



Association for Homeschooling

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8 December 2017

The Deputy Director-General:
Curriculum Policy, Support and Monitoring
Department of Basic Education
222 Struben Stret
Pretoria
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For attention:
Ms. P. Ngcobo
ngcobo.p@dbe.gov.za

Dear Ms. P. Ngcobo

COMMENTS ON DRAFT POLICY ON HOME EDUCATION AS CALLED FOR IN GOVERNMENT GAZETTE NO. 41256

Our previous correspondence related to the proposed changes to the legislation regarding Basic Education has reference (please see attached). Thank you for the opportunity to make submissions related to the Draft Policy on Home Education. We comment as follows:

1. INADEQUATE TIME FOR COMMENT

On the 17th November 2017 the Department of Basic Education released the Draft Policy on Home Education for public comment. The closing date for public comment was indicated as 8th December 2017. This amounts to only three weeks, which is woefully inadequate, especially considering the detailed nature the Proposed Policy. As with the proposed changes to the legislation regarding Basic Education (BELA Bill), requests to have this inadequate period extended have failed or remained unanswered.

The Association therefore reserves the right to provide more detailed comment within a more reasonable timeframe.



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2. INSUFFICIENT COMMUNICATION

Although the Department of Education has the contact details of the Association, we were not contacted to inform us of the release of the proposed policy, nor the call for public comment.

It would appear that the Department has little to no intention of engaging in meaningful consultation with the Home Schooling community.

3. POLICY IN RELATION TO THE ACT

Most (although not all) of the proposed policy appears to anticipate the proposed amendments to the School's Act (BELA Bill). The proposed amendments to the Act are themselves still the subject of an incomplete process and have not been passed by Parliament.

In this the Department appears to be preempting Parliament.

4. WELCOME IMPROVEMENTS

The portions of the Proposed Policy relating to Principles and Legal Framework are generally very good. The Association welcomes, for example, the valid understanding of Home Education principles expressed in Sections 8.3, 8.4, and 9.

We also agree with Section 5 which confirms that the legal basis for Home education in South Africa is found in:

- the Constitution (1996)
- the Children's Act (38 of 2005)
- and the School's Act (84 of 1996)



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5. INCONSISTENCIES

There are unfortunately numerous contradictions and inconsistencies in the Proposed Policy. These appear to be related to a disconnection between agreed principles, and practical policy application. One such example is as follows:

Section 9 confirms principles: "The principles for home education include that... ..the diversity educational philosophies reflects the diversity of preferences of parents for particular forms of education for their children."

Section 18 of the same Proposed Policy however practically contradicts this with the following prescription: "The parent may choose to offer any curriculum that meets the minimum outcomes and assessment standards prescribed in the NCS."

It is almost as if the practical aspects of the proposed policy have been written with absolutely no knowledge of these preceding principles.

Inconsistencies in the policy will lead to confusion and potential arbitrary application by officials, which could result in unnecessary legal costs for all involved.

4. CALL TO WITHDRAW THE PROPOSED POLICY

Most homeschoolers remain unregistered today. This appears to be the result of the unreasonable demands, restrictions and inconsistencies in the current registration process. The Proposed Policy is more unreasonable and even less consistent than the current failing policy. Registration is not likely to improve as a result.

We call upon the Department to withdraw the Proposed Policy and engage in a more meaningful and fruitful consultation process that recognises AND applies the contributions of the homeschooling community. To this end, please also keep the Association informed if the Department publishes anything else related to Home education.

Thank you

Yours faithfully

Shaun Green

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10 November 2017

The Director-General
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For attention:
Advocate TD Rudman
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012 357 3856

Dear Advocate Rudman

COMMENTS ON DRAFT BASIC EDUCATION LAWS AMENDMENT BILL AS PUBLISHED GOVERNMENT GAZETTE NO. 41178

Thank you for the opportunity to make submissions on the proposed changes to the legislation regarding Basic Education. It is particularly the proposed changes to Section 51 of Act. 84 of 1996 (South African Schools Act) that concern us, since this is the section of the Schools Act pertaining specifically to home-education. We comment as follows:

1. INADEQUATE TIME FOR COMMENT

The Draft Basic Education Laws Amendment (BELA) Bill was published in Government Gazette no. 41178 on 13 October 2017. The Department of Basic Education invited all interested parties to submit written comments on the Draft Bill. The closing date for submissions was 10 November 2017. The Association is aware that the Department of Basic Education was inundated with requests to have this date extended. In spite of these numerous requests, no extension to the closing date for submissions was granted. This has left us with less than one month to comment on proposed changes to laws directly affecting our members. There are portions in the Draft Bill that require further analysis. The Association therefore reserves the right to submit further comments at a later date.



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2. LACK OF CONSULTATION

The proposed changes to Section 51 of the Schools Act fail to show signs that the many positive presentations and proposals by home-educators over the past years have been taken into account.

This country has a long history of citizens becoming subject to unfair discrimination and control without being consulted. This is particularly true of education. The changes proposed in the Draft BELA Bill are a severe and unacceptable perpetuation of this history.

Home-educating parents and children who will be directly affected by these proposed changes should be afforded the opportunity to make real substantial contributions to the laws that effect them.

We do not believe that we have been adequately consulted or that our repeated contributions have received due consideration in the Draft BELA Bill.

3. ARBITRARY DEMANDS FOR PERMISSION

We reject the idea that parents need to request permission to fulfil their parental responsibilities. This is also true for those parents who proactively take a direct interest in the education of their own children.

The Constitution grants every child “the right to family care or parental care” (SA Constitution Section 28). The proposed changes to Sub-sections (1), (2), and (3) of the Schools Act, demand that parents request permission to fulfil their legal duty to care for their children. This is an absurd demand, and an unreasonable interference in the child’s right to parental care. These special Children’s Rights (SA Constitution Section 28) cannot be postponed while waiting for permission from a Head of Department to arbitrarily approve a registration.

The parent has a prior duty that does not require permission. A registration process cannot remove this prior duty. The Association cannot support the nonsensical demand that parents need to request permission to fulfil their legal duty to care for their children.



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4. ARBITRARY AUTHORITY ASSUMED FOR HEADS OF DEPARTMENT

“The Head of Department” is mentioned nine times in the proposed changes to Section 51 of the Schools Act. The entire proposal assumes that the Heads of Department should have sweeping power to interfere with the parental option to choose home-education for their children. The criteria for rejecting an application are not clearly stated, but are repeatedly left to the subjective “satisfaction” of the Head of Department.

In Sub-section (3) Heads of Department “may attach any reasonable conditions to a learner's registration for home education”. Sub-section (7) allows for cancelation of registration: once again purely to the subjective satisfaction of “the Head of Department”.

Various unnecessary obstacles are placed in the way of parents seeking to register their children for home-education. The proposed changes are making registration as difficult as possible and are doing so for no justifiable reason. Our positive proposals to simplify and improve the registration process have been ignored.

The proposed changes to Section 51 of the Schools Act suffer from vague definitions and apply arbitrary power to the registration and assessment processes. The Association cannot support processes that are so arbitrary and open to abuse.

5. UNFAIR DISCRIMINATION

Sub-section (2)(d)(iii) places demands on home educators that exceed what is actually being fulfilled at public schools. This is unfair discrimination.

In the same Sub-section (2)(d)(iii) it is also unclear what is meant by ‘a competent assessor’. It is unreasonable to expect tax-paying parents who are already contributing to the education of many other children through their taxes, to also suffer additional expense to have their own children assessed to the satisfaction of an arbitrary standard. This appears to be an intentional attempt to make home-education unaffordable, and diverts valuable resources away from education.

Sub-section (6) imposes demands on learners who are generally beyond the age contemplated in Section (3) of the Act. How can this “Schools Act” apply to learners who are beyond the age regulated by the same Act? This appears to be an unfair demand to ensure that the Education Department controls access to further education by monopolistic means. It is anti-competitive, unfair, and a violation of the Constitutional right to an education (not limited to children only).

The Association cannot support unfair discrimination against those who choose to home-educate.



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6. DIVERSITY - NOT "ONE SIZE FITS ALL"

In Sub-section (2), the Draft Bill expects all Home-education to be "comparable to the relevant national curriculum determined by the Minister". This reduces the options available to home-educators essentially to a single curriculum. It is apparent that this is the primary objective of the proposed changes.

The United Nations Convention on the Rights of the Child requires that education be directed to "the development of the child's personality, talents and mental and physical abilities to their fullest potential". This acknowledges that an education can never be accomplished by means of a "one-size-fits-all" approach. Changes also taking place in the education landscape acknowledge that a rapidly changing environment is best responded to with an education that develops various potentials rather than imposing a single outdated mould on every person. Countries such as Finland, who are leading in progressive education, are currently even questioning the validity of conventional standardised subjects. Many home-educators have known and practiced this for decades, and yet the BELA Bill proposes a single curriculum approach reminiscent of the Industrial Age.

South Africans enjoy great cultural and ethnic diversity. If respected, our diversity will allow us to solve unexpected challenges and prepare us well for a future that is difficult, if not impossible, to predict. To restrict this diversity by imposing a single curriculum will have devastating long-term consequences for our children and society. It is also unconstitutional, especially for the State to "unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth" (SA Constitution Section 9(3)). This is again an uncomfortable reminder of some of the most oppressive moments in the history of education in our country. The Association cannot support the failure of the Draft Bill to acknowledge and respect our diversity.

7. THE CHILD'S BEST INTERESTS

Section 28 (2) in the Bill of Rights in the South African Constitution states that "a child's best interests are of paramount importance in every matter concerning the child." The Draft BELA Bill shows almost no regard for the best interests of the child, apparently choosing instead to further the best interests of an outdated assembly-line approach to education.

The core concern in all legislation regarding children must be the best interests of the children. The Association is very disappointed in the content of this Draft Bill, and cannot lend support to proposals that are not in the best interests of our children, or have so little regard for parental care.



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8. CONCLUSION

On the first page of the Draft Bill it is stated that “The draft Bill proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996)... ..to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996.)”. The changes proposed by the Draft Bill to Section 51 of the Schools Act fail to achieve this self-imposed objective. It is also apparent that the proposed changes have been compiled with little knowledge of what home-education is, how it functions, or the flexibility it affords.

The current registration processes are so invasive and arbitrary that most home-learners remain unregistered for education at home. The amendments proposed in the Draft BELA Bill are likely to make this worse. Registration levels are far more likely to improve if law-makers will respectfully engage with those that this law directly affects. The Association remains fully committed to any consultative process in this regard.

Yours faithfully



Shaun Green

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