EELC EQUAL EDUCATION LAW CENTRE

SUBMISSIONS ON THE CHILDREN'S AMENDMENT BILL 2025 (DEPARTMENT OF SOCIAL DEVELOPMENT)	
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SUBMISSION BY THE EQUAL EDUCATION LAW CENTRE	
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INTRODUCTION

The Equal Education Law Centre (EELC) is a public interest law organisation using legal advocacy, research, litigation and movement support to advance the right to equal, inclusive and quality education for all learners in South Africa. Early Childhood Development (ECD) is one of our key areas of work. We are committed to ensuring that the legal and policy framework governing education, including ECD, promotes access, equity, and quality, particularly for learners in under-resourced communities.

We welcome the opportunity to comment on the Children's Amendment Bill 2025 (CAB 2025) published by the Department of Social Development (DSD) on 26 September 2025. According to the Cabinet Statement, the Bill aims to update and strengthen the existing Children's Act, 2005 (Act 38 of 2005), focusing on several key areas such as weaknesses and inadequacies in the childcare and protection systems. With this in mind, this submission focusses exclusively on the proposed amendments to provisions governing partial care, and their implications for the ECD sector, and on the provisions governing child protection.

Our submission is divided into 3 sections: (1) Context and guiding constitutional principles; (2) Our position on partial care provisions with recommendations; (3) Our position on provisions relating to child protection.

Please note that the EELC is a member of the steering committee and the legal subcommittee of the Real Reform for ECD Movement (RR4ECD). Unless otherwise indicated, we agree with and endorse the contents of the RR4ECD submission.

1. CONTEXT AND GUIDING CONSTITUTIONAL PRINCIPLES

In reviewing amendments to the Children's Act, the DSD must ensure that all changes advance the rights guaranteed under section 28 of the Constitution and align with the State's obligations under section 7(2) to respect, promote and fulfil children's rights.

The proposed amendments must also be consistent with the National Integrated ECD Policy (2015), which recognises that ECD services, including home and community-based care, are integral to the realisation of children's rights to education, development, and protection.

2. COMMENT: PROVISIONS ON PARTIAL CARE

2.1. Coordination between DSD and DBE Law Reform Processes

The EELC notes with concern the lack of coordination and alignment between the DSD's CAB 2025 and the Department of Basic Education (DBE) draft Children's Amendment Bill published for comment in May 2024 (DBE CAB 2024).

Currently, the Children's Act still requires ECD centres to obtain dual registration as both partial care facilities and ECD programmes. This duplication has long been identified as a major obstacle to compliance and efficient regulation. The DBE CAB 2024 seeks to resolve this by amending the Act so that ECD centres no longer fall within the definition of partial care, thereby consolidating registration into a single process under DBE oversight.

However, the DBE CAB 2024 has not yet been introduced to Parliament, and therefore, the dual registration requirement remains in law. The DSD's proposed amendments to partial care, if passed first, would therefore apply to ECD centres and affect how these services are funded and supported. Given the unpredictability of the legislative process and the fact that the two Bills will be processed by different Portfolio Committees, it is important that the DSD's legislative reform process is sequenced and aligned with the DBE's legislative timetable to prevent duplication, incoherence, and unintended consequences. The failure to do so risks undermining ongoing reforms to rationalise, fund, and streamline not only the ECD regulatory framework, but the ECD sector.

EELC therefore recommends:

- No amendments to the partial care provisions be finalised or enacted until alignment with the DBE's legislative reform process has been achieved.
- The DSD and DBE establish a formal coordination process in the form of either the interdepartmental task team or a memorandum of understanding to guide the sequencing and coherence of their respective amendments before either Bill is tabled in parliament.

This coordination is essential to prevent regulatory fragmentation and to ensure a continued smooth and coherent transition of ECD functions under the Children's Act.

2.2. Concerns regarding retrogressive amendments to funding for partial care

EELC submits that certain amendments proposed by the DSD CAB 2025, particularly to section 78 are retrogressive and inconsistent with constitutional and developmental imperatives.

i. Weakening of state obligation

The proposed amendment to section 78(4) commendably introduces priority funding for poverty-declared wards, complementing the existing focus on under-resourced communities and for children with disabilities. However, the amendment simultaneously changes the MEC's duty to fund from a mandatory obligation ("must prioritise") to discretionary power ("may prioritise and fund").

This subtle change has far-reaching implications. It removes a clear legal duty to prioritise and fund partial care services in poor communities and replaces it with a permissive discretion that may be exercised unevenly across provinces. This shift would weaken accountability and risk reducing access to state support for the poorest and most vulnerable children and families, precisely where it is needed most.

Such a regression is inconsistent with section 28(1)(c) of the Constitution which guarantees every child's right to basic nutrition, shelter, basic health care services, and social services, and section 28(2) which requires that the best interests of the child are paramount in all matters concerning the child.

As such, EELC recommends:

- That section 78(4) retain the wording "**must** prioritise and fund" to preserve the binding nature of the MEC's duty to support services in poorer, under-resourced areas.

ii. Exclusion of home-based care facilities from infrastructure funding

The proposed new section 78(5) excludes a range of facilities, including private homes and properties not owned by non-profit organisations (NGOs), from eligibility for infrastructure funding.

This exclusion is deeply anti-poor. Across South Africa, thousands of women provide childcare from their own homes, particularly in informal settlements, townships, and rural areas. These home-based facilities are often the only accessible and affordable form of care available to young children in low-income communities. Excluding home-based facilities from eligibility for infrastructure support will disproportionately harm children in poor households and undermine progress towards equitable access to quality care. It also risks pushing providers further into informality and non-compliance, undermining regulatory and developmental objectives of the Children's Act.

As mentioned, home-based childcare is predominantly provided by women who shoulder the burden of care without adequate state support. Excluding their facilities from infrastructure funding undermines women's economic participation and contradicts the State's commitment to gender equality and the economic empowerment of women.

While EELC acknowledges the state's concerns about accountability and misuse of funds, these risks can be effectively mitigated through existing mechanisms such as:

- Clear eligibility criteria and guidelines for infrastructure grants;
- Risk assessments and control systems within the registration process;
- Claw-back clauses in funding agreements for cases of non-compliance or fraud; and
- Strengthened monitoring and reporting systems.

There is ample precedent for the state subsidising private property for public benefit. Investment in home-based care facilities should be viewed through a developmental lens. A child's right to quality care and protection should not depend on whether the caregiver owns or rents their premises.

EELC therefore recommends:

- That section 78(5) be removed entirely, or be revised to allow for infrastructure support to home-based care facilities subject to safeguards that ensure public accountability.

- Ultimately, a comprehensive socio-economic impact assessment that focuses on access implications for poor households should be conducted before finalising any amendments to section 78 of the DSD CAB 2025.

3. COMMENT: CHILD PROTECTION PROVISIONS

We welcome the Draft Bill's intention to enhance support for providers of prevention and early intervention programmes. We recommend, however, that clearer language be used for the proposed amendment of section 146(3) of the Act, which deals with compliance requirements for providers seeking funding.

Section 67(a) of the Draft Bill would substitute the existing words 'only qualifies for funding' with 'may qualify for funding' and inserts 'substantially' before 'comply' in the phrase 'if the programmes comply with the prescribed national norms and standards.' While the intention is clearly to reduce the rigidity of compliance requirements which are a barrier to service provision, the phrases 'may qualify for funding' and 'substantially comply' risk ambiguous interpretation and inconsistent application, especially when read together.

It is possible that 'may qualify for funding,' read with 'substantially comply,' has at least three different meanings. The first possible meaning is that substantial compliance *could* qualify a service provider to receive funding, but that this would be subject to a determination of each individual case. If this is the case, it is unclear what would inform a decision to approve or deny funding to different programmes which all substantially qualify with the section 147 national norms and standards.

The second possible meaning is that (at least) substantial compliance is a sufficient but unnecessary condition for receiving funding – that is, that substantial compliance would qualify a service provider for funding, but that non-substantially compliant providers may nevertheless be considered eligible for funding in some circumstances. Once again, this would leave uncertainty as to the circumstances or criteria under which such a determination could be made.

The third possible meaning – and perhaps the most logical inference from context – is that compliance is still a necessary condition for funding of any prevention or early intervention provider, but that the threshold is lowered by the amendment to being one of substantial, rather than full compliance. If this is the intended meaning, we recommend retaining 'only qualifies' or using 'may only qualify' rather than 'may qualify,' and using 'substantially or fully comply' rather than 'substantially comply.'

That is, the amended section might read:

> *''(3) The provider of prevention and early intervention Programmes may only qualify for funding contemplated in subsection (1) if the programmes substantially or fully comply with*

the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.''

We welcome the amendment of section 147(1) of the Act, proposed at section 68(a) of the Draft Bill, especially the express inclusion of civil society organisations with an interest in the development of the abovementioned section 147 norms and standards. We similarly welcome the inclusion of civil society at section 68(b), in its proposed amendment of section 147(2) of the Act.

The Draft Bill would not, however, address a fundamental constraint in the Act's provisions for prevention and early intervention. The Act lists prevention and early intervention as distinct (albeit related) programmatic areas, but its description of 'prevention' programming is largely responsive in nature, not preventative. Under section 143 of the Act, the provision of 'prevention' services requires identification of specific families requiring support, who are then empowered and capacitated to avoid harm, or the escalation thereof. In essence, this is *also* a form of early intervention, premised on identification of *specific* risk.

Prevention is most effective when it is systemic. Systemic prevention programming entails broader and more extensive training, awareness raising, and consultation with communities and at institutions such as schools and early childhood development centres. They recognise that harm to children is an *inherent* risk in any and every interaction with children, and that prevention requires wholescale participation. Importantly, these forms of programming are not reflected or are underrepresented in sections 143 and 144. Consequently, the national norms and standards for prevention and early intervention, and the abovementioned funding contemplated in terms thereof, risk not capturing and providing for these crucial forms of child protection programming.

The EELC recommends:

- That a revised iteration of the Draft Bill makes amendments explicitly recognising and providing for truly preventative programming, inclusive not only of family support, but also of whole-community prevention programmes, which may also qualify for funding in terms of the norms and standards for prevention and early intervention.

4. CONCLUSION

The EELC welcomes the DSD's continued efforts to strengthen the legal framework for the care and protection of children. However, we are concerned that several poroposed amendments may have unintended consequences that risk weakening, rather than enhancing, children's access to quality care and protection.

With respect to partial care, EELC urges the DSD to:

1. Align and coordinate its reform process with that of the DBE to ensure coherence;

2. Retain the mandatory funding obligation in section 78(4) to ensure continued state prioritisation of under-resourced communities and poverty declared areas;
3. Remove or revise section 78(5) to avoid the exclusion of home-based care providers from infrastructure support; and
4. Undertake and publish a socio-economic impact assessment that investigates specifically the impact of the proposed amendments on access for poor households and young children.

With respect to the child protection amendments, the EELC welcomes the recognition of the need to support providers of prevention and early intervention services. However, we recommend clearer drafting of section 146(3) to avoid ambiguity and inconsistency in funding eligibility determinations. EELC furthermore recommends that the Bill explicitly recognise and fund systemic, community-based prevention programmes, including those operating through schools and ECD centres. Current provisions describe prevention largely as responsive rather than proactive, limiting the ability to promote whole-community approaches to preventing harm before it arises.

We therefore urge the DSD to ensure that amendments to the Children's Act reflect a holistic and proactive approach to child protection, one that enables civil society, communities, schools, and ECD centres to play an active role in building safe, supportive environments for children.

Ultimately, both the proposed partial care and child protection amendments must advance and not diminish the realisation of children's rights as guaranteed by the Constitution.