

# Basic Education Laws Amendment (BELA) Bill

## Facts and Uninformed Bias

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The Basic Education Laws Amendment Bill (herein 'the Bill') seeks to amend the South African Schools Act of 1996 (herein 'the Act').

Since its introduction in January 2022, the Bill has been criticised by parents, civil society organisations and opposition political parties in the National Assembly and the National Council of Provinces.

Some of this criticism amounts to uninformed bias and malicious prejudice, rather than fact.

I attempt to separate the facts in part A. of this article, from that uninformed bias and malice in part B.

The Basic Education Laws Amendment Bill (B2-2022)

[https://www.parliament.gov.za/storage/app/media/Bills/2022/B2\\_2022\\_Basic\\_Education\\_Laws\\_Amendment\\_Bill/B2B\\_2022\\_Basic\\_Education\\_Laws\\_Amendment\\_Bill.pdf](https://www.parliament.gov.za/storage/app/media/Bills/2022/B2_2022_Basic_Education_Laws_Amendment_Bill/B2B_2022_Basic_Education_Laws_Amendment_Bill.pdf)

South African Schools Act 84 of 1996

[https://www.gov.za/sites/default/files/gcis\\_document/201409/act84of1996.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act84of1996.pdf)

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## A.

### The Facts

#### 1. New starting age for school attendance

The Act provides, in section 3(1), that children must attend school from the age of 7 (Grade 1.).

The Bill amends the starting age to 6 (Grade R.)

Grade R is regulated by the Education White Paper 5 of 2021.<sup>1</sup>

Arno van der Merwe, CEO of the SA Childcare Association <sup>2</sup> argues that Grade R might benefit early childhood education, provided an appropriate learning-through-play approach is adopted. <sup>3</sup>

#### 2. Criminalisation of parents for pupil non-attendance

The Act already provides in section 3(6)(a) that any parent who, "without just cause", fails to register their child for school attendance *"is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months"*.

The Bill increases this criminal sanction to *"a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment"*.

Parents have always had a legal obligation to ensure that their child attends school. Whilst the threat of sanction against parents has always intended to serve as a

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<sup>1</sup> Education White Paper 5 of 2021.

<https://www.gov.za/documents/white-papers/education-white-paper-5-early-childhood-education-01-may-2001>

<sup>2</sup> SA Childcare Association, <https://sachildcare.net/>

<sup>3</sup> You can't 'chalk-and-talk' at Grade R pupils... and other concerns about the R16bn BELA Bill

21 Aug 2023, Yoliswa Sobuwa

<https://www.news24.com/news24/southafrica/news/you-cant-chalk-and-talk-at-grade-r-pupils-and-other-concerns-about-the-r16-billion-bela-bill-20230821>

warning against non-compliance with this legal obligation, the imprisonment of parents or primary care givers may constitute an infringement of the child's Constitutional right to family or parental care. The best interest of a child may be adversely impacted if the child's primary caregiver is imprisoned.

### **A child's best interests**

**28. (1)** Every child has the right  
(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;  
(2) A child's best interests are of paramount importance in every matter concerning the child.

**[Constitution, 1996]**

In *S v M* (2007), the Constitutional Court examined whether courts "*pay sufficient attention to the constitutional provision that in all matters concerning children the children's interests shall be paramount*", when imposing prison sentences on the primary caregiver of young children.

At par 35, Sachs J noted "*It is not the sentencing of the primary caregiver in and of itself that threatens to violate the interests of the children. It is the imposition of the sentence without paying appropriate attention to the need to have special regard for the children's interests that threatens to do so. The purpose of emphasising the duty of the court to acknowledge the interests of the children, then, is not to permit errant parents unreasonably to avoid appropriate punishment. Rather, it is to protect the innocent children as much as is reasonably possible in the circumstances from avoidable harm.*"<sup>4</sup>

Dr Michele van Eck, senior lecturer and head of the Department of Private Law and Professor Amanda Boniface, associate professor in the Department of Private Law, from the University of Johannesburg, argue that imprisonment need not be the only or most appropriate manner of addressing the failure of parental compliance. They suggest the objective may be achieved through community service sentences instead of imprisonment.<sup>5</sup>

<sup>4</sup> *S v M* (CCT 53/06) (2007) ZACC 18

<https://collections.concourt.org.za/bitstream/handle/20.500.12144/3128/Full%20judgment%20Official%20version%20%28509%20Kb%29-11082.pdf>

<sup>5</sup> Haven't been to school? Off to prison your parents go! Michele van Eck and Amanda Boniface

<https://www.iol.co.za/saturday-star/opinion/havent-been-to-school-off-to-prison-your-parents-go-4f40dd05-72d6-47c7-aba1-185751a4e8b3>

The Bill increases the sanction of a fine or imprisonment to a period not exceeding 12 months, or to both a fine and imprisonment, for *"any other person who, without just cause, prevents a learner from attending school"* [s3(6)(b)].

### **3. Criminalisation of unlawful and intentional interruption of school activity**

The Bill inserts into section 3(6) of the Act a new paragraph (c), providing that *"any person who, unlawfully and intentionally interrupts, disturbs or hinders any school activity, or hinders or obstructs any school in the performance of the school's activities, is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment."*

Concern has been raised regarding the potential criminalisation of legitimate protest.

The Constitutional right *"peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions"*<sup>6</sup> should not intentionally interrupt school activity for it to remain lawful.

### **4. Admission of undocumented learners**

The Act provides in section 5(3) that public schools may not unfairly discriminate against learners through their admission policies. No learner may be refused admission to a public school on the grounds that his / her parents (i.) are unable to pay or has not paid school fees, (ii.) does not subscribe to the mission statement of the school, or (iii.) has refused to enter into a contract in terms of which the parent waves any claim for damages arising from the education of the learner.

The Bill reaffirms this overarching principle against unfair discrimination against learners.

In order to align the Act with a 2019 High Court judgement in *Centre for Child Law and Others v Minister of Basic Education and Others*,<sup>7</sup> in which the court confirmed

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<sup>6</sup> Assembly, demonstration, picket and petition

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions. Constitution, 1996.

<sup>7</sup> *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] <https://www.saflii.org/za/cases/ZAECGHC/2019/126.html>

that every child has a right to basic education regardless of their status or their ability to provide proof of identity through the production of a birth certificate or other official documentation, the Bill seeks to facilitate undocumented admissions to public schools by creating a National and Provincial Intergovernmental Committees to provide assistance to public schools that refer cases of learners who have not submitted the required documents, and to assist acquiring missing required documents.

### **Education**

**29.(1)** Everyone has the right  
(a) to a basic education, including adult basic education.

**[Constitution, 1996]**

## **5. Language Policy**

The Act provides that the governing body of a public school may determine the language policy of the school, “*subject to the Constitution, the Act, and any other provincial law*”. Governing bodies are required to avoid language policy racial discrimination.

The Bill amends section 6 of the Act by providing that the governing body must submit its language policy, and any amendment, to the Head of Department for approval, and the language policy must take into consideration the language needs of the broader community.

These amendments are prompted by two important cases.

In a Kwazulu-Natal High Court judgement in *Nkosi v Vermark NO and Another*, a parent of a Durban High School learner sought a declarator that the language policy of Durban High School was discriminatory. The school only offered isiZulu as a third additional language.

The court found that offering Afrikaans as a subject at a higher level (LLC 2) as compared to isiZulu, constituted unfair discrimination against all learners in those grades whose home language was isiZulu.

*"The Court finds that offering Afrikaans as a subject at a higher level than the subject of isiZulu, during 2007, in respect of grades 8 and 9 constituted unfair discrimination against all learners in those grades, whose home language is isiZulu. It is common*

*clause that the Complainant's son Thokozani was in grade 8 during 2007, and therefore both the Complainant and her son were the recipients of the unfair discrimination perpetrated against them in this regard by the 2nd Respondent."* Sanders J. <sup>8</sup>

In the second case, *Hoërskool Ermelo and Another v Head of Department of Education: Mpumalanga and Others*, <sup>9</sup> the Head of Department instructed the Principal of Ermelo High School, an Afrikaans medium school, to admit 113 learners who could not be accommodated elsewhere, to be taught in English for the 2007 academic year. This instruction was contrary to the language policy of the school.

The Head of Department subsequently withdrew the school governing body's function of determining the language policy for that school with immediate effect and appointed an interim committee to change the language policy of the school from an Afrikaans medium school to a parallel medium school.

The Supreme Court of Appeal ruled in favour of the school and set aside the Head of Department's decision to withdraw the school's function of determining its language policy.

The Department appealed to the Constitutional Court, arguing that the school was the only high school not filled to capacity.

The Constitutional Court held that section 29(2) of the Constitution, read with section 22 of the South African Schools Act, empowers the Head of Department to withdraw the school governing body's function to determine language policy.

The court ordered the Head of Department to file a report setting out the likely demand for Grade 8 English places at the beginning of 2010, as well as setting out the steps that the Department had taken to satisfy this likely demand for an English or parallel medium high school in the circuit of Ermelo.

The court further ordered the school governing body of Ermelo to review and determine a language policy in terms of section 6(2) of the Schools Act and the Constitution. <sup>10</sup>

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<sup>8</sup> Nkosi v Vermark NO and Another (77/2007) [2008] ZAKZHC 83 (30 September 2008)

<https://www.saflii.org/za/cases/ZAKZHC/2008/83.html>

<sup>9</sup> Hoërskool Ermelo and Another v Head of Department of Education: Mpumalanga and Others (219/2008) [2009] ZASCA 22; 2009 (3) SA 422 (SCA) ; [2009] 3 All SA 386 (SCA) (27 March 2009)

<https://www.saflii.org/za/cases/ZASCA/2009/22.html>

<sup>10</sup> Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another CCT40/09 [2009] ZACC 32 2010 (2) SA 415 (CC)

<https://collections.concourt.org.za/bitstream/handle/20.500.12144/3584/Full%20judgment%20Official%20version%20%28265%20Kb%29-13901.pdf>

These judgements affirm that learners must be given the choice of studying in their home language as the language of learning and teaching, or as an additional language at a comparable level. The state is duty-bound to ensure access to this Constitutional right and must ensure that schools are able to accommodate learners.

**29.(2)** Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account

- (a) equity;
- (b) practicability; and
- (c) the need to redress the results of past racially discriminatory laws and practices.

**[Constitution, 1996]**

## 6. Corporal punishment

The Act prohibits corporal punishment in section 10.

The Bill affirms a ban on corporal punishment, and amends section 10 to include a fine or imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment, for anyone who contravenes the prohibition.

It also comprehensively defines corporal punishment as "*...any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes, but is not limited to —*

- (a) hitting, smacking, slapping, pinching or scratching with the hand or any object;*
- (b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; and*
- (c) forcing children to stay in uncomfortable positions, forced ingestion, washing children's mouths out with soap, denying meals, heat and shelter, forcing a child to do exercise or denying or restricting a child's use of the toilet."*



The constitutionality of the prohibition of corporal punishment was contested in the Constitutional Court in 2000 in the case *Christian Education South Africa v Minister of Education*.<sup>11</sup>

The appellant, a voluntary association acting as an umbrella body of 196 independent Christian schools in South Africa with a total of approximately 14 500 pupils, argued that corporal punishment is a vital aspect of Christian religion and that it is applied in the light of its biblical context using biblical guidelines which impose a responsibility on parents for the training of their children.

The court was asked to determine whether Parliament, by prohibiting corporal punishment in all schools, had unconstitutionally limited the rights of parents of children in independent schools who, in line with their religious convictions, had consented to the "corporal correction" of their children by teachers.

The Constitutional Court affirmed the right of children to be free from all forms of violence, whether from public or private sources, and dismissed the appeal.

### **Freedom and security of the person**

**12.(1)** Everyone has the right to freedom and security of the person, which includes the right

(c) to be free from all forms of violence from either public or private sources;  
(e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right

(b) to security in and control over their body.

**[Constitution, 1996]**

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<sup>11</sup> *Christian Education South Africa v Minister of Education* (CCT4/00) [2000] ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000)  
<https://www.saflii.org/za/cases/ZACC/2000/11.html>

## 7. Code of conduct, search and seizure, suspension and expulsion

### Code of Conduct

The Act provides in section 8 that the governing body of a public school must adopt a code of conduct for the learners, after consultation with learners, parents and educators.

The Bill amends section 8 of the Act by specifying that *"(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs, religious observances and medical circumstances of the learners at the school."*

The Bill also provides that *"the code of conduct must contain an exemption provision in terms of which a learner, or the parent of a learner, may apply to the governing body for exemption of that learner from complying with certain provisions of the code of conduct on just cause shown."* A parent whose child is refused exemption may appeal the decision to the Head of Department.

In a 2007 case *MEC for Education: Kwazulu-Natal and Others v Pillay*, the Constitutional Court held that school governing bodies must facilitate reasonable accommodation for exemption from strict codes of conduct to *"provide for the reasonable accommodation of deviations on religious or cultural grounds"*, through *"a procedure according to which such exemptions from the Code can be sought and granted."*

In that case, Langa CJ held, *"...a lack of a procedure for exemption is one of the primary reasons this dispute has arisen. As noted earlier, section 21(2)(i) of the Equality Act specifically allows for an order that reasonable accommodation be made for a group or class of persons. Section 8(1) of the South African Schools Act gives the power to the School's Governing Body to adopt a code of conduct in consultation with learners, parents and educators. The power to adopt must necessarily include the power to amend. Although the Governing Body itself is not before us, it is properly represented by its chairperson. In this case it is therefore appropriate to order the School's Governing Body to amend the Code to provide for reasonable accommodation for deviations from the Code on religious and cultural grounds and a procedure for the application and granting of those exemptions."*<sup>12</sup>

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<sup>12</sup> MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2007 (3) BCLR 287 (CC); 2007 (2) SA 106 (CC); (2007) 28 ILJ 133 (CC) (5 October 2007) <https://www.saflii.org/za/cases/ZACC/2007/21.html>

The Bill further specifies that *"(c) The disciplinary proceedings referred to in this subsection must be age-appropriate, must be conducted in the best interests of the learner, and must adhere to the principles of natural justice, fairness and reasonableness prescribed by the Constitution."*

### **Search and seizure**

The Bill provides that *"the principal or his or her delegate may, at random, search a learner or any group of learners, or the property of a learner or group of learners, for any liquor, dangerous object or [illegal] drug, if a fair and reasonable suspicion has been established*

*(a) that liquor, a dangerous object or [an illegal] a drug may be found on school premises or during a school activity; or*

*(b) that one or more learners on school premises or [during] at a school activity are in possession of liquor, dangerous objects or [illegal] drugs."*

### **Suspension and expulsion**

The Act permits the school governing body, after a fair hearing, to suspend a learner from attending school pending a decision as to whether the learner will be expelled.

Learners may only be expelled by the Head of Department if, after a fair hearing, found guilty of serious misconduct. An expelled learner may appeal the decision.

The Bill defines 'serious misconduct' as

*"(i) physical assault of a learner, employee, or other person related to the school, with the intention to cause grievous bodily harm, or the imminent threat to commit such an act, while on school premises or during any school activity, or in any circumstance that could reasonably be connected to the school;*

*(ii) any form of harassment, including sexual harassment of a learner, employee or other person related to the school, including via electronic and social media;*

*(iii) repeated offences related to bullying, or the imminent threat to commit such an act;*

*(iv) the illegal possession of a drug or liquor;*

*(v) the repeated disruption of the school programme, or the imminent threat to commit such an act;*

*(vi) serious transgressions relating to any test, examination or examination paper;*

*(vii) fraud;*

*(viii) theft or any other dishonest act to the prejudice of another person;*

*(ix) the possession of a dangerous object while on school premises, or during any school activity, or in any circumstance that could reasonably be connected to the school;*

*(x) the possession or distribution of pornographic material;*

*(xi) engaging in sexual activity on school premises or committing an act of sexual assault, or the imminent threat to commit such an act; and*

*(xii) any other serious act contemplated in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that prejudices the constitutional rights of learners, employees or other persons related to the school."*

The Bill bans dangerous objects, illegal drugs, and alcohol on school premises, but it also provides an exception to the governing body, upon application to the Head of Department, to *"permit the possession, consumption or sale of liquor during any private or religious function, related to fund-raising activities, held on the school's premises."*

The Bill also bans *"any initiation practices at a school, during a school activity, or in a hostel accommodating learners of a school."*

## **8. Aligning homeschooling and public schooling**

The Act provides for learner education at home through an application by a parent to the Head of Department.

The Bill affirms section 51 of the Act, and further clarifies the requirements for home schooling [s37].

The Head of Department must approve the application and register the learner if he or she is satisfied that education at home is in the best interests of the learner; the parent understands what home education entails and accepts full responsibility for the implementation of home education for the learner; and 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.

Parents who undertake home schooling must make suitable educational resources available to support the learner's learning; monitor the learner's academic progress; arrange for the learner's educational attainment to be assessed annually by a competent assessor against a standard that is not inferior to the standard

determined in the National Curriculum Statement; and submit to the Head of Department, at the end of each phase and as evidence of the learner's educational attainment, the learner's assessment report, signed by the competent assessor.

The Head of Department may require a delegated official to conduct a pre-registration home education site visit and consultation with the parents and learner to verify the information supplied in the application documentation and to provide support, where necessary, with the application process.

The parent of a learner who has been registered must notify the Head of Department at the end of each education phase of his or her intention to continue educating the learner at home.

A learner who is registered to receive home education is exempted from school attendance as contemplated in section 3.

The Head of Department may decline an application, with reason, and a parent may appeal the decision.

## **B.**

### **Uninformed Bias**

**(what the BELA Bill does not mention)**

Amongst the numerous objections to the Bill, some parents and individuals have mistakenly raised often repeated references to matters never dealt with in the South African Schools Act, and not addressed in the Basic Education Laws Amendment Bill.

These include matters related to the regulation on learner pregnancy, termination of pregnancy, comprehensive sexuality education, sexual orientation and gender inclusivity, and unisex toilets.

The active promotion of uninformed bias against these and related subjects by identified civil society organisations Freedom of Religion South Africa, and the Family Policy Institute, the conservative teachers' union SAOU, and political parties like the African Christian Democratic Party, Freedom Front Plus, and Al Jama-ah, constitute malicious prejudice against already marginalised identified sexual orientation and gender minorities.

I have summarised these subjects into three inter-related groups of issues of concern:

1. Regulation on learner pregnancy;
2. Comprehensive Sexuality Education (CSE); and
3. Sexual Orientation and Gender Identity Inclusion.

## 1. Regulation on learner pregnancy

### i. False Claim:

"The Policy on The Prevention and Management of Learner Pregnancy in Schools (2021) states that its goal is to provide, "as necessary", the ability to "obtain abortions". Source: <https://referendums.co.za/@belabill>

#### Fact

The Act determines in section 61 that the Minister may make regulations on any matter which must or may be prescribed by regulation. Section 41 of the Bill inserts a paragraph (aA) to include regulations on the management of learner pregnancy.

The Bill does not make any actual regulations regarding the regulation of learner pregnancy.

It is reasonable to assume that the Minister will be guided in drafting regulation on learner pregnancy by the policy on the Prevention and Management of Learner Pregnancy published by the Department of Basic Education in December 2021.<sup>13</sup>

The DBE's policy document promotes the Constitutional rights of a pregnant learner not to be excluded from school because of pregnancy or childbirth, and mandates schools to provide a supportive and inclusive environment for education.

The policy document does not mention termination of pregnancy / abortion at all.

### ii. Misleading Claim:

"According to the Children's Act 38 of 2005, children are entitled to obtain abortions without parental consent, from age 12." Source: <https://referendums.co.za/@belabill>

#### Fact

The Choice on Termination of Pregnancy Act 92 of 1996 [5(2) and (3)] provides that *"no consent other than that of a pregnant woman shall be required for the termination of pregnancy"*, and clarifies that *"In the case of a pregnant minor (under the age of 18), a medical practitioner or a registered midwife, as the case may be, shall advise such minor to consult with her parents, guardian, family members or*

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<sup>13</sup> Prevention and Management of Learner Pregnancy

[https://pmg.org.za/files/230815Implementation\\_Guidelines\\_on\\_Learner\\_Pregnacy.docx](https://pmg.org.za/files/230815Implementation_Guidelines_on_Learner_Pregnacy.docx)

*friends before the pregnancy is terminated: Provided that the termination of the pregnancy shall not be denied because such minor chooses not to consult them."*<sup>14</sup>

Section 129(1) of the Children's Act 38 of 2005 deals with the right to consent to medical treatment and surgical operation of a minor and clarifies that *"Subject to section 5(2) of the Choice on Termination of Pregnancy Act, a child (from the age of 12) may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given."*<sup>15</sup>

**12.(2)** Everyone has the right to bodily and psychological integrity, which includes the right

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body.

**28.(1)** Every child has the right

- (c) to basic nutrition, shelter, basic health care services and social services.

**[Constitution, 1996]**

## 2. Comprehensive Sexuality Education (CSE)

Neither the School's Act nor the Basic Education Laws Amendment Bill address the subject of CSE.

This term has nevertheless come to be associated with the Bill in public criticism against "sex education", "explicit text-books", and "pornography". Notably, the Sunday Times and TimesLive have facilitated the promotion of falsehood and misinformation, as have many other media sources, against comprehensive sexuality education.<sup>16 17</sup>

<sup>14</sup> Choice on Termination of Pregnancy Act 92 of 1996  
[https://www.saflii.org/za/legis/consol\\_act/cotopa1996325/](https://www.saflii.org/za/legis/consol_act/cotopa1996325/)

<sup>15</sup> Children's Act 38 of 2005  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/a38-053.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a38-053.pdf)

<sup>16</sup> Department 'backtracks' on comprehensive sexuality education  
 15 March 2020 Prega Govender  
<https://www.timeslive.co.za/sunday-times/news/2020-03-15-department-backtracks-on-comprehensive-sexuality-education/>

<sup>17</sup> Basic Education responds to article about Comprehensive Sexuality Education in the Sunday Times Newspaper 17 Mar 2020  
<https://www.gov.za/news/media-statements/basic-education-responds-article-about-comprehensive-sexuality-education>



Freedom of Religion South Africa (FOR SA), the conservative teachers' union SAOU, and the Family Policy Institute have called on civil society to mobilise a boycott of Comprehensive Sex Education (CSE) material, arguing that the content "violates traditional Christian values", and is "dangerous to children". FOR SA called CSE "nothing less than soft porn".

## **Fact**

Comprehensive sexuality education (CSE) is a school-based programme introduced in 2000 within the subjects of Life Orientation and Life Skills. CSE is not Sex Education, does not teach learners how to have sex, does not sexualize children. <sup>18</sup>

The World Health Organisation describes CSE as providing young learners with *"accurate, age-appropriate information about sexuality and their sexual and reproductive health, which is critical for their health and survival. Topics covered by CSE, which can also be called life skills, family life education and a variety of other names, include, but are not limited to, families and relationships; respect, consent and bodily autonomy; anatomy, puberty and menstruation; contraception and pregnancy; and sexually transmitted infections, including HIV."* <sup>19</sup>

### **3. Sexual Orientation and Gender Identity Inclusion**

Neither the School's Act nor the BELA Bill engage with sexual orientation or gender identity in public schools.

Many objections against the Bill however cite the existential threat that comprehensive sexuality education allegedly poses to the moral heterosexual order through vicarious indoctrination by association.

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<sup>18</sup> Comprehensive Sexuality Education  
Department of Basic Education  
<https://www.education.gov.za/Home/ComprehensiveSexualityEducation.aspx>

<sup>19</sup> Comprehensive Sexuality Education  
18 May 2023 World Health Organisation  
<https://www.who.int/news-room/questions-and-answers/item/comprehensive-sexuality-education>

In 2022 the Department of Basic Education published its draft Guidelines for the socio-educational Inclusion of diverse Sexual Orientation, Gender Identity, Expression and Sex Characteristics (SOGIESC) in schools'.<sup>20</sup>

The draft Guidelines evoked the anger of the Family Policy Institute, who characterised them as "godless" and "anti-family".<sup>21</sup> FOR SA asserts the guidelines are "intended to ensure that all children will be educated in an environment where ideologically liberal values will become the accepted norm."<sup>22</sup>

The Constitutional imperative to promote and protect the rights of all children, regardless of gender or sexual orientation, must supersede conservative religious appeals to a non-existent entitlement to discriminate against some learners.

## **Equality**

**9.(1)** Everyone is equal before the law and has the right to equal protection and benefit of the law.

**(2)** Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

**(3)** The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, \*gender, sex, pregnancy, marital status, ethnic or social origin, colour, \*sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

**(4)** No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3)."

**[Constitution, 1996]**

<sup>20</sup> Engagements on Draft Guidelines on socio-educational inclusion in schools  
<https://www.education.gov.za/ArchivedDocuments/ArchivedArticles/Engagements-on-Draft-Guidelines-on-socio-educational-inclusion-in-schools-1122.aspx>

<sup>21</sup> What's Really In SA CSE Program. Shocking DA "Diversity" Assault On Schools!  
 Family Policy Institute 2022  
<https://mailchi.mp/3b568bf686ae/shocking-da-diversity-assault-on-schools?e=f0756729d0>

<sup>22</sup> DBE intends to create a "gender-sensitive" environment for all learners  
 Michael Swain, Freedom of Religion SA  
<https://www.forsa.org.za/articles/department-of-basic-education-develops-sogi-guidelines-teacher-toolkits-for-implementation-in-2023>

## Conclusion

The Basic Education Laws Amendment Bill seeks primarily to align the School's Act with recent case law, and to provide rules and remedies for circumstances not provided for in the original legislation.

### **Supremacy of Constitution**

2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

**[Constitution, 1996]**

The general confusion over the actual content of the Basic Education Laws Amendment Bill, and the malaise of distrust in the intentions of the drafters of the Bill, stems in part from the lack of legal literacy of the average citizen, and in part from the deliberate mechanisation of bias and prejudice against identified minorities, and against the legislature itself, by named agent provocateurs.

Their intentions and efforts to disinform the public can only be characterised as maliciously wilful self-interest, at the expense of verifiable facts, and constructive civil dialogue on vitally important matters affecting minors and their right to education.

SAPRA

13 March 2024