



THE EQUALITY COLLECTIVE

1. This submission is made on behalf of the **Equality Collective** in response to the call for submissions on the Children’s Amendment Bill B18 2020 (“**the Bill**”) and specifically relates to Chapters 5 and 6 of the Bill.
2. The Equality Collective is an activist and community-centred law project based in the Xhora Mouth Administrative Area in the Eastern Cape. One of our pillars is to build the infrastructure for grassroots power to make necessary structural changes to advance greater equity. A key area of ours is advocating for an enabling legal and regulatory system for the early childhood development sector.
3. Tess Nolizwe Peacock, our Director, is a qualified lawyer with extensive experience in ECD law and policy. She has advised various government departments and organisations in the sector on the Children’s Act 38 of 2005 (“**the Act**” or “**the Children’s Act**”); the Children’s Act General Regulations (“**the Regulations**”); the National Health Act 61 of 2003; National and Environmental Health Norms and Standards (“**the NEHNS**”) and the National Integrated Early Childhood Development Policy (“**the ECD Policy**”).
4. The legal and regulatory system currently is exclusionary by design and needs significant reform. Over two thirds of ECD providers are unregistered which means that most providers are operating outside of any monitoring and support by government and most providers are operating without any checks to ensure the environment is safe and healthy for children. The status quo should alarm you.
5. Why this is the case is partly because the legal and regulatory framework includes significant barriers to bringing these unregistered sites into the regulatory fold and it is preventing them from accessing the support that they require for children in their care. The Department of Social Development programmes such as [Vangasali](#) which is aimed at increasing the number of registered sites are laudable, but their success will be fundamentally impeded by the legal regime.
6. That is also why we founded, together with Ilifa Labantwana the Children’s Institute, Equal Education Law Centre, National ECD Alliance, Bridge, SmartStart and DGMT the **Real Reform for ECD Campaign**. The Real Reform for ECD Campaign is calling for the following reforms:

**The Equality Collective is a Non-Profit Company**

**Our vision is thriving rural communities collectively participating in a just and caring society.**

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NPC 2020/125379/08



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- I. A simpler, one-step registration process for ECD providers;
  - II. Recognition of different types of ECD programme providers;
  - III. Inaccessible compliance standards and overlapping roles and responsibilities;
  - IV. Assistance to ECD providers servicing poor communities;
  - V. The conditional registration framework; and
  - VI. The provision of infrastructure support.
7. This Campaign is now supported by over 150 organisations with 1331 signatories ([www.change.org/realecdreform](http://www.change.org/realecdreform)).
8. We need to achieve the objectives of the Campaign if we are serious about expanding universal access to quality ECD services.
9. We would be humbled to have an opportunity to present to the Portfolio Committee on our recommendations. In our opinion, our recommendations are comprehensive dealing with the major objectives for ECD legal reform as well as addressing regressive amendments and important incremental “wins”. As one of the few organisations with legal expertise in the ECD space, we believe that the Portfolio Committee will find a presentation from us useful.

Yours sincerely,

A handwritten signature in black ink that reads "Tess Peacock".

Tess Peacock

We can be contacted on 047 577 8908 or [tess@equalitycollective.org.za](mailto:tess@equalitycollective.org.za) if you require any more information.

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# Children’s Amendment Bill 2020

## Early childhood development – line by line amendments

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### 1. Introduction<sup>1</sup>

The Children’s Amendment Bill B18-2020 (“**the Bill**”) still requires a lot of work if it is going to provide a more enabling legal framework for advancing universal access to quality ECD services. There are fundamental problems with some of the proposed changes, much confusion, the introduction of regressive amendments as well as numerous drafting errors including the inconsistent use of terminology.

Commentary is provided on almost all proposed amendments made in the Bill. A failure to deal with a specific clause, however, should not be read to suggest that we accept or endorse the proposed amendment.

We are of the opinion that the Bill should aim to achieve the following in relation to the proposed amendments:

1. One holistic chapter for ECD under Chapter 6;
2. A one-step registration process;
3. Recognition for different types of ECD programme providers;

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<sup>1</sup> This submission was primarily drafted by Tess Peacock an ECD legal expert who is the Founder of the Equality Collective and an associate of Ilifa Labantwana. The same submission has therefore been submitted separately by Ilifa Labantwana.

4. Simpler compliance standards and the removal of duplication regarding roles and responsibilities;
5. An enabling framework for the ECD Conditional Registration Framework;
6. Provision of support and assistance to ECD providers servicing poor communities; and
7. Provision for infrastructure support.

In addition to line-by-line commentary, we have prepared introductory submissions on these objectives. For each objective above, we have summarised whether that objective has been achieved through proposed amendments with the Bill and if not, how it can potentially be achieved. The line-by-line commentary follows thereafter.

## 2. Once holistic Chapter for ECD under Chapter 6

This objective has been insufficiently achieved and has significant flaws. Although it is obvious that an attempt has been made to have ECD dealt with in one Chapter there are some major shortcomings to the approach proposed.

The introduction of Part II for ECD Centres copies and pastes almost all of the provisions from the partial care chapter. However, ECD services/programmes/centres are not excluded at all from the definition of partial care and partial care is not excluded from the definition of ECD centre. The Bill therefore introduces a major problem of the prospect of a triple registration process for ECD providers.

The Bill indicates that partial care (subject to certain exclusions) is provided when a person takes care of more than six children on behalf of their parents, guardians or care-givers during specific hours of the day or night, or for a temporary period. An ECD programme may be provided by a partial care facility providing partial care services for any children up to school-going age. The Bill introduces the definition of 'early childhood development centre' as a centre that provides an ECD programme for more than six children from birth to school-going age. Based on the above, it appears that a facility which provides ECD programmes for more than six children from birth to school-going age will be considered, under the Bill, as both a partial care facility and an ECD centre. Accordingly, such a facility would - under the current Bill - appear to be required to comply with three separate registration requirements (i.e. registration as a partial care facility, registration as an ECD centre and registration of its ECD programmes).

Although the Bill (proposed sections 103(C)(4) and 103(C)(5)) caters for a registered partial care facility (that provides ECD programmes) to be regarded as having been registered as an ECD centre for a period of 5 years from the date on which the amendments take effect,<sup>2</sup> it is not clear that these provisions apply to partial care facilities established after the amendments come into effect. Moreover, after the five-year deeming period has elapsed, it would appear that the triple registration regime would apply to all facilities providing ECD programmes.

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<sup>2</sup> Clause 55 of the Bill, introducing proposed section 103C(4) and 103C(5).

The Bill must be amended to avoid the potential for triple registration. In particular, the confusing overlap between the scope and regulation of partial care and ECD centres needs to be addressed. While this requires a holistic approach, amendments must include the following:

- Retain the proposed amended definition of “ECD programme”; **and**
- Remove the provisioning of ECD programmes from the scope of partial care entirely by deleting section 93(5)(a) of the Children’s Act; **and**
- Exclude the care of a child by an ECD programme from the scope of partial care under section 76 of the Children’s Act; **and**
- Remove “early childhood development services” as a type of partial care from regulation 12(1)(a) of the General Regulations regarding Children.

Further, the incorporation of the ECD centre provisions within Chapter 6 as proposed by the Bill creates significant duplication with the ECD programme provisions. For example, there are two provisions for the development of ECD strategies, two provisions for the assignment of functions to municipalities; two registration processes; two different funding mechanisms; and two different enforcement provisions and two different appeal and review provisions, all within one chapter.

The potential for regulatory coherence through one ECD chapter is being diluted by the duplication of multiple processes within that chapter.

### 3. One-Step Registration Process

This objective has not been achieved. Looking only at Part I and Part II of Chapter 6 (i.e. ignoring partial care registration), the proposed amendments retain a dual registration process for any provider that meets the definition of ECD programme and ECD centre. Since both definitions remain broad, this is likely to be the case for most ECD providers. There are two application processes envisaged (sections 95 – 97 for ECD programmes and sections 103C – 103E for ECD centres) each with their own set of requirements that need to be complied with.

If a one-step registration process is the objective, then one proposed approach on how this can be achieved is included in Annexure A.

The amendments detailed in the line-by-line commentary in the main part of this document will, however, ensure at least a one-step registration process for non-centre based ECD programmes.

### 4. Recognition of different types of ECD programme providers

This objective has been partially achieved. Different types of ECD programme modalities (centre-based programmes and non-centre based which includes playgroups, toy libraries and home-based ECD) must be expressly recognized and they must have differentiated norms and standards applicable to their modality.

The Minister has been empowered to make regulations concerning different types of ECD programmes (Clause 53 proposed amendment to Section 103). This can, however, be strengthened as follows:

- making the recognition of different types of ECD programmes express in the ECD programmes definition. See items No. 16 in the line-by-line commentary below which includes suggested amendments to section 91(3).
- Empowering the Minister to develop differentiated norms and standards for ECD programmes. See items No. 21. in the line-by-line commentary below which includes suggested amendments to section 94(1).

## 5. Inaccessible compliance standards and overlapping roles and responsibilities

This objective has not been addressed at all. The Act is not clear on who is ultimately responsible for: a) developing health and safety standards; and b) ensuring compliance with health and safety standards for ECD providers. The legislation simply states that an applicant must comply with all prescribed requirements including those of the municipality. This creates the conditions for overlap and duplication between provincial and local government health and safety checks. The Act is also surprisingly silent on local government's responsibilities in respect of "child care facilities" which is a competency of local government as per Schedule 4B of the Constitution.

As it stands, compliance standards for ECD providers are set out in the Children's Act; the Health Act and various local government by-laws. This creates an untenable administrative burden on the State and on the applicant who has to comply with multiple sets of requirements.

Further, the norms and standards that an ECD provider is required to comply with has increased significantly, with higher standards being introduced by the National Environmental Health Norms and Standards ("NEHNS") in 2015. These higher norms and standards are driven by "international best practice", underpinned by higher living standards internationally. Many of the Norms and Standards as determined under the Children's Act are also unrealistic. Standards in South Africa have become excessive and for this reason, largely unattainable by the overwhelming majority of ECD providers who serve poor communities.

Legislation should clearly outline the duties, planning and reporting processes of *local* government. Local government duties should include the duty to ensure a healthy and safe environment for children and appropriate planning and reporting in respect thereof. In addition, the Act should provide clearer guidance to local government on what bylaws should provide for (see Chapter 3 of the Water Services Act as an example of national legislation clearly setting out the scope of local government obligations). The Water Services Act 108 of 1997 offers a blueprint on how the appropriate allocation of roles and responsibilities between different levels of government in respect of a Schedule 4B functional competency may be achieved.

The legislation should also include the power of the Minister to provide model bylaws that must be used as a guide for local government:

“the Minister, in consultation with the Minister of Health, may provide model bylaws aligned with all relevant norms and standards to be used as a guide for municipalities”.

The model bylaws should include guidance on minimising excessive and unrealistic health and safety standards.

Legislation should clearly outline the duties, planning and reporting processes of the *provincial* and *national* government. In respect of ensuring a healthy and safe environment for children these should be limited to powers of monitoring and intervention so as to avoid duplication with local government (see Chapter 8 of the Water Services Act as an example of national legislation clearly setting out the scope of national and provincial monitoring and oversight obligations).

At the same time, health, safety and programme standards relating to ECD provisioning must be simplified and streamlined across all prescribed requirements.

The line-by-line amendments do not attempt to address this objective as more fundamental reform is required. However, some amendments to reduce duplication and overlap are provided at items 22 and 29 below amending Section 94(2) and new Section 103B(2).

## 6. Enabling framework for the ECD Registration Framework

This objective has not been achieved. The Department wants an enabling framework to roll out their [Vangasali](#) programme and the ECD Conditional Registration Framework. The proposed amendments to the Bill do not provide a strong legal framework for this and through profound inconsistent and/or wrong use in terminology, creates much confusion. See items No. 9, 11, 23 and 34 in the line-by-line commentary below which includes suggested amendments to sections 81, 83, 98 and Clause 55.

## 7. Assistance to ECD Providers servicing poor communities

This objective has not been achieved. The Department either wants to or may in the future want to be able to support partial care facilities who cannot meet the entry level standard for the ECD Registration Framework (Bronze). This is sometimes referred to as a “pre-bronze” support package. The proposed amendments to the “power to assist clause” for partial care making the use of these powers dependent on conditional registration, would make this impossible. **Amendments proposed in clause 38(b) to section 82(5) should be rejected.** [It is unclear whether this proposed amendment will be carried through to the new section, Part II ECD centres. Any similar proposals for ECD centres should be rejected].

Further, there are proposals in the Bill that turn obligations to prioritise poor communities into discretionary powers. **Amendments proposed in clauses 35(c) and 47(b) to sections 78(4) and 93(4) should be rejected.**

## 8. Provision for government infrastructure support

This objective has not been achieved. The Bill is costed to provide for a dramatic increase in expenditure on ECD infrastructure, however, there are no proposed amendments in the Bill that

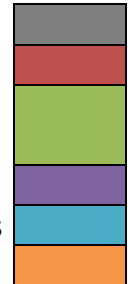
would provide for that or justify the costing. The current legislation fails to give effect to the ECD infrastructure provisions in the National ECD Policy. These include: the development of an infrastructure plan; local government obligations regarding the maintenance and public provision of ECD centres in poor areas and requiring the Minister to develop norms and standards for public provision of ECD centres. This hampers the proper implementation or realisation of those policy objectives.

The legislation must clearly outline government duties, particularly duties of municipalities to expand access to ECD programme infrastructure; the maintenance of ECD programme infrastructure and of existing facilities on private property and ensure access to sufficient and appropriate ECD providers in poor communities.<sup>3</sup> The legislation should require that an infrastructure plan be developed to ensure equitable and universal access to early childhood development programmes as well the development of minimum norms and standards for new public early childhood development facilities.<sup>4</sup> See items 29 and 36 below which includes suggested amendments to new Section 103B(2) and 103J(1).

### 9. Line-by-line commentary on the Bill<sup>5</sup>

The proposed commentary below aims to deal with the following and has been colour coded for ease of reference (the legend has been included in the header for ease of reference):

1. The problem of duplication
2. Regressive amendments and affirming the prioritisation of poor communities
3. Accommodating different types of ECD programmes and ensures that the Minister can develop differentiated norms and standards
4. Ensuring an enabling framework for conditional registration
5. Provision of support and assistance to ECD providers servicing poor communities
6. Infrastructure support for the ECD sector



#### Notes

Amendments in the table are shown as follows:

**Bold brackets – [Children’s Amendment Bill]** – shows proposed Government amendment, deleting text.

Underlined – Children’s Amendment Bill – shows proposed Government amendment, adding new text.

~~Crossed out – Children’s Amendment Bill~~ – shows our proposed amendment, deleting text.

***Bold italics – Children’s Amendment Bill*** – shows our proposed amendment, adding new text.

<sup>3</sup> Clause 9.5(3)(g) of the ECD Policy.

<sup>4</sup> Clause 9.5 of the ECD Policy.

<sup>5</sup> Some of these comments relies on work by SmartStart and we have incorporated them with their permission.



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No.	Clause (Bill) or Section (Act) BILL PROPOSAL	COMMENT/ PROPOSAL
1.	<p>Clause 1(j) (to Section 1)</p> <p>(j) 'early childhood development centre' means a centre that provides an early childhood development programme as contemplated in section 91(3) for more than six children from birth to school going age;</p>	<p>1. It is not clear why only "ECD centre" is defined, and not other ECD modalities – such as playgroups and childminders. Tens of thousands of children attend these types of programmes, but this approach leaves their legal standing uncertain. <b>If the intention is that non-centre based ECD programmes will only have to register under Part I of Chapter 6 then this needs to be made explicit.</b></p> <p>2. The use of the word 'centre' in the definition is not helpful. It could potentially capture a wide range of ECD programmes – including, for example, playgroups, outreach programmes and toy libraries. The reference to '<b>more than 12 hours per week</b>' would ensure that these programmes are not captured.</p> <p>3. The unclear definition of ECD centre proposed could mean that <i>any facility that provides an ECD programme is by definition an ECD centre</i> (if facility is interpreted as synonymous with centre). This means it would capture within its scope partial care facilities (Chapter 5), child and youth care centres (Chapter 13) and drop-in centres (Chapter 14) which provide an ECD programme. Under the Act as drafted, each of these would then have to register three times (for example, an ECD centre, as a partial care facility and as an ECD programme). <b>There should be clear exclusions to the definition of ECD Centre, see item No. 27 below.</b></p>
2.	<p>Clause 1(k) (to Section 1)</p> <p>(k) 'early childhood development service' means a service or support provided to children from birth to school-going age or a service or support provided to a child's parent, guardian or care-giver with the intention to promote the child's emotional, cognitive, sensory, spiritual, moral, physical, social and communication development;";</p>	<p>Early Childhood Development Service is currently defined under s 91 of the Act and expressly excludes services provided by a child's parent or caregiver. It is suggested that such an exclusion be included here as well. This should include a reference to "guardians" as well. The suggestion is as follows:</p> <p>"(k) 'early childhood development service' means a service or support provided <b>by a person other than a child's parent, guardian or caregiver</b> to children from birth to school-going age or a service or support provided <b>by a person other than a child's parent, guardian or caregiver</b> to a child's parent, guardian or care-giver with the intention to promote the child's emotional, cognitive, sensory, spiritual, moral, physical, social and communication development;"</p>

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3.	<p>Clause 34 (to Section 76(1))</p> <p>“(1) <b>[Partial]</b> Subject to subsection (2), partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents, <u>guardians</u> or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents, <u>guardians</u> or care-givers and the provider of the service, but excludes the <u>full-time</u> care of a child— (a) by a school as part of tuition, training and other activities provided by the school; (b) as a boarder in a school hostel or other residential facility managed as part of a school; or (c) by a hospital or other medical facility as part of medical treatment provided to the child.”</p>	<p>It is unclear why “full-time” has been inserted for the list of exclusions in this definition. None of the exclusions are typically full-time. So, what this means is that after-school programmes will have to register as a partial care facility since they are not full-time. Boarding programmes are also not full-time typically and now will also have to register as a partial care facility as with medical programmes for children. This can hardly be intended. <b>The insertion of “full-time” should be rejected.</b></p>
4.	<p>Clause 35a (to Section 78)</p> <p>“(3) <b>[The owner or manager of a partial care facility or provider of a partial care service]</b>A <u>partial care facility</u> only qualifies for funding contemplated in subsection (1) if such <b>[owner, manager or provider]</b> <u>facility</u> complies with the prescribed national norms and standards contemplated in</p>	<p>“A partial care facility” is not a legal entity. A legal entity needs to be a person and can include a juristic person (e.g. a registered organisation). <b>This proposed amendment is therefore non-sensical and should be rejected.</b></p>

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	section 79 and such other requirements as may be prescribed.”;	
5.	<p>Clause 35b (to Section 78)</p> <p><u>“(3A) A partial care facility registered with conditions qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards.”;</u></p>	<p>1.The term “registered with conditions” is not accurately used in this context. <b>This should more accurately be referred to as “conditional registration”.</b></p> <p>Registration with conditions means, for example, the provincial head may impose conditions relating to the type of care or period of registration: your registration is granted on condition that the maximum number of children in your care is 30 or your registration is granted on condition that your services are offered for children aged 3 – 5 years (as Form 12 provides for). These are typical of ordinary conditions in that they limit the scope of a registered provider's entitlement in terms of the legislation.</p> <p>“Conditional registration” of providers on the other hand is possible prior to meeting the full requirements of registration and will therefore be granted based on lower threshold requirements. These providers should be supported to meet full registration requirements within a specified period.</p> <p>The confusion in terminology is littered through-out the Act. <b>Both “conditional registration” and “registration with conditions” must be expressly accommodated. See item 9 and 11 below for specific recommendations.</b></p> <p>2. While not a model of clarity, the amendments to the funding provision appears to envisage some form of registration being possible where there is only partial compliance with the prescribed norms and standards. These provisions are, however, not entirely clear and there is no similar provision for ECD centres.</p>
6.	<p>Clause 35c (to Section 78)</p> <p><b>“(4) [The funding of partial care facilities must be prioritised] The MEC for social development may prioritise and fund partial care facilities and services—</b></p>	<p>1. De-prioritisation of poor communities. The current law requires that the funding of ECD programmes to poor communities must be prioritised. The Bill turns this obligation into a discretionary power by providing that funding of partial care facilities and ECD programmes to poor communities may be prioritised. This undermines the realisation of the right to ECD for all children and is a regressive proposal. <b>This amendment should be rejected.</b></p>

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	<u>(a) in poverty declared wards in a province, taking into consideration the national and provincial strategies contemplated in section 77 and in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and</u> <u>(b) to make facilities accessible to children with disabilities.”</u>	2. It is unclear what “poverty declared ward” refers to. This either needs to be defined or alternatively removed. It is suggested that it just be removed.
7.	Clause 35e (to Section 78)  <u>“(5) The funding for infrastructure of partial care facilities does not apply to private homes of registered non-profit organisations, private homes in general, business properties or properties not owned by a non-profit organisation.”.</u>	While this might at first glance be viewed as a positive amendment that protects public funds when you take into account 1) that most providers of ECD are private providers and 2) the principle that the “best interests of the child” are of paramount importance, then this exclusion is concerning. If this amendment is passed data from the National Audit completed in 2014 shows that 523 purpose-built centres that require support will not be eligible to receive it. Furthermore, all community-type centres are used for purposes other than ECD (e.g. homes, community halls, places of worship, etc.), and therefore none of the 10 098 community-type centres requiring support will be eligible to receive it. In addition, it is assumed (based on the Audit) that 10% of centres that require infrastructure support, 1 152 centres, will be unable to achieve registration and will need to be closed.  <b>Parliament therefore ought to reject the proposed blanket ban on government investment to improve infrastructure for partial care facilities on private property as this will further marginalise mostly poor children.</b> Any concerns government may have in respect of protecting their financial investments for their social impact goals in ECD, can be mitigated against with other checks and procedures. Such mitigating measures include 1) the requirement to be registered as an NPO; 2) a lease is in place to use the premises for an ECD programme for a minimum of five years; 3) the NPO Board is operational and can demonstrate commitment and investment in the ECD programme; 4) if the NPO ceases to provide an ECD services, a repayment of costs arrangement can be enforced.
8.	Clause 36a (to Section 79)	The deletion of “basic” from therapeutic interventions makes this a higher standard that partial care facilities for children with disabilities or chronic illnesses must comply with. We caution against the insertion of any higher requirements.

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	“(iii) [basic] therapeutic interventions.”;	
9.	Clause 37a (to Section 81)  “An application for registration [or conditional registration] of a partial care facility or [for the reinstatement or] renewal of registration must—”;	Currently there is no separate application process for conditional registration. However, if the Department intends to introduce a more considered process for Conditional Registration (as they plan to do with the ECD Registration Framework), then it might be prudent to keep in the language of an application being possible for conditional registration. The application process can then be more fully detailed in the regulations. <b>It is suggested that this proposed amendment be rejected.</b>
10.	Clause 38b (to Section 82)  “(5) Notwithstanding section 78(3) a provincial head of social development may assist the owner or manager of a partial care facility <u>where registration with conditions is granted</u> , to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.”.	<p>1.Narrowing of the “power to assist” clauses. The current legislation empowers the Department of Social Development to assist partial care facilities and programme providers to comply with prescribed norms and standards (the so-called “power to assist” clauses).</p> <p>The power to assist allows for budget to be allocated for the purposes of assisting with compliance with norms and standards (including, for example, infrastructural improvements or other types of support).</p> <p>The current legislation makes it clear that the provincial head of social development has the power to assist non-compliant facilities if there has been cancellation of registration and in the process of considering an application. That is, a facility does not already have to be registered in order for assistance to be provided.</p> <p>The Bill reverses this position where partial care facilities are concerned and makes the use of the “power to assist” contingent on the granting of registration with conditions. <b>This is therefore a narrowing of the powers. This proposal also removes the possibility of doing any kind of “pre-bronze” or “pre-conditional registration” support. This amendment should therefore be rejected.</b></p> <p>2) <b>In addition, the “power to assist” clauses should be strengthened.</b> This can be achieved by a) strengthening reporting on the power to assist and b) incorporating the power to assist in planning.</p> <p>Amending section 82 of the Act to ensure that provincial departments report on the exercise of the power to assist by inserting after subsection (5) the following section:</p> <p><b>“(5A) The provincial head of social development must make an annual report to the Minister on progress achieved in respect of section 82(5).”</b></p>

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		<p>Amending section 97 of the Act by inserting after subsection (5) the following section: <b><i>“(5A) The provincial head of social development must make an annual report to the Minister on progress achieved in respect of section 97(5).”</i></b></p> <p><i>b) Amendments to ensure that national and provincial strategies consider the need to assist facilities</i></p> <p>Amending section 77(1), 77(2), 91(1) and 92(2) to ensure that national and provincial strategies duly consider the need to assist facilities to comply with norms and standards and other registration requirements. This can be achieved by cross referencing the relevant “power to assist” clauses in the list of things the Minister or MECs must give due consideration to. For example:</p> <p><i>“(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration <b>to section 82(5) and</b> as provided in section 11, to children with disabilities or chronic illnesses.”</i></p>
11.	<p>Clause 39 (to Section 83)</p> <p><b>“[Conditional registration] Conditions relating to registration—</b> The registration or renewal of registration of a partial care facility may be granted on such conditions as the provincial head of social development may determine, including <b>[conditions]—</b> <i>(a) conditions specifying the type of partial care that may or must be provided in terms of the registration;</i> <i>(b) [stating] the period for [which the conditional registration will remain valid]</i></p>	<p>The proposed amendments do not clearly accommodate and/or differentiate between “conditional registration”; “conditions relating to registration” and “registration with conditions” and the terms are used differently in relation to partial care, ECD programmes and ECD centres. It is therefore unclear whether DSD is able to grant conditional registration if there is non-compliance with registration requirements as prescribed.</p> <p>As explained above, both conditional registration and registration with conditions serve an important purpose and should be expressly accommodated. However, the Bill continues to conflate and confuse these two concepts. On the one hand, the proposed amendments seem to entrench the “narrow” interpretation that the granting of full registration is dependent on the fulfilment of all conditions. Yet on the other hand, and while not a model of clarity, the amendments to the funding provision (with the insertion of 78(3A) and 93(3A) also discussed above in relation to the power to assist, appears to envisage some form of registration being possible where there is only partial compliance with the prescribed norms and standards. These provisions are, however, not entirely clear and there is no similar provision for ECD centres.</p>

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	<p><u>compliance with the conditions referred to in paragraph (a); and (c) [providing] any other matter that may be prescribed."</u></p>	<p>In relation to ECD centres, proposed sections 103D and 103E make reference to "conditional registration", however the proposed section 103F does not make provision for conditional registration at all, only "conditions for registration".</p> <p>This inconsistency and confusion is untenable.</p> <p><b>a) The use of conditional registration for the purposes of progressive realisation of norms and standards or relevant requirements should be made clear.</b></p> <p>Such clarity can be achieved, by for example:</p> <p>Amending sections 83 and 98 of the Act and 103F of the Bill as follows:</p> <p>By the substitution of the following for the heading of each section: "Conditional registration <b>and conditions relating to Registration</b>"</p> <p>By the substitution for section 83 and 98 of the following sections:</p> <p><b><i>"Conditions relating to registration</i></b></p> <p><b><i>(1) The registration or renewal of registration of a partial care facility (/early childhood development programme) may be granted on such conditions as the provincial head of social development may determine, including conditions—</i></b></p> <p><b><i>(a) specifying the type of partial care that may or must be provided in terms of the registration;</i></b></p> <p><b><i>(b) stating the period for which the registration with conditions will remain valid; and</i></b></p> <p><b><i>(c) providing for any other matters that may be prescribed.</i></b></p> <p><b><i>Conditional registration</i></b></p> <p><b><i>(1) The head of social development may grant conditional registration to an applicant who does not fulfil the requirements for registration contemplated in section 80(1)(c), subject to the applicant having complied with a minimum threshold of requirements as prescribed and the head of social development:</i></b></p> <p><b><i>(a) specifying which requirements have not been complied with; and</i></b></p> <p><b><i>(b) stating the period for which the conditional registration will remain valid."</i></b></p>

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		<p>ALTERNATIVELY:</p> <p>Amending sections 83 and 98 as follows:</p> <p>“(1) The registration or renewal of registration of a partial care facility (early childhood development programme) may be granted on such conditions as the provincial head of social development may determine, including conditions—</p> <p>(a) specifying the type of partial care (early childhood development programme) that may or must be provided in terms of the registration;</p> <p>(b) stating the period for which the conditional registration will remain valid; <del>and</del></p> <p><b><i>(bB) specifying the period by which the applicant must comply with the prescribed requirements for registration; and</i></b></p> <p>(c) providing for any other matters that may be prescribed.”</p> <p><i>Similar proposed amendments should also be made to section 103F and 103B which have been inserted in Part II of Chapter 6.</i></p> <p><b>b) It should also be made an express provision that regulations may be issued relating to the procedure for obtaining conditional registration and progressively attaining full registration.</b></p> <p>Amending sections 90 and 103 of the Act as follows:</p> <p>By the insertion of paragraph aA after paragraph (a):</p> <p><b><i>“(aA) the procedure to be followed in connection with the granting of conditional registration and the process by which full registration must thereafter be obtained.”</i></b></p>
12.	<p>Clause 40 (to Section 85)</p> <p><u>“(5) The owner, manager or organisation operating a partial care facility which has been instructed or ordered to stop operating such facility, must immediately after receiving such instruction or order notify the parent of the affected child.”.</u></p>	<p>The insertion of this clause is fine but the following grammatical suggestion is made:</p> <p>“(5) The owner, manager or organisation operating a partial care facility which has been instructed or ordered to stop operating such facility, must immediately after receiving such instruction or order notify the parents of <b><i>all the</i></b> affected children.”.</p>
13.	<p>Clause 41 (to Section 87)</p>	<p>It is comforting to see a greater monitoring role being incorporated into the Act. The Legislature should consider a more comprehensive quality assurance and monitoring system.</p>



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	“(c) monitor partial care facilities and conduct routine inspections at the prescribed intervals of partial care facilities in the province to enforce the provisions of this Act.”.	
14.	<p>Clause 43 (to Section 89(1))</p> <p>“(1) If a child is seriously injured or abused while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility or a person employed at the partial care facility must immediately report such injury or abuse to the provincial head of social development, who must <b>[cause an investigation to be conducted into the circumstances of the serious injury or abuse] act in accordance with the provisions of section 110(5).</b>”</p>	<p>At first glance this looks like a simple amendment that links section 89 to a more detailed procedure laid out in the Act. However, this amendment narrows the provision as section 110 only deals with abuse. This means that the obligation to have an investigation in the circumstances of <i>serious injury</i> is therefore removed. This amendment is therefore regressive. The following is therefore suggested:</p> <p>“If a child is seriously injured or abused while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility or a person employed at the partial care facility must immediately report such injury or abuse to the provincial head of social development, who must cause an investigation to be conducted into the circumstances of the serious injury or abuse <b>and in the case of abuse, act in accordance with the provisions of section 110(5).</b>”</p>
15.	<p>Clause 45(a) (to Section 91(1))</p> <p>“(1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school going age <u>or, in the case of a child with developmental difficulties and disabilities, until the year before the child enters school.</u>”</p>	<p>1. Children with developmental difficulties and disabilities have the right to start school at the same age as all other children, with appropriate provision to meet their needs. This government amendment suggests that these children are not the responsibility of DBE at age 5 in the same way as all other children are. On its face, this would unfairly discriminate against such children. If the intention of the amendment is to indicate that DSD might have ongoing responsibilities to children with difficulties and disabilities, <i>in addition to DBE’s responsibilities</i>, then this amendment should be worded differently and without reference to school.</p>

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16.	<p>Clause 45(c) (to Section 91(3))</p> <p><u>“(3) An early childhood development programme, as prescribed, is a program that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school-going age.”.</u></p>	<p>1.The suggested change in definition to ECD programme is a fundamental shift from the past which viewed programme as only early learning and support appropriate to the child’s developmental age and stage. This new definition expands that to include “daily care and development”. Now “programme” seemingly includes all modalities contemplated in the NIECDP. This provides an overarching definition of an “ECD provider” broad enough to encompass different types of ECD provisioning. This amendment also clarifies that an ECD programme is the provider, place and programme content together. The lack of clarity over whether an ECD programme is only the <i>programme content</i> (i.e. curriculum) has caused significant confusion and inconsistency in the practical implementation of Chapter 6. The NIECDP makes it clear that the term ‘ECD programme’ refers to the whole entity. In other words, ECD centres and home-based childcare can be understood both to <i>be</i> types of ECD programmes and to <i>provide</i> ECD programmes. This definition now does the same.</p> <p>2.However, this definition is problematic as there is clearly a plan to expand on the definition through regulations (from the reference to “as prescribed”). It is especially hard to comment without having regard to what is proposed in the regulations. <b>In any event, the full definition is more appropriately placed in the Act and not via regulations.</b> The definition must relate to the characteristics of ECD programme modalities that a) distinguish them from each other, and b) are relevant for regulation. For example, the distinctions between these categories have relevance in terms of defining appropriate standards and requirements (for instance on health and safety, practitioner qualification levels and meals) and in terms of identifying the different cost drivers and therefore subsidy eligibility for different types of programmes.</p> <p>3. <b>The definition, however, alone is insufficient.</b> Noting and supporting the proposed amendment to Section 103 at Clause 53, the <b>Minister should also be empowered to develop differentiated norms and standards for those types of ECD programmes.</b> It is also suggested that <b>different types of ECD programmes be expressly recognised</b> in the Act together with the definition.</p> <p>4.<b>The definition is also too broad and will result in multiple dual registration requirements.</b> There needs to be express exclusions (as there are currently in Section 76). Partial care facilities (Chapter 5), child and youth care centres (Chapter 13) and drop-in centres (Chapter 14) all need to be clearly excluded from the definition of ECD</p>

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		<p>programme in order that they are not subject to dual registration requirements. Any requirement for these types of facilities to provide ECD opportunities should be framed as a requirement to provide <i>'structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education'</i>, which is written into the respective chapters.</p> <p>Proposed changes are as follows:</p> <p><u>91(3) An early childhood development programme, as prescribed, is a programme that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school going age.</u></p> <p><b><i>(3A) Different types of early childhood development programmes, include:</i></b>  <b><i>(a) early childhood development centres;</i></b>  <b><i>(b) home and community-based early childhood development programmes;</i></b>  <b><i>(c) sessional early childhood development programmes; and</i></b>  <b><i>(d) outreach early childhood development programmes.</i></b></p> <p><b><i>(3B) Early childhood development programmes do not include-</i></b>  <b><i>(a) care provided in:</i></b>  <b><i>(i) a partial care facility</i></b>  <b><i>(ii) a child and youth care centre;</i></b>  <b><i>(iii) a drop-in centre;</i></b>  <b><i>(iv) a hospital or other medical facility as part of medical treatment provided to the child;</i></b>  <b><i>(v) a homeless shelter;</i></b>  <b><i>(vi) a women's refuge;</i></b>  <b><i>(b) care provided for a child by a person with parental responsibility for the child.</i></b></p>
17.	Clause 46 (to Section 92)	<p>1. See comments regarding section 92(2) above at item No. 10.</p> <p>2. Further, <b>only one section is required to deal with strategy and planning for ECD.</b> New Section 103J elaborates on what should be included in the strategy. These provisions should be merged with existing Section 92 to create a single, coherent section on strategy and planning for ECD. That is the new Section 103J should be incorporated here.</p>

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18.	<p>Clause 47 (to Section 93)</p> <p><u>“(3A) A conditionally registered early childhood development programme may qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards.”</u></p>	See similarly applicable comments at item No. 5 above.
19.	<p>Clause 47 (to Section 93(4))</p> <p><b>“[The funding of early childhood development programmes must be prioritised] The MEC for social development may prioritise and fund early childhood development programmes—</b> <i>(a) in poverty declared wards in a province, taking into consideration the national and provincial strategies contemplated in section 77 and in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and</i> <i>(b) to make facilities accessible to children with disabilities.”</i></p>	<p>1. De-prioritisation of poor communities. The current law requires that the funding of ECD programmes to poor communities must be prioritised. The Bill turns this obligation into a discretionary power by providing that funding of partial care facilities and ECD programmes to poor communities may be prioritised. This undermines the realisation of the right to ECD for all children and is a regressive proposal. <b>This amendment should be rejected.</b></p> <p>2. It is unclear what “poverty declared ward” refers to. This is undefined and a quick search shows that this is not a concept used in any other legislation. It must either be defined or removed. It is suggested that it be removed.</p>
20.	<p>Clause 47 (to Section 93(5))</p> <p>“An early childhood development programme <b>[must]</b> may be provided by—”; and</p>	<b>This section needs to be deleted to avoid triple registration, as per comments in section 2 of the introduction.</b>
21.	Section 94(1)	<b>This amendment is proposed to make clear that the Minister will provide differentiation within the norms and standards to reflect the</b>

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		<p>different circumstances and purpose of different types of ECD programmes.</p> <p>“94.(1) The Minister must determine national norms and standards for <b>different types of</b> early childhood development programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.”</p>
22.	<p>Clause 48 (to Section 94(2))</p> <p>(2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:</p> <p>(a) The provision of appropriate developmental opportunities;</p> <p>(b) programmes aimed at helping children to realise their full potential;</p> <p>(c) caring for children in a constructive manner and providing, <u>protection</u> support and security;</p> <p>(d) ensuring development of positive social behaviour;</p> <p>(e) respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child;</p> <p><b>[and]</b></p> <p>(f) meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children.</p>	<p><b>1. Norms and Standards for ECD programmes must include content for place and programme.</b> The amendments to the definition of ECD programme now clarifies that an ECD programme is the provider, place and programme content together. It is intended that under ECD programmes other modalities of ECD programme provision (other than centre-based) can be accommodated. However, the norms and standards headings do not reflect this and speak only to curriculum (i.e. the old definition). The norms and standards heading therefore need to be amended so that differentiated norms and standards can be issued that dealt with for place and programme content.</p> <p>The headings suggested here deal with all aspects of ECD provision including facility (health and safety), provider and curriculum.</p> <p><b>2. Streamlining the current headings.</b> There is significant duplication between these headings, as well as lack of clarity around scope. This is reflected in the content of the Norms and Standards, in which a number of standards are repeated or overlap.</p> <ul style="list-style-type: none"> <li>- Key standards under current headings 94(2)(a),(b),(d),(e) and (f) can be covered under new headings (a),(b) and (e). These areas are also dealt with through new subsection (2A).</li> <li>- New (b) addresses resources and the learning environment, a crucial area not covered in the current headings.</li> <li>- The rights and needs of children with disabilities are not adequately addressed under the existing N&amp;S and the introduction of new heading (d) helps to deal with this (in line with section 94(3) of the Act).</li> <li>- Record-keeping is introduced as a new heading. This is currently covered in Regulation 18 but for clarity and transparency it is more appropriately situated in the norms and standards.</li> </ul> <p><b>3. Properly cross-referencing DBE’s statutory curriculum frameworks.</b></p>

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		<p>When the Children’s Act was originally drafted the National Early Learning and Development Standards and the Birth to Four National Curriculum Framework did not exist. These documents now provide the statutory framework for the content of all ECD programmes and as such need to be properly cross-referenced on the face of the Act. These documents also mean that there is no longer a need for the current level of detail in the Norms and Standards for ECD Programmes – particularly headings 94(2)(a),(b),(d),(e) and (f). Such detail is undesirable because it creates a third tier of regulation for precisely the same areas of oversight. This causes an unnecessary bureaucratic burden, as well as confusion. The proposed changes are as follows:</p> <p>“2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:</p> <p><b>(a) nurturing environments that provide protection, support and security;</b>  <b>(b) appropriate and adequately resourced environments for play and learning;</b>  <b>(c) group size and ratios;</b>  <b>(d) support for children with disabilities;</b>  <b>(e) support and information for parents and caregivers;</b>  <b>(f) record-keeping;</b>  <b>(g) qualifications, skills and training;</b>  <b>(h) differentiated health and safety standards for different types of ECD programmes;</b></p> <p><b>(2A) An early childhood development centre provided in terms of this section must provide structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education.</b></p> <p><b>(2B) Any other early childhood development programme that is not provided from an early childhood development centre must have due regard to the need to provide structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education.”</b></p>
23.	<p>Clause 50 (to Section 98)</p> <p>“[Conditional Registration] Conditions for registration of</p>	<p>1. Note the inconsistent use of terminology. The amendment to Section 83 refers to “conditions relating to registration”, whereas here the section refers to “conditions for registration...”</p>

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	<p><u>early childhood development programme</u> 98. The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including <b>[conditions]</b>— (a) <u>conditions</u> specifying the type of early childhood development programme that may or must be provided in terms of the registration; (b) <b>[stating the period for which the conditional registration will remain valid]</b> <u>the period for compliance</u>; and (c) <b>[providing for]</b> any other matters that may be prescribed.”.</p>	<p>2. The same comments detailed at item No. 11 regarding Clause 39 (to Section 83) apply here.</p>
24.	<p>Clause 51 (to Section 100)</p> <p>“to stop the provision of that programme <u>and immediately notify the parent of an affected child</u>”</p>	<p>The insertion of this clause is fine but the following grammatical suggestion is made:</p> <p>“to stop the provision of that programme <u>and immediately notify the parents of <del>all the</del> affected children.</u>”</p>
25.	<p>Clause 53 (to Section 103)</p> <p>“(dA) <u>different types of early childhood development programmes that may be provided and the period for which registration is valid..</u>”</p>	<p>1.This is supported and suggestions for strengthening the recognition of different types of ECD programmes have been made at items No. 16 and 21 above.</p> <p>2. It is also suggested that the following be inserted after new paragraph (dG) as per the suggestion detailed in section 5 of the introduction:</p> <p><b><i>“(dH)the Minister, in consultation with the Minister of Health, may provide model bylaws aligned with all relevant norms and standards to be used as a guide for local government”.</i></b></p>

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26.	Part II ECD Centres	Generally, there are amendments to the partial care and ECD programme Part 1 of Chapter 6 that seemingly ought to have been carried through to Part II of Chapter 6 for ECD centres but this has not been the case.
27.	Section 103A New Section	<p>The current definition of ECD Centres is unclear and has potential to overlap with other chapters and could result in multiple registration processes. New subsection (3A) expands on the exclusions currently in Section 76 for partial care and incorporates them here. The expansive definition of ECD centre proposed could mean that <i>any facility that provides an ECD programme is by definition an ECD centre</i> (if “facility” is interpreted as synonymous with “centre”). This means it would capture within its scope partial care facilities (Chapter 5), child and youth care centres (Chapter 13) and drop-in centres (Chapter 14) which provide an ECD programme. These types of provision need to be clearly excluded from the definition of ECD centre in order that they are not subject to three separate registration requirements.</p> <p><b>Early childhood development centres - exclusions</b>  <b>(3A) Early childhood development centres do not include-</b>  <b>(a) care provided in:</b>  <b>(i) a partial care facility</b>  <b>(ii) a child and youth care centre;</b>  <b>(iii) a drop-in centre;</b>  <b>(iv) a hospital or other medical facility as part of medical treatment provided to the child;</b>  <b>(v) a homeless shelter;</b>  <b>(vi) a women’s refuge;</b>  <b>(b) care provided for a child by a person with parental responsibility for the child.</b></p>
28.	Clause 55 (New Section 103(A)(1))	It is unclear how or why the power to provide and fund ECD centres here is different to the power to provide and fund ECD programmes in Section 93. Especially since ECD centres are a type of ECD programme and since these are in one Chapter. This seems to be unnecessary duplication.
29.	Clause 55 (New Section 103B(2))	1. See comments in section 5 of the introduction. Ensuring a health and safe environment for children in ECD centres ought to be clearly a responsibility of the municipality (as per the Constitution and the obligations detailed in the National Health Act). DSD’s role in relation to health and safety should be confined to monitoring and interventions where local government is failing to perform its roles and responsibilities.



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		<p>At the very least, the significant duplication of roles and responsibilities must be removed between provincial and local governments. This can be achieved (albeit insufficiently) by streamlining and amending the headings, and making it possible to create simpler and clearer set of norms and standards.</p> <p>2.The Minister should also be empowered to develop new norms and standards for the construction and design of new public early childhood development centres and additions and it should be prescribed how close communities ought to be to ECD centres in order to facilitate greater accessibility.</p> <p>A proposal to capture the above is as follows:</p> <p><u>(2) The national norms and standards contemplated in subsection (1) must relate to the following:</u></p> <p><u>(a) <b>minimum health and safety standards</b> <del>a safe environment for children;</del></u></p> <p><u>(b) proper care for <del>sick children or children that become</del> <b>who are ill;</b></u></p> <p><u>(c) adequate space and <del>ventilation</del> <b>separation of age groups;</b></u></p> <p><u><del>(d) safe drinking water;</del></u></p> <p><u>(d) hygienic and adequate toilet <b>and ablution facilities;</b></u></p> <p><u><del>(f) safe storage of anything that may be harmful to children;</del></u></p> <p><u><del>(g) access to refuse disposal services or other adequate means of disposal of refuse generated at the facility;</del></u></p> <p><u><del>(h) a hygienic area for the preparation of food for children;</del></u></p> <p><u><del>(i) measures for the separation of children of different age groups;</del></u></p> <p><u><del>(j) the drawing up of action plans for emergencies; and</del></u></p> <p><u><del>(k) the drawing up of policies and procedures regarding health care at the facility.</del></u></p> <p><b>(d) minimum standards for the design and construction of new public early childhood development centres and additions, alterations and improvements to public early childhood development centres.</b></p> <p><b>(m) the minimum distance between early childhood development centres and communities.</b></p>
30.	Clause 55 (New Section 103B(3))	Obligations to provide differentiated services appropriate to the needs of children with disabilities and other special needs is already captured by Section 94(3). The insertion of this section therefore is a duplication.
31.	Clause 55 (New Section 103B(4))	The cross reference to 91(3) no longer makes sense given the proposed changes to the definition of ECD programme. This provision

1.	The problem of duplication	
2.	Regressive amendments and affirming the prioritisation of poor communities	
3.	Accommodating different types of ECD programmes and ensures that the Minister can develop differentiated norms and standards	
4.	Ensuring an enabling framework for conditional registration	
5.	Provision of support and assistance to ECD providers servicing poor communities	
6.	Infrastructure support for the ECD sector	

No.	Clause (Bill) or Section (Act) BILL PROPOSAL	COMMENT/ PROPOSAL
		<p>is simply a cut-and-paste from the partial care Chapter but fails to take into account the amendments to Part 1 of Chapter 6 for ECD programmes.</p> <p>Given the expanded definition of ECD programme (as captured in Clause 45 amending section 91(3)), ECD Centre is now a type of ECD programme. Therefore the requirement that ECD centre provide an ECD programme is non-sensical. Rather, an ECD centre must provide <b><i>“learning and support appropriate to the child’s developmental age and stage”</i></b>.</p>
32.	Clause 55 (New Section 103C(1)-(3))	<p>Given the expanded definition of ECD programme, ECD centres are already a type of ECD programme and have a requirement to register under Part 1. The insertion of this section therefore introduces a second registration process for ECD centres. There is therefore a retention of the dual registration process that previously existed between partial care registration under Chapter 5 and ECD programme registration under Chapter 6.</p> <p>The same comments relating to duplication with ECD programme provisions apply for New Section 103D; E; F; G; H; I; J; K; L For more info, see, Annexure A.</p>
33.	Clause 55 (New Section 103C(4)-(5)).	These are necessary provisions to deal with the partial care and ECD Centre overlap although they are insufficient to deal with the problem of triple registration. Please see comments under item 2 of the introduction above.
34.	Clause 55 (New Section 103D, E & F)	Noting that the changes made to similar sections to partial care provisions have not been carried over here and it is unclear whether that is intended or unintended. If similar amendments were intended to be carried through to these provisions, then please see comments at Item 9, 10 & 11 which are equally applicable here.
35.	Clause 55 (New Section 103L)	Please see comments at item No 14. above regarding the cross reference to section 110(5).
36.	Clause 55 (New Section 103J(1))	<p>In order to meet the infrastructure needs of the sector, the proposed section 103J as per the Children’s Amendment Bill is proposed to be amended as follows:</p> <p>Section 103J entitled “Record, inspection and provision of early childhood development centres”</p> <p><b><i>“(1) The Minister, in collaboration with provincial government and municipalities including with the Department of Basic Education, the</i></b></p>

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No.	Clause (Bill) or Section (Act) BILL PROPOSAL	COMMENT/ PROPOSAL
		<p><b>Department of Health and Department of Cooperative Governance and Traditional Affairs, must develop a costed national infrastructure plan to ensure equitable and universal access to Early Childhood Development Centres;</b></p> <p>(2) A provincial head of social development must—</p> <p>(a) maintain a record of all early childhood development centres in the province;</p> <p><b>(b) assess the adequacy of the available infrastructure; based on prescribed norms and standards;</b></p> <p>(b) compile a profile of the children in that province in the prescribed manner; and</p> <p>(c) conduct inspections at the prescribed intervals of early childhood development centres in the province to enforce the provisions of this Act.</p> <p>(2) A provincial strategy contemplated in section 103A must include a strategy for the provision of early childhood development centres in the province, which must include measures-</p> <p>(a) facilitating the establishment and operation of sufficient early childhood development centres in that province;</p> <p>(b) prioritising those types of early childhood development centres most urgently required; and</p> <p>(c) liaising with municipalities on facilitating the identification and provision of suitable premises.</p> <p><b>(3) Municipalities must—</b></p> <p><b>a) ensure, provide and maintain sufficient and appropriate ECD centres for the children in its area of jurisdiction, including the maintenance of ECD centres that are owned by registered non-profit organisations;</b></p> <p><b>(b) develop a municipality ECD maintenance strategy.”</b></p>
37.	<p>Clause 55 (New Section 103J(2))</p> <p><u>(2) A provincial strategy contemplated in section 103A must include a strategy for the provision of early childhood development centres in the province, which must include measures-</u></p> <p><u>(a) facilitating the establishment and operation of sufficient early childhood</u></p>	<p>There is no reference to a provincial strategy in section 103A. It is presumed this means to cross-reference the provincial strategy in section 92(2)(b).</p>

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	<u>development centres in that province;</u> <u>(b) prioritising those types of early childhood development centres most urgently required;</u> <u>and</u> <u>(c) liaising with municipalities on facilitating the identification and provision of suitable premises.</u>	

## 10. Conclusion

Overall, the major changes needed to ensure a more enabling legal and regulatory framework have not been proposed. Significant legal reform is still required. This is a moral imperative based on the best interests of the child principle as Constitutionally enshrined.

The introductory remarks together with the line-by-line commentary provides Parliament with the information it needs to revise and overhaul this existing framework.

We hope that this process will not be another missed opportunity and we are available to assist both Parliament and the relevant Departments should that be required.

## 11. Appendix A: Achieving a holistic chapter with a one-step registration process<sup>6</sup>

To achieve a one-step registration process more significant amendments are required within Chapter 6. These amendments are entirely attainable and largely require the removal of the duplication of processes between Part I and II. One proposed approach on how this can potentially be achieved is as follows:

Clause (Bill) or Section (Act)	PROPOSAL	MOTIVATION
Clause 1(j) (to Section 1)	<del>(j) 'early childhood development centre' means a centre that provides an early childhood development programme as contemplated in section 91(3) for more than six children from birth to school going age;</del>	'Early childhood development centre' is a non-inclusive term and excludes key ECD programme modalities – including community-based programmes and mobile programmes. It does not make sense to define only one modality in the Act and not others.  An inclusive definition of 'ECD programme' which captures all modalities is proposed against Clause 45(c) below. Definitions of individual modalities are more appropriately set out in regulations and not on the face of the Act. This will give the government more flexibility in future to make regulatory adjustments to reflect the changing ECD landscape.
Clause 34 (to Section 76(1))	76.(1) <b>[Partial]</b> <u>Subject to subsection (2), partial</u> care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents, <u>guardians</u> or care-givers during specific hours of the day or night, or	1. In order for ECD programmes to be dealt with under a single system (in a single chapter), they need to be removed from the scope of partial care.  2. The proposed insertion of 'full time' does not make sense in the context of the types of care listed. It suggests that part-time care at these types of facility <i>would</i> have to register as

<sup>6</sup> This proposed approach was largely put together by SmartStart in consultation with other ECD sector organisations, although we have independently reviewed it and agree with the recommendations.

Clause (Bill) or Section (Act)	PROPOSAL	MOTIVATION
	<p>for a temporary period, by agreement between the parents, <u>guardians</u> or care-givers and the provider of the service, but excludes the <del>full-time</del> care of a child—</p> <p>(a) by a school as part of tuition, training and other activities provided by the school;</p> <p>(b) as a boarder in a school hostel or other residential facility managed as part of a school; <del>or</del></p> <p>(c) by a hospital or other medical facility as part of medical treatment provided to the child; <b>or</b></p> <p><b>(d) at an early childhood development programme as contemplated in Section 91.</b></p>	<p>partial care, which is unlikely to be the government’s intention.</p>
<p>Clause 45(c) (to Section 91(3))</p>	<p><u>91(3) An early childhood development programme, as prescribed, is a programme that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until school-going age: to six years old.</u></p> <p><b>(3A) The minister may by regulation define different types of early childhood development programmes, including:</b></p> <p><b>(a) early childhood development centres;</b></p> <p><b>(b) home and community-based early childhood development programmes;</b></p> <p><b>(c) sessional early childhood development programmes; and</b></p> <p><b>(d) outreach early childhood development programmes.</b></p> <p><b>(3B) Early childhood development programmes do not include-</b></p> <p><b>(a) care provided in:</b></p> <p><b>(i) a partial care facility</b></p> <p><b>(ii) a child and youth care centre;</b></p> <p><b>(iii) a drop-in centre;</b></p>	<p>1. The four categories proposed in sub-section 3A cover all modalities contemplated in the NIECDP. The Act’s regulations should create legal definitions that are consistent with and fulfil the purposes of the Policy. The definitions in the regulation should relate to the characteristics of ECD programme modalities that a) distinguish them from each other, and b) are relevant for regulation. For example, the distinctions between these categories have relevance in terms of defining appropriate standards and requirements (for instance on health and safety, practitioner qualification levels and meals) and in terms of identifying the different cost drivers and therefore subsidy eligibility for different types of programmes.</p> <p>This amendment also clarifies that an ECD programme is the provider, place and programme content together. The lack of clarity over whether an ECD programme is only the <i>programme content</i> (i.e. curriculum) has caused significant confusion and inconsistency in the practical implementation of Chapter 6. The NIECDP makes it clear that the term ‘ECD programme’ refers to the whole entity. In other words, ECD centres and home-based childcare can be understood both to <i>be</i> types of ECD programmes and to <i>provide</i> ECD programmes.</p> <p>2. New subsection (3B) expands on the exclusions currently in Section 76. Partial care facilities (Chapter 5), child and youth care centres (Chapter 13) and drop-in centres (Chapter 14) all need to be clearly excluded from the definition of ECD programme in order that they are not subject to dual registration requirements. Any requirement for these types of</p>

Clause (Bill) or Section (Act)	PROPOSAL	MOTIVATION
	<p><i>(iv) a hospital or other medical facility as part of medical treatment provided to the child;</i>  <i>(v) a homeless shelter;</i>  <i>(vi) a women’s refuge;</i>  <i>(b) care provided for a child by a person with parental responsibility for the child.</i></p>	<p>facility to provide ECD opportunities should be framed as a requirement to provide ‘structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education’, which is written into the respective chapters.</p>
<p>Clause 92 (Strategy for ECD)</p>	<p><i>[Incorporate new Section 103J]</i></p>	<p>Only one section is required to deal with strategy and planning for ECD. New Section 103J elaborates on what should be included in the strategy. These provisions should be merged with existing Section 92 to create a single, coherent section on strategy and planning for ECD.</p>
<p>Clause 47(e) (to section 93(5))</p>	<p><del>93(5) An early childhood development programme <b>[must]</b> may be provided by:</del>  <del>(a) a partial care facility providing partial care services for any children up to school-going age; and</del>  <del>b) a child and youth care centre which has in its care any children up to school-going age.</del></p>	<p>This amendment ensures that partial care facilities and child and youth care centres only have to register once. The requirement for a child and youth care centre that cares for young children to provide an appropriate ECD programme should be framed as a requirement to provide ‘structured early learning and development opportunities in line with prescribed requirements published by the Department for Basic Education’. This should be written into Chapter 13 and not dealt with here.</p>
<p>Clause 48 (to Section 94(2))</p>	<p>(2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:  <del>(a) The provision of appropriate developmental opportunities;</del>  <del>(b) programmes aimed at helping children to realise their full potential;</del>  <del>(c) caring for children in a constructive manner and providing, protection support and security;</del>  <del>(d) ensuring development of positive social behaviour;</del>  <del>(e) respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child; <b>[and]</b></del>  <del>(f) meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children.</del></p>	<p>The amendments proposed here achieve four goals:</p> <ol style="list-style-type: none"> <li><b>Incorporating the proposed headings relating to ECD centres in Clause 55 (new Section 103(c)) to create a single set of Norms and Standards for ECD Programmes.</b> This ensures that requirements and standards relating to <i>all aspects of ECD provision</i> – including facility (health and safety), provider and curriculum – are dealt with together, and can be assessed together under a unified registration system.</li> <li><b>Streamlining the current headings relating to ECD programmes in Section 94 of the Act.</b> There is significant duplication between these headings, as well as lack of clarity around scope. This is reflected in the content of the Norms and Standards, in which a number of standards are repeated or overlap. <ul style="list-style-type: none"> <li>- Key standards under current headings 94(2)(a),(b),(d),(e) and (f) can be covered under new headings (a),(b) and (e). These areas are also dealt with through new subsection (2A).</li> <li>- New (b) addresses resources and the learning environment, a crucial area not covered in the current headings.</li> </ul> </li> </ol>

Clause (Bill) or Section (Act)	PROPOSAL	MOTIVATION
	<p><i>(a) nurturing environments that provide protection, support and security;</i></p> <p><i>(b) appropriate and adequately resourced environments for play and learning;</i></p> <p><i>(c) group size and ratios;</i></p> <p><i>(d) support for children with disabilities;</i></p> <p><i>(e) support and information for parents and caregivers;</i></p> <p><i>(f) record-keeping;</i></p> <p><i>(g) qualifications, skills and training;</i></p> <p><i>(h) minimum health and safety standards;</i></p> <p><i>(i) proper care for children who are ill;</i></p> <p><i>(j) adequate space and separation of age groups;</i></p> <p><i>(k) hygienic and adequate toilet and ablution facilities.</i></p> <p><b><i>(2A) Early childhood development programmes must provide structured early learning and development opportunities in line with prescribed requirements of the Department for Basic Education.</i></b></p>	<p>- The rights and needs of children with disabilities are not adequately addressed under the existing N&amp;S and the introduction of new heading (d) helps to deal with this (in line with section 94(3) of the Act).</p> <p>- Record-keeping is introduced as a new heading. This is currently covered in Regulation 18 but for clarity and transparency it is more appropriately situated in the norms and standards.</p> <p><b>3. Streamlining and amending the proposed headings in new Section 103B.</b> This will create a simpler and clearer set of norms and standards, and eliminate the legislative over-reach in the current headings.</p> <p>DSD’s central role/duty is in relation to the care and stimulation of children. At the moment, the norms and standards proposed in Section 103B focus solely on health and safety, which is a municipal responsibility. So while it is useful to cover basic health and safety standards here, the principle should be that the more extensive health, safety and infrastructure are dealt with in and through the mandated part of the government system – i.e. municipal by-laws. It is neither logical nor desirable for ECD centres to have to comply with separate and parallel sets of health, safety and infrastructure standards in the Children’s Act, the National Health Act and local by-laws.</p> <p>- Headings in 103(B) (d), (f), (g), (h) and (j) can all be covered under new (h).</p> <p>- Heading 103(B)(k) is covered under (i).</p> <p>- Heading 103(B)(i) is combined with (j).</p> <p><b>4. Properly cross-referencing DBE’s statutory curriculum frameworks.</b></p> <p>When the Children’s Act was originally drafted the National Early Learning and Development Standards and the Birth to Four National Curriculum Framework did not exist. These documents now provide the statutory framework for the content of all ECD programmes and as such need to be properly cross-referenced on the face of the Act. These documents also mean that there is no longer a need for the current level of detail in the Norms and Standards for ECD Programmes – particularly headings 94(2)(a),(b),(d),(e) and (f).</p>



Clause (Bill) or Section (Act)	PROPOSAL	MOTIVATION
		<p>Such detail is undesirable because it creates a third tier of regulation for precisely the same areas of oversight. This causes an unnecessary bureaucratic burden, as well as confusion.</p> <p>Instead, the Act and its regulations should provide clarity on the relationship between registration requirements and curriculum requirements prescribed by the Department of Basic Education.</p>
Section 95 (ECD programme to be registered)	<p><del>(1) A person or organisation providing an early childhood development programme must</del> <b>Any person, Department, provincial head of social development or organisation may establish or operate an early childhood development programme provided that an early childhood development programme that is attended by more than six children:</b></p>	<p>1. The proposed amendment to the first part of Section 95(1) reflects the government's proposed wording in new Section 103C(1).</p> <p>2. The reference to 'attended by more than six children' is inserted because while minimum programme size is not relevant to the definition of ECD programme, it is relevant to the requirement to register. In line with the current regulatory framework, it is therefore proposed that only ECD programmes with more than six children <i>must</i> register.</p>
Clause 55 (New Section 103A - Provision of ECD centres)	[Delete proposed new Section 103A]	Under a one-step registration process, proposed new Section 103A is no longer required as all of its provisions are repeated and therefore covered in Section 93.
Clause 55 (New Section 103B)	[Delete proposed new Section 103B – and move applicable norms in sub-section (2) to Section 94]	Under a one-step registration process, there will be a single integrated set of Norms and Standards for ECD Programmes, which include norms relating to infrastructure and health and safety. These are captured in the proposed amendments to Section 94(2) – see commentary above.
Clause 55 (New Section 103C)	[Delete proposed new Section 103C]	Under a one-step registration process, proposed new Section 103C is no longer required as the duty to register is set out in Section 95.
Clause 55 (New Sections 103D, 103E, 103F, 103G, 103H & 103I)	[Delete proposed new Sections 103D – 103I]	These sections all relate to the registration system and processes. Under a one-step registration process they become redundant because these provisions are repeated almost word-for-word in existing Sections 96 to 101.
Clause 55 (New Section 103J)	[Delete proposed new Section 103J – and move relevant provisions to Section 92]	These sections all relate to the registration system and processes. Under a one-step registration process they become redundant.
Clause 55 (New Section 103K)	[Delete proposed new Section 103K]	This proposed new section is no longer required because its provisions are repeated and therefore covered in Section 102.

Clause (Bill) or Section (Act)	PROPOSAL	MOTIVATION
Clause 55 (New Section 103L)	[Substitute all references to 'ECD centre' with 'ECD programme']	This is an important new section and should remain, but brought into the conceptual framework proposed in the foregoing by amending the terminology.
Clause 55 (Section 103M)	[Delete proposed new Section 103M]	Under a one-step registration process, there will be a single, integrated set of regulations for ECD programmes. The list proposed in new Section 103M are all captured through the government's proposed amendments to Section 103.