

The Director General  
Private Bag X895  
Pretoria  
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18<sup>th</sup> October 2017

Attention: Adv. TD Rudman

Dear Adv. Rudman,

**Draft Basic Education Laws Amendment Bill - Request for an extension to the closing date for comments on the Bill**

**Summary reasons to request extension of time**

The Pestalozzi Trust, a legal defence fund for home and civil education, requests an extension of time for comment on the proposed draft Basic Education Laws Amendment Bill, not only for ourselves but for all other Interested and Affected Parties. Reasons for an extension include: home educators have been procedurally prejudiced by lack of prior notice; the prescribed comment period (October-November) is a period of preparation for and taking of exams for home educating families; the need for detailed consultation with our members before responding; the impacts of the proposed changes are not merely technical, but may have multiple complex substantive financial, curricular, time, and legal impacts on home educating families and their supporting and representative organisations; the changes do not merely edit elements of the previous law but include entirely new provisions; many consequences thereof that may be unintended by the authors of the proposal bill and if not remedied may lead to unnecessary litigation which is neither in the interests of the Department of Basic Education, home educators nor any other party; we and other organisations will need to take legal counsel on constitutional and other issues after consulting our members. The 15th December to 15th January festive season should be excluded from the consultation period, in accordance with government policy. We thus request the comment deadline for all parties be extended to the 15 February 2018. We would be most appreciative if this request for an extension of the closing date for comments could receive your urgent consideration and that you communicate your decision to us within 7 (seven) working days.

**Introduction**

The Pestalozzi Trust (IT6377/98) ("**The Trust**") is a legal defence fund for home and civil education established in 1998 to protect the rights and freedoms of all families to educate their children at home according to their own religious and/or philosophical persuasions, pedagogical convictions and cultural traditions. The Trust has a substantial member base, is the only legal defence fund for home educators in South Africa and works closely with associations of home educators locally and internationally.

The Trust appreciates the opportunity to engage with the Department of Basic Education ("**DBE**") and trusts that this engagement will result in a meaningful discussion aimed at promoting the best interests of learners and of home educating families.

## Background

On 13 October 2017 the DBE invited public comment on the draft Basic Education Laws Amendment Bill gazetted in Government Gazette no. 41178 and released via [www.gpwonline.co.za](http://www.gpwonline.co.za).

The Trust, other associations of home educators and home educators only became aware of this in the course of the week-end of the 14th and 15th of October.

If a vigilant home educator did not notice this in a press article and alert organisations of home educators, the deadline for comment could easily have passed by without any comment or input from the home education community.

This failure to notify the home education community is despite the fact that the DBE has been in possession of the contact details of home education organisations since at least 2014. This lack of notification that a bill was in the final stages before public comment is especially troubling in view of the statement contained in section (c) "*Background notes*" where it is stated that "*The Department also briefed numerous organizations, such as school governing body associations and unions involved in the education sector, on the content of the draft Bill. Some of the organizations and provincial education departments provided the Department with written comments*".

Despite the fact that this proposed amendment Bill includes provisions that severely restrict the freedom of parents to choose the type of education that is in the best interest of their children, the representative organizations of home educators have not been consulted nor even contacted by the DBE in over two years.

Since the publication of the Basic Education Laws Amendment Bill we have been deluged by feedback from our members and home educators in general. Our members have described the Bill and especially the provisions that affect home education as novel, complex and difficult to understand. Many members feel unable to comment effectively because of the complexity of the proposed legislation. Members are very concerned that they do not currently have time to comment in a comprehensive fashion.

In addition, some are fearful and wish to comment anonymously. This may seem an exaggerated fear to outsiders but this is a matter that is extremely sensitive as it directly affects children. Home educators have historically faced significant harassment and even persecution by the state.

In 1992 home educators were jailed under the Apartheid Schools Act. Even post-1994 the Trust has dealt with innumerable illegal actions by DBE officials including but not limited to threats and intimidation, invasions of privacy and flagrant violations of the SASA, the Constitution and the Bill of Rights.

In view of this background and in order to ensure effective public participation we wish to set out reasons for our application for an extension of the closing date for the period of public comment.

### Reasons for seeking an extension

**Lack of Notice:** It should go without saying that it is clear from the background to date that the Trust, associations of home educators and individual home educators have not been consulted in the period leading to the presentation of this Amendment Laws Bill. As such we have been procedurally prejudiced and require additional time to compile our responses and inputs.

**Timing:** The months of October and November are the busiest months for schools as well as home educating families, as this is the time of the year when learners have to prepare for and write their year-end examinations. Home educating parents, by the very fact that they home educate,

are intimately involved with their children's exams and therefore do not have time to consider the impacts of the Bill and to make meaningful comment.

**The need to broaden consultation:** In order to ensure full participation we require time to brief our members, consult with them and obtain their feedback. Given the fact that our members are located throughout the country and that many are in rural areas we need more time to consult them.

The lack of constructive engagement and notice by the DBE is especially unfortunate as if the department had been in communication with us we would have been able to brief our members as we have just completed an extensive annual process of member engagement through a series of expositions, conferences and road shows.

We represent many but not all home educators. Many home educators who would be adversely impacted by the provisions of this Bill are no doubt still unaware that the Bill has been published for comment.

Some home educators do not belong to home education organisations or groups and it will therefore take time for them to hear that the bill has been published for comment. The 10th of November 2017 closing date for comments could pass before they become aware that their comments are sought.

The Trust is attempting to bring these proposed changes to the attention of all home educators. We are also in the process of making organizations that were also excluded from the consultation process aware of the draft Bill. But we will require more time than 30 days to contact these non-members.

We need to address the fear that many of our members are experiencing. The manner in which we were side-lined during the consultation process has only deepened their lack of trust in the DBE and their own government.

Therefore, we require additional time to reassure our members that they and their children will not be prejudiced or targeted if they comment. In addition, we need to liaise with your office to discuss if and how anonymous submissions can be made.

**Complexity:** The Bill, by its nature, is fairly complex being a General Laws Amendment Bill. As we have not been consulted on the Bill we have not had time to educate our members on how to approach such a Bill. We have merely had to send the Bill on to them for comment. Should we have more time we will be able to explain the nature of the Bill to them and that will allow for more meaningful participation.

In view of the complexity, it is however unfortunate that the DBE appears to have spent its time consulting with certain bodies on proposed amendments that are in the main of a merely technical nature or which are in response to settled jurisprudence.

However, the proposed amendments and the completely new provisions which affect tens of thousands of home educating families are not only novel and untested proposals, but have not been put to the home educating community at all, nor has the home educating community been consulted in any way. One would expect that the levels of consultation would correspond with the degree of impact. This does not appear to have been the approach of the DBE in engaging with its interested and affected parties.

The feasibility of the various proposals has not been discussed with home educators.

Furthermore, on the face of it, many proposals appear not to have been harmonized with other provisions of the proposed Bill, or are unconstitutional and, in addition, practically unworkable.

We therefore need time to consider the intended and unintended consequences, to conduct impact analyses and feasibility studies, especially with regard to modelling the financial implications of these proposals.

If the department has already done this we would greatly appreciate them sharing this with us so that we can accelerate the work of our own experts.

In light of the above reasons it is our contention that it would be a grave injustice if we were not granted a appropriate extension in order to make our submission.

### **Duration of extension**

While we wish to commend your office on the encouragement of genuine public participation by attempting to ensure that comments are completed before the December break, the fact that this is the period in which schools and home educators write year-end exams does not alleviate the problem of the proposed deadline for comment.

**Exam time frames:** Home educators write a variety of exams with different time frames. The National Senior Certificate exams run from 23rd October to 28th November 2017. The Independent Examination Board exams run from 20th September to 29th November 2017. The Cambridge International Exams run from 2nd October 2017 to 17th November 2017. The Theocentric Christian Education exams start on 1st November 2017 and many learners will be writing into December 2017. The prescribed deadline for 10th November 2017 thus very seriously prejudices home educators as it falls within the most inconvenient time of year for home educating families.

Comment on Bills concerning education matters should ideally be completed well before learners' year-end exams start. As this is not achievable in this instance, the DBE should grant a minimum of 30 days following the end of the year-end examinations.

As that would however place the comment period squarely within the period of the December break we would request that the period of thirty days begin to run from the 15<sup>th</sup> January 2018 and therefore the new closing dates for comments would be the **15th February 2018**.

For example the Department of Environmental Affairs prohibits public consultation on Environmental Impact Assessments, between the 15th of December and the 15th of January owing to the festive season and we would argue the reasons for this policy apply equally to public comments on this proposed Bill.

### **Conclusion**

In view of the unfortunate lack of consultation by the DBE with home educators and their representative organisations in the lead up to the invitation for public comment on the Bill, the homes educating community has not had the opportunity to prepare adequately to complete comments on this Bill before the 10<sup>th</sup> November.

In addition to the problems posed by lack of consultation the timing for comments is unfortunate as it clashes with year-end exams. If we are forced to comment within the current deadline the whole process will be severely compromised as we will not have an opportunity to have broad consultation with our members nor assist non-members to make comments.

The complexity of the proposed Bill is such that unless an extension is granted we will not be able to comment in the depth and detail required.

We therefore respectfully request an extension until the 15<sup>th</sup> February 2018.

We request that you inform us of your decision regarding the requested extension within 7 (seven) working days of the receipt of this letter by you.

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