

# MINI-MBA

## BELA BILL

Which aspects of the BELA Bill will have an impact on schools?

Presented by: Chris Klopper  
22 June 2022



DIE VERANDERING IN ONDERWYS  
THE CHANGE IN EDUCATION

# Origin of principle of Public School

## Background

- 1990 - 92: Initiative by previous TED, CED, FSED and NED to provide more autonomy to schools
- Schools could select between:
  - **Model A**: Privatised and take possession of school buildings and assets
  - **Model B**: Remain a state school
  - **Model C**: Become a state-aided school – community takes control
    - All staff employed by SGB
    - All staff could retain their conditions of service
- In SA only 2 schools opted for Model A
- Vast majority opted for Model C, but some preferred to remain state schools
- Section 21 of SASA: Current public school synonymous to previous state-aided school

## Proposed amendments to the South African Schools Act 84 of 1996

# State school vs Public school

- Hunter Commission: Investigation into state schools and state-aided schools
- 1994 – '96: Principle of public school was accepted – can't revert to pre-'76 model of state schools
- White Paper
- SASA (Act 84 of 1996): Section 21 –
  - Embodiment of public school
  - Juristic person
  - Democratic institution
  - Extension of community
  - Partnership by and between parents (SGB), school and Dept
  - Principle is cooperation and mutual respect
- Latest proposed amendments – virtually a state school model and very little original powers for SGB



## Section 1: Definitions – Grade R

“‘**basic education**’ means *grade R* to grade 12, as evidenced in the National Curriculum Statement”

- Grade R: Sec. 1(f): Reception year
- Sec 3 (1) Every parent must cause every learner to attend Grade R from first school day of the year the learner reaches the age of six ~~[seven]~~ years.
- Sec 5(4)(c): The admission age of a learner to a public school is 4 turning 5 by 30 June in the year of admission, preference must be given to learners who are subject to compulsory attendance.
- **NOTE:** The above will definitely affect private pre-schools

## Section 1: Definitions and application of the Act

“**‘loan’** means any financial obligation based on agreement, which obligation renders a school liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of employees appointed by the governing body in terms of section 20(4) or (5), or operational costs as determined in the annual budget contemplated in section 38;”

Loan: Sec. 1(j): The definition of “loan” has been amended. The SAOU believes that the definition may be regarded as unnecessarily restrictive for functional schools.

It must be considered that schools participate in the economic activities in communities and must from time to time make “loans” to comply with its obligations towards learners and the community, e.g. photo copying machine, security services, etc

# Section 5: Admission to public schools

by the substitution for subsection (5) of the following subsection

“(5) Subject to this Act and any applicable provincial law, the 15 admission policy of a public school is determined by the governing body of such school: Provided that—  
(a) the Head of Department, after consultation with the governing body of the school, **has the final authority**, subject to subsection (9), to admit a learner to a public school;”

- The Constitutional Court (CC) has already interpreted the right of learners to access to education in the case *MEC for Education Gauteng v Governing Body of the Rivonia Primary School (2013)*.
- The SAOU is convinced that the bill goes further than the judgment requires and assigns excessive rights to the provincial department of education.
- **SAOU proposal**: That the current formulation of Sec 5 should not be amended as the CC has interpreted “the right to access to education” (Sec 29 of the Constitution)

# Section 6: Language Policy

“(2) The governing body of a public school may, subject to subsection (13), determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law:

Provided that the language policy of a public school must be limited to one or more of the official languages of the Republic as provided in section 6(1) of the Constitution.” ... “and must submit to the HOD .... for approval (annually)”

Note: Subsec 13: The HOD may also instruct a SGB to adopt more than one LOLT

- The Constitutional Court (CC) also interpreted the principle of a public school’s language policy in the case *Head of Mpumalanga Department of Education and Another v Hoërskool Ermelo and Others* (2010).
- The SAOU also believes that the proposed amendment goes further than the requirements as contemplated in the judgement.
- The intrusion of the HOD on the SGB’s powers conflicts with the scheme of the SASA and the CC judgements which envisage a cooperative partnership by and between the SGB and the department
- This intrusion is a source of concern and must be rectified.
- SAOU proposal: Not to amend Sec 6 of the SASA

# Section 18A: Code of conduct of the SGB

*Section 18A of the South African Schools Act, 1996, is hereby amended—*

*by the insertion after subsection (4) of the following subsection: “(4A) The code of conduct referred to in subsection (1) must provide that all members of a governing body must disclose on an annual basis, all his or her financial interests and the financial interests of his or her spouse, partner and immediate family members, including but not limited to the following:*

- a) Shares and other financial interests in an entity;*
- b) sponsorships;*
- c) gifts, hospitality, sponsorship or other benefit received from an entity or person conducting business with the public school;*
- d) immovable property; and*
- e) any matter of financial interest.”*

Disclosure of personal financial interests: Sec. 18A:

- The Bill requires that SGB members must annually disclose all the financial interests of him/her and his/her spouse as well as of family members.
- The SAOU believes that this approach will discourage parents to make themselves available to serve on the SGB – therefore, must be contested.



# Section 21: Allocated functions of governing bodies

## **Proposed new Sec 21A: Application by school for self managed status**

- 1) Subject to this Act, a governing body of a public school may apply to the Head of Department in writing for self managed status on the basis of having satisfactorily:

- a. Performed the functions referred to in Section 21(1) for the preceding five years;
- b. Obtained a clean audit record in regard to the financial management of the public school for the preceding five years;
- c. Complied with the minimum criteria determined by the Minister in regard to academic performance; and
- d. Maintained the minimum requirements in regard to academic performance.

## Section 21: Allocated functions of governing bodies (continued)

- 2) A public school with self managed status will, for a period of ten years:
  - a. Have the following powers and functions:
    - i. The functions referred to in the following sections –
      - a) 5(5): Admission
      - b) 6(2): Language
      - c) 8(1): Code of conduct
      - d) 9(1): Suspension of learners in cases of serious misconduct
      - e) 20: All functions
      - f) 21(1): Buildings and school programmes; and
    - ii. The self managed school will be entitled to determine the curriculum and assessment programme, provided that the CAPS minimum national norms and standards with regard to the curriculum and assessment programme is complied with.
  - b. Be exempt from the attendance of departmental meetings by the educator staff and the non-educator staff.
  - c. The attendance of a self managed school will be on a voluntary basis, provided that the principal shall attend the departmental meetings held for principals of self managed schools.

## Section 21: Allocated functions of governing bodies (continued)

- 3) During the 10 year period the self managed school must comply with the following:
  - a. The self managed school must comply with the following:
    - i. The annual submission of unqualified audited financial statements to the Head of Department;
    - ii. The principles of fit and proper governance of the school;
    - iii. The minimum requirements in regard to academic performance;
    - iv. The minimum requirements for service in the broader community;
    - v. The chairperson of the governing body of a self managed school shall attend the annual meeting for chairpersons of the governing bodies of self managed schools; and
    - vi. Such other reasonable requirements determined by the Head of Department;
  - b. The self managed school will qualify for financial assistance; and
  - c. That educators remain in the employment of the Department as contemplated in the Employment of Educators Act, No. 76 of 1998.

# Academic standards: Maybe a bridge too far?

## STAND VAN KURRIKULUMDEKKING EN AGTERSTANDE

- Number of school days lost due to lockdowns or rotational timetabling in 2020 and 2021
- Average school year: 200 school days

	% of Grade 3 learners (for schools providing data)
Less than 140 days	2%
140 – 150 days	71%
150 – 160 days	12%
160 – 200 days	7%
200+ days	8%

70% - 75% of a school year was lost

# Academic standards: Maybe a bridge too far?

## Grade 3: Language

	Not achieving pass mark			Not achieving low benchmark		
	2019	2021	Increase (percentage points)	2019	2021	Increase (percentage points)
Total	56%	61%	4	32%	41%	9
Afrikaans LOLT	64%	69%	5	39%		
English LOLT	43%	50%	7	22%		
Xhosa LOLT	65%	67%	2	36%		
Quintile 1	75%	82%	6	47%	60%	13
Quintile 2	63%	68%	5	36%	45%	10
Quintile 3	68%	71%	2	39%	47%	8
Quintile 4	63%	71%	8	37%	50%	13
Quintile 5	32%	36%	4	15%	20%	5

**NB: In Gr 1- 3 learners learn to read, but from Gr 4, learners read to learn!**

- Low initial Grade 3 Language scores, despite almost half the questions being multiple choice, show that reading problems predate Covid-19.

## Grade 6: Language

	Not achieving pass mark			Not achieving low benchmark		
	2019	2021	Increase (percentage points)	2019	2021	Increase (percentage points)
Total	44%	53%	10	15%	24%	9
Afrikaans LOLT	48%	58%	10	18%	28%	10
English FP	29%	38%	9	8%	14%	5
Xhosa FP	59%	71%	12	21%	35%	14
Quintile 1	65%	75%	10	27%	42%	15
Quintile 2	57%	68%	11	21%	32%	12
Quintile 3	55%	66%	11	19%	31%	12
Quintile 4	46%	58%	12	16%	26%	10
Quintile 5	20%	26%	6	5%	8%	3

- There is considerable learning loss in Gr 6 Language, especially in schools with LOLT changes. The percentage failing rose sharply from 44% to 53% overall, and in Xhosa-English schools from 59% to 71%.

## Grade 9: Language

	Not Achieving pass mark			Not achieving low benchmark		
	2019	2021	Increase (percentage points)	2019	2021	Increase (percentage points)
Total	31%	36%	6	7%	10%	3
Afrikaans LOLT	34%	41%	7	8%	11%	3
English HL	12%	15%	4	2%	3%	1
Xhosa HL	49%	56%	7	13%	18%	5
Quintile 1	52%	59%	7	15%	21%	6
Quintile 2	51%	59%	8	13%	19%	6
Quintile 3	45%	51%	6	11%	14%	3
Quintile 4	35%	41%	6	8%	10%	2
Quintile 5	11%	14%	3	2%	3%	1

- Performance levels in Grade 9 Language are much higher than for other subject grade combinations, reflecting a very easy test. The 12% of a standard deviation decline is low.



# Academic standards: Maybe a bridge too far?

## Grade 3: Mathematics

	Not achieving pass mark			Not achieving low benchmark		
	2019	2021	Increase (percentage points)	2019	2021	Increase (percentage points)
Total	32%	47%	15	13%	25%	12
Afrikaans LOLT	41%	57%	16	19%	35%	16
English LOLT	23%	37%	14	9%	18%	10
Xhosa LOLT	31%	47%	16	11%	23%	12
Quintile 1	48%	66%	19	22%	41%	19
Quintile 2	35%	51%	17	13%	27%	13
Quintile 3	38%	54%	16	18%	30%	14
Quintile 4	39%	57%	19	17%	32%	16
Quintile 5	16%	25%	9	6%	11%	5

There were **extreme learning losses** in Grade 3 Mathematics, with average marks dropping from a relatively high **59% to 50%**. Those **not achieving a pass mark increased from 32% to 47%** and those **not reaching the low benchmark doubled** Afrikaans LOLT schools, already weakest in Maths in 2019, lost the most—equivalent to a **full school year**.

SAOU

## Grade 6: Mathematics

	Not achieving pass mark			Not achieving low benchmark		
	2019	2021	Increase (percentage points)	2019	2021	Increase (percentage points)
Total	36%	52%	17	10%	20%	11
Afrikaans LOLT	45%	62%	17	14%	27%	13
English FP	23%	39%	15	5%	12%	7
Xhosa FP	40%	61%	21	11%	25%	14
Quintile 1	56%	75%	18	18%	36%	17
Quintile 2	41%	63%	22	12%	26%	14
Quintile 3	45%	62%	17	13%	25%	12
Quintile 4	41%	60%	20	11%	23%	13
Quintile 5	16%	26%	10	3%	7%	4

- Learning **losses were large** in Grade 6 Mathematics. Conservatively estimated, learners who **wrote in 2021 performed more than a year behind those who wrote in 2019**. The proportion **failing** to achieve a pass mark rose greatly from **36% to 52%**. Even the Quintile 5 decline converts to around **three-quarters of a year's learning lost**.

SAOU

## GRADE 9: MATHEMATICS

- The Grade 9 Mathematics test showed the **lowest performance in 2019 (38%)** and a considerable decline in 2021. Almost **three-quarters of learners failed** this test in 2019, **rising to 80% in 2021**. Learning loss was at least **106% of a year's learning, and 120% in schools where the LOLT change from Xhosa** in the Foundation Phase to English in subsequent grades. Performance of **Quintile 4 schools** was as weak as that of Quintile 1, 2 and 3.

	Not achieving pass mark			Not achieving low benchmark		
	2019	2021	Increase (percentage points)	2019	2021	Increase (percentage points)
Total	74%	80%	6	39%	55%	17
Afrikaans LOLT	75%	81%	5	41%	59%	18
English HL	61%	67%	6	26%	39%	14
Xhosa HL	89%	94%	4	51%	70%	19
Quintile 1	92%	96%	4	55%	74%	20
Quintile 2	92%	95%	3	54%	73%	19
Quintile 3	89%	94%	5	50%	71%	21
Quintile 4	87%	93%	5	48%	67%	19
Quintile 5	51%	56%	5	20%	31%	10

SAOU

SAOU

**Thank you**

**Opportunity for questions**



**SΔOU**