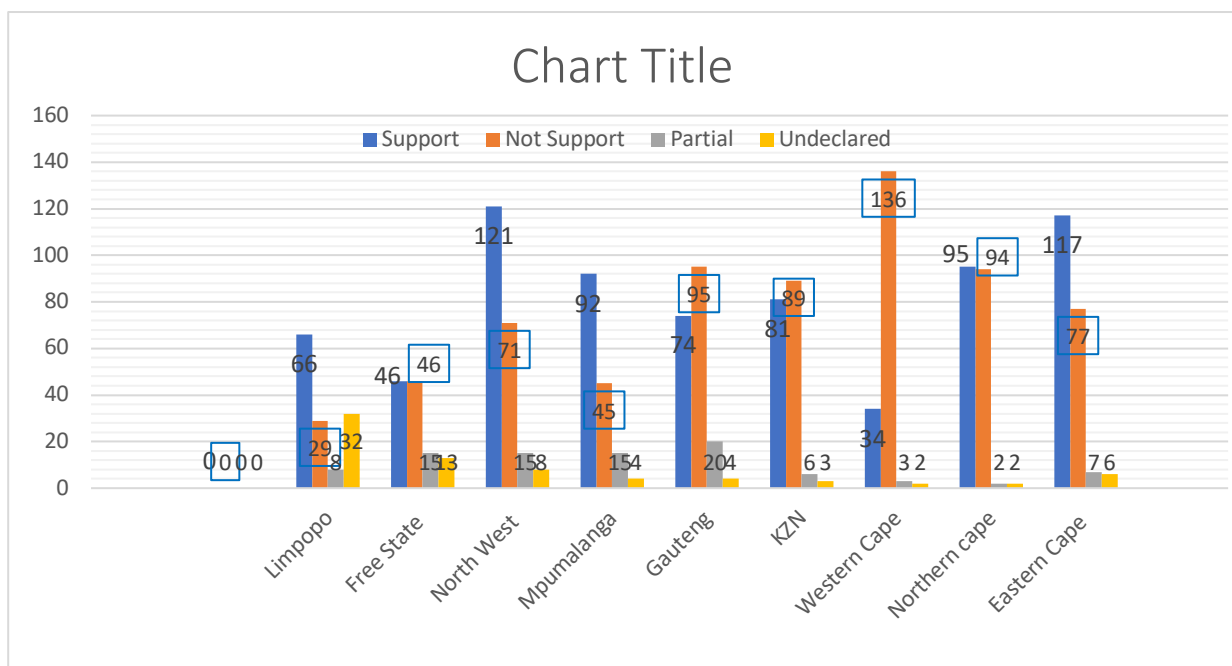


Overall, there were 638 female speakers, 944 male speakers and 4 speakers whose gender was undeclared or fall in the category of transgender at the public hearings across the 9 provinces.

The province with the greatest number of male speakers was the Eastern Cape (n=145) speakers, followed by North West (n=127) followed by Gauteng (n=117) and Northern Cape (n=111) respectively. The Western Cape had more prevalence of female speakers (n=104), followed by North West (n=97) and Northern Cape (n=85) respectively.

#### 4.1.5.3 Speakers views on the Basic Education Amendment Bill

Figure 4 shows that, overall, there were more speakers who supported the Basic Education Amendment Bill across the Provinces.



**Figure 4: Speakers Views**

#### Public Hearings: Speakers Views on the BELA Bill across the Province

A total of 1586 speakers across the provinces made oral submissions on the Bill. A total of 726 (46%) speakers were in support of the Bill while 682 (42%) of those who spoke rejected it. A total of 102 (7%) of the speakers partially supported the Bill while 76 (5%) speakers did not indicate whether they supported or rejected the Basic Education Laws Amendment Bill.

It was noted that the Bill was most supported by speakers from various stakeholders in the Basic education Sector such as Teacher Unions dominated by the South African Democratic Union (SADTU), Congress of South African Students (COSAS) SGB Associations and other



organisations such as the Congress of South African Trade Unions (COSATU), SANCO, the African National Congress (ANC).

<b>Public Hearings Summary of Speakers Views on the BELA</b>					
<b>No</b>	<b>Province</b>	<b>Yes</b>	<b>No</b>	<b>Partial</b>	<b>Undeclared</b>
<b>1</b>	Limpopo	66	29	8	32
<b>2</b>	Free State	46	46	15	13
<b>3</b>	North West	121	71	15	8
<b>4</b>	Mpumalanga	92	45	15	5
<b>5</b>	Gauteng	74	95	20	4
<b>6</b>	Kwa-Zulu	81	89	6	2
<b>7</b>	Western Cape	34	136	2	2
<b>8</b>	Northen Cape	95	94	3	4
<b>9</b>	Eastern Cape	117	77	7	6
<b>National Total</b>		<b>726</b>	<b>682</b>	<b>102</b>	<b>76</b>

Figure 5 Summary of Speakers Views on the BELA

The bill was in the main rejected by an organisation from the Home-Schooling Sector, the Democratic Alliance, African Christian Democratic Party, AfriForum and Freedom Front Plus. The Federation of School Governing Bodies of South Africa (FEDSAS) and the Suid Afrikaanse Onderwyser Unie (SAOU) partially rejected the Bill as they specified the clauses they rejected.

## Submission Forms Received at the Public Hearings

The number of submission forms were processed as follows:

Province	Submission Forms	Support	Not Support	Partial	Undeclared
Limpopo	344	192	62	73	17
Free State	352	235	60	57	0
North West	1213	561	467	158	27
Mpumalanga	814	543	199	72	0
Gauteng	520	280	172	65	3
KZN	345	191	116	38	0
Western Cape	451	102	323	25	1
Northern Cape	340	120	205	15	0
Eastern Cape	354	153	161	29	11
<b>Total Forms</b>	<b>4733</b>	<b>2377</b>	<b>1765</b>	<b>532</b>	<b>59</b>

Northwest Province had the largest number of submission forms, (1213) followed by Mpumalanga at (814) and Gauteng at (520). The province with the lowest submission forms received is Western Cape (340). Support is high at Northwest at (561)

## 4. KEY EMERGING ISSUES ACROSS PROVINCES

The following is a summary of the comments received during the public hearing:

### 4.1.5.1 CLAUSE 1: DEFINITIONS

In terms of definition of Corporal Punishment, the speakers welcomed the broadening of the definition of corporal punishment and called for closer monitoring of schools. However, some participants called for the reconsideration of some of the BELA Bill definitions to be inserted such as online schooling, meetings, special needs education clauses to ensure its effectiveness.

- Clause 1(c) amending Section 1 of the South African Schools Act -insertion of the definition “**corporal punishment**“, a proposal was raised that the definition of corporal punishment should be corrected to include emotional abuse as well as verbal abuse to be avoided.
- The Bill must define punishment and alternative thereof in disciplining of the child.
- The definition of corporal punishment should be corrected.
  - The definition of “Educator”

- Alternates to corporal punishment
- The definition is ambiguous, there is a call that it provides clarity and review of the following areas of concern: clause 1 (a) – (c)
- Section 1, on the definition of drugs – the word “illegal” is removed and that it should be retained. Learners still taking substances like nyaope, and crystal meth and those substances are illegal, and their legality and non-legality has not been changed in the Constitution.
- Clause 1 (m) amending Section 1 of the Act by insertion of “required documents “, a proposal was made that the “required documents” definition be reviewed.
  - Speakers called for clear definition of “Educator”.
  - Alternates to corporal punishment
- Definitions that should be included
  - An additional definition for Compulsory Education attendance – “*attendance of school starting from Grade R on the first school day of the year in which such learner reaches the age of 15 years or when he/she complete Grade 9.*”
- Reconsideration of some of the BELA Bill definitions to be inserted such as online schooling, meetings, special needs education clauses to ensure its effectiveness.
- Clause `1 amending Section 1 of the Act – proposal for the inclusion of children /learners with disabilities in the definition, as well as inclusion of the definition of ECD.
- Insertion of ‘starting age’ for grade R is not defined.

## 4.2 CLAUSE 2: COMPULSORY SCHOOL ATTENDANCE FROM GRADE R

### Key issues raised by speakers

- Criminalisation will not address the underlying problems and will negatively impact women, who are often the primary caregivers. This leaves family in distressed situation and should be avoided.
- The penalty of jail punishment period must not exceed 6 months and the HOD must capacitate the parents with an aim to build capacity.

- Increase of the penalty provision in section 3(6) of the SASA from six months to 12 months
- Imprisonment fine would leave children without caregivers when parents /mothers are languishing in jail.
- Teachers have a legal right to protected strikes, which they were allowed to exercise in terms of the Constitution
- Arresting parents will not solve the issue of infrastructure, transport issue, and solving the issue of bullying etc
- The Bill addresses this by coercing and threatening parents with jail time.
- Grade R Learners at that stage should be playing rather than be burdened with too much formal learning

#### **4.3 CLAUSE 3: COMPULSORY LEARNER ATTENDANCE**

Speakers supported the clause but made the following comments:

- Parents should take responsibility about the whereabouts of their children.
- Proposed that it be 5 days instead of 3 days for further investigation.
- When a learner is absent for 3 days without valid reason, propose that the principal, within 24 hours investigate the matter by contacting parents.
- Child Headed Families need to be clarified when it comes to imprisonment sentence.
- interaction should take place between the Department and parents in respect of learner school attendance.
- The Department should consider employing truancy officers to better address issues of learner attendance and absenteeism.
- The roles and responsibilities of different role-players (teachers, principals and SGBs), in ensuring school attendance of learners, must be clearly defined so that the extent of their responsibility is clarified.

#### **4.4 CLAUSE 4: ADMISSION OF LEARNERS TO PUBLIC SCHOOLS AND POWERS OF SGBS**

Speakers who supported the clause emphasised the need for the Department to intervene in ensuring that SGBs did not discriminate learners when developing admission policies. They did not support the idea of SGBs given unlimited powers to determine such policies without check and balances. They called for an adjudicator in the form of the HOD.

Opposing views were that the Bill would take away the powers of the SGBs and bring about centralisation of power against the will of the parents. The Department would, according to the speakers, not have the capacity to approve admission policies of all public schools.

#### **4.5 CLAUSE 5: LANGUAGE POLICY**

**Amendments of the Bill in summary:** Clause 5 seeks to amend section 6 of the SASA Act to Provide for the governing body to submit the language policy of a public school and any amendment thereof, to the Head of Department for approval.

There were strong views that the proposed amendments to have the Head of Department (HOD) approve the policy, after consultation with the SGB will ensure transformation and inclusive policies in schools as well as eliminating racism and discrimination against learners of other races. It was said that language is used as a tool to exclude learners of other races to access schools in the areas they live.

Opposing views were that the referral to “final authority” and the powers given to the HOD go against the principle of cooperative partnership between the SGBs, the HOD and the Minister. They are of the view that the SGB is the most appropriate stakeholder to determine the school’s admission and language policy. The Bill undermines communities and SGBs and seeks to centralize power in education departments.

#### **4.6 CLAUSE 7: CODE OF CONDUCT FOR LEARNERS**

It noted that the exemption “Clause” on amending the code of conduct based on accommodating different cultural and religious background of learners is also commended as schools deny learners access to education based on cultural and religious differences under the “schools’ code of conduct” policy therefore was discriminatory for many learners. Schools’ codes of conduct are not accommodating to cultural, traditional and religious differences. Bullying is rife in schools and the Department should develop and implement mechanisms to address it.

#### **4.7. CLAUSE 8: SALE OF ALCOHOL ON SCHOOL PREMISES**

The clause received the most opposition from all the different organisations and individual in all venues where public hearings were held. It was a clause that brought uniform views in the hearings. Deletion of the clause was highly recommended by all.

#### **4.8 CLAUSE 10: CORPORAL PUNISHMENT**

The submitters welcome the abolishment of corporal punishment. However, they are concerned about the Department not providing educators with alternatives to corporal punishment. It was recommended that the definition of corporal punishment be reviewed to include emotional elements of learner abuse. Teachers wanted an assurance that doing physical education with learners will not be regarded as corporal punishment.

Speakers support the clause as they were against initiations, especially in hostels. It was reported that the prohibition would reduce bullying in schools.

#### **4.9 CLAUSE 13: MERGER OF TWO OR MORE SCHOOLS**

The submitters raised concern regarding the challenges brought about the merger and closure on non-viable schools. It was noted that farming communities would mostly be affected by the mergers and closures. The proposed closure and merger of small non-viable schools will deprive children of quality schooling closer their homes. This will expose children to inherent risk in that they have to be transported to schools away from their homes. There was lack of consultation with communities in which the schools were to be closed are.

Supporters of the clause who were teachers in the main complained of work overload and their inability to provide quality education to all learners due to the teacher learner ratio which leads to multi-grade teaching. Learners were unable to receive all subjects and the required hours as per the norm.

#### **.4.10 CLAUSE 14: SGB DISCLOSURE OF FINANCIAL INTEREST**

The disclosure of financial interests and the financial interests of SGB members, their spouses, and immediate family members was rejected by SGB associations and members of the public. They said that the clause would discourage people as volunteers to be members of the SGB.

#### **.4.11 CLAUSE 15: USE OF SCHOOL FOR EDUCATION-RELATED ACTIVITIES, WITHOUT THE CHARGING OF A FEE OR TARIFF**

The unilateral allowance for the utilization of school facilities by the HOD was rejected.

#### **.4.12 CLAUSE 16: HOD POWERS TO CENTRALLY PROCURE LTSM**

Speakers raised concerns about centralisation of the procurement of Learner and Teacher Support Materials (LTSM) as proposed. Most called for a decentralised procurement of LTSM as centrally procured LTSM will be an administrative burden to the Department, often leading to delays in the delivery of the materials in schools and compromises the quality of the supplies.

#### **4.13 CLAUSE 17: WITHDRAWAL OF “ONE OR MORE FUNCTIONS” OF SGBS BY HOD**

Some speakers objected to the withdrawal of the SGB’s allocated functions and proposed that it should happen only where there were capacity issues within the SGB. Some supported the clause to allow the HOD to remove non-functional and corrupt SGB members including the disbandment of SGBs that have ceased to function.

#### **4.14 CLAUSE 19: MINISTER POWERS TO DETERMINE SGB MEMBERS IN SCHOOLS FOR LEARNERS WITH SPECIAL EDUCATIONAL NEEDS.**

Some Speakers representing the special needs education sector objected to the proposed clause. The support was based on the need for a uniform system of elections.

#### **4.15 CLAUSE 21: POWER OF THE SGB TO DISSOLVE AN SGB**

Opposition to the HOD taking the powers of the SGB whereas the supporters of the clause emphasized the need for the HOD to dissolve dysfunctional SGBs.

#### **4.16 CLAUSE 23: NON-REMUNERATION OF SGB FOR THE PERFORMANCE OF DUTIES**

Public recommended for SGBs to receive stipends

#### **4.17 CLAUSE 27: CLOSURE OF PUBLIC SCHOOLS**

Speakers were divided on the need for school closures. Supporters of the clause said there was a need to address reasons for closure of schools looking at low learner numbers or poor performance of such schools. Those opposing it said that the closure of schools will deprive learners of education closest to their communities. Most agreed that there should be clear guidelines and steps on the closure of schools.

#### **4.18 CLAUSE 33: FINANCIAL RECORDS OF THE SCHOOL**

Speakers who supported the clause spoke of the need for schools to be transparent with their financial status of the school and report on a regular basis to prevent mismanagement of funds. They supported the need for the Department to be informed about financial matters of schools. Those who opposed the clause complained of additional work and expenses to prepare financial records. They said that the Department would not have the capacity to manage submitted financial records. They wanted financial statements to be submitted annually as is the case currently.

#### **4.19 CLAUSE 37: HOME EDUCATION**

Submitters, mostly home school parents, practitioners and learners objected to the proposed Clause 37. They have raised concerns regarding the undermining of their freedom to choose. They chose to home school for different reasons, including learning disabilities of their



children, overcrowding in public schools, bullying, sexual harassment, religion, etc. They argue that not all learners learn the same and with home schooling they can see what method works best for the child and in that way the child flourishes and enjoys schooling so much more. They called for consultation and proper research to be conducted.

Speakers who supported the clause on home schooling wanted home education to be regulated. They spoke of the country's requirement to know and account for every child and to confirm the child is receiving education. They were opposed to parents' provision of education to their children unchecked. They were of the view that home schooling divides the society, instead of uniting it. It encourages racism in South Africa and stated that the aim was to build and not to divide the country.

#### **4.20 CLAUSE 41: EMPOWER THE MINISTER TO PROMULGATE REGULATIONS.**

Speakers rejected the powers given to the Minister to make regulations that would punish teachers, parents and SGB members who don't implement sexuality education. They were opposed to the DBE forcing comprehensive sexual education (CSE) and scripted lesson plans on schools and force teachers to teach CSE. The BELA Bill was viewed as abortion Bill as it would allow children as young as 12 years to do abortion without consulting parents.

Teachers, in the main supported the clause because it would help them manage pregnant girls better since they were not medical practitioners. They argued that the Future of learners will be destroyed if they were not allowed to attend school when they fall pregnant.

## 5. PART B: ORAL SUBMISSIONS

The Committee embarked on physical oral public hearings in Parliament from 8 to 29 November 2022. The public hearings afforded an opportunity to the stakeholders who had expressed interest to make oral presentations of their written submissions. Stakeholders included professional associations, civil society organizations, individuals, university academics, children's commissioner, chapter 9 institutions, learner organizations, home education sector, trade unions and faith-based stakeholders. The names of the organisations and individuals are recorded in alphabetical order below as follows:

<ul style="list-style-type: none"> <li>• <i>Afriforum</i></li> <li>• <i>Association for Home Schoolers</i></li> <li>• <i>Banele Sifunda (Private)</i></li> <li>• <i>Cause for Justice</i></li> <li>• <i>Centre for Child Law</i></li> <li>• <i>Christian View Network</i></li> <li>• <i>COSAS</i></li> <li>• <i>COSATU</i></li> <li>• <i>Equal Education &amp; Equal Education Law Centre (Joint)</i></li> <li>• <i>FEDSAS</i></li> <li>• <i>FW De Klerk Foundation</i></li> <li>• <i>Gauteng Association for Home Schooling</i></li> <li>• <i>Governance Alliance</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Governing Body Foundation</i></li> <li>• <i>Learn Free</i></li> <li>• <i>Legal Resource Centre</i></li> <li>• <i>National Association of School Governing Bodies</i></li> <li>• <i>National Governance Association</i></li> <li>• <i>Pestalozzi Trust</i></li> <li>• <i>SADTU</i></li> <li>• <i>SAOU</i></li> <li>• <i>Section 27</i></li> <li>• <i>Skole-Ondersteuningsentrum</i></li> <li>• <i>Solidariteit</i></li> <li>• <i>South African Human Rights Commission</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>South African Institute for Race Relations</i></li> <li>• <i>South African Learners Command NP</i></li> <li>• <i>Universal Association of School Governing Bodies</i></li> <li>• <i>Wandile Gxabuza (Private)</i></li> <li>• <i>Western Cape Commission for Children and Child Government Monitors</i></li> <li>• <i>World Changes</i></li> </ul>
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### 5.1. Oral Hearings at Parliament:

The following oral comments are received as summarised below:

#### *Clause 1: Definitions, amending Section 1 of SASA Act, 1996*

- ***WEBER ATTORNEYS***

Submitted that the definition “meeting” must be properly defined to cover the aspect of meetings to be conducted online. They recommended that the definition "corporal

punishment” must be nuanced to give clear guidance on the principle of what constitutes corporal punishment.

- ***SECTION 27***

Submitted that any form of punishment that is cruel or degrading (physical or otherwise) should be abolished alongside corporal punishment. They further submitted that “any form of punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.” should be included in the definition.

- ***LEGAL RESOURCE CENTRE***

Submitted that the definition “basic education” should not represent an exhaustive list but should be open-ended. They further added that the definition of an “educator” be amended to state the following:

[A]ny person who teaches, educates or trains other persons or who provides professional education psychological services, or who provides administrative, maintenance or extra-curricular training service at any public school or departmental office and who is appointed in a post on any educator establishment under this Act [addition underlined].

*Clause 2: Section 3 of SASA Act*

- ***HUMAN RIGHTS COMMISSION***

Submitted that the definition in *Clause 2: Section 3* about “required documents” for admission is problematic because many of those documents are unattainable. It further submitted that the BELA Bill does not clarify that learners may be admitted regardless of their undocumented status.

*Clause 3: Section 4 of SASA Act*

- ***SADTU***

Submitted that for the proposal to increase the penalty provision in section 3(6)(a) of SASA the department must first interact with the erred parent/caregiver before instituting criminal proceedings as socio-economic conditions, context and literacy levels of these parents/caregivers could play a part in the erred action.

It further proposed that the insertion in clause 2 of section 3(7) must be brought in line with section 4 of the Labour Relations Act, 1995 so that it protects educators and/or members of a union that embark on a protected strike.

- ***LEGAL RESOURCE CENTRE***

Submitted that the proposed insertion in clause 2 of section 3(7) is phrased so widely that it may criminalise disruptive children. They recommended that section 3(7) be removed entirely

- ***SECTION 27***

Submitted that it welcomes and supports the proposal to make Grade R compulsory for all children. However, submitted that the proposed section 3(a) is unclear as it is in contradiction with section 4.

- ***COSATU***

Submitted that it is concerned that *Clause 3: Section 4A – Insertion of section 4A of Act 84 of 1996*, government did not extend the required schools as many learners drop out of school at grade 9 and/or 15 years of age.

- ***SADTU***

Submitted that the subsection 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 fall on a weekend. It further submitted that “further interventions” as suggested by the amendment be defined.

- ***LEGAL RESOURCE CENTRE***

Submitted that section 4A must include “habitual absenteeism” to the proposed provision and a benchmark added to classify habitual absenteeism. It further submitted that the BELA Bill must go further to discuss the steps to be taken after the investigation by the principal.

#### Clause 4: Section 5 – Amendment of section 5 of Act 84 of 1996

- **SECTION 27**

Submitted that it supports clause 4 and 5 in respect of the language and admission policy. It supports the necessity of such policies to be approved by the HoD to ensure constitutional compliance. However, it is concerned that there are no objective criteria to determine when a school is full. It recommended that an office specialising in reviewing policies be established in terms of the BELA Bill under the auspices of the HoD and establish a well-functioning complaints mechanism for interested parties to challenge policies that believe are exclusionary, unlawful and unconstitutional.

- **HUMAN RIGHTS COMMISSION**

Submitted that it is concerned that section 5(4) of the BELA Bill is entirely inconsistent with the *Centre for Child Law and Others v Minister of Basic Education & Others* judgment.

- **LEGAL RESOURCE CENTRE**

Submitted that section 5(1A) to 5(1G) creates an undue barrier to accessing education, particularly to learners from disadvantaged backgrounds and locations. The provision places an emphasis on admission policies that restrict children to their community-based schools rather the admission policies emphasizing diversity and equal access to education. Cause for Justice, Centre for Child Law, on the issue of documentation raised that there was a frustration that some learners may not be able to produce the required documents. This was probably because of issues arising from Department of Home Affairs thus parents were unable to provide such documents. However, there may be a situation where parents submitted false documents.

#### **Recommendations:**

That section 5(1A) to 5(1G) be deleted from the BELA Bill.

- ***COSATU***

Submitted that it welcomes the provisions that provide clear guidelines about admissions as it will prevent unfair and discriminatory exclusions from schools.

- ***SOLIDARITY TRADE UNION***

Recommended that where an HOD forms the view that a policy adopted by the SGB fails to give effect to the relevant Constitutional rights and objectives of the SASA, the HOD's recourse is two-fold.

*Clause 5: Section 6 – Amendment of section 6 of Act 84 of 1996*

- ***SADTU***

Submitted that it welcomes the adoption of the additional language however the decision to introduce an additional language must be taken into consideration by looking at the holistic development of a child and age capacity.

- ***COSATU***

Submitted that it welcomes the inclusion of South African Sign Language as it is a step forward to including learners that are hearing impaired.

- ***SOUTH AFRICAN LEARNERS COMMAND***

Submitted that it welcomes the recognition of the South African Sign Language, however, opposes the fact that it is merely given recognition as an official language for the purpose of teaching. It recommended that it should be given official status as an official language for the purpose of teaching, learning **and** serve as a language of instruction.

*Clause 7: Section 8 – 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*

They have objected to this proposed amendment. In their view a code of conduct cannot contain certain portions for exemption as this will create a grey area for execution of disciplinary measures and proposes that the exemption be deleted.

They recommended that the term “just cause” is too wide and will lead to frivolous applications for exemption. The term should be replaced by “religious, cultural or medical grounds” to align the proposed amendment with its intended purpose.

- ***COSATU***

Submitted that it supports the provisions that provides for a code of conduct that will guide diversity, inclusivity, religion, medical and other needs as it will prevent incidents where learners are being victimized.

- ***LEGAL RESOURCE CENTRE***

Submitted that it welcomes the amendment to ensure that schools are inclusive spaces. They however raised a concern that the BELA Bill does not place an obligation on SGBs to consider the diverse sexual orientations and gender ideas of learners, particularly transgender learners.

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

- ***SADTU***

Submitted that alcohol plays a critical funding role to school activities, therefore, the prohibition of alcohol on school premises would see to schools losing the income that they are currently receiving from these activities.

- ***COSATU***

supports the provisions that aim to prevent learners from bring drugs, alcohol and weapons on school premises. However, it is wary about this proposed provision because although the provision sets conditions in which alcohol can be sold and/or used on school premises, it may not be enough to prevent learners from accessing liquor at such events.

- ***MALIHAMBE SEVENTH DAY ADVENTIST CHURCH***

Submitted provisions that are in line with the belief that the safety of teachers is just as important as the safety of learners. They recommend that the following provision be added to clause (3)(a)(v): (ii) the interest of public good.

*Clause 9: section 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*

- **LEGAL RESOURCE CENTRE**

Submitted terms that should be removed under the definition of “serious misconduct” as the offence does not align with the punishment. It submits that the sanctions are too harsh.

*Clause 16: Section 21 – Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999*

They submitted that the proposed amendment of Clause 17: Section 22 is problematic because it appears to provide a means to summarily circumvent the allocation of functions between the SGB’s and HODs for the purpose of procurement. They feel that it also seeks to enable the HOD to arbitrarily withdraw this function from the SGB without any due process or a clear indication as to what would establish sufficient grounds when it will be more efficient and effective for the HOD to be entitled to intervene. According to them, in practice, this amendment can hinder SGBs who are functioning effectively and transparently to deliver high quality education to the learners in its schools.

- **INSTITUTE OF RACE RELATIONS**

Submitted that changes must be made to Section 22 of SASA because it introduces an amendment that allows the HoDs to remove various functions from the SGBs.

*Clause 18: Section 23 – Amendment of section 23 of Act 84 of 1996, as amended by section 11 of Act 48 of 1999*

- **SOLIDARITY TRADE UNION**



Submitted that Section 23 of the SASA underscores the importance of parent responsibility in the governance of public schools, by ensuring that there is a minimum number of parents serving the SGB, and this has been recognized by the Constitutional Court. They recommended that there be no remuneration. Nevertheless, reference must be made to the reimbursement of expenses incurred by members, in the fulfilment of their duties.

*Clause 23: Section 27 – Amendment of section 27 of Act 84 of 1996*

*Clause 24: Section 28 – Amendment of section 28 of Act 84 of 1996*

- **LEGAL RESOURCE CENTRE**

Submitted that it is concerned with the amendment of section 28 as there is no explanation as to why the function of the MEC was taken away and given to the Minister.

*Clause 31: Section 38A – Amendment of section 38A of Act 84 of 1996, as inserted by section 2 of Act 1 of 2004*

- **NATIONAL ASSOCIATION SCHOOL GOVERNING BODIES**

Submitted that it requests that the 38A (2) be reviewed considering practical application of such provisions as amended curbing SGB role and power.

*Clause 32: Section 41 - Amendment of section 41 of Act 84 of 1996, as amended by section 5 of Act 24 of 2005*

- **SOUTH AFRICAN LEARNERS COMMAND**

Submitted that it vehemently rejects section 41 of the SASA and thus rejects the amendment of the Act 17 through clause 32 of the Bill, which sought to amend section 41 of the Act.

- **SOLIDARITY TRADE UNION**

Submitted that the principles of co-operative government and inter-governmental relations are also extended to all organs of State within each sphere of government in section 41.

*Clause 34: Section 43 – Amendment of section 43 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007*

- ***WANDILE GXABUZA***

Submitted a recommendation to transpose section 43(2) and Section 43(1) such that SGBs have a primary responsibility to appoint as per Section 43(2), then Section 43(1) becomes a secondary consideration.

*Clause 37: Section 51 – Substitution of section 51 of Act 84 of 1996*

- ***INSTITUTE OF RACE RELATIONS***

Submitted that these provisions in the SASA Act are sufficient to safeguard the interests of pupils and should not be changed.

- ***PESTALLOZI TRUST***

Submitted that there is contradiction between section 51 and the Home Education Policy of 2018 where the former states that an official **may** perform “Pre-registration” home visit and the latter states an official **must** perform “Pre-registration” home visit.

- ***GAUTENG ASSOCIATION FOR HOMESCHOOLING***

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.

- ***ASSOCIATION FOR HOMESCHOOLING***

Submitted that it objects to section 51(1) & (2), section 51(3), section 51(2)(a)(iii) and section 51(2)(b)(iii) (aa) & (bb). It recommends that that the term “registration” be changed to notification. It is recommended that the “home invasion” clause be removed from the

Bill and that there should be no requirement to be assessed against CAPS and that monitoring should be on a contingency basis.

*Clause 41: Section 5 – Substitution of section 51 of Act 84 of 1996*

The Christian View Network emphasised highlighted concerns related to school governing bodies, and parental rights being respected. Some presentations also noted that the best interests of the child were paramount. Law that impacts children should be child-centric and based on the fundamental rights of the child. Legal Resource indicated that sexual misconduct posed a considerable risk to the well-being of learners. Others' submissions addressing the learner was that if the Bill was passed it would allow that primary schools children could have an abortion.

**5.2 COMMENTS ON THE EMPLOYMENT OF EDUCATORS ACT:**

*Clause 49: Section 17 – Amendment of section 17 of Act 76 of 1998, as amended by section 10 of Act 53 of 2000*

• **LEGAL RESOURCE CENTRE**

Submitted that the amendments proposed to the EEA do not go far enough to address educators' sexual misconduct. They recommended that section 17(1)(c) be amended to read as follows “[a]n educator must be dismissed if he or she is found guilty of sexual harassment, sexual assault, rape or statutory rape of a learner” [addition underlined]. Such an explicit identification of the different forms of serious misconduct will provide clarity and provide necessary guidance in these cases.

*Clause 50: Section 18 – Amendment of section 18 of Act 76 of 1998, as amended by section 11 of Act 53 of 2000, and section 58 of Act 16 of 2006*

• **LEGAL RESOURCE CENTRE**

Submitted that because of the shortcomings of section 17 of the EEA, it recommends the necessary amendments to section 18. It further submitted that it is necessary to provide clarity regarding the definitions of misconduct and serious misconduct in a manner that aligns with the Constitution, the Children’s Act, and existing sexual offences laws. It recommends that:

The Employment of Educators Act should be amended to not allow teachers who are appealing a decision of educator sexual misconduct against them to continue teaching. Instead, educators whose matters are on appeal must be placed on paid suspension and not be allowed to work with children until the appeal is finalised.

Where an educator resigns while under investigation for sexual

(a) misconduct or while suspended, Section 14(1)(c) and (d)(ii) must be invoked. Thus, should educators resign before the disciplinary process is completed, they must be deemed dismissed.

(b) The legislative framework should, moreover, be amended to provide that, where an educator who is under investigation for educator sexual misconduct seeks employment at a different school, information on the allegations should be provided to the school.

(c) The Employment of Educators Act must require that schools share the outcome of disciplinary proceedings with PEDs and SACE regardless of the perceived seriousness of the allegation of educator sexual misconduct.

(d) Finally, it is necessary to provide clarity regarding the definitions of misconduct and serious misconduct in a manner that aligns with the Constitution, the Children’s Act, and existing sexual offences laws.

## **6. PUBLIC SUBMISSIONS**

The report provides a summary of key issues raised in the written submissions and recommendations made by the public on the Basic Education Amendment Bill [B2 – 2022]. Comments were received from parent associations, SGBs, Teacher unions, Principals’ Associations, Legal firms, Civil society, Community Based structures, and NGOs.

### **6.1 WRITTEN SUBMISSION RECEIVED**

The call for public submissions attracted approximately 32,941 submissions from members of the public. The average figure of 17 452 initially reported to the Committee were preliminary figures based on the entries reflected in the email inbox. Public Submissions were received electronically via email, google forms and hand delivered via courier. Others were received during the Public Hearings The received number of comments is broken down as follows:

*Email Submissions	17 452
*Google form submissions	549
*Handwritten submission	1
*Courier/ Hand Delivered	11 522
* Post cards	251
* Video Submission	1
* Submission received during the public hearings.	4733

PS: Written submissions during public hearings were added to this category.

## **6.2 METHODOLOGY**

In the processing of the received submissions, the secretariat recorded the details of individuals and stakeholders that sent written submissions in an excel spreadsheet. Their inputs were categorized into the 8 themes that emerged i.e. (1) Access to Basic Education, (2) Compulsory Learner Attendance, (3) Language, (4) Governance and Professional Management of Public Schools, (5) Budget and Finances of Public Schools, (6) Home Education, (7) Independent Schools, (8) Educators. Columns were created to designate the public views on support/ not support/ partial support of the bill. The staff processed the submissions in batches as per allocated numbers 1-100. Once completed, they were returned to secretariat. Submissions projecting offensive language could not be categorised.

## **7. SUMMARY OF COMMENTS**

The report provides a summary of key issues raised in the written submissions and recommendations made by the public on the Basic Education Amendment Bill [B2 – 2022].

## **7.1 Access to Basic Education**

Many concerns were raised by public on clause 2, section 3 which states that the HOD, after consultation with the governing body, has the “final authority” to admit a learner to a public school. This is viewed by the public as an idea that seeks to centralize the HOD powers regarding the extended powers of the HoD. Submitters purport that this goes against the aim of SASA and is against the principle of democratic governance. The view of those against this proposal is that it reduces the role and function of the SGB. The submitters argued that to admit learners to public school, rest with SGB as parents that are best placed to make that decision. The HoD’s involvement should be minimal as they are already overburdened.

## **7.2 Compulsory Learner Attendance**

Section 29 of the constitution grants all children of school going age a right to education. The BELA bill gives light to this right, yet the concern is it might undermine this very same right. For example, Clause 2, section 3 proposes criminalising of parents who keep their children out of school, with increased jail penalty of 6- 12 months. Whilst certain aspects of amendments are welcomed, the public is not happy about the extension of the penalty from 6- months to 12 months. On the issue of parents not having document or documents being falsified, the clause proposes that those providing false or misleading information, should be jailed. The submitters concern on this clause is that parents might not have legal documentation, for a few valid reasons, therefore if parents are jailed, more learners will be on the streets and families would be subject to poverty.

## **7.3 Language Policy**

There are concerns of social cohesion on the language policy issue. Some school governing bodies responses were that the power to determine a school's language policy rests with the SGB in terms of section 6(2) of the Schools Act. Clause 5(c). The bill proposes to amend section 6 of the Schools Act by adding subsections (5) to (20), which seeks to limit the governing body’s power to determine the school’s language policy. The requirement that the SGB submit the admission policy to the HOD for “approval” is regarded as undermining the powers of the SGB. Those in support of the clause submitted that SGBs under SASA were provided with an opportunity to promote multilingualism, however some used the

language policy to discriminate against other language groups w.r.t school admission criteria.

#### **7.4 Governance and Management of Public Schools**

The excessive powers conferred on the Minister, MEC and HOD by the Bela bill is amongst the major issues of concern. The public expressed discontent on the matter of centralization of power. Part of the concerns is that the department has additional responsibility of schools. Further the concerns allude to powers of the Ministers overriding the SGB e.g. clause on “withdrawal of “one or more functions” of an SGB by HoD. The granting of “exclusive” decision making powers to the HoD and Minister, undermines the powers of the SGB who demonstrate accountability mechanisms in governing their schools. On the clause that deals with HoD’s powers to dissolve the SGB, Section 25 - the main concern about the proposed amendment is the power granted for temporary or interim SGB in section 25(4). Submitters argue it is difficult to take decisive making when SGBs are temporary.

#### **7.5 Budget and Finance**

A critical concern that needs to change with matters of Budget and Finance in running of public schools is issue of funding model. Submitters allude that the funding model for schools needs to be reviewed, the quantile system, the fee exemption tables, as well as its current staffing model.

The current models assumed that all schools are single-medium, institutions. The concern is that the department must consider the additional costs, resources and staffing required to offer more than one medium of instruction and staffing model for multi-language schools. On the proposal for Disclosure of financial interest by members of a governing body, Clause 14 proposes the insertion of section 18A(4A) which will compel all members of a governing body to disclose on an annual basis, all his or her financial interests and the financial interests of his or her spouse, partner, and immediate family. Issue of concern is that the proposed disclosure would constitute an unreasonable invasion of the privacy of both the governing body member and one’s family, ultimately parents would deter from being selected as SGB members.

#### **7.6 Home Education:**

Home education elaborate submissions point to the concern that there was minimal consultation, and no research was conducted whose findings ascertain the inclusion of home education in the process of drafting the bill. Parents of home educated children object to regulation of Home Education under the South African Schools Act; they recommend that rather HE should be regulated under the Children's Act. In their view, it does not make sense for home education to be under the Schools Act because the difference between a school and a family are so huge. Some suggest for research before developing the policies to help guide the home education. Others cited constitutional rights, for home schooling, as they preferred access online lessons, because the school curriculum does not offer flexibility.

### **7.7 Independent schools**

Submissions from organizations representing the independent schools allude that their academic year runs for 3 terms per annum, therefore the clause which require them to submit 4 quarterly financial reports like public schools would be unrealistic and put them at a disadvantage. Provision for a public school to become an independent school. The proposed amendments do not create an opportunity for a Public School to become an Independent School, in the same way, SASA section 49 allows for an Independent School to become a Public School. It should be made possible for an SGB to apply for the conversion to an Independent School.

### **7.8 Educators**

Even though educator's issues are regulated by the EEA and dealt with by ELRC some submitters welcomed the proposal that deals with clause 49. This clause prohibits educators from conducting business with the State, to avoid financial conflict of interest. The submitters concern also points to Clause 45, in relation to promotion posts where the influence of SGB in recruitment, oftentimes excludes appointment of educators on criteria which is not based on equity



## 9. COMBINED REPORT

The table below present total combined number of public written comments and comments from the public hearings. Out of 32 941 submissions ,26593 processed submissions presented the outcome of public participation. (14801) supported the Bill, while (10128) rejected the Bill. The submitters ( 1024) gave partial support and 640 were undeclared.

### Consolidated Public Submissions – Views in Support, Not Support

Category	Support	Not Support	Partial	Undeclared	
<b>Email: excel Spreadsheet Re-checked on 5 Aug</b>	70	5862	298	485	6715
<b>MS Word</b>	6	1172	58	0	1236
<b>Google</b>	100	415	34	0	549
<b>Video</b>				1	1
<b>Courier /Hand Delivery</b>	11 522	230	0	21	11 773
					20,274
<b>Public Hearings</b>					
<b>Orals Speakers</b>	726	684	102	74	1586
<b>Submission Forms</b>	2377	1765	532	59	4733
<b>All Public Views</b>	<b>14 801</b>	<b>10 128</b>	<b>1024</b>	<b>640</b>	<b>26 593</b>

Of the 26,593 public views, 20 274 were processed written submissions, 6219 were public hearings, the remainder is not processed. This is a good sample to gauge the public responses, as Parliament is expected to sample a sizable number of comments. By Parliament standards, number of the processed public submissions is commendable sample.

## 9. MATTERS RAISED OUTSIDE THE BELA Bill

### COVID-19 Vaccination

During processing of submissions 1, it became apparent that the most of written responses alluded to issue of Covid-19 vaccination, which is not part of the bill amendments. The public expressed need to recognize that that the bill did not consider the changes brought about by the COVID-19 pandemic in the education sector.

### **Other unrelated issues raised were:**

- Online education
- Crime
- Infrastructure challenges such as pit latrines
- Water and electricity supply
- Teacher colleges
- Inclusive Education (Special Schools)
- Three Stream Model
- Safety and Security
- Learner Transport

### **10. OTHER GENERAL OBSERVATIONS**

Based on the observation of the written submissions, the analysis notes the following:

- In written submissions most people responded as one group like dear Bela bill group, some political parties, civil society organizations and NGO. Their mobilization brought a bulk number of registered emails.
- Most emails have the same wording which gives a notion that the same group of people advocate for similar issues for example the emails referring to SBG powers, language policy and unregulated home education.
- In some instances, the concerns projected a negative view critiquing the present government without substantiating the facts.
- Some of the submissions from lobby groups hinge on admission clause 4, section 5. they put forward that the clause is not feasible in poorly resourced schools such as Quantile 1-3 considering the issue of capacity, issue of undocumented learners and other reasons why parents keep learners at home.
- In the Public Hearings, it seemed that some participants were given pre-written scripts which were read from one venue to the next.
- Some Written submissions were a duplication of one key aspect,

### **Conclusion**

The report provides the Portfolio Committee with information for the final consideration of the Bill. The main key raised during the public hearings were consolidated in the summary contained in this report. Committee consideration of this report takes into cognisance that it combines both the written submissions outcomes and the provincial public hearings into a national report.