



A breakdown of the BELA bill

What the bill proposes, and what we think about it

Basic Education Amendment Bill (Bela) of 2022

The revision of school and educator legislation was first initiated in 2013, and the first version of the bill was published in Gazette No. 41178 on 13 October 2017. Following extensive consultation, the reviewed bill was published in its current form and tabled in the National Assembly in 2022. Notice of the introduction of Bela was first published in the Government Gazette No. 45601 of 6 December 2021.

The Bill was adopted by the National Assembly on 26 October 2023, and following public consultation by the National Council of Provinces, the NCOP's Selection Committee is currently reviewing the public comments. Despite objections from the opposition, the ANC is certain to push the Bill through for adoption just before Parliament wraps up and closes in time for the elections.

The amendments to the South African Schools Act (1996) and Employment of Educators Act (1998) can be grouped into the following themes:

- Compulsory Grade R
- Powers of SGBs vs Provincial Head of Department for Education
- Greater accountability for SGBs
- Greater power to the Minister for Basic Education
- Greater accountability for parents and teachers
- Learner attendance
- Stronger clauses against corporal punishment and initiation
- South African Sign Language is an official language of instruction
- Sport and art-focused schools
- Requirements for School Code of Conduct and suspensions
- Drugs, alcohol, and dangerous weapons at school
- Home education
- Independent schools
- Centralised procurement
- Other

This document outlines the proposed amendments to the bill, their corresponding sections, and our comments on the various strengths and areas of development for the bill. The revisions aim to address critical challenges faced by our basic education system, including governance, accountability, access, and quality. Grounded in thorough consultation and informed by monitoring data, the amendments hold some promise with regards to strengthening the system, but must, in our view, give greater consideration to implementation (capacity and resources) if they are to be effective, sustained and scaled.

THEMES	PROPOSED AMENDMENT PER BELA	SECTIONS	COMMENTS
Compulsory Grade R	to provide that attendance of Grade R is compulsory	SASA Section 3(1) and 5(1)	This is a good measure in principle, since attendance of Grade R is associated with long-term schooling success. However, the issue of quality of Grade R education has not been interrogated in this association, and in the context of low-quality education in South Africa leading to poor outcomes, it remains to be seen how compulsory Grade R will address this. The Bill states that the financial burden has been calculated as R5.12bn (as of 2022) for implementation, though there is no breakdown for this in terms of salaries, training, and materials, while the infrastructure cost is estimated at R12bn. No breakdown of costs or detailed studies have been produced, no provision made in the current financial year, and in fact education budgets have been slashed, so the implementation of this section will no doubt be near impossible. Given that learner admission numbers are continuously climbing, the number of learners required to enter compulsory Grade R in 2025, with proposed fines for parents that don't comply, represents an administrative and financial nightmare for government. This should have followed a phased approach based on resource availability and comprehensive planning. This also makes the official age for starting school to be 4 turning 5 by 30 June.
Powers of SGBs vs Provincial Head of Department for Education	to enhance the authority of the Head of Department in relation to the admission of a learner to a public school, after consultation with the governing body of the school	SASA Section 5(5)	The most controversial clauses of Bela, which are largely perceived to be a future assault on Afrikaans-only medium schools, though the counter-argument is that it prevents SGBs from excluding learners who would be more suitably accommodated at a local school. The sections require that admission and language policies are submitted to HoDs, and give the HoD final authority on the admission of a learner to a school, and on the language of education at a schools. This is largely perceived as a direct attack on the powers of SGBs, which the original Schools Act intended to have semi-autonomous powers by parents that would be acting in the best interest of the learners.
	to provide that the governing body of a public school must submit the admission and language policies of the public school to the Head of Department for approval	SASA Section 5(5A) and 5(2)	

	and that the Head of Department may direct a public school to adopt more than one language of instruction, where it is practicable to do so, and that, if the Head of Department issues such a directive, he or she must take all necessary steps to ensure that the public school receives the necessary resources to enable it to provide adequate tuition in the additional language of instruction	SASA Section 5(13-20)	The reality is that preserving language of instruction at schools is often a fine line between realising the right to be taught in an official language and the benefits and cultural promotion and preservation that this represents, and exclusive of learners from schools that are more geographically accessible. The sections however do provide for extensive public notice, public participation, provision of clear grounds for HoD decision, and appeal processes. If this is read in with the new dispute resolution processes, then the implementation of a new language policy will not be a quick decision, and given the precedence around this issue, most HoDs will (hopefully) tread carefully. The Bill does provide for exceptional circumstances where a HoD can push a new language of instruction on a school, but given the burden of providing good grounds for this, it remains to be seen what these exceptional circumstances are, and holds potential for abuse. The clause regarding resource requirements for additional languages of instruction does place a further burden of proof on a HoD, and in a climate of reduced funding for education, it seems that this will mitigate for any potentially rash decisions. SGBs must submit their language and admissions policies to the HoD within 30 days of the Act commencing, which may lead to significant administrative challenges for Provincial Departments.
	to provide that the code of conduct of a public school must take into account the diverse cultural beliefs, religious observances and medical circumstances of learners at the school to provide for the inclusion of an exemption clause in the code of conduct	SASA Section 8(1)	Code of Conducts are required and must be submitted to the HoD. This does appear to implement a degree of standardisation, and aims to prevent past controversies over learners' hair and uniforms. The wording of the sections is not too prescriptive, does allow for interpretation by SGBs, and attempts to implement important provisions of the Bill of Rights regarding diversity and unfair discrimination. There is a provision for parents to apply for an exemption for their children from a particular clause of the Code of Conduct, and this will likely yield interesting debates regarding diversity and conformity in school environments.

Greater accountability for SGBs	to provide that the Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions	SASA Section 25	In an environment of dysfunctional or non-functioning SGBs, these are important sections, but can be open to abuse, particularly where a HoD can withdraw a function and assign it to someone, seemingly at random. However there are reporting requirements and SGBs have the ability to make representations and appeal, which will ideally prevent any abuse. The implementation of these sections will need to be monitored.
	to further regulate the withdrawal of the functions of governing bodies	SASA Section 22	
	to provide that a member of a governing body must declare a direct or indirect personal interest that he or she or his or her family member may have in the recruitment or employment of staff at a public school, or in the procurement of goods and services for a public school, and that the member of the governing body must recuse himself or herself from a meeting of the governing body under such circumstances	SASA Section 14(4A) and 26	A number of important anti-fraud and corruption measures intended to address the widespread dysfunctionality and financial abuse by SGBs, and to ideally to instil good governance practices, especially around financial management. The proof will be in the implementation of these sections, and capacitation of SGBs in financial management will no doubt become an important focus for Provincial Departments of Education, which should be reflected in their SGB training budgets
	to provide further clarity regarding the prohibition of the remuneration of members of governing bodies	SASA Section 27(2)	
	to provide that, where reasonably practicable, only a parent member of a governing body who is not employed by the public school may serve as chairperson of the finance committee	SASA Section 29(2)	
	to further regulate and refine matters relating to the budget of a public school	SASA Section 37(1)	
	to further regulate the circumstances under which a governing body may pay additional remuneration, or give	SASA Section 38A	

	any other financial benefit or benefit in kind, to a state employee		
	to provide for financial record-keeping by the governing body of a public school, for the drawing up of financial statements, and for the presentation of these to a general meeting of parents	SASA Section 38(3-7) and 42	
	to provide that the governing body of a public school must submit quarterly reports on all income and expenditure to the Head of Department	SASA Section 42	
	to provide that lease agreements relating to a school's immovable property must be submitted to the Member of the Executive Council for approval and that, in the case of a lease for a period not exceeding 12 months, the approval of the Member of the Executive Council is not required	SASA Section 36(2) and (4)	An unusual power to be given to a MEC, as this administrative function would normally be given to a HoD. This may have been introduced in order to prevent abuse through unaffordable and/or irregular long-term leases, but there still appears to be no obvious reason this should be undertaken by the MEC.
	to extend the powers of the Head of Department to conduct an investigation into the financial affairs of a public school	SASA Section 43(4-5)	A not unreasonable measure to ensure forensic investigations happen timeously and that the recommendations are implemented. Read together with the requirements for SGBs to submit accurate financial statements on a regular basis, it will ideally enforce the accountability measures of this Bill.

Greater power to the Minister for Basic Education	to provide the Minister with the authority to appoint a person, an organisation or a group of persons to advise on curriculum and assessment-related matters	SASA Section 6A(3)	A not unreasonable power, and which will hopefully send a signal that the onerous requirements of CAPS on both educators and learners will be reviewed faster and by the necessary experts on the subject.
	to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the composition and related matters, of governing bodies of schools for learners with special needs	SASA Section 24	This proposed amendment seems necessary, since it removes an administrative burden of 9 separate notices going out every year from each MEC for Education, and ensures consistency for all provinces. Our hope is that the bar for requirements for SGBs for learners with special needs will be set high.
	to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the election of members of governing bodies of public schools	SASA Section 24	
	to extend the power of the Minister to make regulations and to provide for offences to be created in regulations made by the Minister (both SASA and EEA)	SASA Section 51, 61, and EEA 35	This is a standard section in legislation, but the implementation will be telling. The creation of offences will address the sections relating to non-attendance, disruption of school activities, corporal punishment, and initiation practices, and it will be interesting to see what the fines and sentences for these will be. It may assist in prosecuting the last three in serious circumstances.
Greater accountability for parents and teachers	to create an offence where a parent supplies a public school with false or misleading information or forged documents when applying for the admission of a learner or for exemption from the payment of school fees	SASA Section 59(3)	An important provision to cut down on fraud in exemption applications for paying fees, where budgets are already stretched. It is unclear whether this will be implemented at no-fee quintile 1 and 2 schools, which would create an enormous administrative burden on provincial education departments.

	to amend the penalty provision in the case where the parent of a learner, or any other person, without just cause, prevents a learner who is subject to compulsory attendance from attending school, and to create an offence in respect of the interruption, disruption, or hindrance of school activities	SASA Section 3: “(1) Subject to <i>this Act</i> and any applicable provincial law, every <i>parent</i> must cause every <i>learner</i> for whom he or she is responsible to attend [a] <i>school</i>, [from] starting from <i>grade R</i> on the first <i>school</i> day of the year in which such <i>learner</i> reaches the age of [seven] six years and not leaving <i>school</i> until the last <i>school</i> day of the year in which such <i>learner</i> reaches the age of [fifteen] 15 years or [the ninth] will complete grade nine, whichever occurs first: Provided that a <i>learner</i> who will turn six after 30 June must start attending <i>grade R</i> the following year.”; (b) by the substitution for subsection (6) of	While upholding the Constitutional right of children to access education, this does appear somewhat controversial, though there have been no strong public detractors on this. However, when read together with the ability of the HoD to force parents who home-school to send their children to school, this punitiv approach, if implemented within this context, will be highly controversial.
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		the following subsection: “(6) Subject to <i>this Act</i> and any other applicable law— (a) any <i>parent</i> who, without just cause and after a written notice from the <i>Head of Department</i>, fails to comply with subsection (1)[,] is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding [six] 12 months, or to both a fine and such imprisonment; or (b) any other person who, without just cause, prevents a <i>learner</i> who is subject to compulsory attendance from attending [a] <i>school</i>[,] is guilty of an offence and liable, on	
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		conviction, to a fine or to imprisonment for a period not exceeding [six] 12 months, or to both a fine and such imprisonment.”; and “(7) Any person who, unlawfully and intentionally interrupts, disturbs or hinders any <i>school</i> activity, or hinders or obstructs any <i>school</i> in the performance of the <i>school’s</i> 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.”.	
	to prohibit an educator from conducting business with the State and to create an offence in relation thereto	EEA Section 19	An anti-corruption measure that reflects the standard clause in the Public Service Act, now brought to educators. As within the rest of government there are many ways to circumnavigate this, and the South African public lacks trust in the ability of government to implement such anti-corruption measures. It will be interesting to observe how the department aims to implement this.

Learner attendance		SASA Section 4A (1) The <i>educator, principal</i> and <i>governing body</i> are responsible for promoting and monitoring the attendance of <i>learners</i> at <i>school</i>. (2) The <i>governing body</i> must ensure that the code of conduct for <i>learners</i> contains rules dealing with punctuality and regular <i>school</i> attendance. (3) If a <i>learner</i> is absent for three consecutive <i>school</i> days without valid reason, the class teacher concerned must report the absence to the <i>principal</i>. (4) The <i>principal</i> must, within 24 hours after being informed of the absence, investigate the matter by making	Encouraging learner attendance is certainly welcomed given that poor attendance rates have a severe impact on learning, and contribute to declining school performance. This section must be read together with the section that makes it an offence to prevent a learner from attending school – adding to the pressure on parents to make sure that their children attend school. It must also be read together with the requirements for school Code of Conducts, since requirements for attendance must be included in the Code of Conduct. Provincial education departments should now be able to collate more accurate attendance figures and have clear accountability measures in place to deal with principals, educators, and SGBs that are not taking learner attendance rates seriously.
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		a reasonable effort to contact the <i>parent</i> of the <i>learner</i> by whatever means are suitable for the circumstances of the <i>school</i> and the family concerned and report the matter to the <i>governing body</i> of the <i>school</i> for further intervention.”.	
Stronger clauses against corporal punishment and initiation	to provide for the prohibition of corporal punishment at school activities and at hostels accommodating learners of a school	SASA definition: ‘corporal punishment’ means 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— <i>(a)</i> hitting, smacking, slapping, pinching or scratching with the hand or any object; <i>(b)</i> kicking, shaking, throwing, throwing objects at, burning, scalding,	Even though the original Schools Act outlawed corporal punishment, the practice has continued. The sections include the new definition for corporal punishment, which while important, also includes “forced exercise”. This effectively allows all learners to opt out of compulsory physical education classes. While eradicating corporal punishment is important, many South Africans still support it, and the implementation of this section will be as challenging as before.

		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;" Section 10(1-2)	
	to prohibit initiation practices during school activities	SASA Section 10A(1)	Deaths and abuse from initiation practices have been far too frequently reported, and while instructors have been issued in the past to ban initiation practices, this section codifies it. It does have a technicality that it only prohibits initiation practices <i>against</i> a learner, so it raises the question as to can initiation be permitted if a learner is a willing participant, which would be very complicated to prove. However if this technicality were ever to come to court the spirit and intention of the section will not doubt override any doubts.

South African Sign Language is an official language of instruction	to provide that the South African Sign Language has the status of an official language for purposes of learning at a public school	SASA Section 5(2)	A good step reflecting the signing of the Sign Language Act on 19 July 2023, which recognised South African Sign Language as the 12 th official language of South Africa. This important distinction gives greater recognition to a minority language, and will hopefully encourage greater learning materials, and possibly inclusion into programmes to teach hearing learners to be able to communicate with deaf learners. As with all other proposed amendments, special consideration must be given to how this will be resourced, implemented and monitored.
Sport and art-focused schools	to provide for the designation of a public school as a public school with a specialised focus on talent	SASA Section 12(3A-D) and 24A	An important provision for recognising schools that specialise in sports and arts, to mirror the specialised schools in STEM. Given the unique focus of these schools, the composition of the SGB will now ideally include experts in the relevant fields
	to provide for the membership of a governing body of a public school that provides education with a specialised focus on talent, sports and performing or creative arts		
Requirements for School Code of Conduct and suspensions	to provide that the code of conduct of a public school must take into account the diverse cultural beliefs, religious observances and medical circumstances of learners at the school	SASA Section 8(1-5)	Code of Conducts are required and must be submitted to the HoD. This does appear to implement a degree of standardisation, and aims to prevent past controversies over learners' hair and uniforms. The wording of the sections is not too prescriptive, does allow for interpretation by SGBs, and attempts to implement important provisions of the Bill of Rights regarding diversity and unfair discrimination.
	to provide for the inclusion of an exemption clause in the code of conduct		There is provision for parents to apply for an exemption for their children from a particular clause of the Code of Conduct, and this will likely yield interesting debates around diversity and conformity in school environments.
	for disciplinary proceedings to be dealt with in an age-appropriate manner and in the best interests of the learner	SASA Section 9(1)	The requirement for disciplinary proceedings to be accessible to the learner and in their best interest is reasonable, but the clarification around suspensions due to serious misconduct, while important for consistency, is likely to be controversial, given that only SGBs can suspend learners, and only once they've provided the learner with a chance to make representations. This function should be given to principals, since this a daily management issue, though the sections are not clear as to whether temporary suspensions can be carried out by principals, with the final suspension confirmed by the SGB.
	to refine the provisions relating to suspension and expulsion from public school by inserting a definition of serious misconduct		

Drugs, alcohol, and dangerous weapons at school	to refine the provisions relating to the possession of drugs on school premises or during school activities	SASA Section 8A	Designed to tackle the prevalence of drugs, alcohol, and dangerous weapons being brought to school, this empowers principals to conduct searches and do both targeted and random (non-invasion) drug testing. It is worded carefully so as not to infringe on the rights of learners, but could be open to abuse by overeager principals. Still, given the current scourge and attacks by learners that have led to serious injury and death, this provision could avert future disaster.
	to provide for conditions under which liquor may be possessed, sold or consumed on school premises or during school activities		Controversial when implemented through the Western Cape Provincial School Education Amendment Act (2018), this will now become a national standard, reflecting a reality that school fundraising activities often involve sales of alcohol which bring in much-needed funds. The hope is that, as with the Western Cape, this has been introduced so that the sale of alcohol is now properly regulated. Once again though, the key question we should be asking is what capacity provincial education departments have to regulate this.
Home education	to further regulate home education	SASA definition: ‘home education’ means a purposeful programme of education for a <i>learner</i> , alternative to <i>school</i> attendance, which— (a) is provided under the direction of the <i>learner’s</i> parent, primarily in the environment of the <i>learner’s</i> home; (b) may include tutorial or other educational support, if necessary, secured by the <i>parent</i> on specific areas of the curriculum	A highly controversial clause, as it requires all learners being home schooled to be registered by their parents with the department. The HoD is given powers for conducting inspections to check that the learners are receiving education in a suitable environment, that is equal to that provided in public schools, and to force parents to stop home-schooling and send their children to school if they fail the inspection. While this is arguably important as the Provincial Department of Education is responsible for ensuring that all learners have the right to basic education, it creates a tremendous administrative burden. The registration within 30 days will create a flood of paperwork, but home-schooling parents get relief in that if they don’t get a response in 60 days, their child is registered by default. Parents that home-school are usually fiercely defensive of their decision, and it touches on the right of parents to determine the education received by their children, vs that of the public/private school system. The implementation of this section will likely yield interesting test cases of the rights of parents vs the decisions of HoDs in this regard and will likely set important legal precedents in education.

		followed by the <i>learner</i>; and (c) meets the requirements for <i>home education</i> contemplated in section 51 of <i>this Act</i>;" SASA Section 51	
Independent schools	to increase the penalty provision in the case where a person establishes or maintains an independent school and fails to register it	SASA Section 46	The flourishing of independent schools to cater for the demand for quality education has led to instances of fly-by-night schools and those operating under the radar, often to the detriment of learners. This requirement appears to address this, but could go further in terms of requiring Provincial Departments of Education to be more rigorous about conducting inspections and responding to reports of unregistered independent schools.
	to empower the Member of the Executive Council to determine conditions when granting a subsidy to an independent school and to provide for financial reporting, by such subsidised independent schools	SASA Section 48(2) and (6)	With the number of independent schools catering for learners who would ordinarily fall within quintiles 1-3, it seems reasonable that the capacity provided by these schools could ease the burden on the public school system through subsidies. However, the Bill gives the MEC exclusive authority to set the conditions for the subsidy, which should ordinarily be the prerogative of the HoD. Without any standards for the conditions this is open to potential abuse. The subsidy would have to be provided by a budget vote in the Provincial Legislature, which would imply a degree of legislative oversight. The implementation of this section will have to be closely monitored by the media and civil society as it holds potential for abuse.
Centralised procurement	to provide for centralised procurement of identified learning and teaching support material for public schools	SASA Section 21(3A)	In the best-case scenario this has the potential to reduce costs of textbooks, stationery, and uniforms, but in the current context of South Africa there is no-one who trusts central government procurement which is synonymous with corruption and State Capture. The implementation of this section will have to be closely monitored by the media and civil society as it holds high potential for abuse.

Other	to further regulate the merger of public schools	SASA Section 12A(2-9)	Provides clear administrative processes, including inspections, reports, public participation, sharing of information relating to the decision and proper public notification, calls for comments from parents, consideration of comments, and appeals by parents
	to extend and refine the provisions relating to the closure of a public school	SASA Section 33	An important addition to cover what is usually a controversial process
	to provide for the reasonable use of the facilities of a school for education-related activities without the charging of a fee or tariff	SASA Section 15(20)	A simply administrative provision to allow reasonable use of school facilities – which the HoD may determine. This does introduce the risk of additional administrative burden for the HoD.
	to make a technical amendment in regard to the status of learners serving on governing bodies of public schools	SASA Section 32	Change of terms from “minor” to “learner”
	to provide that, where the parent of a learner applies for exemption from the payment of school fees and information cannot be obtained from the other parent of the learner, the parent may submit documentary evidence in the form of an affidavit or court order in relation to the other parent	SASA Section 41(2A-B)	A helpful addition to the responsible parent where the other parent doesn’t come to the party when submitting vital proof for claiming exemption from school fees. The responsible parent can now provide an affidavit to show that they tried unsuccessfully to get the necessary information from the non-responsive parent, and this affidavit is enough to prevent the application from being rejected. This process will prove very useful for acrimonious divorces, and absent parents.
	to provide for a dispute resolution mechanism in the event of a dispute between the Head of Department or the Member of the Executive Council and a governing body	SASA Section 59A	Clear dispute resolution processes are always important, and this emphasizes using informal processes first before resorting to more formal processes and appeals. This will provide clarity for the incoming storm over admission and language policies, and help HoDs and MECs avoid going to court as a first step by litigious SGBs.
	to further regulate the liability of the State for delictual or contractual damages	SASA Section 60(4)	Clarifying that government is not liable for damages arising out of third-parties which are operating on school premises to provide educational services (this could be a direct to reference collaboration schools).

	to exclude further education and training centres, adult basic education centres and institutions, from the ambit of the Act	EEA Section 1, 5, 18	A minor correction to reflect the separation of the former Department of Education into Basic and Higher Education respectively. This amendment removes any reference to adult education and further education and training (FET) centres, and ensures the separation of the departments in administration and legislation
		SASA new definition for “required documents” and Section 5(1)	A new definition is provided for the required documentation that parents must submit as part of their child’s application. Given the challenge faced by many parents and children in getting this documentation, interventions here are welcome. A National Intergovernmental Committee and Provincial Intergovernmental Committees must be established by the Minister and Provincial MECs with the sole purpose of resolving this challenge. This seems very heavy-handed when a simpler solution would be to have a dedicated office in Home Affairs that will fast-track learner-related documents. Provincial departments can collate application references from parents and principals and submit these to the new Home Affairs office for resolution. Massive intergovernmental committees just add unnecessary bureaucracy.