



The Children's Amendment Bill, 2023

Submission

Name: Kayin Scholtz, Chair of the Real Reform for ECD Steering Committee

Organisation: Real Reform for ECD movement

Prepared by: Real Reform for ECD Legal Subcommittee representatives: Centre for Law and Society, Ilifa Labantwana, Agana Bokamoso, Equal Education Law Centre, SmartStart, Equality Collective and the Legal Resources Centre.

List of endorsements:

<https://docs.google.com/spreadsheets/d/1JpxAVZ1QKOAvZEBN6GOsZzAcG6rAArznk7EMxprc1lw/edit?usp=sharing>

Contact number: 084 648 8547

Contact email: Kayin@dgmt.co.za

Introduction

1. This submission is made by the Real Reform for ECD movement in response to the invitation for public comment on the Children's Amendment Bill, 2023 (CAB) by the Department of Basic Education on 14 May 2024.
2. [Real Reform for ECD](#) is supported by over 200 organisations and works with over 1 000 early childhood practitioners across six provinces in South Africa. Real Reform for ECD is a movement advocating for holistic, well-funded, inclusive, and quality early childhood development services for all children. **Our focus is to ensure an enabling legal, policy, and regulatory environment for the provision and expansion of ECD services.**
3. We are grateful for this opportunity to participate in public consultations on the CAB. In preparation for this submission we consulted 174 of our supporters. This submission is endorsed by 69 organisations/ECD programmes and 35 people in their individual capacity.
4. Real Reform for ECD was launched in response to the Children's Amendment Bill (2020 CAB) being tabled before Parliament. Many in the early childhood development (ECD) sector felt that the 2020 CAB did not address the core reforms needed for strengthening the ECD sector and had the potential to create additional burdens and challenges for ECD service providers.

5. The recent publication of the CAB and its proposed amendments significantly improve, clarify, and streamline the regulatory framework for ECD programmes. The recent steps taken by the Department of Basic Education (DBE) are a welcome relief to the sector that has long been advocating for an enabling legal and regulatory framework to ensure universal access to inclusive, holistic, and quality ECD programmes.¹

One step registration process for all programmes

6. The CAB aims to create a one-step registration process by removing ECD programmes from the definition of partial care, ensuring they no longer need to register as partial care facilities under Chapter 5 *and* as ECD programmes under Chapter 6. We welcome this proposed change wholeheartedly. It will provide significant relief to overburdened ECD providers as well as government administrators.

Programmes attended by four or more children must register

7. ECD programmes with four or more children will be required to register and, therefore, would be eligible for funding support, whether registered or conditionally registered. Although we have some concerns about the regulatory burden this will have on the DBE and providers, if the regulatory system is sufficiently simplified this concern falls away. Those in the ECD sector we consulted with were generally supportive of this threshold as it ensures the safety of young children and enables the opportunity for funding support.

Recognition of different types of ECD programmes

8. The CAB expressly recognises different types of ECD programmes including parent support groups, play groups, child-minders, toy-libraries, mobile programmes, outreach programmes and ECD centres. It also makes way for these to be defined in regulations. The express recognition that different types of ECD programmes exist (and will be defined, and must be registered) means that different types of ECD programmes will also be eligible for funding support. We welcome this recognition, as different types of ECD programmes can reach many more children, especially in areas where infrastructure is limited. It will also enable diverse ECD programme offerings that may better suit certain caregiver needs.

Municipality strategies to ensure the availability and maintenance of facilities

9. We welcome the requirement, introduced by clause 4, for municipalities to develop an integrated municipal strategy to ensure the availability and maintenance of facilities. This clause represents a major step forward, as it expressly cross-references the Constitution

¹ T Peacock, R Parker & N Ally “Early Childhood Development Reform Misses the Mark” *Sunday Times* (1 November 2020) available at: <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2020-11-01-early-childhood-development-reform-misses-the-mark/>.

and mandates that municipalities develop integrated strategies that include childcare facilities, and more specifically ECD centres. These strategies must be incorporated into Integrated Development Plans (IDPs) and budgets. For a long time, the ECD sector has had little guidance on the constitutional parameters of childcare facilities, making it difficult to engage with municipalities. This has resulted in an unfunded mandate with minimal planning.

10. The new requirement radically shifts this landscape by providing express guidance to municipalities, and requiring them to incorporate ECD centres into their planning processes. This significant stride forward will allow ECD providers to navigate local government more effectively and receive much-needed support.
11. This directive will also provide the clarity and direction for which the ECD sector has long been advocating, marking a pivotal change in how ECD centres are integrated and supported at the municipal level.

Draft by-law guidance to municipalities

12. Current registration requirements are overly complex, crossing multiple national laws (Children's Act and the National Health Act, 61 of 2003) and requiring compliance with municipal structural safety, environmental health, and other requirements. Laudably, the Bill aims to provide guidance to municipalities to better streamline their requirements by permitting the development of a model draft by-law that is consistent with the norms and standards contained in the Children's Act. We are greatly encouraged by the developmental approach in these provisions, which take into account different socio-economic contexts and "promotes consistent approaches by municipalities to the regulation of ECD programmes".²
13. While we recognise that municipalities are autonomous and that the draft by-law will act as guidance, it is a very important tool to ensure greater uniformity across municipalities. It also provides a useful tool for the ECD sector to contribute to local municipal public participation processes and engage with municipalities on how to better streamline their standards. This guidance, although advisory, is crucial for the sector's development and regulatory coherence.

Norms and standards

14. We welcome the amendment to Section 94 that requires the Minister to determine national norms and standards for different types of ECD programmes. We need norms and standards that are appropriate for different types of programmes, including various types of non-centre-based programmes (such as playgroups, toy libraries, and parent and family support groups). Different types of ECD programme providers, including playgroups, toy libraries and home-based care, must be regulated differently and a one-size-fits-all

² T Peacock "Advancing Early Childhood Development: The Role of Local Government" *South African Journal on Human Rights* (2022) 38(3-4), 285 at 285-308 offers a comprehensive analysis on the role of local government in ECD provisioning.

approach is not appropriate.

15. We also welcome the proposal that norms and standards will cover support for children with disabilities; child protection; and support and information for parents and caregivers. This will ensure a comprehensive and inclusive approach to early childhood development, addressing the diverse needs of all children and their families.
16. When the CAB is tabled before Parliament, we think it is important that the associated draft regulations and norms and standards should be published at the same time, given that important detail will be contained in the latter.³ This will allow Parliament, and the general public, to consider the overall impact of the full package of reforms.⁴

Urgency

17. For over a decade the ECD sector has been calling for national legislation to deal with ECD in a streamlined registration process. It has already been over three years since the Technical Team was set up to prepare this draft. It is now up to the DBE to ensure that finalising these amendments is a top priority for the new dispensation. We urge the Department of Basic Education to ensure the swift tabling of the CAB in Parliament *this year*, together with a draft set of regulations and norms and standards, with the aim of passing the Bill by 2025.

Conclusion

18. We congratulate the DBE on the potential for these proposed amendments to contribute to a more enabling regulatory environment for ECD programmes. We have provided detailed line-by-line proposals with the hope that they will be useful in addressing identified issues and enhancing the overall regulatory framework. Should there be any questions or need for further discussion, we are available for consultation. Our recommendations are made in the spirit of collaboration, aiming to support the DBE in creating a robust and effective framework for early childhood development.

³ In *Pharmaceutical Manufacturers Association of South Africa: In re Ex Parte President of the Republic of South Africa* [2000] ZACC 1, the Constitutional Court found that a decision by the President to bring an Act into force prior to the finalisation of the 'regulatory base necessary for [its] operation' was irrational and unconstitutional (paras 5, 87-89).

⁴ See N Ally 'Clearing the Red Tape: Towards a Balanced Regulatory Framework for Early Childhood Development' *Potchefstroom Electronic Law Journal* 26.1 (2023) 1-29 for an analysis of some of the problems with the current regulatory framework.

The CAB's proposed amendments and our motivations for any proposed changes

Clause and section number	Our proposal (in bold)	Motivation
Clause 3 amending Section 91 of the principal Act	<p>(b) by the substitution for subsection (3) of the following subsection: “(3) An early childhood development programme [means a programme structured within an early childhood development service to provide learning and support appropriate to the child’s developmental age and stage] <u>is any type of programme, as prescribed, that provides [one or more forms of] care, development, early learning opportunities [and] or support to children from birth to school going age.”;</u></p>	<p>We welcome a broad and encompassing definition of ECD programme and that further definitions will be provided in Regulations.</p> <p>In order to qualify as an ECD programme, it is not necessary to provide care, development, early learning opportunities <i>and</i> support. For example, some of the prescribed types of ECD programme, such as child-minders or parent support groups, provide care or support but not early learning opportunities.</p> <p>Our proposed amendment to the definition of an ECD programme would make this clearer.</p>
	<p>(c) by the insertion after subsection (3) of the following subsections: <u>(6) Early childhood development programmes do not include-</u> <u>(a) a partial care facility;</u> <u>(b) a child and youth care centre;</u> <u>(c) a drop-in centre;</u> <u>(d) a hospital or other medical facility as part of medical treatment provided to the child;</u> <u>(e) a homeless shelter;</u> <u>(f) a women’s refuge;</u></p>	<p>For the sake of coherence and consistency, in addition to parents, it is important to make clear that ECD programmes do not include situations where children of up to two sets of guardians are cared for completely or mainly in one or both sets of <i>guardians’</i> homes. The failure to include the word “guardians” in the latter part of the sub-section seems to be a clear error or oversight. Our proposed amendment would rectify this error.</p>

	<p><u>(g) care provided for children of up to two sets of parents or guardians by a family member of one of the children; and</u></p> <p><u>(h) where children of up to two sets of parents or guardians are cared for completely or mainly in one or both sets of parents' or guardians' home."</u></p>	
<p>Clause 4 amending Section 92 of the principal Act</p>	<p>(c) by the insertion after subsection (2) of subsections (2A), (2B) and (2C) respectively: <u>"(2A) The provincial strategy must be reviewed annually, and must include measures –</u></p> <p><u>(a) enabling the establishment and operation of sufficient early childhood development programmes in that province;</u></p> <p><u>(b) prioritising underserved and poor communities where the need for each childhood development programme is most critical;</u> [those types of early childhood development programmes and places where early childhood development programmes are most urgently required;]</p> <p><u>(c) giving due consideration to children with disabilities or chronic illnesses;</u></p> <p><u>[(c)] (d) monitoring the performance of municipalities within its jurisdiction to ensure compliance with section 92(2C) as well as with all applicable plans, policies and norms and standards for early childhood development programmes.</u></p>	<p>We welcome the requirement, introduced by clause 4, for provinces to develop ECD strategies.</p> <p>However, we think the provincial clause could be strengthened by making clear that the provincial strategies should be developed every five years and reviewed annually. This would mirror the frequency of the development and review of municipal integrated development plans (IDPs).</p> <p>In addition, we think it would be clearer to require the provincial strategies to prioritise underserved and poor communities where the need for ECD programmes is most critical.</p> <p>The national strategy provisions emphasise consideration to children with disabilities or chronic illnesses. This should be mirrored for provincial strategies.</p>

	<p>(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: “(2) An early childhood development programme [referred to in subsection (1)] must-</p>	<p>The introduction of the amendment in section 93(2), to say "those referred in subsection 1" creates redundancy with section 93(3). It is therefore recommended that this cross-reference be deleted. If retained it will pose additional confusion when interpreting the new S93(3A).</p>
<p>Clause 5 amending section 93 of the Principal Act</p>	<p>by the substitution after subsection (b) of the following section: (c) <u>early childhood development centres must comply with the structural safety, environmental health and other requirements of the municipality of the area where the early childhood development centre [programme] is situated.</u></p>	<p>Applying municipal compliance requirements to all ECD programmes is overly burdensome and impractical, particularly for non-centre based ECD programmes; thus, we propose limiting these requirements to ECD centres to ensure feasibility and appropriateness.</p> <p>In addition, municipal requirements are not differentiated based on the type of ECD programme being provided. This can undermine the objective of the Bill in trying to ensure a differentiated approach to norms and standards that takes into account the needs and requirements of different types of programmes.</p>
	<p>(e) by the insertion after subsection (3) of the following subsection: “(3A) <u>Notwithstanding subsection (3), a conditionally registered early childhood development programme may qualify for interim funding contemplated in subsection (1) if such programme demonstrates partial compliance [notwithstanding only partial</u></p>	<p>We welcome the clarification that conditionally registered ECD programmes qualify for funding. However, we think the clause could be amended for clarity.</p> <p>We do however think that there is a tension (they are directly contradictory) between subsection (3)</p>

	<p><u>compliance]</u> with the prescribed national norms and standards for early childhood development programmes, and, where relevant, partial compliance with the structural safety, environmental health and other requirements of the municipality in the area where the early childhood development programme is offered, and meets any additional criteria specified for conditional registration within a specified timeframe as determined by the relevant authority."</p>	<p>and the newly created subsection (3A) which needs to be resolved. We suggest the inclusion of a qualifier that makes clear that subsection (3A) applies notwithstanding the previous section, and that conditionally registered programmes qualify for funding.</p> <p>The inclusion of “interim” and “within a specified timeframe as determined by the relevant authority” is also suggested as this helps emphasise that conditional registration is designed to facilitate compliance with the norms and standards by providing interim funding within a specific timeframe, ensuring a coherent regulatory framework that promotes a progressive transition to full compliance.</p> <p>Finally, it is also important to make conditional registration available to those providers who cannot meet municipal requirements.</p>
<p>Clause 6 amending Section 94 of the principal Act</p>	<p>(a) by the substitution for subsection (1) of the following subsection: “(1) The Minister of <u>Basic Education</u> must determine national norms and standards for <u>different types of</u> early childhood development programmes by regulation after consultation with interested persons and the Ministers <u>responsible for</u> [of] [Education], [F]finance, [H]health, <u>higher education and training,</u></p>	<p>In our view, the requirement for the Minister of Basic Education to consult with “any other Minister” before determining national norms and standards is confusing and unclear. We recommend amending this clause to make clear that the Minister of Basic Education should consult with any other Minister they deem necessary in order to fulfill their mandate in relation to ECD.</p>

	<p>[P]rovincial and [L]ocal [G]overnment, <u>social development</u> and [T]ransport <u>and any other Minister as the Minister for Basic Education deems necessary.</u>”;</p>	
	<p>(b) by the substitution for subsection (2) of the following subsection: “(2) The prescribed national norms and standards contemplated in subsection (1) <u>must secure a developmental approach which takes into account the socio-economic contexts of all communities and South Africa</u>, and must relate, <u>amongst others</u>, to the following:”</p>	<p>The proposed amendment will ensure that the norms and standards acknowledge and address the vast disparities in resources, infrastructure, and needs among different regions and populations in South Africa.</p>
	<p>(c) by the insertion after subsection (2) of the following subsection: “(2A) <u>An early childhood development centre must provide structured early learning and development opportunities that meet the critical outcomes of the [in line with a] national curriculum framework as approved by the Minister of Basic Education.</u>”</p>	<p>The proposed amendment ensures that alternative educational pedagogical approaches are accommodated while still ensuring that a structured programme is delivered and that all programmes meet the critical outcomes of the national curriculum framework. ECD centres. This means that ECD programmes, such as Montessori, Waldorf, and others, which are an important part of the ECD sector, are accommodated.</p> <p>Secondly, we are not convinced that ECD centres are the only form of ECD programme that should be required to provide structured early learning and development opportunities in line with an approved national curriculum framework. We recommend that you consider including mobile programmes and play</p>

		groups to this requirement, given their nature.
Clause 7 amending Section 95 of the principal Act	(c) by the insertion in subsection (1) after paragraph (c), of the following paragraph: “(d) <u>early childhood development centres must comply with the structural safety, environmental health and other requirements of the municipality of the area where the early childhood development centre [programme] is situated.</u> ”;	Applying municipal compliance requirements to all ECD programmes is overly burdensome and impractical, particularly for non-centre based ECD programmes; thus, we propose limiting these requirements to ECD centres to ensure feasibility and appropriateness. In addition, municipal requirements are not differentiated based on the type of ECD programme being provided. This can undermine the objective of the Bill in trying to ensure a differentiated approach to norms and standards that takes into account the needs and requirements of different types of programmes.
Clause 9 amending Section 97 of the principal Act	(a) by the substitution of subsection (4) of the following subsection: “(4) <u>Before granting registration or conditional registration or renewing registration [deciding an application for registration, conditional registration or renewal of registration] the provincial head of education must consider–</u> <u>(a) the assessment referred to in subsection (6); and</u> <u>(b) the outcome of an environmental health inspection of the early childhood development programme conducted by [a registered environmental health practitioner of] the relevant municipality.</u> ”;	In our view, this subsection should not refer to an "application" for conditional registration, as this fails to accurately reflect the process for obtaining conditional registration. An ECD programme cannot apply for conditional registration. Rather, an ECD programme applies for full registration but may be granted conditional registration if they demonstrate partial rather than full compliance. We recommend that the subsection should instead make clear that it lists considerations for the provincial head of education to take into account "[b]efore granting registration or conditional registration or renewing registration".

		<p>In addition, we recommend that the requirement for an environmental health inspection to be conducted by a registered environmental health practitioner should be removed. This permits environmental health inspections of ECD programmes to be conducted by auxiliary workers where possible.</p>
<p>Clause 10 amending Section 98 of the principal Act</p>	<p>"98. <u>Conditions relating to registration of early childhood development programmes</u>"</p>	<p>The Bill ensures a coherent and enabling approach to conditional registration, clarifying the grounds for granting it, enabling funding for conditionally registered programmes, and allowing for a framework to be published to guide conditional registration. This is welcomed.</p> <p>However, we note that in its current form, Section 98 contains provisions relating to both full registration with conditions, on the one hand, and conditional registration, on the other. This undermines the clarity regarding conditional registration that the proposed amendments to Section 98 are seeking to achieve. We strongly recommend that the two forms of registration addressed here should each have their own self-standing section, each with its own appropriate heading, to avoid any confusion and misinterpretation.</p>
	<p>(3) <u>The Minister of Basic Education, after consultation</u></p>	<p>Given the critical developmental role that the current</p>

	<p><u>with the Minister of Health, MECs for local government and organised local government, [may] must publish a framework concerning registration and conditional registration.</u>”</p>	<p>Registration Framework has played in the ECD sector, we recommend that there should be a clear legal duty on the Minister to publish registration and conditional registration frameworks from time to time.</p> <p>We support the extent of the consultation required under this section, given the importance of integrated and coordinated service delivery in the ECD context.</p>
<p>Clause 12 substituting Section 100 of the principal Act</p>	<p>[(b)] a person [who provides] <u>operating or managing</u> an early childhood development programme which does not comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed, <u>where such non-compliance results in conditions that pose a significant risk to the safety, health, or well-being of children. This includes, but is not limited to, situations where the programme lacks safe sanitation and water services, exposes children to intolerable elements such as severe weather conditions or toxic substances, or operates from a building that is structurally unsafe, rendering the environment hazardous or unsuitable for early childhood development</u></p>	<p>The proposed amendment is to ensure that ECD programmes are only closed when there is actual or significant harm or risk to children, rather than mere non-compliance with prescribed norms and standards. By focusing on actual harm or risk, the amendment promotes a balanced regulatory framework that protects children while avoiding unnecessary closures for minor non-compliance issues.</p>
	<p>[(i)a) to stop the provision of that programme <u>and immediately notify the parents or [caregivers]</u></p>	<p>The Bill should be consistent in its references to parents and guardians. The term “guardian” is</p>

	<u>guardians of all the affected children</u> ; or	defined in the Children’s Act and has presumably been used advisedly, in preference to the term “caregiver”.
Clause 14 amending Section 103 of the principal Act	(e) by the insertion after paragraph (e) of the following subsections: <u>“(1A) The Minister responsible for local government, in collaboration with the Minister of Health and the Minister of Basic Education, may make a standard draft by-law as contemplated in section 14 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000), with the objectives of:</u> <u>(a) securing a safe and healthy environment in early childhood development programmes; and</u> <u>(b) promoting consistent approaches by municipalities to the regulation of ECD programmes.</u>	Insert and between (a) and (b).
New clause proposed	<u>Amendment of section 125 of Act 38 of 2005 18A.</u> <u>Section 125 of the principle Act is hereby amended by the substitution of subsection (2) by the following paragraph:</u> <u>(2) The Director-General may, on such conditions as the Director-General may determine, allow officials of a provincial education department designated by the head of that department access to Part B of the Register for the purpose of implementing section 123</u>	The proposed amendment is necessary to fully accommodate the ECD function shift, in line with the DBE’s additional obligations in relation to child protection, and verification of ECD staff against the National Child Protection Register.

	<u>in relation to schools and early childhood development programmes under the jurisdiction of that department.</u>	
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