

REPUBLIC OF SOUTH AFRICA

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**BASIC EDUCATION LAWS  
AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 45601 of  
6 December 2021)  
(The English text is the official text of the Bill)*

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(MINISTER OF BASIC EDUCATION)

**[B 2B—2022]**

ISBN 978-1-4850-0897-2

GENERAL EXPLANATORY NOTE:

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend—

- the South African Schools Act, 1996, to insert and amend certain definitions; to provide that attendance of grade R is compulsory; 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 official educational activities of a school; 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; 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; to provide that the South African Sign Language has the status of an official language for purposes of learning at a public school, 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; 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; 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 and to provide for the inclusion of an exemption clause in the code of conduct and for disciplinary proceedings to be dealt with in an age- appropriate manner and in the best interests of the learner; to refine the provisions relating to the possession of drugs on school premises or during school activities; to refine the provisions relating to suspension and expulsion from public school by inserting a definition of serious misconduct; to provide for the prohibition of corporal punishment at school activities and at hostels accommodating learners of a school; to prohibit initiation practices during school activities; to provide for the designation of a public school as a public school with a specialised focus on talent; to further regulate the merger of public schools; to provide for centralised procurement of identified learning and teaching support material for public schools; to further regulate the withdrawal of the functions of governing bodies; 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; 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; to provide that the Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions; to provide that a member of a governing body must declare a direct or indirect personal and financial 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; to provide further clarity regarding the prohibition of the remuneration of members of governing bodies; 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; 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; to make a technical amendment in regard to the status of learners serving on governing bodies of public schools; to extend and refine the provisions relating to the closure of a public school; 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; to further regulate and refine matters relating to the budget of a public school; to further regulate the circumstances under which a governing body may pay additional remuneration, or give any other financial benefit or benefit in kind, to a state employee; 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; 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; to extend the powers of the Head of Department to conduct an investigation into the financial affairs of a public school and to provide that the governing body of a public school must submit quarterly reports on all income and expenditure to the Head of Department; to increase the penalty provision in the case where a person establishes or maintains an independent school and fails to register it; 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; to further regulate home education; 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; 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; to further regulate the liability of the State for delictual or contractual damages; to extend the power of the Minister to make regulations and to provide for offences to be created in regulations made by the Minister; to amend the Preamble; and to provide for matters incidental thereto; and

- the Employment of Educators Act, 1998, so as to amend certain definitions; to exclude further education and training centres, adult basic education centres and institutions, from the ambit of the Act; to prohibit an educator from conducting business with the State and to create an offence in relation thereto; to extend the powers of the Minister to make regulations; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 84 of 1996, as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002, section 1 of Act 24 of 2005, section 4 of Act 31 of 2007 and section 4 of Act 15 of 2011** 5

1. Section 1 of the South African Schools Act, 1996, is hereby amended—
- (a) by the insertion in subsection (1) before the definition of “*Constitution*” of the following definitions:
- “*basic education*” includes *grade R* to grade 12, as evidenced in the National Curriculum Statement; 10

“*benefit in kind*” means any benefit offered or afforded to an employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is not a monetary benefit, including, but not limited to— 15

(a) exclusive private usage or ownership of a vehicle; 15

(b) free accommodation; 15

(c) free phone, including a cell phone; 15

(d) free holiday; 15

(e) groceries to the benefit of the employee; or 20

(f) garden services; 20

“*competent assessor*” means an *educator* registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), a recognised professional body in the field of education, or a person or body registered with the South African Qualifications Authority as defined in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);” 25
- (b) by the substitution in subsection (1) for the definition of “*Constitution*” of the following definition:
- “*Constitution*” means the Constitution of the Republic of South Africa, 1996 [(Act 108 of 1996)];” 30
- (c) by the insertion in subsection (1) after the definition of “*Constitution*” of the following 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— 35

(a) hitting, smacking, slapping, pinching or scratching with the hand or any object; 35

(b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; and 40

(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 exercises which are not in accordance with the curriculum applicable to the learner or denying or restricting a child’s use of the toilet;” 40
- (d) by the insertion in subsection (1) after the definition of “*dangerous object*” of the following definitions:
- “*Department of Basic Education*” means the national department established in terms of section 7(2), read with Schedule 1, of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for *basic education*; 50

“*drug*” means any— 50

(a) intoxicating or stupefying substance that has a psychological or physiological effect; 50

(b) substance that has the effect contemplated in paragraph (a) and that is possessed contrary to the code of conduct of a *school* or contrary to the laws of the Republic; 55

(c) substance, the possession or use of which, or the dealing in which, is prohibited without a medical prescription or legal authorisation; or 55

(d) performance-enhancing drug, prohibited performance-enhancing substance, dependence-producing substance, dangerous depen- 60

- dence-producing substance, undesirable dependence-producing substance, unlawful substance, prohibited substance, illicit substance, illicit drug, or scheduled substance, contemplated in any South African legislation that deals with the control of medicines and related substances, with drug trafficking, substance abuse in general, and with substance abuse in sport and in any programmes or policies aimed at curtailing social and sport-related substance abuse, and in any international instruments that deal with such matters and to which South Africa subscribes or is a party;”;
- (e) by the insertion in subsection (1) after the definition of “*education department*” of the following definition:
- “**‘education district’** means a district in an area of a province which is demarcated by the *Member of the Executive Council* for administrative purposes;”;
- (f) by the insertion in subsection (1) after the definition of “*grade*” of the following definition:
- “**‘grade R’** means the Reception grade;”;
- (g) by the insertion in subsection (1) after the definition of “*Head of Department*” of the following definition:
- “**‘home education’** means a purposeful programme of education for a *learner*, alternative to *school* attendance, which—
- (a) is provided under the direction of the *learner’s* parent, primarily in the environment of the *learner’s* home;
- (b) may include tutorial or other educational support, if necessary, secured by the *parent* on specific areas of the curriculum followed by the *learner*; and
- (c) meets the requirements for *home education* contemplated in section 51 of *this Act*;”;
- (h) by the deletion in subsection (1) of the definition of “*illegal drug*”;
- (i) by the insertion in subsection (1) after the definition of “*learner*” of the following definition:
- “**‘liquor’** means liquor as defined in section 1 of the Liquor Act, 2003 (Act No. 59 of 2003);”;
- (j) by the substitution in subsection (1) for the definition of “*loan*” of the following definition:
- “**‘loan’** means any financial obligation based on agreement, which obligation renders a *school* liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of employees appointed by the *governing body* in terms of section 20(4) or (5), or operational costs as determined in the annual budget contemplated in section 38;”;
- (k) by the insertion in subsection (1) after the definition of “*officer*” of the following definition:
- “**‘other financial benefit’** means any benefit of a monetary nature, including, but not limited to—
- (a) exemption from the payment of *school fees* to the *school* in respect of the child of an employee, but excluding exemption in terms of the provisions of sections 39 to 41;
- (b) a credit card linked to an employee for his or her personal use; or
- (c) a petrol card linked to an employee for his or her personal use not related to any *school* activity;”;
- (l) by the substitution in subsection (1) in the definition of “*parent*” for paragraph (c) of the following paragraph:
- “(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the *learner’s* education [at *school*];”;
- (m) by the insertion in subsection (1) after the definition of “*registrar of deeds*” of the following definition:
- “**‘required documents’** for *learners* shall have the following meaning in relation to the following categories of *learners*:

- (a) Where at least one or both biological or adoptive *parents* of a *learner* are South African citizens, the following documents:
  - (i) An unabridged birth certificate of the *learner*;
  - (ii) the South African identity documents or cards of the *learner's parents*; and
  - (iii) where either or both *parents* are deceased, the relevant death certificates;
- (b) where both *parents* of the *learner* are foreign nationals and hold either permanent residence permits or temporary residence visas, the following documents:
  - (i) the *learner's* foreign issued birth certificate;
  - (ii) the *learner's* passport;
  - (iii) a study visa or permanent residence permit issued to the *learner*;
  - (iv) the *parents'* passports; and
  - (v) the *parents'* temporary residence visas or permanent residence permits;
- (c) where the *parents* of the *learner* are refugees or asylum seekers, the following documents:
  - (i) the *parent's* asylum seeker or refugee visa;
  - (ii) the *learner's* asylum seeker or refugee visa;
  - (iii) the *learner's* birth certificate if the *learner* was born in the Republic; and
  - (iv) where asylum seeker visas are provided, a refugee or long term study visa must be provided within three years of admission of the *learner*; and
- (d) where the *learner* is in alternative care, the following documents:
  - (i) the relevant court order granting guardianship or custody; and
  - (ii) the *learner's unabridged birth certificate*.”; and
- (n) by the insertion in subsection (1) after the definition of “*school fees*” of the following definition:
 

“‘**special education needs**’ means education designed to facilitate the learning of individuals who, for a wide variety of reasons, require additional support and adaptive pedagogical methods in order to participate and meet learning objectives in an educational programme;”.

#### Amendment of section 3 of Act 84 of 1996

#### 2. Section 3 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 

“(1) Subject to *this Act* and any applicable provincial law, every *parent* must cause every *learner* for whom he or she is responsible to attend [a] *school*, [from] starting from *grade R* on the first *school* day of the year in which such *learner* reaches the age of [seven] *six* years and not leaving *school* until the last *school* day of the year in which such *learner* reaches the age of [fifteen] 15 years or [the ninth] will complete grade *nine*, whichever occurs first.”;
- (b) by the substitution for subsection (6) of the following subsection:
 

“(6) Subject to *this Act* and any other applicable law—

  - (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1)[,] is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding [six] 12 months, or to both a fine and such imprisonment; or
  - (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending [a] *school*[,] 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.”; and
- (c) by the addition of the following subsection:
 

“(7) Any person who, unlawfully and intentionally interrupts, disturbs or hinders any official educational activity of a school, or hinders



or obstructs any *school* in the performance of the *school's* official educational 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.”.

Insertion of section 4A in Act 84 of 1996 5

3. The following section is hereby inserted in the South African Schools Act, 1996, after section 4:

“Monitoring learner attendance

- 4A. (1) The *educator, principal* and *governing body* are responsible for promoting and monitoring the attendance of *learners* at *school*. 10
- (2) The *governing body* must ensure that the code of conduct for *learners* contains rules dealing with punctuality and regular *school* attendance.
- (3) If a *learner* is absent for three consecutive *school* days without valid reason, the class teacher concerned must report the absence to the *principal*. 15
- (4) The *principal* must, within 24 hours after being informed of the absence, investigate the matter by making a reasonable effort to contact the *parent* of the *learner* by whatever means are suitable for the circumstances of the *school* and the family concerned and report the matter to the *governing body* of the *school* for further intervention.”. 20

Amendment of section 5 of Act 84 of 1996, as amended by section 2 of Act 50 of 2002

4. Section 5 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 25
- “(1) A *public school* must admit, and provide education to, *learners* and must serve their educational requirements for the duration of their *school attendance* without unfairly discriminating in any way.”;
- (b) by the insertion after subsection (1) of the following subsections: 30
- “(1A) Any *learner* whose *parent* or guardian has not provided any *required documents*, whether of the *learner* or such adult person acting on behalf of the *learner*, during the application for admission, shall nonetheless be allowed to attend *school*.
- (1B) The *principal* of the *school* must advise the *parent* or guardian to secure the *required documents*.”;
- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 35
- “(a) The admission age of a *learner* to a *public school* to *grade R* is age four turning five by 30 June in the year of admission: Provided that, if a *school* has limited capacity for admission in *grade R*, preference must be given to *learners* who are subject to compulsory attendance.”; 40
- (d) by the substitution for subsection (5) of the following subsection: 45
- “(5) Subject to *this Act* and any applicable provincial law, the admission policy of a *public school* is determined by the *governing body* of such *school* in line with the *Constitution* and relevant legislation: Provided that—
- (a) the *governing body* must submit the admission policy of a *public school* and any amendment thereof to the *Head of Department* for approval;
- (b) the *Head of Department* may approve the admission policy of a *public school* or any amendment thereof; 50
- (c) the *Head of Department*, when considering the admission policy or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the needs, in general, of the broader community in the *education district* in which the *public school* is situated, and must take into account factors including, but not limited to— 55

- (i) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution*, and equity;
  - (ii) whether there are other *schools* in the community that are accessible to *learners*;
  - (iii) the available resources of the *school* and the efficient and effective use of state resources; and
  - (iv) the space available at the *school* for *learners*; and
- (d) the *Head of Department*, after consultation with the *governing body* of the *school*, has the final authority, subject to subsection (9), to admit a *learner* to a *public school*; and
- (e) the *governing body* must review the admission policy determined in terms of this section every three years or whenever the factors referred to in paragraph (c) have changed when circumstances so require, or at the request of the *Head of Department*.”;
- (e) by the insertion after subsection (5) of the following subsections:
  - “(5A) The *governing body* of each *public school* must, within 30 days after the commencement of the Basic Education Laws Amendment Act, 2022, submit the admission policy of that *public school* to the *Head of Department* for approval.
  - (5B) The *Head of Department* must respond to the *governing body* as contemplated in subsection (5)(b) and subsection (5A) within 60 days after receiving the admission policy, failing which the admission policy will be regarded as having been approved by the *Head of Department*.
  - (5C) When a *public school* has, as contemplated in subsection (5)(a) and subsection (5A), submitted its admission policy to the *Head of Department*, such admission policy will be regarded as the valid admission policy of the *school* during the 60-day period referred to in subsection (5B), or, if the *Head of Department* responds to the *school's* request for approval of the admission policy before the end of the 60 day period, until the earlier date on which the *Head of Department* responds.
  - (5D) The *governing body* of each *public school* must, after the commencement of the Basic Education Laws Amendment Act, 2022, submit any amendment to the admission policy to the *Head of Department* for approval, and the *Head of Department* must respond within 30 days after receiving the amendment, failing which the amendment will be regarded as having been approved by the *Head of Department*.”;
- (f) by the substitution for subsection (9) of the following subsection:
  - “(9) Any *learner* or *parent* of a *learner* who has been refused admission to a *public school* may appeal against the decision to the *Member of the Executive Council* within 14 days of receiving the notification of the refusal of admission to the *public school*.”; and
- (g) by the addition of the following subsections:
  - “(10) If an appeal contemplated in subsection (9) has been received, the *Member of the Executive Council* must, within 14 days after receiving such an appeal, consider and decide on the matter and inform the *learner* or the *parent* of the *learner* of the outcome of the appeal.
  - (11) If the *governing body* is not satisfied with the decision of the *Head of Department* as contemplated in subsection (5)(b), the *governing body* may appeal against the decision to the *Member of the Executive Council* within 14 days after receiving the decision of the *Head of Department*.
  - (12) If an appeal contemplated in subsection (11) has been received, the *Member of the Executive Council* must, within 14 days after receiving such appeal, consider and decide on the matter and inform the *governing body* of the outcome of the appeal.
  - (13) While the *Member of the Executive Council* considers the appeal, the admission policy shall remain valid and applicable, and only the provisions that are the subject of the appeal shall be suspended pending the finalisation of the appeal process.”.



**Amendment of section 6 of Act 84 of 1996**

**5.** Section 6 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The *governing body* of a *public school* may, subject to subsection (13), determine the language policy of the *school* subject to the *Constitution*, *this Act* and any applicable provincial law: Provided that the language policy of a *public school* must be limited to one or more of the official languages of the Republic as provided in section 6(1) of the *Constitution*.”;

(b) by the substitution for subsection (4) of the following subsection: 10

“(4) [**A recognised**] *South African Sign Language* has the status of an official language for purposes of learning at a *public school*.”; and

(c) by the addition of the following subsections:

“(5) The *governing body* must submit the language policy of a *public school* and any amendment thereof to the *Head of Department* for approval. 15

(6) The *Head of Department* may approve the language policy of a *public school* or any amendment thereof.

(7) The *Head of Department*, when considering the language policy of a *public school* or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the language needs, in general, of the broader community in the *education district* in which the *public school* is situated, and must take into account factors including, but not limited to— 20

(a) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity; 25

(b) section 6(2) of the *Constitution*;

(c) section 29(2) of the *Constitution*;

(d) the changing number of *learners* who speak the language of learning and teaching at the *public school*; 30

(e) the need for effective use of classroom space and resources of the *public school*; and

(f) the enrolment trends of the *public school*.

(8) The *governing body* must review the language policy determined in terms of this section every three years or whenever the factors referred to in subsection (7) have changed, when circumstances so require, or at the request of the *Head of Department*. 35

(9) The *governing body* of each *public school* must, within 30 days after the commencement of the Basic Education Laws Amendment Act, 2022, submit the language policy of that *public school* to the *Head of Department* for approval. 40

(10) The *Head of Department* must respond to the *governing body* as contemplated in subsection (6) within 60 days after receiving the language policy, failing which the language policy will be regarded as having been approved by the *Head of Department*. 45

(11) When a *public school* has, as contemplated in subsection (5) and subsection (9), submitted its language policy to the *Head of Department*, such language policy will be regarded as the valid language policy of the *school* during the 60-day period referred to in subsection (10), or if the *Head of Departments* responds to the *school's* request for approval of the language policy before the end of the 60-day period, until the earlier date on which the *Head of Department* responds. 50

(12) The *governing body* of each *public school* must, after the commencement of the Basic Education Laws Amendment Act, 2022, submit any amendment to the language policy to the *Head of Department* for approval, and the *Head of Department* must respond within 30 days after receiving the amendment, failing which the amendment will be regarded as having been approved by the *Head of Department*. 55

(13) Notwithstanding the provisions of subsection (2), the *Head of Department* may, where it is practicable to do so and subject to subsection (7), direct a *public school* to adopt more than one language of instruction. 60

- (14) The *Head of Department*, in determining whether it is practicable for a *public school* to have more than one language of instruction, must take into account factors including, but not limited to—
- (a) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity; 5
  - (b) the changing number of *learners* who speak the language of learning and teaching at the *public school*;
  - (c) the need for effective use of classroom space and resources of the *public school*; and
  - (d) the language needs, in general, of the broader community in the *education district* in which the *public school* is situated. 10
- (15) The *Head of Department* may not act in terms of subsection (13) unless he or she has—
- (a) in writing, informed the *school* and the *governing body* of his or her intention to act as contemplated in subsection (13) and his or her reasons therefor; 15
  - (b) notified the *parents* associated with the *school*, and the community in which the *school* is situated, of his or her intention so to act and the reasons therefor—
    - (i) by means of a notice in at least one newspaper circulating in the area where the *school* is situated, if any newspapers circulate in that area; 20
    - (ii) by causing the *principal* of the *school* to—
      - (aa) hand to every *learner* a notice containing the relevant information; and 25
      - (bb) instruct the *learners* to hand the notice to their *parents*; and
    - (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;
  - (c) granted the *school*, the *governing body*, the *parents* associated with the *school*, and the community in which the *school* is situated, a reasonable opportunity to make representations to him or her in relation to such action; 30
  - (d) conducted a public hearing, on reasonable notice, to enable the community to make representations to him or her in relation to such action; and 35
  - (e) given due consideration to any such representations received.
- (16) The *Head of Department* must—
- (a) inform the *school* and the *governing body* of his or her decision contemplated in subsection (13) and his or her reasons therefor; and 40
  - (b) by means of the methods listed in subsection (15)(b), notify the *parents* associated with the *schools*, and the communities in which the *schools* are situated, of the decision.
- (17) If the *Head of Department* acts in terms of subsection (13), he or she must, before his or her directive is implemented, take all necessary steps to ensure that the *public school* concerned receives the necessary resources, including, but not limited to—
- (a) *educators*; and
  - (b) learning and teaching support material, 45
- to enable that *public school* to provide adequate tuition in the additional language or languages of instruction. 50
- (18) If the *governing body* is not satisfied with the decision of the *Head of Department* as contemplated in subsection (6), or with a directive contemplated in subsection (13), the *governing body* may appeal against the decision or the directive, as the case may be, to the *Member of the Executive Council* within 14 days after receiving the decision or the directive, as the case may be. 55
- (19) If an appeal contemplated in subsection (18) has been received, the *Member of the Executive Council* must, within 14 days after receiving such appeal, consider and decide the matter and inform the *governing body* of the outcome of the appeal. 60

(20) While the *Member of the Executive Council* considers the appeal, the language policy shall remain valid and applicable, and only the provisions that are the subject of the appeal shall be suspended pending the finalisation of the appeal process.”.

**Amendment of section 6A of Act 84 of 1996, as inserted by section 3 of Act 50 of 2002**

6. Section 6A of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

“(3) The *Minister* may, in writing, appoint a person, an organisation or a group of persons to advise him or her in regard to the determination contemplated in subsection (1).”.

**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**

7. Section 8 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 15

“(1) Subject to the *Constitution*, *this Act* and any applicable provincial law, a *governing body* of a *public school* must adopt a code of conduct for the *learners* after consultation with the *learners*, *parents* and *educators* of the *school*.”;.

(b) by the substitution for subsection (2) of the following subsection: 20

“(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*.”; 25

(c) by the substitution for subsection (4) of the following subsection:

“(4) (a) Nothing contained in *this Act* exempts a *learner* from the obligation to comply with the code of conduct of the *school* attended by such *learner*.

(b) Despite paragraph (a), 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. 30

(c) On receiving an application contemplated in paragraph (b), the *school governing body* must communicate its decision to the *learner*, or the *parent* of the *learner*, as the case may be, within 14 days after receiving the application, and must in the case of a refusal provide written reasons for the refusal. 35

(d) A *learner*, or the *parent* of a *learner*, who has been refused exemption as contemplated in paragraph (c) may, within 14 days of receiving the notice of the decision, appeal to the *Head of Department* against the decision of the *governing body*, and the *Head of Department* must, after considering the reasons for the appeal and the reasons for the refusal by the *governing body*, communicate his or her decision to the *learner* or the *parent* of the *learner*, as the case may be, and to the *governing body*, within 14 days after receiving the appeal, and must provide written reasons for his or her decision.”; and 40 45

(d) by the addition to subsection (5) of the following paragraph:

“(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*.”. 50

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

8. Section 8A of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:  
 “(1) Unless authorised by the *principal* for legitimate educational purposes, no person may bring a *dangerous object* or **[illegal]** a *drug* onto *school* premises or have such *dangerous object* or *drug* in his or her possession on *school* premises or during any *school* activity.” 5
- (b) by the substitution for subsection (2) of the following subsection:  
 “(2) Subject to subsection (3), 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— 10  
 (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*.”; 15
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:  
 “(5) Any *liquor*, *dangerous object* or **[illegal]** *drug* that has been seized must be— ”; 20
- (d) by the substitution for subsection (6) of the following subsection:  
 “(6) If the police cannot collect the *liquor*, *dangerous object* or **[illegal]** *drug* from the *school* immediately, the *principal* or his or her delegate must— 25  
 (a) take the *liquor*, *dangerous object* or **[illegal]** *drug* to the nearest police station; and  
 (b) hand the *liquor*, *dangerous object* or **[illegal]** *drug* over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”; 30
- (e) by the substitution for subsection (7) of the following subsection:  
 “(7) The police officer who receives the *liquor*, *dangerous object* or **[illegal]** *drug* must issue an official receipt for it to the *principal* or to his or her delegate.”; 35
- (f) by the substitution for subsection (8) of the following subsection:  
 “(8) The *principal* or his or her delegate may at random administer a urine or other non-invasive test to any *learner* or group of *learners* that is on fair and reasonable grounds suspected of using *liquor* or **[illegal]** *drugs*, after taking into account all relevant factors contemplated in subsection (3).”; 40
- (g) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:  
 “(9) A *learner* contemplated in subsection (8) may be subjected to a urine or other non-invasive test for *liquor* or **[illegal]** *drugs* only if —”; 45
- (h) by the substitution for subsection (12) of the following subsection:  
 “(12) A *learner* may be subjected to disciplinary proceedings if—  
 (a) *liquor*, a *dangerous object* or **[illegal]** *any drug* is found in his or her possession; or  
 (b) his or her sample tested positive for **[an illegal]** *liquor* or *any drug*.”; and 50
- (i) by the substitution in subsection (14) for paragraph (a) of the following paragraph:  
 “(a) a search contemplated in subsection (2) was conducted and *liquor*, a *dangerous object* or **[illegal]** *any drug* was found; or”.

**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**

9. Section 9 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection: 55

- “(1) (a) The *governing body* may, on reasonable grounds and as a precautionary measure, suspend a *learner* who is **[suspected]** *accused* of serious misconduct from attending *school*, but may **[only]** enforce such suspension only after the *learner* has been granted a reasonable opportunity to make representations to it in relation to such suspension. 60

- (b) Serious misconduct by a *learner* is defined 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*; 5
  - (ii) any form of harassment, including sexual harrassment of a *learner*, employee or other person related to the *school*, including via electronic and social media; 10
  - (iii) repeated offences related to bullying, or the imminent threat to commit such an act; 15
  - (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; 20
  - (vi) serious transgressions relating to any test, examination or examination paper;
  - (vii) fraud; 25
  - (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; 30
  - (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*.”. 35

#### Amendment of section 10 of Act 84 of 1996

10. Section 10 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

- “(1) [No] Corporal punishment is abolished and no person may [administer] inflict or impose corporal punishment [at a school] to a learner at a school, during a school activity, or in a hostel accommodating learners of a school. 30
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a [sentence which could be imposed for assault] fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.” 35

#### Amendment of section 10A of Act 84 of 1996, as inserted by section 5 of Act 50 of 2002

11. Section 10A of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A person may not conduct or participate in any initiation practices against a *learner* at a *school*, during a school activity, or in a hostel accommodating *learners* of a *school*.”. 40

#### Amendment of section 12 of Act 84 of 1996, as amended by section 8 of Act 15 of 2011

12. Section 12 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsections: 45

- “(3A) The *governing body* of a *public school* may, in writing, apply to the *Member of the Executive Council* for the *public school* to be designated as a *public school* with a specialised focus on talent as contemplated in subsection (3)(a)(iii). 50
- (3B) The *Head of Department* may, after consultation with the *governing body* of a *public school*, identify the *school* and recommend to the *Member of the Executive Council* that the *school* should be designated as a *public school* with a specialised focus on talent as contemplated in subsection (3)(a)(iii). 55
- (3C) The *Member of the Executive Council* may, in writing, designate a *public school* from which an application contemplated in subsection (3A) has been received, and a *school* identified and recommended as contemplated in subsection (3B), as a *school* with a specialised focus on talent as contemplated in subsection



- (3)(a)(iii), if it is in the interest of education in the province and if the *school* complies with the norms and standards determined by the *Minister* in terms of subsection (3)(b).
- (3D) Before designating a *public school* as a *school* with a specialised focus on talent as contemplated in subsection (3)(a)(iii), the *Member of the Executive Council* must— 5
- (a) give written notice to the *school* in question, and to its *governing body*, of the intention to designate the *public school* as a *school* with a specialised focus on talent and of the reasons therefor; 10
  - (b) notify the *parents* associated with the *school*, and the community in which the *school* is situated, of the intention to designate the *public school* as a *school* with a specialised focus on talent and of the reasons therefor— 15
    - (i) by means of a notice in at least one newspaper circulating in the area where the *school* in question is situated, if any newspapers circulate in that area; 15
    - (ii) by causing the *principal* of the *school* in question to—
      - (aa) hand to every *learner* at the *school* a notice containing the relevant information; and
      - (bb) instruct the *learners* to hand the notice to their *parents*; and
    - (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible; 20
  - (c) give the *school* in question, and its *governing body*, and any other interested persons, an opportunity to make representations within a period of not less than 90 days from the date of the notices and communication referred to in paragraph (b); 25
  - (d) give due consideration to any such representations received; and
  - (e) be satisfied that the employers of staff at the *public school* have complied with their obligations in terms of the applicable labour law.”.

**Amendment of section 12A of Act 84 of 1996, as inserted by section 8 of Act 48 of 1999** 30

- 13.** Section 12A of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
 

“(2) Before merging two or more *public schools*, the *Member of the Executive Council* must—

    - (a) give written notice to the *schools* in question, and to their *governing bodies*, of the intention to merge them and of the reasons therefor; 35
    - (b) **[publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated]** notify the *parents* associated with the *schools*, and the communities in which the *schools* are situated, of the intention to merge the *schools* and of the reasons therefor— 40
      - (i) by means of a notice in at least one newspaper circulating in the area where the *schools* in question are situated, if any newspapers circulate in that area; and
      - (ii) by causing the *principals* of the *schools* in question to— 45
        - (aa) hand to every *learner* at each *school* a notice containing the relevant information; and
        - (bb) instruct the *learners* to hand the notice to their *parents*; and
      - (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible; 50
    - (c) give the **[governing bodies of the]** *schools* in question, and their *governing bodies*, and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the **[notice]** notices and communication referred to in paragraph (b); 55
    - (d) **[consider]** give due consideration to any such representations received; and
    - (e) be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law.”; 60



- (b) by the insertion after subsection (2) of the following subsection:
- “(2A) (a) The *Member of the Executive Council* must, within 30 days after receiving the representations referred to in subsection (2)(c), take a decision on whether or not to go ahead with the merger, and—
- (i) in writing, inform the *schools* in question, and their *governing bodies*, of the decision; and
  - (ii) by means of the methods listed in subsection (2)(b), notify the *parents* associated with the *schools*, and the communities in which the *schools* are situated, of the decision.
- (b) If the *Member of the Executive Council* fails to act in terms of paragraph (a), the contemplated merger will be deemed to have lapsed.
- (c) If the decision of the *Member of the Executive Council* is to go ahead with the merger, he or she must ensure that the merger is proceeded with within 30 days after giving notice as contemplated in paragraph (a).”;
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) (a) If the *Member of the Executive Council* decides to merge the *public schools* in question, he or she must, after consultation with the *governing bodies* of the *public schools* that are to be merged, determine, by notice contemplated in subsection (1)—
- (i) the date of establishment of the *public school*;
  - (ii) the name of the *public school*; and
  - (iii) the physical location and official address of the *public school*.
- (b) The single *school* contemplated in subsection (1) must be regarded as a new *public school*.”;
- (d) by the substitution for subsection (6) of the following subsection:
- “(6) (a) **[The]** After the notice as contemplated in subsection (4)(a) has been published, the *governing bodies* of the *schools* that are to be merged must have a meeting **[before the merger]** to constitute a single interim *governing body* comprising **[of]** all the members of the *governing bodies* concerned, which single interim *governing body* will govern the new *school* for a period not exceeding three months.
- (b) The interim *governing body* must—
- (i) elect office bearers;
  - (ii) decide on the budget **[and]**;
  - (iii) reach consensus about differences in codes of conduct and *school fees*[,] and, if applicable, about contractual obligations and the utilisation and disposal of movable assets; and
  - (iv) make recommendations to the *Head of Department* on personnel matters, as well as on any issue that is relevant to the merger or which is prescribed in terms of *this Act*,
- until a new *governing body* is constituted in terms of sections 23 and 28.
- (c) The *Member of the Executive Council* may extend the period referred to in paragraph (a) once for a further period not exceeding three months.”; and
- (e) by the addition of the following subsections:
- “(8) A merger contemplated in subsection (1) does not affect the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence.
- (9) A *learner* is subject to the code of conduct applicable to the new single *public school* as from the date of the merger contemplated in subsection (1), but if any proceedings in respect of a charge of misconduct had been instituted or commenced before the date of the merger, such proceedings must continue in terms of the code of conduct relevant to the *public school* immediately before the merger.
- (10) The new single *public school* or the *Head of Department*, as the case may be, may undertake rationalisation or redeployment of its workforce according to operational requirements in accordance with sections 189 and 189A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the Employment of Educators Act, 1998 (Act No. 76 of 1998), and any ratified collective agreement that deals with the rationalisation or redeployment of a workforce.

(11) If two or more *public schools* are merged into a single *public school* in terms of subsection (1), the new single *public school* continues with all academic programmes offered by the former *public schools* under the programmes applicable to the respective *public schools* immediately before the date of the merger, until such programmes are amended or restructured by the *governing body* or education department, where applicable.”. 5

**Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999**

14. Section 21 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsection: 10

“(3A) Notwithstanding the provisions of subsections (1)(c) and (3) and section 22, the *Head of Department* may, in consultation with the *governing body*, centrally procure identified learning and teaching support material for *public schools* on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.”. 15

**Substitution of section 22 of Act 84 of 1996**

15. The following section is hereby substituted for section 22 of the South African Schools Act, 1996:

**“Withdrawal of functions [from] of governing [bodies] body 20**

22. (1) The *Head of Department* may, on reasonable grounds, withdraw [a function] one or more functions of a *governing body*.

(2) The *Head of Department* may not take action [under] in terms of subsection (1) unless he or she has—

- (a) in writing informed the *governing body* of his or her intention so to act and the reasons therefor; 25
- (b) granted the *governing body* a reasonable opportunity to make representations to him or her relating to such intention; [and]
- (c) given due consideration to any such representations received; and
- (d) informed the *governing body* of his or her final decision, in writing. 30

(3) In cases of urgency, the *Head of Department* may act in terms of subsection (1) without prior communication to such *governing body*, if the *Head of Department* immediately thereafter—

- (a) furnishes the *governing body* with written reasons for his or her actions; 35
- (b) [gives] grants the *governing body* a reasonable opportunity to make representations to him or her relating to such actions;
- (c) duly considers any such representations received; and
- (d) informs the *governing body* of his or her final decision, in writing. 40

(4) The *Head of Department* may for sufficient reasons reverse or suspend his or her action in terms of subsection (1) or (3). 40

(5) [Any person aggrieved by a decision of] If the *Head of Department* acts in terms of [this section may appeal against the decision to the Member of the Executive Council] subsection (1) or (3), he or she must appoint sufficiently qualified persons to perform the withdrawn function or functions, as the case may be, for a period not exceeding three months. 45

(6) The *Head of Department* may extend the period referred to in subsection (5) by further periods not exceeding three months each, but the total period may not exceed one year. 50

(7) The persons contemplated in subsection (5) must, within the period of their appointment, build the necessary capacity to ensure that the *governing body* will thereafter be able to perform the functions that it previously failed to perform.

(8) The persons contemplated in subsection (5) shall have exclusive voting rights and decision making powers on any function that they have been appointed to perform. 55

(9) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal against the decision to the *Member of the Executive Council*, and the *Member of the Executive Council* must communicate his or her decision to the aggrieved person within 30 days after receiving the appeal and must provide written reasons for his or her decision.”.

**Amendment of section 23 of Act 84 of 1996, as amended by section 11 of Act 48 of 1999**

16. Section 23 of the South African Schools Act, 1996, is hereby amended—  
by the substitution for subsection (6) of the following subsection: 10  
“(6) A *governing body* may co-opt a member or members of the community, or persons from outside the community, with the relevant expertise, to assist it in discharging its functions.”.

**Amendment of section 24 of Act 84 of 1996, as amended by section 7 of Act 100 of 1997** 15

17. Section 24 of the South African Schools Act, 1996, is hereby amended—  
(a) by the substitution for subsection (2) of the following subsection:  
“(2) Subject to *this Act*, the [*Member of the Executive Council*] *Minister* must, by notice in the [*Provincial*] Gazette, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every *public school* for learners with special education needs [*within his or her province*].”; and 20  
(b) by the substitution for subsection (4) of the following subsection:  
“(4) The [*Member of the Executive Council*] *Minister* must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).”.

**Insertion of section 24A in Act 84 of 1996**

18. The following section is hereby inserted in the South African Schools Act, 1996, after section 24: 30

**“Membership of governing body of public school with specialised focus on talent, including sport, performing arts or creative arts**

**24A.** (1) The provisions of section 23, excluding subsection (5), will apply to a *governing body* of a *public school* that provides education with a specialised focus on talent, including sport, performing arts or creative arts, as contemplated in section 12(3)(a)(iii). 35

(2) The authority to co-opt a member or members of the community as contemplated in section 23(6) includes the authority to co-opt relevant experts in the specialised focus of the *public school*, whether from inside or outside the community.”. 40

**Substitution of section 25 of Act 84 of 1996, as amended by section 4 of Act 57 of 2001**

19. The following section is hereby substituted for section 25 of the South African Schools Act, 1996:

**“Dissolution of governing body** 45

**25.** (1) The *Head of Department* may, on reasonable grounds, dissolve a *governing body* that has ceased to perform its functions in terms of *this Act* or any provincial law.

(2) If the *Head of Department* acts in terms of subsection (1), he or she must appoint sufficiently qualified persons to perform all the functions of the *governing body* for a period not exceeding three months. 50

(3) The *Head of Department* may extend the period referred to in subsection (2) by further periods not exceeding three months each, but the total period may not exceed one year.

(4) The persons contemplated in subsection (2) shall have exclusive voting rights and decision making powers on all the functions of the *governing body*.

(5) The *Head of Department* may not take action in terms of subsection (1) unless he or she has—

(a) in writing, informed the *governing body* of his or her intention so to act and the reasons therefor;

(b) granted the *governing body* a reasonable opportunity to make representations to him or her relating to such intention;

(c) given due consideration to any such representations received; and

(d) informed the *governing body* of his or her final decision, in writing.

(6) If the *Head of Department* has dissolved a *governing body* as contemplated in subsection (1), he or she must ensure that a new *governing body* is elected in terms of *this Act*, within a year after the appointment of the persons contemplated in subsection (2).

(7) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal against the decision to the *Member of the Executive Council*, and the *Member of the Executive Council* must communicate his or her decision to the aggrieved person within 14 days after receiving the appeal and must provide written reasons for his or her decision.”.

#### Substitution of section 26 of Act 84 of 1996

20. The following section is hereby substituted for section 26 of the South African Schools Act, 1996:

#### “Recusal by member of governing body

26. (1) Before a *governing body* discusses, or decides on, the recruitment or employment of staff, or the procurement of goods and services for a *public school*, a member must declare to the *governing body* any direct or indirect personal and financial interest that the member or any of his or her family members or close friends or business partners has, including—

(a) a personal interest—

(i) in an entity conducting business with the *school*; or

(ii) in a business or a commercial or financial activity undertaken by the *governing body* of the *school*;

(b) a financial or other obligation to an entity conducting business with the *school*; and

(c) a gift, hospitality, sponsorship or other benefit received from an entity conducting business with the *school*.

(2) Any person may in writing inform the chairperson of a *governing body* or the *principal* of a *school* of a possible conflict of interest concerning a *governing body* member.

(3) A *governing body* member must recuse himself or herself and withdraw from a meeting of the *governing body* for the duration of the discussion and decision-making on an issue in which the member has a personal interest as contemplated in subsection (1).

(4) If a *governing body* has knowledge that a member who is present has a personal interest in a matter, the *governing body* may not take a decision on that matter until the member has withdrawn as contemplated in subsection (3).

(5) Where a *governing body* member contravenes the provisions of this section, the *Head of Department* may, after due process as contemplated in the code of conduct for the members of the *governing body*—

(a) suspend the *governing body* member; or

(b) terminate the membership of the *governing body* member.

- (6) This section applies, with the necessary changes, to committees of a *governing body* and committee members.
- (7) For the purposes of this section, family member means a parent, sister, brother, child or a spouse of a member of the *governing body*, and includes—
  - (a) a person living with that member as if they were married to each other, namely a life partner;
  - (b) a relative who resides permanently with that member; and
  - (c) any other relative who is dependent on such member.

**Amendment of section 27 of Act 84 of 1996**

21. Section 27 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:  
“(2) No member of a *governing body* may be remunerated in any way for the performance of his or her duties or for the attendance of meetings and *school activities*.”.

**Amendment of section 28 of Act 84 of 1996**

22. Section 28 of the South African Schools Act, 1996, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:  
“Subject to *this Act*, **[and any applicable provincial law, the *Member of the Executive Council*]** the *Minister* must, by notice in the **[Provincial]** Gazette, determine—”.

**Amendment of section 29 of Act 84 of 1996, as amended by section 12 of Act 48 of 1999**

23. Section 29 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:  
“(2) (a) Only a *parent* member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the *governing body*.  
(b) Where reasonably practicable, only a *parent* member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the finance committee of that *public school*.”.

**Amendment of section 32 of Act 84 of 1996**

24. Section 32 of the South African Schools Act, 1996 is hereby amended—
- (a) by the substitution for the heading of the following heading:  
“**Status of [minors] learners on governing bodies of public schools**”;
  - (b) by the substitution for subsections (1), (2) and (3) of the following subsections:
    - “(1) A member of a *governing body* who is a **[minor] learner** may not contract on behalf of a *public school*.
    - (2) A member of a *governing body* who is a **[minor] learner** may not vote on resolutions of a *governing body* which impose liabilities on third parties or on the *school*.
    - (3) A member of a *governing body* who is a **[minor] learner** incurs no personal liability for any consequence of his or her membership of the *governing body*.”; and
  - (c) by the addition of the following subsection:
    - “(4) A member of a *governing body* who is a *learner* may not take part in meetings at which recommendations for the appointment of staff to the *school* are decided on, or form part of interview panels relating to the appointment of staff, whether *educators* or non-*educators*, or in any other way be involved in the appointment of staff to the *school*.”.

**Substitution of section 33 of Act 84 of 1996**

25. The following section is hereby substituted for section 33 of the South African Schools Act, 1996:



### “Closure of public schools

**33.** (1) The *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school*.

(2) The *Member of the Executive Council* may not act **[under]** in terms of subsection (1) unless he or she has—

- (a) in writing informed the school and the governing body **[of the school]** of his or her intention so to act and his or her reasons therefor;
- (b) **[granted the governing body of]** notified the parents associated with the school, **[a reasonable opportunity to make representations to him or her in relation to such action]** and the community in which the school is situated, of his or her intention so to act and the reasons therefor—
  - (i) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area;
  - (ii) by causing the principal of the school to—
    - (aa) hand to every learner a notice containing the relevant information; and
    - (bb) instruct the learners to hand the notice to their parents; and
  - (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;
- (c) **[conducted a public hearing on reasonable notice, to enable]** granted the school, the governing body, the parents associated with the school, and the community in which the school is situated a reasonable opportunity to make representations **[to him or her]** in relation to such **[actions]** action; **[and]**
- (d) conducted a public hearing, on reasonable notice, to enable the community to make representations in relation to such action; and
- (e) given due consideration to any such representations received.

(3) (a) Notwithstanding the provisions of subsection (2), the *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school* in his or her sole discretion if no *learners* are registered at that *school*.

(b) The *Member of the Executive Council* may not act in terms of paragraph (a) unless he or she has verified, by means of a site inspection by an official nominated by him or her, that no *learners* are registered at that *school*.

(4) (a) The *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school* if, in the case of a primary *school*, 135 or fewer than 135 *learners* are registered at that *school*, and, in the case of a secondary *school*, 200 or fewer than 200 *learners* are registered at that *school*: Provided that the provisions of this subsection do not apply where the *Member of the Executive Council* has, before the commencement of the Basic Education Laws Amendment Act, 2022, acted in terms of subsection (2).

(b) The *Member of the Executive Council* may not act in terms of paragraph (a) unless he or she has—

- (i) given written notice to the school and the parents of the learners of that school;
- (ii) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area, and by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible, given notice of his or her intention to close the school and invited comment;
- (iii) consulted with the parents of the learners of the school and afforded them an opportunity to make representations within a period of not less than 30 days from the date of the notice or communication referred to in subparagraphs (i) and (ii); and



- (iv) considered any representations and any comments received after publication of the notice or communication referred to in subparagraphs (i) and (ii).
- (5) After the consultation contemplated in subsections (2) and (4)(b), the *Member of the Executive Council* must decide whether or not to go ahead with the closure of the *school* and must—
  - (a) inform the *school* and the *governing body* of his or her decision; and
  - (b) by means of the methods listed in subsection (2)(b), notify the *parents* associated with the *school*, and the community in which the *school* is situated, of the decision.
- (6) If the decision is to go ahead with the closure, the *Member of the Executive Council* must, where applicable and before the closure takes place, make alternative arrangements for the *learners* of the *school* to attend another *school* that is able to accommodate those *learners* and, where appropriate, make arrangements for the transport of qualifying *learners* to that *school*.
- (7) If a *public school* is closed in terms of [subsection (1)] this section, all assets and liabilities of such *school* must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the *Member of the Executive Council* and the *governing body* of the *school*.
- (8) The *Member of the Executive Council*, in determining whether to act under subsection (1) or (4), must take into account—
  - (a) the needs, in general, of the broader community in the *education district* in which the *public school* is situated; and
  - (b) factors including, but not limited to—
    - (i) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution*, and equity;
    - (ii) whether there are other *schools* in the community that are accessible to *learners*; and
    - (iii) the efficient and effective use of state resources.”.

**Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001 and section 12 of Act 15 of 2011**

- 26. Section 36 of the South African Schools Act, 1996, is hereby amended—
  - (a) by the substitution for subsection (2) of the following subsection:
    - “(2) Despite subsection (1), a *governing body* may not, without the written approval of the *Member of the Executive Council*, enter into any *loan*, *lease* or *overdraft* agreement [so as to supplement the *school fund*, without the written approval of the *Member of the Executive Council*] for any purpose.”; and
  - (b) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph:
    - “(i) [lease,] burden, convert or alter immovable property of the *school* to provide for *school activities* or to supplement the *school fund* [of that *school*], or lease such property for such purpose: Provided that such approval is not required for a lease of a period not exceeding 12 months; and”.

**Amendment of section 37 of Act 84 of 1996, as amended by section 6 of Act 57 of 2001**

- 27. Section 37 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:
  - “(1) The *governing body* of a *public school* must establish a *school fund* and administer it in accordance with [directions] *directives* issued by the *Head of Department*.”.

**Amendment of section 38 of Act 84 of 1996, as amended by section 7 of Act 57 of 2001 and section 7 of Act 50 of 2002**

- 28. Section 38 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:
- “(3) **[The]** When notice is given to the *parents* as contemplated in subsection (2) **[must also inform]**—
- (a) the budget, together with a document explaining the budget, must be made available to the *parents* by means of the existing communication channels of the *school*; and
- (b) the *parents* must be informed that the document and the budget will be available for inspection at the *school* at least 14 days prior to the meeting.”; and
- (b) by the addition of the following subsections:
- “(4) If a *governing body* finds it necessary to—
- (a) deviate from the initial budget that has been approved as contemplated in subsection (2), and the deviation will be 10 per cent or more of the initial budget; or
- (b) reallocate funds for use for a purpose different to that which was approved by the *parents* as contemplated in subsection (2), the *governing body* must present such deviation or reallocation to a general meeting of *parents* convened specifically for that purpose, on at least 14 days’ notice, for consideration and approval by a majority of *parents* present and voting.
- (5) When notice is given to the *parents* as contemplated in subsection (4)—
- (a) a document explaining and providing reasons for the deviation or reallocation must be made available to *parents* by means of the existing communication channels of the *school*; and
- (b) the *parents* must be informed that the document will be available for inspection at the *school* at least 14 days prior to the meeting.
- (6) A quorum of 10 per cent of *parents* is required for the general meetings of *parents* contemplated in subsections (2) and (4).
- (7) If the quorum contemplated in subsection (6) is not reached at the general meeting of *parents*—
- (a) the chairperson shall determine the date, time and place for the second meeting of the general meeting and notify *parents* 14 days prior to such meeting;
- (b) the *principal* shall, at least seven days prior to the date of the second general meeting, distribute a copy of the notice to every *learner* at the *school* with an instruction to hand the notice to the *parents*; and
- (c) there shall be no quorum required at the second general meeting.”.

**Amendment of section 38A of Act 84 of 1996, as inserted by section 2 of Act 1 of 2004**

- 29.** Section 38A of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) A *governing body* may apply to the employer for approval to pay a state employee any **[payment contemplated in subsection (1)]** remuneration, or to give to a state employee any *other financial benefit, or benefit in kind*.”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) Such application must be lodged in writing in the office of the employer and must state—
- (a) full details of the nature and extent of the **[payment]** remuneration, *other financial benefit, or benefit in kind*;
- (b) the reasons for the remuneration, *other financial benefit, or benefit in kind*;
- (c) if practicable, the monetary value of the remuneration, *other financial benefit, or benefit in kind*;
- (d) the process that will be followed and the resources that will be used to compensate or remunerate the state employee; and
- (e) the extent of compliance with section 20(5) to (9).”;
- (c) by the substitution for subsection (6) of the following subsection:
- “(6) An employer **[must]** *may* not unreasonably refuse an application **[contemplated]** referred to in subsection (2).”;

(d) by the substitution for subsection (8) of the following subsection:

“(8) The **[payment]** remuneration, *other financial benefit, or benefit in kind* contemplated in subsection (1) must be reflected in the *school's* budget, as presented to the general meeting of *parents* as contemplated in section 38(2), and in such reflection in the budget, any remuneration, *other financial benefit, or benefit in kind* must, if practicable, be accorded a monetary value.”. 5

**Amendment of section 41 of Act 84 of 1996, as amended by section 5 of Act 24 of 2005**

**30.** Section 41 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsections: 10

“(2A) Notwithstanding subsection (2), a *parent* may submit to the *governing body* an affidavit, as proof that the other *parent* of the *learner*—

- (a) is untraceable; 15
- (b) is unwilling to provide the first-mentioned *parent* with particulars of his or her total annual gross income;
- (c) has failed to provide the first-mentioned *parent* with particulars of his or her total annual gross income despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned *parent* that he or she do so; or
- (d) has provided the first-mentioned *parent* with incomplete or inaccurate particulars about his or her total annual gross income and has refused to rectify the deficiency or has failed to do so despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned *parent* that he or she do so. 20

(2B) Although the affidavit contemplated in subsection (2A) constitutes sufficient proof, a *parent* may also submit to the *governing body* a court order or any other documentary evidence that would support the proof contemplated in subsection (2A).” 25

**Substitution of section 42 of Act 84 of 1996**

**31.** The following section is hereby substituted for section 42 of the South African Schools Act, 1996: 30

**“Financial records and statements of public schools**

**42.** The *governing body* of a *public school* must—

- (a) keep records of all investments, donations and funds received and spent by the *public school* and of its assets, liabilities and financial transactions; **[and]** 35
- (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements reflecting all the investments, donations and funds received and spent by the *public school* in accordance with the guidelines determined by the *Member of the Executive Council*; 40
- (c) present the financial records and statements to a general meeting of *parents*; and
- (d) inform the *parents* that the financial records and statements will be available for inspection at the *school* at least 14 days prior to the meeting referred to in paragraph (c).” 45

**Amendment of section 43 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007**

**32.** Section 43 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) If the **[Member of the Executive Council]** *Head of Department* deems it necessary, on just cause shown, he or she may— 50

- (a) authorise suitably qualified officers to conduct an investigation into the financial affairs of a *public school* and, where necessary, after consultation with the *governing body*, access documents relevant for the purposes of the investigation; 55

- (b) request the Auditor-General to undertake an audit of the records and financial statements of a *public school*; or
- (c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a *public school*.
- (5) A governing body must submit to the *Head of Department*[,]— 5
- (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure in accordance with directives issued by the *Head of Department*; and
- (b) within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.”. 10

**Amendment of section 46 of Act 84 of 1996**

33. Section 46 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any person who contravenes subsection (1) is guilty of an offence and liable, upon conviction, [liable] to a fine or to imprisonment for a period [of three] 15 not exceeding 12 months, or to both a fine and such imprisonment.”.

**Amendment of section 48 of Act 84 of 1996**

34. Section 48 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 20  
“(2) The *Member of the Executive Council* may, out of funds appropriated by the *provincial legislature* for that purpose, grant a subsidy to an *independent school*, subject to conditions determined by the *Member of the Executive Council*.”; and
  - (b) by the addition of the following subsection: 25  
“(6) An *independent school* must submit to the *Head of Department*—
- (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure relating to the subsidy contemplated in subsection (2), in accordance with directives issued by the *Head of Department*; and
  - (b) within six months after the end of each financial year, a copy of the audited or examined annual financial statements relating to the subsidy contemplated in subsection (2).”.

**Substitution of section 51 of Act 84 of 1996**

35. The following section is hereby substituted for section 51 of the South African Schools Act, 1996: 35

**“Home education**

51. (1) If the *parent* of a *learner* who is subject to compulsory attendance as contemplated in section 3(1) chooses to educate the *learner* at home, such *parent* must apply to the *Head of Department* for the registration of the *learner* to receive *home education*. 40
- (2) The *Head of Department* must approve the application and register the *learner* as contemplated in subsection (1)—
- (a) if he or she is satisfied that—
- (i) education at home, as provided for in *this Act*, is in the best interests of the *learner*; 45
  - (ii) the *parent* understands what *home education* entails and accepts full responsibility for the implementation of *home education* for the *learner*; and
  - (iii) 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*; and 50
- (b) if the *parent* undertakes to—

- (i) make suitable educational resources available to support the *learner's* learning;
  - (ii) monitor the *learner's* academic progress;
  - (iii) arrange for the *learner's* educational attainment to be assessed by a *competent assessor*—
    - (aa) at the end of each phase, up to the end of the year in which the *learner* reaches the age of 15 years or completes grade 9, whichever occurs first; and
    - (bb) against a standard that is not inferior to the standard determined in the National Curriculum Statement; and
  - (iv) 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*.
- (3) In considering the application, the *Head of Department* may, on just cause shown and after notification to the parent, require a delegated official to conduct a pre-registration 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.
- (4) If the *Head of Department* is satisfied that the *parent* does not meet the requirements set out in subsection (2), or if the outcome of the process set out in subsection (3) fails to satisfy the *Head of Department* that *home education* is in the best interests of the *learner*, the *Head of Department* must decline to register a *learner* to receive *home education*.
- (5) If a *parent* educates a *learner* at home, and that *learner* has, at the time of the commencement of this section, not been registered as contemplated in this section, the *parent* must, within 30 days after the commencement of this section, apply to the *Head of Department* for the registration of the *learner* to receive *home education*.
- (6) If the *Head of Department* does not respond within 60 days of receipt of an application for *home education* as contemplated in subsections (1) and (5), the application shall be deemed to have been approved, on condition that the applicant must be able, on request, to produce proof that an application for registration to receive *home education* was submitted.
- (7) A *learner* who is registered to receive *home education* is exempted from *school* attendance as contemplated in section 3.
- (8) The *parent* of a *learner* who has been registered as contemplated in subsection (1) or (5) must notify the *Head of Department* at the end of the—
- (a) Foundation Phase (grades R to 3);
  - (b) Intermediate Phase (grades 4 to 6); and
  - (c) Senior Phase (grades 7 to 9),
- of his or her intention to continue educating the *learner* at home.
- (9) A *parent* who wishes to continue educating a *learner* at home after the *learner* has reached the age of 15 years or has completed grade 9, whichever occurs first, or who wishes to start educating such *learner* at home at such time, is not required to apply for registration, as contemplated in subsections (1) and (5), or to notify the *Head of Department*, as contemplated in subsection (8).
- (10) After a home-educated *learner* has completed grade 9 or has reached the age of 15 years, whichever occurs first, the *parent* may enrol the *learner* at a *public school* or an *independent school* for the completion of grades 10 to 12.
- (11) If the *parent* of a *learner* contemplated in subsection (9) desires the *learner* to eventually write the National Senior Certificate examination, such *parent* must, before the *learner* embarks on any studies following grade 9, ensure that the *learner* complies with the requirements stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination (published under R872 in Gazette No. 31337 of 29 August 2008), for a *learner* receiving *home education*.



(12) The *Head of Department* must cancel a *learner's* registration to receive *home education* if, after investigation, the *Head of Department* is satisfied that *home education* is no longer in the best interests of the *learner*.

(13) The *Head of Department* may not decline to register a *learner*, as contemplated in subsection (4), or cancel the registration of a *learner*, as contemplated in subsection (12), before—

- (a) informing the *parent*, in writing, of his or her intention so to act and the reasons therefor;
- (b) granting the *parent* a reasonable opportunity to make representations to him or her, which opportunity must include discussions relating to such intention;
- (c) giving due consideration to any such representations received; and
- (d) providing the *parent* with written reasons for his or her decision.

(14) (a) The *parent* of a *learner* may appeal to the *Member of the Executive Council*, within 30 days of receiving notice—

- (i) that the *Head of Department* has declined the application to register the *learner* to receive *home education*; or
- (ii) that the *Head of Department* has cancelled the *learner's* registration to receive *home education*.

(b) If the *parent* of a *learner* is of the opinion that any decision of the *Head of Department* in relation to the *home education* of the *learner* in question is unreasonable, such *parent* may appeal to the *Member of the Executive Council* within 30 days of receiving notice of such decision.

(15) If an appeal contemplated in subsection (14) is received, the *Member of the Executive Council* must, within 30 days of receiving such appeal, consider and decide on the matter and, in writing, inform the *parent* of the outcome of the appeal.

(16) The *Minister* may make regulations relating to registration for, and the administration of, *home education*.”.

#### Amendment of section 59 of Act 84 of 1996, as amended by section 10 of Act 100 of 1997

36. Section 59 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for the heading of the following heading:

“**Duty [of schools] to provide information**”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) Every *school* must provide such information about the *school* as is reasonably required by the *Head of Department*, or by the Director-General of the [national] *Department of Basic Education* in consultation with the *Head of Department*.”; and

- (c) by the addition of the following subsection:

“(3) If, when applying for admission to a *public school* or for exemption from the payment of *school fees*, the *parent* of a *learner*, or any other person—

- (a) submits or provides information which he or she knows to be false or misleading;
- (b) submits a document which he or she knows to be forged; or
- (c) submits a document and claims that it is a true copy of the original when in fact it is not a true copy,

such person is guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”.

#### Insertion of section 59A in Act 84 of 1996

37. The following section is hereby inserted in the South African Schools Act, 1996, after section 59:

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**“Dispute resolution**

- 59A.** (1) If a dispute arises between the *Head of Department* and a *governing body*, the following procedure must be followed:
- (a) All attempts must be made by the parties to resolve the dispute informally. 5
  - (b) If the parties are unable to resolve the dispute informally as referred to in paragraph (a), the following steps must be taken:
    - (i) The aggrieved party must give the other party written notice of the dispute; and
    - (ii) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof. 10
  - (c) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in paragraph (b), each party must nominate a representative within seven days, and those representatives must meet within 14 days after their nomination in order to resolve the dispute. 15
  - (d) If the parties cannot resolve the dispute as contemplated in paragraphs (a), (b) and (c), the *governing body* may appeal to the *Member of the Executive Council* against the decision that gave rise to the dispute. 20
  - (e) If an appeal contemplated in paragraph (d) has been received, the *Member of the Executive Council* must, within 30 days after receiving such appeal, consider and decide on the matter and, in writing, inform the *governing body* of the outcome of the appeal. 25
- (2) If a dispute arises between the *Member of the Executive Council* and a *governing body*, the following procedure must be followed:
- (a) All attempts must be made by the parties to resolve the dispute informally. 25
  - (b) If the parties are unable to resolve the dispute informally as referred to in paragraph (a), the following steps must be taken:
    - (i) The aggrieved party must give the other party written notice of the dispute; and
    - (ii) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof. 30
  - (c) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in paragraph (b), each party must nominate a representative within seven days, and those representatives must meet within 14 days after their nomination in order to resolve the dispute. 35
- (3) This section does not apply to matters in respect of which *this Act* makes provision for an appeal process.”. 40

**Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999, section 12 of Act 31 of 2007 and section 14 of Act 15 of 2011**

- 38.** Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection: 45
- “(4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused—
- (a) as a result of any act or omission in connection with any enterprise or business operated under the authority of a *public school* for purposes of supplementing the resources of the *school* as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business; or 50
  - (b) if the provisions of section 36(2) have not been complied with.”. 55

**Amendment of section 61 of Act 84 of 1996, as amended by section 5 of Act 53 of 2000 and section 9 of Act 50 of 2002**

- 39.** Section 61 of the South African Schools Act, 1996, is hereby amended—
- (a) by the insertion after paragraph (a) of the following paragraphs:

- “(aA) on the management of *learner* pregnancy;
- (aB) on the admission of *learners* to *public schools*;
- (aC) on the prohibition of the payment of unauthorised remuneration or the giving of *other financial benefits*, or *benefits in kind* to certain employees;
- (aD) on the minimum norms and standards for provincial educator development institutes and district educator development centres;
- (aE) on the organisation, roles and responsibilities of *education districts*;
- (aF) on a national education information system;”;
- and
- (b) by the addition of the following subsections, the existing section becoming subsection (1):
  - “(2) The regulations contemplated in subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding six months, or to both a fine and such imprisonment.
  - (3) Any regulation made under subsection (1)(aA) and (aB) must, before publication in the *Gazette*, be tabled in Parliament.”.

**Amendment of the Preamble of Act 84 of 1996** 20

40. The Preamble of the South African Schools Act, 1996, is hereby amended by the substitution for the second paragraph of the following paragraph:

“WHEREAS this country requires a new national system for *schools* which will redress past injustices in educational provision, provide an education of progressively high quality for all *learners* and in so doing lay a strong foundation for the development of all our people’s talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, facilitate the education of children through the promotion and protection of the right to *basic education*, protect and advance our diverse cultures and languages, uphold the rights of all *learners*, *parents* and *educators*, and promote their acceptance of responsibility for the organisation, governance and funding of *schools* in partnership with the State; and”.

**Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000, section 58 of Act 16 of 2006 and section 15 of Act 15 of 2011** 35

41. Section 1 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the deletion of the definition of “adult basic education centre”;
  - (b) by the substitution for the definition of “educator” of the following definition:

“**‘educator’** means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school[,], or departmental office [**or adult basic education centre**] and who is appointed in a post on any educator establishment under this Act;”;
  - (c) by the substitution for the definition of “provincial department of education” of the following definition:

“**‘provincial department of education’** means a department responsible for education in a province and includes all public schools[,], **further education and training institutions**,] and departmental offices [**and basic adult education centres**] in such province;”.

**Amendment of section 5 of Act 76 of 1998**

42. Section 5 of the Employment of Educators Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The educator establishment of any public school[,], **further education and training institution**,] or departmental office [**or adult basic education centre**] under the control of a provincial department of education shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the

said school[, **institution,**] or office [**or centre**] by the Head of Department from the educator establishment of that department.”.

#### **Amendment of section 7 of Act 76 of 1998**

43. Section 7 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) In the making of any appointment, [**or**] in any promotion, and in the filling of any post on any educator establishment under this Act, due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996 [(**Act No. 108 of 1996**)], and which include the following factors[, **namely—**];”;
  - (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) in a permanent capacity or in a promotion post, whether on probation or not;”.

#### **Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999, section 11 of Act 50 of 2002, section 58 of Act 16 of 2006, and section 3 of Act 1 of 2004**

44. Section 8 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection:

“(4) A recommendation contemplated in subsection (2) shall be made within two months from the date on which a governing body [**or council**] was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.”;
  - (b) by the substitution for subsection (7) of the following subsection:

“(7) Despite section 6(3)(a) and subsection (2), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school [**or an adult education and training centre**].”.

#### **Amendment of section 9 of Act 76 of 1998**

45. Section 9 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) another Department of Basic Education, or another department;”.

#### **Amendment of section 11 of Act 76 of 1998**

46. Section 11 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:
- “(b) on account of the abolition of the educator’s post or any reduction in, or reorganisation or readjustment of the post establishments of, departments, schools[, **institutions,**] or offices [**or centres**];
  - (c) if, for reasons other than the educator’s own unfitness or incapacity, the educator’s discharge will promote efficiency or economy in the department, school[, **institution,**] or office [**or centre**] in which the educator is employed, or will otherwise be in the interest of the State;”.

#### **Amendment of section 17 of Act 76 of 1998, as amended by section 10 of Act 53 of 2000**

47. Section 17 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (e);
  - (b) by the insertion in subsection (1) of a semi-colon and the word “or” at the end of paragraph (f); and

- (c) by the addition to subsection (1) of the following paragraph:  
“(g) committing any other act which, in any other law that applies to the educator in so far as his or her employment is concerned, is classified as serious misconduct.”.

**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**

- 48.** Section 18 of the Employment of Educators Act, 1998, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:  
“(b) wilfully or negligently mismanages the finances of the State[,], or a school [or an adult learning centre];”;
  - (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:  
“(c) without permission possesses or wrongfully uses the property of the State, a school, [an adult learning centre,] another employee or a visitor;”;
  - (c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:  
“(d) wilfully, intentionally or negligently damages or causes loss to the property of the State[,], or a school [or an adult learning centre];”;
  - (d) by the substitution in subsection (1) for paragraph (f) of the following paragraph:  
“(f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Basic Education, a provincial department of education, an office of the State or a school [or adult learning centre];”;
  - (e) by the substitution in subsection (1) for paragraph (g) of the following paragraph:  
“(g) misuses his or her position in the Department of Basic Education, a provincial department of education or a school [or adult learning centre] to promote or to prejudice the interests of any person;”.

**Insertion of section 19 in Act 76 of 1998**

**49.** The Employment of Educators Act, 1998, is hereby amended by the insertion after section 18 of the following section:

- “Conducting business with State**
- 19. (1)** An educator may not—
- (a) conduct business with the State; or
  - (b) be a director of a public or private company conducting business with the State.
- (2)** A contravention of subsection (1)—
- (a) is an offence, and any person found guilty of such offence is liable, on conviction, to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment; and
  - (b) constitutes serious misconduct, and the employer must terminate the employment of any person who is alleged to have contravened the subsection and who, during a disciplinary process, is found guilty of such misconduct.”.

**Amendment of section 35 of Act 76 of 1998**

**50.** Section 35 of the Employment of Educators Act, 1998, is hereby amended by the insertion after paragraph (c) of the following paragraph:  
“(cA) norms and standards for district staffing;”.

**Repeal of section 38 of Act 76 of 1998**

**51.** Section 38 of the Employment of Educators Act, 1998, is hereby repealed.

**Amendment of Schedule 1 to Act 76 of 1998, as inserted by section 15 of Act 53 of 2000, and amended by section 12 of Act 50 of 2002**

**52.** Schedule 1 to the Employment of Educators Act, 1998, is hereby amended by the substitution in item 1(2) for paragraph (a) of the following paragraph:

“(a) the extent to which the incapacity impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, **public further education and training institution or public adult learning centre**];”.

**Amendment of Schedule 2 to Act 76 of 1998, as inserted by section 15 of Act 53 of 2000 and amended by sections 8 to 11 of Act 57 of 2001, section 13 of Act 50 of 2002 and section 6 of Act 1 of 2004**

**53.** Schedule 2 to the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in item 3(3) for paragraph (a) of the following paragraph:

“(a) the extent to which the misconduct impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, **public further education and training institution or public adult learning centre**];”; and

(b) by the substitution in item 9(5) for the words preceding paragraph (a) of the following words:

“(5) The Member of the Executive Council or the Minister, as the case may be, must, within 30 days after receiving the appeal, consider the appeal, and may—”.

**Short title**

**54.** This Act is called the Basic Education Laws Amendment Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE BASIC EDUCATION LAWS AMENDMENT BILL, 2022**

### **1. BACKGROUND AND OBJECTS OF BILL**

- 1.1 In 2013, the Minister of Basic Education (“Minister”) instructed a task team to review the basic education legislation as a strategic priority for the Department of Basic Education (“Department”). The task team identified the South African Schools Act, 1996 (Act No. 84 of 1996) (“SASA”), and the Employment of Educators Act, 1998 (Act No. 76 of 1998) (“EEA”), as needing amendments.
- 1.2 The Basic Education Laws Amendment Bill (“Bill”), which was published for public comment under Government Notice No. 1101 in *Gazette* No. 41178 on 13 October 2017, proposed to amend the SASA and the EEA so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996 (“Constitution”). Another aim of the Bill was to bring about certain technical and substantive adjustments in the SASA and the EEA, to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.
- 1.3 One of the developments in the education landscape came about in 2009, when the then Department of Education was split into two new departments, being the Department and the Department of Higher Education and Training (in terms of Proclamation No. 44 of 2009, signed by the President on 20 June 2009 and published in *Gazette* No. 32367 on 1 July 2009).
- 1.4 The general public and education stakeholders submitted just under 5 000 comments in respect of the Bill. There were also 144 petitions, containing a total of 195 695 names, objecting to certain clauses of the Bill.
- 1.5 On 19 February 2018, a task team consisting of representatives from the Department and three of the provincial education departments (namely the education departments of Gauteng, Limpopo and the Western Cape) started with the process of perusing the submissions and amending the Bill by incorporating constructive comments into the Bill. During the period from 19 February 2018 to 14 February 2020, the task team had 31 meetings (57 days altogether) and held extensive discussions with other Department officials in order to clarify issues raised by some of the commentators and, where necessary, sought advice and inputs from persons outside the Department as well.
- 1.6 Late in January 2020, the Minister met with representatives of school governing body associations, teachers’ unions, and home education associations to further discuss pertinent matters with them. Further comments submitted by those stakeholders in relation to that meeting were also considered. A series of meetings with the National Economic Development and Labour Council (“Nedlac”) also took place between February 2020 and September 2020, and the inputs made by Nedlac were also taken into consideration.
- 1.7 The version of the Bill that is currently under consideration is the result of the incorporation of many of the commentators’ inputs, many hours of discussions at task team meetings, countless hours of individual work put in by task team members, and inputs from a variety of officials and other persons who were consulted.



## 2. CLAUSE-BY-CLAUSE ANALYSIS

### Amendments to South African Schools Act, 1996 (Act No. 84 of 1996)

#### 2.1 Clause 1: Amendment of section 1

- 2.1.1 This clause provides for the insertion of new definitions and seeks to amend certain existing definitions.
- 2.1.2 A definition for “basic education” has been inserted to clarify that basic education includes grades R to 12, as evidenced in the *National Curriculum Statement Grades R–12*. This was necessary in order to clarify the fact that basic education continues until the end of grade 12 even though a learner who has completed grade 9 is no longer subject to compulsory school attendance.
- 2.1.3 Definitions for “benefit in kind” and “other financial benefit” are inserted in order to create clarity regarding the provisions of section 38A of the SASA, which prohibits the payment of unauthorised remuneration and the giving of financial benefit or benefit in kind to certain employees.
- 2.1.4 Definitions for “competent assessor” and “home education” are included in order to provide more certainty in the home education environment.
- 2.1.5 A definition for “corporal punishment” has been inserted as there exists a gap in regulating this definition in the sector. The incidents of corporal punishment are increasing within the school environment as well as the home environment and it is anticipated that the inclusion of the definition will provide clarity on what corporal punishment entails.
- 2.1.6 The definition for “Constitution” is amended to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005).
- 2.1.7 A definition for “Department of Basic Education” is inserted in order to reflect the new education dispensation.
- 2.1.8 A definition for “drug” is inserted in order to better accommodate the kinds of issues with which schools struggle in relation to drugs and, by means of referencing applicable drug-related legislation, to make provision for recent legislative changes in regard to cannabis. As a result of the insertion of this new definition, the definition of “illegal drug” is therefore deleted.
- 2.1.9 A definition for “education district” is inserted in order to facilitate matters relating to a school’s admission and language policies.
- 2.1.10 A definition for “Grade R” is inserted in order to clarify that Grade R is a reception Grade that must be completed before Grade 1.
- 2.1.11 A definition for “home education” is inserted in order to explain what home education entails and to distinguish it from school attendance.
- 2.1.11 A definition for “liquor” is inserted in support of the proposed amendment to section 8A of the SASA.
- 2.1.12 The definition of “loan” is amended to allow public schools to deal with the day-to-day business of the school without obtaining the written approval of the Member of the Executive Council (“MEC”).

- 2.1.13 The clause proposes the insertion of a definition for “other financial benefit” which means any benefit of a monetary nature, including an exemption from the payment of school fees in respect of the child of an employee, and a credit card or a petrol card linked to an employee for his or her personal use.
- 2.1.14 The definition for “parent” is amended in order to align it with the changes in the provisions relating to home education.
- 2.1.15 The clause proposes the insertion of a definition for “required documents” in order to provide clarity in respect of the documents which must be submitted for the purpose of the admission of learners to schools.
- 2.1.16 Finally, the clause proposes the insertion of a definition for “special education needs” considering the numerous references thereto in the SASA.

## 2.2 Clause 2: Amendment of section 3

- 2.2.1 This clause seeks to amend section 3(1) of the SASA to provide that school attendance is compulsory from grade R and no longer only from grade 1. The clause further proposes to increase the penalty provision in section 3(6) of the SASA from six to 12 months in the case where the parent of a learner, without just cause, fails to ensure that a learner, who is subject to compulsory attendance, attends school, or where any other person, without just cause, prevents such a learner from attending school.
- 2.2.2 The clause proposes the addition of subsection (7) which provides that it is an offence where any person unlawfully and intentionally interrupts, disturbs or hinders any official educational activity of a school, or hinders or obstructs any school in the performance of the school’s official educational activities. The latter amendment is necessitated by incidents, in several provinces, in which communities, or portions of communities, prevented learners from attending school in an attempt at making a political or other point.

## 2.3 Clause 3: Insertion of section 4A

- 2.3.1 This clause seeks the insertion of section 4A into the SASA to ensure that the educators, principals and school governing bodies (“SGB”) are accountable and responsible for the learners in their care. Enrolment of learners and their regular and punctual attendance at a school are a pre-requisite for an educated nation. Moreover, enrolment and punctual regular attendance at a school is important because a school that successfully curbs absenteeism without valid reason will most likely improve learner retention and performance. This will assist in mitigating the high learner dropout rate.
- 2.3.2 Educators, the principal and the SGB as *parentis in loco*, must take responsibility and accountability for learners that are within their school community by ascertaining the whereabouts of a learner who absents himself of herself from school for a period of more than three days without valid reason.
- 2.3.3 The principal, upon receiving a report from the educator that the learner is absent without valid reason, must within 24 hours investigate the matter by making reasonable effort to contact the parents to ascertain the reason as to why the learner is not present at school. Furthermore, the principal has a responsibility to report the matter to the SGB for further intervention.

- 2.3.4 The reason for establishing such a process is to ensure that learners attend school regularly thereby preventing them from dropping out of school. This requires a collective effort from the immediate school community, starting with the educator, principal and SGB.

#### 2.4 **Clause 4: Amendment of section 5**

- 2.4.1 This clause seeks to amend section 5 of the SASA. Section 5(1) is amended to provide that a public school must admit and provide education to learners and must serve their educational requirements for the duration of their school attendance without unfairly discriminating in any way. In order to ensure that no learner is discriminated against in any way, the clause proposes the insertion of subsections (1A) and (1B) which provide that any learner whose parent or guardian has not provided the required documents will nonetheless be allowed to attend school and that the principal of the school must advise the parent or guardian to secure the required documents.
- 2.4.2 The clause substitutes section 5(4)(a) and provides that despite the age at which school attendance is compulsory, as stipulated in section 3(1), a parent may, if he or she so wishes and subject to a few conditions, enrol a child at a school to start attending grade R at a younger age.
- 2.4.3 The clause proposes the amendment of subsection (5) which provides that the Head of Department (“HoD”), after consultation with the SGB, has the final authority to admit a learner to a public school. It provides that the SGB of a public school must submit the admission policy of the school, and any amendment thereof, to the HoD for approval. The HoD must take into account certain prescribed factors when considering the admission policy or any amendment thereof. Furthermore, the SGB must review the admission policy at certain intervals or under certain conditions.
- 2.4.4 The clause proposes the insertion of subsections (5A) to (5D) which provides that should the HoD not respond to the SGB within 60 days after receiving the admission policy for approval, the admission policy will be regarded as having been approved and where an SGB submits an amendment to its admission policy to the HoD for approval and he or she fails to respond within 30 days after receiving such amendment, the amendment to the admission policy will be regarded as having been approved by the HoD.
- 2.4.5 The clause further proposes an amendment to subsection (9) and provides for time periods within which a learner who has been refused admission to a public school, or the parent of such a learner, may appeal to the MEC against the decision. Furthermore, the clause proposes the addition of subsections (10) to (13) which provides that the MEC must respond to an appeal contemplated in subsection (9) within 14 days after receiving such an appeal and provides for an appeal by an SGB to the MEC if the SGB is not satisfied with the HoD’s decision in terms of subsection (5)(c).
- 2.4.6 The aforementioned amendments have become necessary as a result of the confusion created by section 5(5) and 5(7) in respect of the admission of learners to public schools and who has the final authority to admit a learner to a school. When exercising the authority to admit learners, the HoD is not rigidly bound by a school’s admission policy. The general position is that admission policies must be applied in a flexible manner and that the right of a learner to be admitted to a school takes precedence over the right of a school to enforce the criteria set out in its admission policy.

- 2.4.7 Furthermore, the admission policy of the Department provides that the admission policy of a school must be consistent with the Department's admission policy. Therefore, the HoD must have an opportunity to study the admission policy of a school to ensure that it is in fact consistent with the Department's admission policy.

## 2.5 Clause 5: Amendment of section 6

- 2.5.1 This clause seeks to amend section 6 of the SASA to provide that South African Sign Language has the status of an official language for purposes of learning at a public school. The clause also provides that the SGB must submit the language policy of a public school, and any amendment thereof, to the HoD for approval. The language policy of a public school may not list, as one of the languages of learning and teaching of the public school, a language other than one of the official languages provided for in section 6(1) of the Constitution. The language policy of the school must take into account the provision of sections 6(2) and 29(2) of the Constitution. The process that an HoD must follow in this regard, and factors that he or she must take into account when considering a language policy, or an amendment thereto, are also provided. As is the case with the admission policy, the SGB must review the language policy at certain intervals, or under certain conditions. The clause provides the time period for the submission of language policies to the HoD for approval, as well as the time period within which the HoD must respond to the SGB.
- 2.5.2 The clause seeks to empower the HoD to direct a public school to adopt more than one language of instruction, after taking certain prescribed factors into account, and after the prescribed procedures have been followed. The factors to be taken into account, and the manner in which the HoD must act before he or she directs a public school to adopt more than one language of instruction, are set out in the clause. Where a school has been so directed, the HoD must, before his or her directive is implemented, take all the necessary steps to ensure that the public school receives the necessary resources to enable that public school to provide adequate tuition in the additional language of instruction.
- 2.5.3 Provision is made for an SGB, which is not satisfied with the HoD's direction to a school to adopt an additional language of instruction, to appeal against the HoD's direction to the MEC.
- 2.5.4 The proposed amendments to section 6 of the SASA are consistent with the Constitutional Court judgment of *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo and Another* [2010(2) SA 415 (CC)] ("Ermelo judgment"), which provided guidance with regard to the approval of a school's language policy. The Constitutional Court made it clear that even though the function of determining a school's language policy is a devolved function (or responsibility), in terms of section 6(2) of the SASA, it is not the exclusive preserve of an SGB. The devolution of power does not mean that the SGB's right to decide the language policy is absolute. This power is subject to the Constitution, the SASA and any applicable provincial law. The Constitutional Court in the Ermelo judgment further held that the SGB's extensive powers and duties do not mean that the HoD is precluded from intervening, on reasonable grounds, to ensure that the admission and language policies of a school pay adequate heed to section 29(2) of the Constitution.
- 2.5.5 Moreover, the Ermelo judgment, as well as the Constitutional Court judgment of *Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Har-*

*mony High School and Another* [CCT 103/12 [2013] ZACC 25], made it necessary to incorporate further checks and balances above and beyond those that are currently in the SASA in respect of the language and admission policies of schools.

2.5.6 The Constitutional Court in the Ermelo judgment held that the SGB of a school must recognise that it is entrusted with a public resource which must be managed not only in the interests of those who happen to be learners and parents at the time but also in the interests of the broader community in which the school is located and in the light of the values of our Constitution.

2.5.7 For the above reasons, it is also necessary to empower the HoD to direct a public school to adopt more than one language of instruction where it is practicable to do so. A number of checks and balances have been included in the clause to guide the HoD's decision in this regard. Furthermore, a comprehensive consultation process is provided for to ensure that the views of all interested parties are obtained and are given proper consideration.

## 2.6 Clause 6: Amendment of section 6A

This clause seeks to amend section 6A of the SASA to empower the Minister to appoint a person, organisation or group of persons to advise the Minister on matters relating to a national curriculum statement and a national process and procedures for the assessment of learner achievement. This allows the Minister to obtain inputs from a broader spectrum of people.

## 2.7 Clause 7: Amendment of section 8

2.7.1 Clause 7 seeks to amend section 8 of the SASA by providing that the SGB of a public school must adopt a code of conduct for the learners subject to the Constitution, the SASA and any applicable provincial law.

2.7.2 The clause further amends section 8 to provide that the code of conduct of a public school must also take into account the diverse cultural beliefs, religious observances and medical circumstances of the learners at the school. The clause makes provision for an exemption clause, making it possible to exempt learners, upon application and on just cause shown, from complying with certain provisions of the code of conduct. If an application for exemption is refused, the learner or the parent of the learner may appeal to the HoD against the decision of the SGB and time periods within which these actions must take place are provided for.

2.7.3 The clause also provides that disciplinary proceedings must be age-appropriate, should be conducted in the best interest of the learner, and should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution.

2.7.4 This amendment is informed by the United Nations Convention on the Rights of the Child, 1989, and the latest jurisprudence on this issue, as expressed in the Constitutional Court judgment of *MEC for Education: Kwazulu-Natal and Others v Pillay* [CCT 51/06 [2007] ZACC 21]. The amendment seeks to bring the SASA in line with such jurisprudence.

## 2.8 Clause 8: Amendment of section 8A

2.8.1 This clause seeks to extend the provisions of section 8A of the SASA regarding the possession of liquor by a learner and to make



consequential amendments to the section in this regard and in regard to the new definition of “drug”.

2.8.2 The clause also makes it clear that a school has the right to search an individual learner and not only a group of learners and consequential amendments in this regard are proposed to the section.

2.8.3 This amendment is necessitated by the fact that learners have increasingly been found in possession of, or abusing, liquor and a variety of drugs, dependence-producing substances, performance-enhancing substances and the like and that there are many cases of learners being expelled because of such abuses.

## **2.9 Clause 9: Amendment of section 9**

Clause 9 seeks to amend section 9 of the SASA by proposing the insertion of a detailed definition of serious misconduct by a learner in order to provide greater clarity in this regard. In particular, the insertion is an attempt at addressing the growing incidents of violence at schools.

## **2.10 Clause 10: Amendment of section 10**

Clause 10 seeks to amend section 10 of the SASA by extending the prohibition of corporal punishment being administered to learners to include “during a school activity or in a hostel accommodating learners of a school”. This amendment is necessary to close an existing gap.

## **2.11 Clause 11: Amendment of section 10A**

Clause 11 seeks to amend section 10A of the SASA by extending the prohibition of initiation practices to include “during a school activity”. As with corporal punishment, the amendment is aimed at closing a gap in the legislation.

## **2.12 Clause 12: Amendment of section 12**

2.12.1 Clause 12 seeks to amend section 12 of the SASA by providing that the SGB of a public school may apply to the MEC to be designated as a public school with a specialised focus on talent. The HoD may also identify a public school to be so designated and may make a recommendation to the MEC in this regard, and the MEC may so designate a public school if it is in the best interest of education in the province and if the school complies with the norms and standards determined by the Minister. The process to be followed before a school may be so designated is also set out in the clause.

2.12.2 This amendment is necessary to close a gap in the current legislation and to clarify the process that a school needs to follow to be designated as a public school with a specialised focus on talent. It further clarifies whose responsibility it is to designate such schools and the criteria that will be applied in the case of such a designation.

## **2.13 Clause 13: Amendment of section 12A**

2.13.1 Clause 13 seeks to amend section 12A of the SASA to provide that, in instances where two or more schools are merged, a new public school will be established. Methods of communicating with interested parties in regard to such a merger are also clarified, and timeframes within which the MEC must act are set out. Provision is made for the case where the MEC fails to act within the stipulated periods, and further details of the process to be followed by the MEC and the SGBs concerned are set out.

2.13.2 The clause further provides that a merger will not affect the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence and further provides for the rationalisation or redeployment of the workforce of the new public school. In addition, after the merger of two or more public schools, the newly formed school will continue with all the academic programmes offered by the former public schools and provision is made for the governance of the new public school.

2.13.3 This amendment is proposed for the sake of clarity and uniformity in the manner in which schools are merged.

#### **2.14 Clause 14: Amendment of section 21**

Clause 14 seeks to amend section 21 of the SASA to empower the HoD to centrally procure identified learning and teaching support material for public schools, in consultation with the SGB and on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards. This amendment is proposed in order to bring about economies of scale.

#### **2.15 Clause 15: Amendment of section 22**

2.15.1 Clause 15 seeks to amend section 22 of the SASA to empower the HoD to withdraw, on reasonable grounds and after complying with prescribed requirements, “one or more functions” of an SGB and not only “a function”, as the section currently reads. It also provides that, in cases of urgency, the HoD may withdraw functions without prior communication with such SGB. In such a case, the HoD must immediately thereafter furnish the SGB with written reasons for his or her actions, grant the SGB a reasonable opportunity to make representations, duly consider such representations, and inform the SGB of his or her final decision. Further provision is made for steps that the HoD must take if he or she acts in terms of this section, including the appointment of sufficiently qualified persons to perform the withdrawn function or functions for a specified period. The appointed persons must build capacity to ensure that the SGB will in future perform the functions that it failed to perform. The clause also deals with the voting rights of such persons and provides for an appeal process.

2.15.2 The proposed amendment will create clarity regarding the powers of the HoD to withdraw functions of SGBs and clearly indicates the processes that need to be followed when functions are withdrawn.

#### **2.16 Clause 16: Amendment of section 23**

This clause seeks to amend section 23 of the SASA by substituting subsection (6) to provide that SGB representatives may co-opt members from within the community, as well as from outside the community, to assist the SGB in discharging its functions. The amendment is proposed to enable the SGB to co-opt experts in relevant fields where such experts may not be found within the community. In this way, the SGB is allowed to co-opt members with the requisite skills from outside the community in which the school is located without changing the requirement that the majority of SGB members must be parents.

#### **2.17 Clause 17: Amendment of section 24**

Clause 17 seeks to amend section 24 of the SASA by substituting “Member of the Executive Council” with “Minister” and the “Provincial *Gazette*” with “*Gazette*” in regard to arrangements for the election of members of an SGB of a public school for learners with special education needs. Currently, each

province deals with these matters in its own preferred way, and this amendment will bring about uniformity across the provinces.

**2.18 Clause 18: Insertion of section 24A**

2.18.1 Clause 18 proposes the insertion of section 24A into the SASA to provide that the provisions of section 23 of the SASA, excluding subsection (5), which deal with the membership of SGBs of ordinary public schools, will apply to a public school with a specialised focus on talent and that the authority to co-opt members includes the authority to co-opt relevant experts in the specialised focus of the public school, whether from inside or outside the community.

2.18.2 This amendment is necessary to address a gap in the SASA and to ensure uniformity in the establishment of the governance structures for public schools with a specialised focus on talent.

**2.19 Clause 19: Substitution of section 25**

2.19.1 Clause 19 proposes to substitute section 25 of the SASA in order to empower the HoD to dissolve an SGB that has ceased to perform the functions allocated to it in terms of the Act, if the HoD has reasonable grounds to do so. Provision is made for steps that the HoD must take if he or she acts in terms of this section, including the appointment of sufficient qualified persons to perform the functions of the SGB for a specified period. The clause also deals with the voting rights of such persons and provides that the HoD may act in terms of this section only after following certain prescribed procedures. The clause also provides that the HoD must ensure that a new SGB is elected within one year, and provides for an appeal process.

2.19.2 The proposed amendment creates clarity regarding the powers of the HoD to dissolve an SGB and clearly indicates the processes that need to be followed when an SGB is dissolved.

**2.20 Clause 20: Substitution of section 26**

2.20.1 Clause 20 proposes to substitute section 26 of the SASA and provides for the declaration of a direct or indirect personal and financial interest that an SGB member, or any of his or her family members, close friends or business partners has and where such a personal interest exists, the SGB member must recuse himself or herself and withdraw from a meeting of the SGB for the duration of the discussion and decision-making on an issue in which such member has a personal interest.

2.20.2 The clause further provides that should a SGB have knowledge that a member who is present has a personal interest in a matter under discussion, the SGB may not take a decision on the matter until such member has withdrawn from the meeting. Furthermore, the clause provides for the imposition of a sanction, after due process, where an SGB member contravenes the provisions of the section. The amendment also applies to a committee of an SGB and to committee members. A definition for “family member” has also been inserted into the clause.

2.20.3 The proposed amendment is made to promote the prevention of corruption and to promote good governance.

**2.21 Clause 21: Amendment of section 27**

Clause 21 seeks to amend section 27 of the SASA which provides that SGB members are not entitled to be remunerated for the performance of their

duties, by adding the words “or for the attendance of meetings and school activities”. This amendment is proposed merely to clarify the matter of remuneration.

#### **2.22 Clause 22: Amendment of section 28**

2.22.1 Clause 22 seeks to amend section 28 of the SASA by substituting “Member of the Executive Council” with “Minister” and “*Provincial Gazette*” with “*Gazette*” in regard to arrangements for the election of members of an SGB of a public school and by deleting the reference to “any applicable provincial law”.

2.22.2 Currently, each province deals with the election of the members of a SGB in its own preferred way and this amendment will bring about uniformity across all provinces.

#### **2.23 Clause 23: Amendment of section 29**

Clause 23 seeks to amend section 29 of the SASA to provide that, where reasonably practicable, only a parent member of an SGB, who is not employed at the school, may serve as the chairperson of the finance committee of that public school. This amendment seeks to promote good governance.

#### **2.24 Clause 24: Amendment of section 32**

Clause 24 seeks to amend section 32 of the SASA to provide for a technical amendment that is required as a result of the provisions of the Children’s Act, 2005 (Act No. 38 of 2005), which changed the age of majority from 21 to 18 years. This will ensure that learners 18 years and older are not a party to litigation by virtue of their membership of the SGB. A new provision is also inserted to ensure that learners who are SGB members are not involved in the appointment of educators.

#### **2.25 Clause 25: Substitution of section 33**

2.25.1 Clause 25 proposes to substitute section 33 of the SASA which deals with the closure of public schools. The MEC must embark on a comprehensive consultation process before closing a school. The proposed amendment also empowers the MEC to close a public school in his or her sole discretion if there are no learners registered at that public school. However, the MEC must first verify, by means of a site inspection by an official nominated by him or her, that there are no learners registered at that school. The amendment also empowers the MEC to close a public school after following a prescribed consultation process if, in the case of a primary school, 135 or fewer than 135 learners are registered at that school, and, in the case of a secondary school, 200 or fewer than 200 learners are registered at the school. The MEC must inform interested parties of his or her decision in the above regard and, if the decision is to close a public school, must make arrangements for the learners of the school to attend another school and, where appropriate, make arrangements for the transport of qualifying learners to that school. The MEC must, furthermore, take certain prescribed factors into account before acting under this section.

2.25.2 The purpose of this amendment is to provide for a proper consultation process and to simplify the procedure when dealing with the closure of a school.

#### **2.26 Clause 26: Amendment of section 36**

2.26.1 Clause 26 seeks to amend section 36 of the SASA to provide that the SGB must also seek the approval of the MEC to enter into lease agreements, for any purpose, including loans and overdrafts which are

already provided for in the said section. The clause also provides that the approval of the MEC is not required in regard to the lease of immovable property of the school if the lease is for a period not exceeding 12 months.

2.26.2 With regard to lease agreements, the proposed amendment seeks to ensure good governance, economies of scale, that money is spent economically, and a reduction in the risk that the State will be held responsible for acts or omissions on the part of schools.

2.26.3 The proposed amendment further reduces the burden on schools to apply for permission when entering into small lease agreements in regard to immovable property.

#### **2.27 Clause 27: Amendment of section 37**

Clause 27 seeks to amend section 37 of the SASA by substituting the word “directions” with the word “directives”. The proposed amendment is a technical correction.

#### **2.28 Clause 28: Amendment of section 38**

2.28.1 Clause 28 seeks to amend section 38 of the SASA to provide that a document explaining the budget of a school, together with the budget itself, must be made available to parents before the budget is presented to a general meeting of parents for consideration. It also sets out the procedure that an SGB must follow if it proposes to deviate from the initial budget by 10 per cent or more of the initial approved budget, or if it proposes to reallocate funds for a purpose that is different from the purpose set out in the budget originally approved by a general meeting of parents.

2.28.2 Reasons for the deviation or reallocation must also be made available to the parents prior to the meeting and parents must be informed that this information will be available for inspection at the school at least 14 days prior to the meeting. A quorum of 10 per cent of the parents is required for the general meetings referred to above. If a quorum cannot be achieved at the first meeting, a second meeting must be arranged, at which no quorum is required. A copy of the notice of the second meeting must also be distributed to every learner at the school with an instruction to hand the notice to their parents. This amendment is proposed to address issues concerning governance and fairness.

#### **2.29 Clause 29: Amendment of section 38A**

2.29.1 Clause 29 seeks to amend section 38A of the SASA to extend its application to a state employee who is paid any additional remuneration or any other financial benefit or benefit in kind. It requires SGBs to provide full details of the nature and extent of the remuneration or benefit; the reasons for the remuneration or benefit; if practicable, the monetary value of the remuneration or benefit; and details of the process that will be followed and the resources that will be used to compensate or remunerate the employee.

2.29.2 The proposed amendment is necessary to provide clarity and to reduce the financial burden on parents who pay substantial school fees at fee-paying schools.

#### **2.30 Clause 30: Amendment of section 41**

Clause 30 seeks to amend section 41 of the SASA by inserting a new subsection (2A) to provide that when a parent applies for exemption from the payment of school fees, such parent may submit additional documentary



evidence in the form of an affidavit in instances where information cannot be obtained from the other parent of the learner. The proposed amendment aims to lessen the burden on single parents whose ex-partners are untraceable or unwilling to provide information on their financial situation.

#### **2.31 Clause 31: Substitution of section 42**

Clause 31 proposes to substitute section 42 of the SASA to provide that the SGB of a public school must keep detailed records on prescribed aspects of its financial affairs; draw up annual financial statements within a specified time and in a specified manner; and present the financial records and statements to a general meeting of parents. The proposed amendment expands the existing provision contained in section 42 to ensure transparent accounting and good governance.

#### **2.32 Clause 32: Amendment of section 43**

2.32.1 Clause 32 seeks to amend section 43 of the SASA to empower the HoD, if he or she deems it necessary, on just cause shown, to authorise an investigation into the financial affairs of a public school; to request the Auditor-General to undertake an audit of the records and financial statements of a public school; or appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school. All of these steps must be taken in accordance with specified requirements.

2.32.2 The clause also places a responsibility on the SGB to provide the HoD with quarterly reports on all income and expenditure in accordance with directives issued by the HoD. The provision that the SGB must submit a copy of the annual financial statements within six months after the end of each financial year to the HoD remains unchanged.

2.32.3 The proposed amendment further expands on the existing provision by creating more options for the HoD if he or she needs to have the financial matters of a school investigated after, for example, receiving allegations of corruption, fraud and the like. In addition, the amendment seeks to create certainty with regard to reporting and to promote open and transparent accounting and financial accountability, bearing in mind that public funds and parents' money are at stake.

#### **2.33 Clause 33: Amendment of section 46**

Clause 33 seeks to amend section 46 of the SASA by increasing the penalty provision from six to 12 months in the case where a person establishes or maintains an independent school that is not registered by the HoD.

#### **2.34 Clause 34: Amendment of section 48**

2.34.1 Clause 34 seeks to amend section 48 of the SASA to provide that the subsidy granted to an independent school can be made subject to conditions determined by the MEC. The amendment also provides that an independent school must submit quarterly reports to the HoD on all income and expenditure relating to the subsidy, and must, within six months after the end of each financial year, provide the HoD with a copy of the audited financial statements relating to the subsidy.

2.34.2 The proposed amendment seeks to create certainty in regard to reporting and to promote open and transparent accounting for the sake of financial accountability when dealing with public funds.

### **2.35 Clause 35: Substitution of section 51**

- 2.35.1 Clause 35 seeks to substitute section 51 of the SASA to provide clarity with regard to home education. The amendment makes it clear that learners may be educated at home only if they are registered for such education. A parent must, at the end of each of the three school phases, notify the HoD if he or she intends to continue educating the learner at home. The criteria that the HoD must consider, when deciding whether or not to approve an application, are also set out.
- 2.35.2 The amendment provides that the HoD may, on just cause shown and after notification to the parent when considering an application, require a delegated official to conduct a pre-registration 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. It also sets out the main responsibilities of a parent who wishes to educate his or her child at home.
- 2.35.3 The amendment stipulates that, in the case of learners who are not yet registered for home education, application must be made within 30 days after the section comes into operation. Provision is also made for a time limit within which the HoD must respond to an application for registration for home education. The amendment further stipulates that home-educated learners must be assessed by a competent assessor at the end of each phase and sets out the options for a home-educated learner after reaching the age of 15 or after completing grade 9.
- 2.35.4 Clarity is also provided to ensure that a learner who is educated at home after the age of 15, or after completion of grade 9, will not be at a disadvantage. In the case of a learner who will be writing the NSC, the parent must, before the learner embarks on any studies following grade 9, ensure that the learner complies with the requirements stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination, for a learner receiving home education.
- 2.35.5 The amendment further provides that the HoD must decline to register a learner for home education if the HoD is satisfied that the parent does not meet certain requirements, or that home education is not in the best interests of the learner; and that the HoD may cancel a learner's registration for home education if, after investigation, the HoD is satisfied that home education is no longer in the best interests of the learner. Before so cancelling a learner's registration, the HoD must satisfy certain requirements. Provision is also made for an appeal process.
- 2.35.6 The amendment provides that the Minister may make regulations relating to the registration and administration of home education. The proposed amendment creates clarity on the powers and responsibilities of officials and of the parents of a learner who is educated at home and proposes steps to protect parents who want to educate their children at home in the Further Education and Training Phase (grades 10 – 12) and will ensure that the final qualification obtained will give the learner opportunities for further study at institutions of higher education.

### **2.36 Clause 36: Amendment of section 59**

Clause 36 seeks to amend section 59 of the SASA to provide for a technical amendment and provides that where a parent, or any other person, applies for the admission of a learner to a public school, or applies for exemption from the payment of school fees, and submits false or misleading information, or

submits a forged document or a document he or she claims is a true copy of the original but is not, is guilty of an offence.

#### **2.37 Clause 37: Insertion of section 59A**

Clause 37 proposes the insertion of section 59A into the SASA to provide for dispute resolution mechanisms in the event of any dispute between an SGB and the HoD, or any dispute between an SGB and an MEC. It is anticipated that this proposed amendment will save costs for all concerned parties and will enable the parties involved to resolve disputes amicably.

#### **2.38 Clause 38: Amendment of section 60**

Clause 38 seeks to amend section 60 of the SASA. This section deals with the liability of the State for any delictual or contractual damages caused as a result of any school activity conducted by a public school for which the public school would have been liable. The proposed amendment to section 60 excludes the liability of the State if the provisions of section 36(2) of the SASA have not been complied with. This amendment seeks to protect the interests of the State in the case where a school does not comply with the provisions of the SASA.

#### **2.39 Clause 39: Amendment of section 61**

2.39.1 Clause 39 seeks to amend section 61 of the SASA to extend the powers of the Minister to make regulations on the management of learner pregnancy; on the admission of learners to public schools; on the prohibition of the payment of unauthorised remuneration or the giving of other financial benefits or benefits in kind to employees; on minimum norms and standards for provincial teacher development institutes and district teacher development centres; on the organisation, roles and responsibilities of education districts; and on a national education information system. The clause also provides for the possibility of creating offences in the regulations made by Minister.

2.39.2 The amendment provides that any regulation contemplated in section 61(1) may provide that any person who contravenes a provision of the regulation, or fails to comply therewith, is guilty of an offence.

2.39.3 Furthermore, the clause provides that any regulations made on the management of learner pregnancy and the admission of learners to public schools must be tabled in Parliament before publication in the *Gazette*.

#### **2.40 Clause 40: Amendment of Preamble**

Clause 40 provides for the insertion of a phrase into the Preamble of the SASA to facilitate the **education of children** through the promotion and protection of the right to basic education.

#### **Amendments to Employment of Educators Act, 1998 (Act No. 76 of 1998)**

#### **2.41 Clause 41: Amendment of section 1**

Clause 41 seeks to amend section 1 of the EEA by deleting obsolete provisions in order to align the Act with the new education dispensation. The proposed amendment deletes the references to “adult basic education centre” and “further education and training Institution”.

**2.42 Clause 42: Amendment of section 5**

Clause 42 seeks to amend section 5 of the EEA by deleting obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the references to “further education and training institution”, “adult basic education centre”, “institution” and “centre”.

**2.43 Clause 43: Amendment of section 7**

Clause 43 seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment and to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005). The clause further provides for the possibility that an appointment to a promotional post can be made on probation. The intention is to close the gap and extend the provision to promotional posts in addition to appointments.

**2.44 Clause 44: Amendment of section 8**

Clause 44 seeks to amend section 8 of the EEA by proposing the deletion of the obsolete references to “council” and “adult education and training centre”.

**2.45 Clause 45: Amendment of section 9**

Clause 45 seeks to amend section 9 of the EEA to provide for the secondment of educators to another department.

**2.46 Clause 46: Amendment of section 11**

Clause 46 seeks to amend section 11 of the EEA by proposing the deletion of obsolete references to “institutions” and “centres”.

**2.47 Clause 47: Amendment of section 17**

Clause 47 seeks to amend section 17 of the EEA by inserting a phrase that expands the list of acts of serious misconduct. This is necessary because “conducting business with the State” is a new act of serious misconduct that is introduced in the Bill in the proposed insertion of section 19 in the EEA and the current section 17 of the EEA is no longer adequate. The new phrase is worded in a manner which will ensure any acts of misconduct that may be identified in future legislation will be covered.

**2.48 Clause 48: Amendment of section 18**

Clause 48 seeks to amend section 18 of the EEA by proposing the deletion of the obsolete references to “adult learning centre” and includes a provincial department of education within the ambit of the section.

**2.49 Clause 49: Insertion of section 19**

Clause 49 proposes the insertion of a new section 19 into the EEA, which prohibits educators from conducting business with the State or from being a director of a public or private company conducting business with the State and provides that a contravention of the aforementioned provision is an offence. Such contravention will also constitute serious misconduct, which shall result in the termination of the educator’s employment by the employer. This proposed amendment aims to promote good governance to protect the financial interests of the State and to prevent corruption.

#### **2.50 Clause 50: Amendment of section 35**

Clause 50 seeks to amend section 35 of the EEA to extend the powers of the Minister to make regulations on norms and standards for district staffing.

#### **2.51 Clause 51: Repeal of section 38**

Clause 51 seeks to repeal section 38 of the EEA which has become obsolete.

#### **2.52 Clause 52: Amendment of Schedule 1**

Clause 52 seeks to amend Schedule 1 to the EEA by proposing the deletion of the obsolete references to “public further education and training institution or public adult learning centre”.

#### **2.53 Clause 53: Amendment of Schedule 2**

Clause 53 seeks to amend Schedule 2 to the EEA by proposing the deletion of the obsolete references to “public further education and training institution or public adult learning centre”. It also provides for a timeframe within which an appeal contemplated in Schedule 2 must be considered.

#### **2.54 Clause 54: Short title**

Clause 54 provides the short title of the envisaged Act and provides that the envisaged Act comes into operation on a date fixed by the President by proclamation in the Gazette.

### **3. DEPARTMENTS, ORGANISATION AND INSTITUTIONS CONSULTED**

The following national and provincial Departments, agencies, major stakeholders in the basic education sector and other organs of state responsible for the following functions were consulted:

- All nine provincial education departments;
- all national government departments;
- the Heads of Education Departments Committee;
- the Council of Education Ministers;
- South African Democratic Teachers Union (SADTU);
- SA Onderwysersunie (SAOU);
- National Professional Teachers Organisation of South Africa (NAPTOSA);
- Federation of Association of Governing Bodies (FEDSAS);
- Governance Alliance (GA);
- National Association of School Governing Bodies (NASGB);
- Governing Body Foundation;
- the Pestalozzi Trust for Home Educators;
- National Economic, Development and Labour Council (NEDLAC);
- The Technical Working Group; and
- The Social Protection, Community and Human Development Cluster.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

The Bill will create financial liability for the State in the form of implementation costs relating to the following:

- In terms of the provision of Grade R, it is estimated that an additional amount of R5.26 billion will be required. The amount is composed of both the funding needed for equalisation of conditions of service and the funding of appointment of additional educators to address the estimated increased learner enrolment. The calculations are based on the current provisioning of Grade R in public schools;
- in terms of additional infrastructure, a total of 7 888 schools still need to be provided with Grade R classrooms, and an amount of R12 billion is required to address the shortfall. The shortfall will continue to be funded from the Education Infrastructure Grant, the equitable share and other funding mechanisms to ensure that schools receive the requisite spaces to accommodate Grade R learners;



- Home Education Assessment costs have been divided into two categories, namely, the sourcing, preparing of exam papers and marking of scripts and Invigilation. A suggested rate of R100 per hour for marking of scripts and R150 could be added for sourcing and preparing of papers. The estimated cost for invigilators is R40 per hour. The bearers of these costs will be the parents.

## 5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution.
- 5.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.
- 5.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence. In the Constitutional Court judgment of *Ex-Parte President of the Republic of South Africa In Re: Constitutionality of the Liquor Bill*<sup>1</sup> (“*Liquor Bill* judgment”), Cameron AJ held the following:

“[27] *It must be borne in mind that section 76 is headed ‘ordinary Bills affecting provinces’. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76.*

...

*[29] Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76 (1) or the section 76(2) procedure . . .”.*

- 5.4 Following the *Liquor Bill* judgment, the Constitutional Court in the judgment of *Tongoane and Others vs Minister for Agriculture and Land Affairs and Others*<sup>2</sup> (“*Tongoane* judgment”) confirmed the following:

“[59] . . . the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.”.

- 5.5 Furthermore, the Constitutional Court held that:

“[66] . . . procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting themàthey are fundamental to the role of the NCOP in ensuring that provincial interests are taken into account in the national sphere of government . . .”.

- 5.6 As the Court held in the *Tongoane* judgment, a Bill must be tagged as a section 76 Bill if its provisions in substantial measure deal with a Schedule 4 functional area. We are therefore of the view that the Bill should be classified as a section 76 Bill, which is an ordinary Bill affecting provinces, as its provisions in a substantial measure fall within a functional area listed in

1. (CCT/12/99) [1999] ZACC 15.

2. 2010 (8) BCLR 741 (CC).

Schedule 4 to the Constitution, namely “Education at all levels, excluding tertiary education”.

- 5.7 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as it does not contain any provisions which directly affect traditional or Khoi-San communities or provisions which pertain to customary law or customs of traditional or Khoi-San communities.





