



EQUAL  
EDUCATION  
LAW CENTRE

**SUBMISSION TO THE SOUTH AFRICAN LAW REFORM COMMISSION**

**BY**

**EQUAL EDUCATION LAW CENTRE**

**ON**

**THE DRAFT BILL ON THE PROTECTION AND PROMOTION OF PERSONS WITH DISABILITIES**

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## Introduction

1. Equal Education Law Centre (EELC) is a registered law clinic whose staff of social justice lawyers specialise in education policy, legal advocacy, community lawyering, and public interest litigation. The EELC engages in strategic litigation regarding long-term educational reform and works on individual cases arising from experiences of learners, parents and teachers, such as access to schools amongst others. The EELC provides free legal services and representation to persons who could not otherwise afford them. The EELC's legal processes seek to create systemic change in the education sector. Based on our work and the lived realities of the individuals and communities we work with in enabling access to justice, we also make legal submissions on law and policy reform. We additionally produce action-based research to facilitate reform within South Africa's education system and ensure equal and quality education for all learners.
2. This submission is made by the EELC in response to the call for comments by the South African Law Reform Commission (SALRC) on the domestication of the Convention on the Rights of People with Disabilities in South Africa (CRPD). We note from the onset that these submissions include recommendations that echo [submissions that have previously been made by the EELC](#).
3. We welcome the efforts to domesticate the CRPD. This process is both urgent and vital to address the systemic barriers and discrimination faced by persons, and particularly children, with disabilities in South Africa. However, we note with serious concern that the Draft Bill in its current form fails to achieve its intended purpose. Rather than creating a coherent and enforceable framework, the Bill largely consists of vague, aspirational principles transposed directly from the UNCRPD without adequate consideration of implementation mechanisms or how persons with disabilities will be able to claim and enforce these rights. Due to these fundamental structural weaknesses, our submission focuses on key overarching principles rather than detailed section-by-section commentary. Where we do comment on specific sections, we do so to illustrate examples of our statements above. We strongly recommend that the drafters undertake a comprehensive redrafting of the Bill and suggest that this revision process be led by a working group with expert representatives from key sectors.



Table of Comments

**General comments**

**A. The Impact of this Bill on the Education Sector**

The current state of education law regarding disability inclusion in South Africa reflects a significant gap between constitutional promises and practical implementation. While the Constitution guarantees everyone's right to an equitable and inclusive education system, there is currently no comprehensive legislation giving full effect to this right for children with disabilities.<sup>1</sup> Instead, the existing framework is fragmented and piecemeal, failing to translate into clear, enforceable entitlements for affected learners.

The outdated nature of current laws and policies, particularly White Paper 6, highlights this problem. White Paper 6's 20-year implementation plan fundamentally conflicts with both the Constitution and the UNCRRPD, which establish education as an immediately realisable right rather than one subject to progressive realisation. While the development of educational systems may be progressive, core education rights demand immediate implementation.

The domestication of the UNCRRPD through this Draft Bill brings with it the opportunity to ensure that amongst other things, children with disabilities are properly and comprehensively protected through establishing an overarching regulatory framework that could create immediate, tangible duties across sectors, including the education sector. Such a framework should mandate immediate reform of education legislation; fast-track implementation of disability inclusion; create clear accountability mechanisms; establish enforceable rights for learners with disabilities; and provide specific support measures and remedies.

However, the Draft Bill in its current form falls short of these objectives. It lacks provisions to drive systemic reform. It fails to establish clear timelines for implementation of sectoral legislative reform and disability mainstreaming, and it does not create sufficiently robust accountability mechanisms. It lacks clear reasonable accommodation measures, provisioning for adequate budgeting, identification of duty bearers, reporting systems, and effective remedies. Specific examples are discussed below.

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<sup>1</sup> The Equal Education Law Centre defines inclusive education to be fundamentally about ensuring access, permanence, quality learning and full participation and integration for all children, particularly learners from disadvantaged and poor societies, those with disabilities, those who are homeless, those who are workers, those living with HIV and AIDS, and other vulnerable children. However, where we use the term "inclusive education" in this submission, we refer to disability inclusion and its intersections with various other identities and characteristics that are typically discriminated against and marginalised.



Without substantial strengthening of these elements, the Bill risks perpetuating rather than resolving the current implementation gap. To fulfil its intended purpose, the Bill must move beyond broad statements of principle to create concrete obligations, specific enforcement mechanisms, and clear consequences for non-compliance.

### **B. Sectoral Disability Mainstreaming & Legislative Reform**

The Draft Bill, as an overarching framework, should adequately address the need for systematic sectoral reform and disability mainstreaming across government departments. The UNCRPD, including General Comment No. 4, requires a comprehensive review and reform (the identification and eradication of barriers) across all aspects of service delivery, including legislation, funding mechanisms, programme design, implementation strategies, and monitoring frameworks. To be effective, the integration of disability inclusion must occur across all key sectors.

We therefore recommend that the Draft Bill should include a schedule listing all national and provincial government departments required to undertake legislative reform and disability mainstreaming. This schedule should set clear timeframes (deadlines) for review and reform, establish reporting requirements (such as the integration of disability inclusion into existing reporting mechanisms like Annual Performance Plans), and mandate resource allocation, as discussed in the section D which follows.

### **C. Funding and resource allocation**

The Draft Bill's absence of funding provisions is a significant oversight that needs to be addressed. Rights without resources are merely promises on paper. While framework legislation need not detail specific funding models, it must create binding obligations for resource allocation and accountability. Without these express provisions for funding, the rights this Bill seeks to protect risk becoming aspirational statements rather than enforceable obligations.

The challenges in the education sector illustrate this problem. Despite constitutional and legislative guarantees to the right to education for *every* child, a lack of dedicated funding for disability inclusion has severely hampered implementation. First, funding for "special schools" (schools for learners with disabilities) under Programme 4, is conflated with funding for inclusive education. For example, funding spent on disability inclusion in full-service schools is not categorised (and traceable) as spending on inclusive education.<sup>2</sup> Infrastructure development, under a different Programme, may include spending on upgrades that incorporate universal design or retrofitted improvements to physical accessibility, but there is no way to track this spending/lack thereof

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<sup>2</sup> Full-service schools are ordinary public schools and are intended to provide low-intensive and moderate support to learners, whilst progressively building capacity towards full inclusion



because it is not categorised under disability inclusion. In essence, current budget structures make it impossible to track spending on disability inclusion, with no disaggregated data on allocations between special schools and inclusive education initiatives. When expenditure cannot be tracked, it cannot be monitored or enforced effectively.

Second, the level of funding for special schools is insufficient to fulfil the right to *free* quality basic education – while special schools are funded at a higher rate per learner, no special schools are a "no fee school".

To address this gap, we recommend that the Bill should, at minimum:

1. Require key departments at both provincial and national levels to provide disaggregated data on disability related budgets **and** expenditure. Relevant departments should be those listed in the schedule to the Bill that is recommended above in section C.
2. Create obligations for progressive funding increases.
3. Mandate annual reporting on disability-specific expenditure, for example in Annual Reports and Annual Performance Plans.
4. Establish an accountability measure for inadequate funding

#### **D. The Identification and Delineation of Duty Bearers**

A fundamental weakness of the Draft Bill is its failure to properly distinguish between and delineate the responsibilities of different duty bearers. The Bill frequently uses broad, undefined terms like "no person may" or "must ensure," without specifying who bears the duty to implement, monitor, or enforce these obligations. This vagueness undermines both accountability and enforceability.

##### **State Versus Private Obligations**

The Bill fails to recognise that the state bears primary responsibility for realising disability rights, with correspondingly weightier obligations than private actors. For instance, Section 14(1)(e) requires "the state, the mass media and other providers of information through the Internet" to provide accessible information formats - treating these vastly different entities as if they had identical obligations and capabilities. This approach ignores the reality that while a national broadcaster might reasonably be expected to provide sign language interpretation, an obligation to provide information in an accessible format may not be practicable/affordable for a small community newspaper without State support. In addition, "providers of information through the internet" is an extremely vague term that is too broad to identify any actual duty bearers.



Examples of Problematic Provisions:

1. Section 8 on reasonable accommodation applies identical standards to all “duty bearers”, from government departments to small businesses to individuals. It uses the term “any person who has the duty to provide reasonable accommodation” without identifying who duty bearers are.
2. Section 11 on barriers creates sweeping obligations without distinguishing between state and private responsibilities. For example, section 11(3) states that “the state and any person who have a duty to remove barriers for persons with disabilities, bear the burden of proving justification for refusing to remove barriers for persons with disabilities.” Smaller actors do not have the same capacity as the State to discharge this burden of proof.

**State Machinery**

The Bill's repeated reference to "the state" as a singular entity ignores the complex, multi-layered nature of government structures. Effective implementation requires clear designation of responsibilities to specific national departments, provincial departments, local government, Chapter 9 institutions and regulatory bodies.

**Private Sector Differentiation**

Similarly, private sector obligations must be differentiated according to characteristics like size, capacity, and public interest. Section 11(b) states that “the State must implement measures to identify and eliminate barriers to accessibility by ensuring that persons who offer facilities, goods and services to the public enable access for persons with disabilities”. To this end, the Bill should establish clear factors to be considered that take into account these differences when assessing obligations and compliance and ideally provide for a process whereby small private actors providing services with high public interest can apply for and are entitled to State support. For example, a small Early Childhood Development Centre that furthers not only early learning priorities but also plays a key role in the early identification and support of both children and parents of children with disabilities should be able to access State support to ensure disability inclusion.

**Recommendations:**

1. Create separate chapters for state and private sector obligations – see the National Strategic Framework on Reasonable Accommodation for Persons with Disabilities (2020) for an example of this.

2. Clearly identify responsible authorities for each major obligation
3. Establish assessment criteria for private sector duties
4. Establish clear oversight and accountability mechanisms
5. Specify enforcement bodies and procedures

**E. Aspirational rights, not specific and enforceable ones**

The primary purpose of domestication is to ensure that the provisions of the CRPD, to which South Africa is already bound as a State Party under international law, are meaningfully enforceable and harmonised with domestic legislative frameworks. Domestication therefore requires clear, precise legislation which identifies responsible stakeholders, unambiguous determinants of compliance, and consequences for non-compliance which are rational and constitutional. In addition, domestication Acts must establish rights and State obligations which are at least equal to those contained in the international instrument, although they may also introduce additional rights and obligations or set domestic fulfilment standards higher than those of the instrument.

The present draft legislation sets out rights and State responsibilities, but its framing of these is often aspirational, rather than establishing clear, measurable and enforceable duties. The draft legislation, in several instances, sets vague fulfilment standards which are *lower* than those contemplated by the Convention, as the latter uses more detailed peremptory language to describe the duties of State Parties. For example, Article 9(2) of the Convention details eight distinct, specific outputs which States *must* take appropriate measures to implement. By contrast, Section 10 of the draft Bill (which is intended to domesticate the contents of Article 9 of the Convention) does not refer directly to these distinct duties, referring instead to vague and undefined ‘measures’ to be implemented and monitored. In addition, Section 10(2)(c) introduces a retrospective limitation on State duties – that is, the State only has a duty to take ‘measures’ to ensure access to physical infrastructure, services and communications which are constructed or provided after the Act’s commencement. The Bill therefore places no duty on the State to take appropriate measures to enhance access to existing infrastructure, services or communications. The Convention does not contain such a limitation, and while some States Parties entered reservations to certain components of Article 9, South Africa ratified both the Convention and the Optional Protocol without reservation. Section 10 would fail, therefore, to domesticate both the contents and the fulfilment standard of Article 9.

Consequently, this draft would be an ineffective mechanism for implementation of South Africa’s existing duties, and its enactment would likely constitute a non-domestication of the Convention.

## **F. Enforcement and complaints mechanisms**

### ***Overlapping enforcement bodies***

The Draft Bill's approach to enforcement creates a confusing array of overlapping enforcement bodies without clear jurisdictional boundaries or procedures, while simultaneously failing to provide robust, practical enforcement mechanisms for rights violations.

The Bill establishes and identifies four key bodies for enforcement - the Conflict Administration Unit, the Equal Opportunities Office, the Equality Court, and monitoring powers for the Human Rights Commission - without clearly delineating their respective roles and responsibilities. This creates potential for jurisdictional confusion, forum shopping, inefficient use of resources, delayed remedies, and contradictory outcomes. A streamlined, single authority with clear powers would be more effective.

### **Administrative fines**

The Draft Bill's approach to administrative fines in Section 38(4) raises serious constitutional and procedural concerns. The provision that a person who is alleged to have committed an offence "may, with or without admission of guilt" pay an administrative fine fundamentally undermines basic principles of criminal justice and procedural fairness.

First, this provision appears to create a mechanism whereby persons can be compelled to pay fines without any finding of guilt or wrongdoing. This directly contradicts the constitutional principle of presumption of innocence and the right to a fair trial. By allowing fines to be imposed without admission of guilt, the provision essentially creates a system of penalty without proof.

Second, the provision is procedurally vague and potentially arbitrary. It fails to specify:

- Who determines whether a fine should be paid
- What criteria are used to make this determination
- What procedural safeguards exist
- Whether payment of the fine precludes further prosecution

- What happens if someone refuses to pay
- How the amount of the fine is determined in each case

Third, the provision appears to bypass established criminal procedure frameworks without creating alternative procedural safeguards. Unlike the Criminal Procedure Act's admission of guilt provisions, which are carefully regulated and include specific procedural protections, this provision operates in a procedural vacuum. The provision should be entirely reconsidered to align with constitutional principles and established criminal procedure.

### ***South African Human Rights Commission***

The recommendation made by the SALRC regarding the enforcement of domesticated obligations under the Convention centres the South African Human Rights Commission as both an oversight entity and the primary enforcement mechanism for violations. This would, in the current context, not be possible given the constraints on the Commission's capacity. These constraints include resource and logistical limitations but also include a recent Supreme Court of Appeal judgement<sup>3</sup> which held that the Commission does not, by virtue of its establishment as a Chapter 9 institution, have the power to enforce remedies through binding directives, and that it must instead use courts of law for all enforcement objectives. While the matter has been appealed by the Commission to the Constitutional Court,<sup>4</sup> the status quo is that the Commission would only be capable of litigating where enforcement is sought, which severely restricts its ambit for broad enforcement.

That said, it is important to note that the SCA judgement concerned the powers granted to the SAHRC under the Constitution *per se*. That is, legislation may still grant the SAHRC *ad hoc* powers, to the extent that such powers are not in themselves unconstitutional. A case may therefore be made for the expansion of the SAHRC's enforcement powers through express determination in legislation. If this avenue were to be pursued, the domestication of the CRPD would require the drafting of express provisions establishing specific enforcement duties and powers to be granted to the SAHRC, by virtue of *that* legislation. This may then enable the Commission to enforce remedies for violations, but only insofar as such violations are linked specifically to domesticated obligations of the CRPD.

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<sup>3</sup> South African Human Rights Commission v Agro Data CC & Another (Afriforum, Centre for Applied Legal Studies and Commission for Gender Equality intervening as Amici Curiae) (39/2023) [2024] ZASCA 121

<sup>4</sup> See SAHRC statement on SCA judgement here: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/4125-media-statement-sahrc-takes-judgment-on-its-powers-to-the-constitutional-court>

**G. Data collection and information systems**

The Draft Bill does not create obligations for comprehensive, disaggregated data collection across sectors. While it broadly addresses data protection, it fails to create specific requirements for systematic data collection and analysis, which is essential for effective policy implementation and monitoring.

The current state of education data illustrates this problem starkly. Estimates of out-of-school children with disabilities in South Africa range wildly from 40,000 to 600,000 - a disparity that renders effective planning and resource allocation impossible. This lack of accurate data, which the UN Committee on the Rights of Persons with Disabilities has specifically criticised, effectively masks the scale of exclusion and hampers efforts to address it.

Reliable disaggregated data serves multiple functions. It enables the identification of patterns of exclusion and discrimination, supports effective resource allocation, and provides the basis for monitoring implementation progress. Furthermore, it informs evidence-based policy development and enables targeted interventions where they are most needed.

The Bill should mandate the establishment of comprehensive data collection systems that operate across all relevant sectors. These systems must use standardised definitions and metrics, while collecting intersectional data that accounts for disability, gender, age, and location. These systems could facilitate coordination between departments to ensure coherent service delivery.

Without mandated data collection systems, it becomes impossible to measure progress, identify gaps, or hold duty bearers accountable for implementation. This perpetuates a cycle where the true extent of disability exclusion remains hidden, making it easier for systemic discrimination to persist unchallenged. You cannot address a problem you cannot identify or measure.

Section	Comments	Recommendations
1: Definitions	<p><b>“Accessibility”</b> - while the definition contained in the Bill is the definition adopted from the CRPD and provides guidance in understanding accessibility from an ideal perspective, this definition needs further clarification.</p>	<p><b>Accessibility</b> – the extent to which aspects of society can be equally, easily, safely, and appropriately used or reached by persons with disabilities or impairments; accessibility describes the extent to which an environment, service or product allows access to as many people as possible, in particular to persons with disabilities; These aspects include buildings, facilities, constructed spaces, transport, information, equipment, services,</p>



		activities, resources, utilities, language, communication and technology.
	<p><b>“Barriers”</b> - amendment to the current definition to make it more inclusive. Current reading of the definition is narrow and technical. It provides no insight as to what the term entails.</p>	<p><b>Barriers</b> - obstacles and impediments that prevent people from free movement, decision making, association, and participation. Barriers may be social (including high cost, lack of disability awareness, prejudice, cultural differences, communication difficulties), psychological (such as fear for personal safety) or structural (including infrastructure, operations and information).</p>
	<p><b>“Communication”</b> - amendment to the current definition to make it more inclusive. Current reading of the definition is narrow and technical. It provides no insight as to what the term entails.</p>	<p><b>Communication</b> - verbal and nonverbal means of conveying information, inclusive of languages, display of texts, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain language, lip-speaking services, speech reading services, whisper interpretation, note-taking services and augmentative and alternative modes, means and formats of communication, and communication technology human reader and augmentative and alternative modes, means and formats of communications as well as accessible information communication technologies</p>
	<p><b>“Discrimination”</b> - current wording is fragmented.</p>	<p><b>Discrimination</b> - any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly (a) imposes burdens, obligations or disadvantages on; and/or (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, which include disability and any other ground that might disadvantage a</p>



		<p>person, undermines human dignity or adversely affects an individual’s rights and freedoms.</p>
	<p><b>“Discrimination based on disability”</b> – amend current definition to include denial of reasonable accommodation as a ground.</p>	<p><b>Discrimination based on disability</b> – mean any distinction, exclusion or restriction based on disability which has the purpose or effect of impairing or nullifying the recognition enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, social, cultural, civil or any other field. <i><b>It encompasses all forms of unfair discrimination, whether direct or indirect, including denial of reasonable accommodation.</b></i></p>
	<p><b>“Undue hardship”</b>- current definition does not provide clarity or detail. In addition, it is used interchangeably throughout the draft Bill with the term “Undue Burden”.</p>	<p><b>Unjustifiable hardship</b> (legal interpretation) – unjustifiable hardship is an action that requires significant or considerable difficulty or expense; this involves considering, among other things, the effectiveness and efficiency of the accommodation and the extent to which it would seriously disrupt the operation of the business or create a disadvantage.</p>
	<p><b>“Necessary Accommodation”</b></p> <p>The Bill introduces the concept of “necessary accommodation”, distinguishing between “necessary” and “reasonable” accommodation. This distinction creates confusion and contradicts the UNCRPD’s definition of reasonable accommodation as well as the definition used in South Africa’s Strategic Framework on Reasonable Accommodation.</p>	<p>We recommend the Draft Bill abandon the distinction and align with the UNCRPD’s established definition. This would provide a single, coherent standard that acknowledges that reasonable accommodations are, by their nature, necessary.</p>



	<p>The UNCRPD defines reasonable accommodation as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden.” This definition makes clear that reasonable accommodations are, by definition, necessary – they are modifications and adjustments needed to ensure persons with disabilities can enjoy their rights on an equal basis with others (not nice to haves). The only limitation is whether these necessary accommodations would impose a disproportionate or undue burden.</p> <p>The Bill’s creation of a separate category of “necessary accommodation” undermines this established framework. This distinction risks creating a hierarchy of accommodations where some are deemed necessary and others reasonable, potentially leading to a situation where necessary accommodations could be denied if not deemed reasonable.</p>	
	<p>We recommend the following definitions be included, accompanied by appropriate provisions.</p>	<p><b>Assistive devices</b> - any device, product, equipment or tool that is designed or adapted to enable persons with disabilities to participate in activities, tasks or actions. Products may be specifically produced or generally available for persons with disabilities or according to specific needs of individual.</p> <p><b>Assistive technology</b> - an umbrella term that includes assistive, adaptive, and rehabilitative devices and services for persons with disabilities, which enable persons with disabilities to attain independence</p>



		<p><b>Department</b> - any government department responsible for service delivery within the three spheres of government; whether national, provincial and municipal government. It also includes the agencies of any government department, state-owned entities or sector institutions.</p> <p><b>Disability Mainstreaming</b> - a systematic integration of the priorities and requirements of persons with disabilities across all sectors of society. It require effective planning, adequate human resources, and sufficient financial investment – accompanied by specific measures such as targeted programmes and services with the outcome of enabling persons with disabilities to participate in mainstream society and to continue to participate throughout their lives.</p> <p><b>Duty-bearers</b> - in human rights law, duty-bearers include government and their agencies national, provincial and local levels of government, traditional and tribal authorities, any government agency in any government department, all public officials and service providers in the public and private sector.</p> <p><b>Empowerment</b> - processes, procedures and actions aimed at affording access, equal treatment, inclusion, participation, accountability and efficiencies.</p> <p><b>Enabling environments</b> - Interrelated physical and other infrastructures, built environments, culture, laws, policies, processes and procedures, information and communication technologies, capacity and knowledge of staff in organisations</p>
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		<p>that must be in place to facilitate the socio-economic development of all persons, regardless of age, gender, disability, culture etc</p> <p><b>Exclusion</b> - the act of socially isolating or marginalizing an individual or groups on the basis of disability, gender, race, language, sexual orientation culture, religion or socioeconomic status, by not allowing them to participate or enabling them to benefit. Exclusion occurs when specific needs are not accommodated, by allowing or enabling someone to fully participate, or to be included in society and enjoy the same rights and privileges as others who are not discriminated against.</p> <p><b>Full and equal participation</b> - equal participation occurs if equalisation of opportunities to participate is provided through universal design and reasonable accommodation measures. In adapting to social structures, social models focus more sharply on empowerment, participation and modifications to promote equalisation of opportunities for all.</p> <p><b>Impairment</b> - Impairment is a perceived or actual feature in the person’s body or functioning that may result in limitation or loss of activity or restricted participation of the person in society with a consequential difference of physiological and/or psychological experience of life. For example, the International Classification of Disease (ICD) could be utilised for purposes of defining physical, sensory, intellectual, psychosocial and neurological impairments</p>
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		<p><b>Information and communications technology</b> - an umbrella term which includes any kind of information and communication device or application and its content, and encompasses a wide range of access technologies, such as radio, television, satellites, GPS, mobile phones, fixed lines, computers, tablets and network hardware and software.</p> <p><b>Independence</b> - state of being whereby available and adequate support services, assistive devices and personal assistance to persons with all disabilities enables persons with disabilities to exercise choice, bear responsibility and participate fully in society.</p> <p><b>Independent living</b> - the ability of a person to live just like anyone else, to have opportunities to make decisions that affect their lives and to be able to pursue activities of their own choosing with the necessary support to enable persons with disabilities to live independently.</p> <p><b>Mobility</b> - the means by which a person, whether with a disability or without, moves in their current environment. It is the ease of human movement with or without the use of assistive devices, (such as devices that augment dexterity, communication, sight or hearing) and mobility aids, such as wheelchairs, crutches, guide dogs and mobility canes</p> <p><b>Progressive realisation</b> - The concept of progressive realisation constitutes recognition of the fact that full realisation of all economic, social and cultural rights will generally not be able to</p>
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		<p>be achieved in a short period of time. It imposes an obligation to move as expeditiously and effectively as possible towards that goal, and to be able to provide evidence that this is being achieved.</p> <p><b>Universal access</b> - the removal of cultural, physical, social and other barriers that prevent people with disabilities from entering, using or benefiting from the various systems of society that are available to other citizens and residents. The absence of accessibility or the denial of access is the loss of opportunities to take part in the community or society on an equal basis with others.</p> <p><b>Universal design</b> - the design of products, environments, programmes and services to be usable by all persons to the greatest extent possible without the need for adaptation or specialised design.</p>
<p>Section 8</p> <p>Reasonable accommodation</p>	<p><b>“Reasonable accommodation”</b> -</p> <p>The Bill defines reasonable accommodation with reference to “disproportionate or undue burden,” yet fails to definite what constitutes an undue burden. Instead, it defines “undue hardship” as accommodations that will impose a “disproportionate burden” – a circular definition that provides no meaningful standard for assessment or practical implementation. To add to the confusion, the definition and</p>	<p>The Bill should establish clear, standardised factors for assessing both reasonable accommodation and any limitations based on burden or hardship. These factors should address the assessment process, financing obligations, and comprehensive cost-benefit analysis, particularly for public sector accommodation. The Bill should also reiterate the duties of government departments across sectors to provide for codes of practice, as mandated by PEPUDA, and in addition, provide timeframes in which this must be done.</p>



further provisions regarding reasonable accommodation set out in section 8 are not aligned with other existing definitions in South African law and policy (like Strategic Framework on Reasonable Accommodation for Persons with Disabilities).

For instance, the Code of Good Practice on Disability in the Workplace uses the term “unjustifiable hardship”, defined as “action that requires significant or considerable difficulty or expense”. Importantly, this concept has been developed to be more rigorous than “undue hardship”, reflecting South Africa’s historical context and the need to address systemic patterns of exclusion.

The Draft also does not provide for standardised factors for assessing either reasonable accommodation or undue burden. Factors could include, but not be limited to, the cost, the capacity of the duty bearer, the nature and extent of the duty owed, the nature and extent of the rights infringement, and the number of requests.

The Draft Bill would be strengthened by the inclusion of such factors, combined with the distinction between the roles and responsibilities various stakeholders and duty bearers.

For example, when considering public sector/government obligations, cost-benefit analysis must consider broader societal impacts. For example, when assessing the cost of providing reasonable accommodation in education, the analysis must consider not just the immediate financial cost, but also the



	<p>long-term economic implications of exclusion – including dependency on social assistance, lost productivity, and the economic impact on families who must provide full-time care.</p> <p>The Draft Bill should also mandate specific sectors to develop codes of practice within a specified timeframe to account for sectoral differences and provide further content to reasonable accommodation that is sector specific. This is in line with duties under PEPUDA to “develop codes of practice... in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation.” Education-specific guidelines for schools, parents, and education departments outlining the scope of reasonable accommodation as well the identification of whose duty it is to provide such accommodation would greatly benefit learners with disabilities.</p>	
Section 8(4)	<p>While the section may be accepted as progressive in its attempt hold the state and persons accountable, there ought to be more guiding this duty/responsibility.</p>	<p>We recommend this section must be amended to include provisions relating to:</p> <ul style="list-style-type: none"><li>i. How one ought to request said justification - the process to be followed</li><li>ii. Time frame of when reasons/justifications must be provided.</li><li>iii. The form in which justification must be provided.</li></ul>
Section 9(1)	<p>Section introduces or makes use of the concept of bare minimum without providing a definition/ criterion and further</p>	<p>First, we recommend the removal of the distinction between “necessary accommodation” and “reasonable accommodation,” a reasonable accommodation is necessary.</p>



	<p>makes use of peremptory language without clarifying who bares this obligation.</p>	<p>In the alternative, should the distinction remain, we recommend the inclusion of a definition and/or an explanatory note on the term “bare minimum,” who the duty bearers are, and the criteria to be applied in determining what the bare minimum is.</p>
<p>Section 9 (2)</p>	<p>The section provides that “necessary accommodation must be made available on request”.</p> <p>The section does not provide for the following;</p> <ol style="list-style-type: none"><li>1. Whom the request is made to</li><li>2. By whom the request is made</li><li>3. Who is eligible to make such a request</li><li>4. Format in which the request is to be made</li><li>5. Circumstances that qualify as necessary</li><li>6. Timeframe by which request must be made</li><li>7. Timeframe by which necessary accommodation must be made available.</li></ol>	<p>Consider re-drafting the section to include more detail and clarify the questions identified.</p>
<p>Section 10(2)</p>	<p>This section reads as follows:</p> <p>“(2) The <i>state</i> must implement and monitor measures to ensure –</p> <p>a) access to the physical environmental, buildings, structures, and infrastructure; and</p> <p>(b) transportation, information, communication, and services open to the general public,</p>	<p>We recommend these sections are clarified and amended.</p>



	<p>(c) that are built, manufactured, produced or rendered after the commencement of this Act.</p> <p>(d) The <i>state</i> may in consultation with any person, including employers and providers of goods and services, assign to that person the duty to provide <i>accessibility to persons with disabilities</i>.</p> <p>(e) The <i>state</i> and any person who have a duty to provide <i>accessibility to persons with disabilities</i>, bear the burden of proving justification for refusing to provide <i>accessibility to a person with disabilities</i>.”</p> <p>This section does not make grammatical sense and it is unclear. For example, section 10(2)(c) essentially states “The <i>state</i> must implement and monitor measures to ensure that are built, manufactured, produced or rendered after the commencement of this Act.”</p> <p>Further, subsections (d) and (e) do not follow from section 2 and instead seem as though they should instead by sections 3 and 4.</p>	
Section 12 – Older persons, women and children	Section deals with matters that are child specific in nature, which are also dealt with in depth in other primary legislation, and specifically the Children’s Act 38 Of 2005.	We recommend the inclusion of a reference to the Children’s Act 38 of 2005 as amended and any other applicable law when interpreting and applying provisions of S12 of the Bill.



Section 12(2)(b)	This section does not make grammatical sense, and it is unclear from the wording and strict reading of the section what the intention of the drafter is.	We recommend this section is redrafted to make clear the intended purpose.
Section 12(2)(f)	<p>This section states that “Children with disabilities and their families have equal rights to family life and to receive early and comprehensive information, services and support to realise these rights.”</p> <p>It would be beneficial for the section to elaborate on the interconnectedness of children’s and family rights. For example, a child’s right to early intervention and support services directly connects to the parent’s need for training, support and resources to facilitate their child’s development. Early childhood development cannot be viewed in isolation from family support systems. Similarly, healthcare services must address both the child’s medical needs and the family’s capacity too provide ongoing care and support.</p>	<p>We recommend that the Bill should explicitly outline entitlements including the right to:</p> <ul style="list-style-type: none"><li>i. Comprehensive early childhood development services</li><li>ii. Healthcare rights that recognise family centred care</li><li>iii. Social service entitlements</li><li>iv. Parental support programmes</li></ul>
Section 15 - Education	First and foremost, section 15(3) which states that “The state must provide primary education for persons with disabilities at no financial cost” is misguided and does not align with the Constitutional right of all learners to a free basic education	<p>Section 15(3) must be amended to state:</p> <p>“The state must provide, at a minimum, basic education for persons with disabilities at no financial cost.”</p>



	<p>(including free secondary education) which starts from Grade R to Grade 12.</p> <p>White Paper 6 describes an inclusive education and training system as a system which is about maximising the participation of all learners in the culture and the curricula of educational institutions and identifying and mitigating barriers to learning. One of the most significant barriers to learning for learners in special and “ordinary” schools is the curriculum. In this case, barriers to learning arise from different aspects of the curriculum, such as:</p> <ul style="list-style-type: none"><li>i. The content (i.e. what is taught).</li><li>ii. The language or medium of instruction.</li><li>iii. How the classroom or lecture is organised and managed.</li><li>iv. The methods and processes used in teaching.</li><li>v. The pace of teaching and the time available to complete the curriculum.</li><li>vi. The learning materials and equipment that is used.</li><li>vii. How learning is assessed.</li></ul> <p>We note that the most important way of addressing barriers arising from the curriculum is to make sure that the process of learning and teaching is flexible enough to accommodate different learning needs and styles</p>	<p>We recommend that the Draft Bill provide for mechanisms to monitor the implementation of an inclusive education system and that it require the adoption of an intersectoral approach to inclusive education.</p>
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<p>Section 41(3)(b) – Interdepartmental Coordinating Structure</p>	<p><b>Early identification and intervention</b></p> <p>Early identification is critical to ensure access to early intervention services to support optimal development. Often disabilities are identified through access to health services or whilst young children are included in ECD Centres. It is essential that information regarding a child’s learning and developmental needs be transferred seamlessly and that referrals for assessment can occur easily. In South Africa, despite the recommendation of the CRC Committee to “Improve inter-sectoral coordination to provide integrated services to children with disabilities and their families and caregivers”, the lack of effective integration and coordination of service across different departments remains a significant challenge.</p>	<p>Section 41(3)(b) states “the <i>Minister</i> may establish structures and practices to co-ordinate the actions by the <i>state</i> to give effect to <i>this Act</i>.”</p> <p>We recommend that “may” be changed to “must”.</p>
<p>Section 27(3)(g)</p>	<p>Section provides that the exclusion of children with disabilities from free and compulsory primary education, or from secondary education because of their disability is discrimination.</p> <p>While we in the main agree with this provision, it is important to include Early Childhood Care and Education which forms part of Early Childhood Development.</p> <p>Early childhood development (ECD) is a comprehensive approach to programmes and policies for children from birth to seven years of age. Its purpose is to protect the rights of children to develop their full cognitive, emotional, social and physical potential.</p>	<p>Section be amended to include Early Childhood Care and Education.</p>



	<p>ECCE often receives low priority in education policies and investment and may exclude marginalized groups including learners with disabilities. Much of ECCE is privately provided, adding to its vulnerability. Extending education rights to include early childhood care can significantly impact developmental outcomes for children, more importantly learners with disabilities. Evidence suggests that legal provisions for compulsory pre-primary education can boost early development.</p>	
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