

Every child is a National Asset

BASIC EDUCATION LAWS AMENDMENT (BELA) BILL, 2022

PRESENTATION ON THE PROGRESS OF THE BELA BILL

DEPARTMENT OF BASIC EDUCATION

25 JULY 2022



PURPOSE

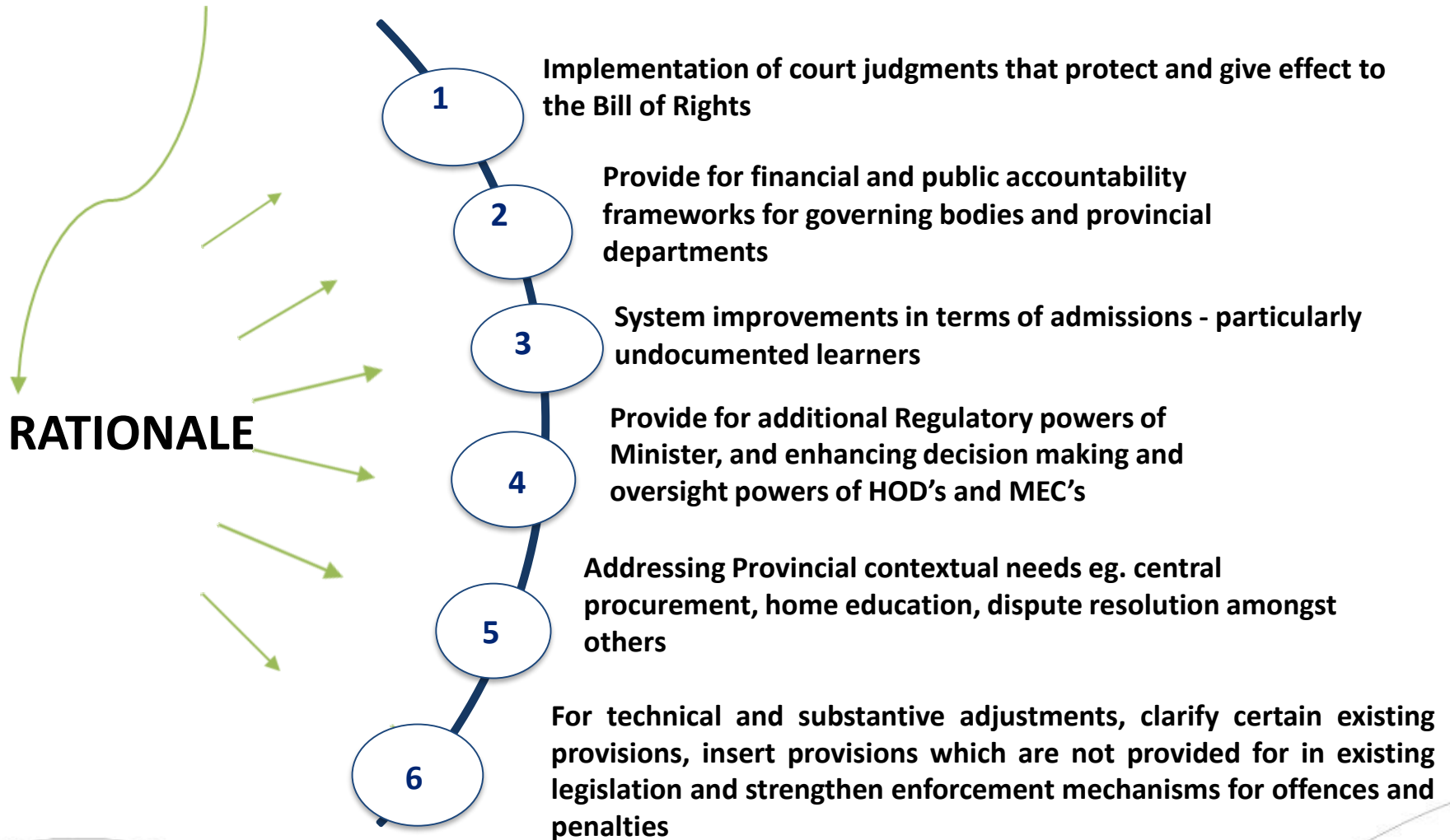
- To present progress on the BELA Bill to Professional Bodies.

INTRODUCTION

- The Minister of Basic Education had identified the review of all basic education legislation as a strategic priority for the Department of Basic Education. The Draft Amendment Bill, proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1998) (the SASA and the EEA, respectively).

TO CREATE CERTAINTY & CURE MISCHIEF IN THE EDUCATION LANDSCAPE

LEGISLATIVE REFORMS



STAKEHOLDERS CONSULTATIONS

- The Bill was published for public comment on 13 October 2017. **More than 5 000 written submissions** were received from stakeholders and the general public. All nine of the PEDs, HEDCOM and CEM were consulted. The Draft Amendment Bill was also **circulated to all National Departments** for comments.
- The **written comments received** from the latter process were **considered and consolidated** into the Draft Amendment Bill. After the consolidation of the comments into the Draft Amendment Bill, the SGB associations, Teacher Unions and the home education stakeholders were subsequently invited to submit further comments on the latest version of the BELA Bill, and were invited to a meeting with the Minister on 27 and 28 January 2020.
- The Bill was presented to the Portfolio Committee on 05 May 2021.
- On completion of the latter process, the Draft Amendment Bill was **presented to NEDLAC** on 23 April 2020, by the DBE. The final report from NEDLAC was received in October 2020.
- A Socio-economic Impact Assessment was conducted and all recommendations of the Socio-economic Impact Assessment System (SEIAS) report have been incorporated into the BELA Bill. The draft BELA Bill is based on the preferred option from the Department and is supported by the SEIAS report.

OCSLA and SEIAS

- The following financial implications were identified-
 - a) Costing for procurement of competent assessors in the case of home education;
 - b) provision of personnel by provincial department of education to consider the language and admission policies developed by governing bodies; and
 - c) provision of educators and infrastructure for Grade R learners.
- Precertification from the OCSLA was also received.
- In August 2021, the BELA Bill was presented to the Technical Working Group for the Bill to be submitted to the Social Protection, Community and Human Development Cluster (SPCHD). On 08 September 2021, the BELA Bill was presented to the SPCHD Cluster and the Bill was approved to be submitted to Cabinet for introduction to Parliament

CABINET COMMITTEE

- On 9 November 2021 the BELA Bill was presented to the Cabinet Committee.
- Two amendments were proposed by the Cabinet Committee.
- It was recommended that s10(1) state that “Corporal punishment is abolished...”.
- The President raised the concern of high learner drop out rates and making the educators, principal and SGB responsible for ascertaining the whereabouts of learners. A new clause 3 seeks the insertion of section 4A into the SASA to ensure that the educators, principals and school governing bodies ("SGB") are accountable and responsible for the learners in their care. Enrolment of learners and their regular and punctual attendance at a school are a pre-requisite for an educated nation. Moreover, enrolment and punctual regular attendance at a school is important because a school that successfully curbs absenteeism without valid reason will most likely improve learner retention and performance. This will assist in mitigating the high learner dropout rate. Educators, the principal and the SGB as parentis in loco, must take responsibility and accountability for learners that are within their school community by ascertaining the whereabouts of a learner who absents himself or herself from school for a period of more than three days without valid reason.

CABINET

At a Cabinet Meeting that took place on 24 November 2021, the following was concluded:

- The **Cabinet** –
- (a) **noted** the Basic Education Laws Amendment Bill, 2021 as presented;
- (b) **noted** that the Deputy Minister of Basic Education and the briefing team took cognisance of the following comments and suggestions made by Members and **approved** that the Bill be strengthened in line with the discussion, including, amongst others, -
 - (i) clarifying the intent/rationale for the Bill;
 - (ii) clearly defining “HoD”;
 - (iii) clearly articulating the prohibition of corporal punishment;
 - (iv) reviewing Clause 20, especially as it relates to empowering the Head of Department (HoD) to dissolve the School Governing Body (SGB); and
 - (v) the deletion of Clause 27;
- (c) in view of concerns raised regarding the high school dropout rate and its implications for the Country, **approved** that the Minister of Basic Education considers expanding the role and responsibilities of teachers and the SGB to include school dropout prevention initiatives;
- (d) **noted** that the revised Bill (5A of 2021) was submitted to the Cabinet which addressed the matters raised in paragraph (b) above; and
- (e) **approved** the submission of the Basic Education Laws Amendment Bill, 2021 to Parliament.
- Cabinet subsequently approved that the BELA Bill be introduced in Parliament.

Tabling of Bill with Parliament

- The National Assembly (NA) Rule 276 requires that before a Bill is introduced in the NA, there must be prior notice of its introduction together with an explanatory summary of the Bill, published in the Gazette. On 6 Dec 2021 the Notice was gazetted.
- In terms of Joint Rule 159 of the Joint Rules of Parliament, a Cabinet member or Deputy Minister who intends introducing a Bill in the NA or who initiates the introduction of a Bill in the NCOP, must as soon as possible after the Bill has been approved by Cabinet, submit the following to the Speaker and the Chairperson of the NA and NCOP respectively:
 - the draft of the proposed Bill as approved by Cabinet, whether or not the draft has been legally or technically formalised as a proper draft Bill; and
 - a memorandum explaining the objects of the proposed legislation.

The letters were subsequently sent on 6 December 2021.

- On 20 December 2021 the OCSLAs advised that the Bill and Memo Was submitted to Parliament for purposes of certification.
- The BELA Bill is with the Portfolio Committee.

PROCESSING OF THE BILL

- The BELA Bill has been introduced in Parliament, and it would have been referred to the Joint Tagging Mechanism (“JTM”) for classification. The BELA Bill is classified as a section 76 Bills – ordinary Bills affecting the provinces.
- The next step in the Parliamentary process is for the Bill to be referred to the relevant Portfolio Committee for consideration. And the Bill is with our Portfolio Committee.
- Because there is great public interest in a Bill, the Portfolio Committee has organised public hearings to allow interested parties to submit written comments and sometimes make oral representations on the provisions of the Bill. There has been an extension granted for the receipt of public comments by the Portfolio Committee.
- The members of the relevant Portfolio Committee are then tasked with considering and debating the Bill in order to determine whether they are satisfied with the provisions of the Bill.
- If the Portfolio Committee is not satisfied with the provisions of the Bill, the Bill is amended to reflect the version which the Portfolio Committee prefers.

Section 76 Bill

- ❑ At the conclusion of its work the Portfolio Committee submits the Bill, together with a report, to the NA for debate (called the second reading debate) and a vote. If the NA passes the Bill, it is referred to the NCOP for its consideration.
- ❑ Once an ordinary Bill that affects the provinces has been passed by the NA, it must be referred to the NCOP.
- ❑ The NCOP must either pass the Bill; pass an amended Bill or reject the Bill.
- ❑ A section 76 Bill must, if it was passed by the NCOP without any amendment, be submitted to the President for assent.
- ❑ If the NCOP passes an amended Bill it goes back to the NA and if the NA passes the amended Bill, it must then be submitted to the President for assent.
- ❑ If the NCOP rejects a Bill or if the NA refuses to pass the NCOP amended version of the Bill, the matter must be referred to the Mediation Committee.
- ❑ If the Committee is unable to secure an agreement on a section 76 Bill introduced in the NA within 30 days, the Bill may be passed by the NA with a two-thirds majority if not it lapses.

SIGNING A BILL INTO LAW

- ❑ A Bill is referred to the President after it has passed through the National Assembly and NCOP.
- ❑ Section 79 of the Constitution requires that the President must assent to and sign a Bill or if the President has reservations about the constitutionality (whether the provisions of a Bill are in line with the Constitution or not) of a Bill, he or she may refer it back to the National Assembly for reconsideration.
- ❑ If the Bill affects the provinces, the NCOP must participate in the reconsideration of the relevant Bill.
- ❑ If a reconsidered Bill accommodates the President's reservations, the President must assent to and sign the Bill.
- ❑ However, if a reconsidered Bill does not fully accommodate the President's reservations, the President must either assent to and sign the Bill or refer it to the Constitutional Court for a decision on its constitutionality.

❑ If the Constitutional Court decides the Bill is constitutional, the President must sign it.



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