

COMMENTS ON THE CHILDREN'S AMENDMENT BILL [B 18B—2020] AS RELATES TO INCLUSION AND CHILDREN WITH DISABILITIES			
Contact Person:	Ms M Williams	Due date for comments:	21 October 2022
Email:	<a href="mailto:mawilliams@parliament.gov.za">mawilliams@parliament.gov.za</a>		
Submitted by:	Equal Education Law Centre		
Contact:	Robyn Beere ( <a href="mailto:robyn@eelawcentre.org.za">robyn@eelawcentre.org.za</a> )		

#### **Introduction:**

1. This submission is made by the Equal Education Law Centre (“EELC”) in respect of provisions in the Children’s Amendment Bill B 18B—2020 (“the Bill”) relating to children with disabilities and which are aimed at facilitating inclusion. The EELC is a public interest law centre using legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa.

#### ***Disability and inclusion***

2. The Bill presents a rare opportunity to create a truly inclusive piece of primary legislation for children in South Africa. The processes of amending the Children’s Act brought with it an opportunity for ensuring that the rights of children with disabilities are properly and comprehensively protected. More than this, it offered an opportunity to assist all children to overcome all barriers which may limit their capabilities, participation and achievement, and ensure that they receive the necessary support to enable them to participate on an equal basis.

3. We are disappointed to see that the proposed amendments to sections 6(2)(f),<sup>1</sup> 106(2)<sup>2</sup> and 194(2)<sup>3</sup> under the earlier version of the Bill have now been removed. These proposed amendments sought to introduce the concept of an “accessible and inclusive” environment for children with disabilities to the general principles guiding the implementation of all legislation; add the phrase “rehabilitation services for children with disabilities” to the requirements for the national norms and standards for child protection; and add an additional requirement for the national norms and standards for child and youth care centre relating to access to rehabilitation services for children with disabilities. In our comments on the earlier version of the Bill, dated 27 October 2020, we made a number of recommendations aimed at an inclusive legislative framework, which have not been taken forward. We urge Parliament to take the opportunity to protect and further the rights of *all* children by following our recommendations, set out in detail below.
4. It should be noted that these recommendations draw heavily on our earlier submission, dated 27 October 2020. That submission was endorsed by the following organisations:
  - Down Syndrome South Africa (DSSA);
  - BlindSA;
  - Autism SA;
  - Centre for Child Law (CCL);
  - National Council of and for Persons with Disabilities;
  - The Chaeli Campaign; and

---

<sup>1</sup> Clause 2(b) would have amended section 6(2)(f) in the following way: “All proceedings, actions or decisions in a matter concerning a child must... recognise a child’s disability and create an [enabling] **accessible and inclusive** environment to respond to the special needs that the child has.”

<sup>2</sup> Clause 57(c) would have amended section 106(2) in the following way: “The national norms and standards contemplated in subsection (1) must relate to the following... **(I) rehabilitation services for children with disabilities**”

<sup>3</sup> Clause 98 would have amended section 194 in the following way: “(2) The national norms and standards contemplated in subsection (1) must relate to the following... **(IA) access to rehabilitation services for children with disabilities**”.



Western Cape Forum for Intellectual Disability (WCFID).

5. In our General Comments, we point out the need for comprehensive legislative reform, far beyond what was contained in the proposed amendments previously included in the Bill. All our recommendations must be read with this overarching recommendation in mind.
6. Lastly, we note that reform of the provisions relating to early childhood development which were dealt with in our earlier submission is being considered separately, under the draft Second Children's Amendment Bill. The Equal Education Law Centre is part of a Technical Task Team dedicated to this work. In our view, the Technical Task Team is best placed to consider reforms relating specifically to early childhood development. In view of this, and to avoid confusion and ensure a more streamlined process, we are pleased to see that the proposed amendments relating to early childhood development have now been removed from the Children's Amendment Bill. In our view, it will be essential to ensure that the Second Children's Amendment Bill creates an inclusive legislative framework for early childhood development.

## Table of comments

### General Comments:

The principle of inclusion refers to a process that assists in addressing and overcoming all barriers to the presence, participation and achievement of all children on an equal basis.<sup>4</sup> Legislation and policies have been enacted to build an inclusive system in South Africa; however, many children continue to experience barriers to accessing learning, care and support. One of the contributing factors to this has been the lack of inclusivity and deficiencies in the regulatory frameworks which regulate the rights of children and the lack of implementation of those laws and policies that do exist.

As the principal legislation in South Africa relating to children, it is especially important that the Children’s Act, 38 of 2005 (“**Children’s Act**”) enables inclusivity and creates an inclusive system in which all children are protected on an equal basis. The Bill presents an opportunity to ensure that the Children’s Act achieves this and that the principle of inclusion is applied in all matters concerning children.

Unfortunately, the Bill misses this opportunity, in that, amongst other things:

1. It no longer refers to the concepts of “inclusion”.
2. The word “disability” is used throughout the Children’s Act without being defined.

---

<sup>4</sup> See the Unesco: Guide for Ensuring Inclusion and Equity in Education (2017). Available at: [http://www.unesco.org/new/en/media-services/single-view/news/a\\_guide\\_for\\_ensuring\\_inclusion\\_and\\_equity\\_in\\_education/](http://www.unesco.org/new/en/media-services/single-view/news/a_guide_for_ensuring_inclusion_and_equity_in_education/).

We recommend that the concepts of “inclusion” is reintroduced into the Bill. We further recommend that the terms “disability” and “inclusion” are defined in the Bill to promote clarity and certainty and to incorporate all aspects of diversity. We recommend the following definitions be included:

- **“Inclusion”**: A process that assists in overcoming all barriers which limit the presence, participation and achievement of all children, including but not limited to barriers experienced by children with disabilities, through which all children receive the necessary support to enable them to participate on an equal basis.<sup>5</sup>
- **“Disability”** must be defined or explained using the accepted definitions in the White Paper on the Rights of Persons with Disabilities and in the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

Perhaps most critically, the Bill fails to facilitate the holistic reform needed to ensure that inclusivity is built into the system and design of the frameworks put in place to protect children. This is a missed opportunity to make comprehensive amendments to the Children’s Act, drafted through the lens of mainstreaming disability and with the explicit intention of creating a truly inclusive piece of legislation.

Section in Children’s Act, 38 of 2005 <i>(Sections that ought to be amended)</i>	Clause formerly contained in the Bill <i>(The former proposed amendment)</i>	DSD’s explanation of former proposed amendment	Comment	Recommendation

<sup>5</sup> Definition adapted from the Unesco: Guide for Ensuring Inclusion and Equity in Education (2017). Available at: [http://www.unesco.org/new/en/media-services/single-view/news/a\\_guide\\_for\\_ensuring\\_inclusion\\_and\\_equity\\_in\\_education/](http://www.unesco.org/new/en/media-services/single-view/news/a_guide_for_ensuring_inclusion_and_equity_in_education/) and the National Integrated Early Childhood Development Policy, 2015 Available at: <https://www.unicef.org/southafrica/media/531/file/National%20Integrated%20Early%20Childhood%20Development%20Policy.pdf>.

<p>Section 6(2)(f):</p> <p>“All proceedings, actions or decisions in a matter concerning a child must... recognise a child’s disability and create an enabling environment to respond to the special needs that the child has.”</p>	<p>Clause 2(b):</p> <p>“All proceedings, actions or decisions in a matter concerning a child must... recognise a child’s disability and create an [enabling] <b>accessible and inclusive</b> environment to respond to the special needs that the child has.”</p>	<p>Clause 2 sought to amend section 6 and introduces the concept of accessible and inclusive environment to promote and protect the interests of children with disabilities.</p>	<p>We welcomed the inclusion of a reference to creating an accessible and inclusive environment to respond to the special needs that a child has. It was especially valuable that the concept of inclusivity was incorporated into the general principles guiding the implementation of all legislation applicable to children, including the Children’s Act itself.</p> <p>However, as explained above, it is vital that the term “inclusive” is defined.</p>	<p>Reintroduce what was previously Clause 2(b).</p> <p>As explained above, a definition of “inclusive” must be added, along the lines we suggest.</p>
<p>Section 106(2):</p> <p>“(2) The national norms and standards contemplated in</p>	<p>Clause 57(c):</p>	<p>Clause 57 sought to amend section 106 by adding the phrase</p>	<p>We welcomed the inclusion of a reference to the specific needs of children with</p>	<p>Reintroduce what was previously Clause 57(c).</p>

<p>subsection (1) must relate to the following...”</p>	<p><b>“(l) rehabilitation services for children with disabilities”</b></p>	<p>"rehabilitation services for children with disabilities” to the requirements for the national norms and standards for child protection.</p>	<p>disabilities, but we considered that the use of the term “rehabilitation services” was not clear.</p> <p>Our understanding is that rehabilitation, and habilitation services more particularly, refer to the right of persons with disabilities to access a full range of services in the community to allow for maximum independence and participation. It is however unclear what the drafters of the Bill mean by “rehabilitation services.”</p>	<p>The term “rehabilitation services” must be amended to refer to “rehabilitation <b>and habilitation</b> services” and must be included in the definitions section of the Bill.</p> <p>“Rehabilitation and habilitation” must be defined to include a broad range of therapeutic interventions, including, but not limited to, physiotherapy, occupational therapy and speech therapy.</p>
--	--	--	--	---

<p>Section 194(2):</p> <p>“(2) The national norms and standards contemplated in subsection (1) must relate to the following...”</p>	<p>Clause 98:</p> <p><b>“(IA) access to rehabilitation services for children with disabilities”</b></p>	<p>Clause 98 sought to amend section 194 to insert an additional requirement for the national norms and standards for child and youth care centres which relates to access to rehabilitation services for children with disabilities.</p>	<p>We welcomed the proposed amendment to include access to rehabilitation services for children with disabilities.</p> <p>However, as stated above, it is unclear what is meant by rehabilitation services.</p>	<p>Reintroduce what was formerly Clause 98.</p> <p>As above, the term “rehabilitation services” must be amended to refer to “rehabilitation <b>and habilitation</b> services” and must be included in the definitions section of the Bill.</p> <p>The definition of this term should be as outlined above.</p>
---	---	---	---	--

