

Law reform and case law affecting children 2024/25

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In this chapter, we summarise and comment on recent law reform and court cases that affect children, with a focus on key developments in the areas of education and child health, followed by a summary of the draft National Strategy for Accelerated Action for Children.

Education

The South African Council of Educators (SACE) published a revised policy on sanctions for educators found guilty of misconduct. Educators found by SACE to have used corporal punishment in schools can now be required to attend programmes aimed at equipping them to manage conflict in the classroom in non-violent ways. In the context of overcrowded classrooms and corporal punishment still being prevalent in many schools, capacitating educators on non-violent methods to manage classroom dynamics will contribute to making schools safer for learners.

Many schools continue to lack the basic infrastructure needed for a conducive and safe learning environment: water, sanitation, electricity, perimeter security, safe building materials and enough classrooms, and libraries and laboratories. Regulations that set norms and standards, and timeframes for meeting these standards, were first promulgated in 2013. These have helped to hold government accountable for providing the infrastructure required but the deadlines have not been met for all schools. Revised regulations promulgated in June 2025 incorporate a public planning and reporting process aimed at promoting accountability, but do not include any deadlines; raising concerns about governments ability and commitment to meet the norms and standards for all schools.

Draft regulations on school capacity and admissions have been published for public comment. If drafted appropriately, they could contribute to the realisation of the transformative intent of the Basic Education Laws Amendment Act – greater

equity across the education system. The consultation period has been extended twice, in recognition of the significant public interest.

SACE's Sanctioning Policy for educators guilty of misconduct

In September 2024, the South African Council of Educators (SACE) published a revised version of its *Sanctioning Policy: For the contravention of the code of professional ethics*. The revisions were ordered by the High Court, after hearing a case where inadequate sanctions were imposed on two teachers who had assaulted learners.¹

Centre for Child Law v SACE

The first incident involved a seven-year-old child who was hospitalised after a teacher hit him with a PVC pipe, the second incident involved a ten-year-old learner who was slapped across the face by a teacher and sustained head injuries that left her bleeding from the ears and with long-term medical complications. In accordance with the 2016 SACE sanctions policy, both teachers were fined R15,000 and it was decided that they should be removed from the register of educators. However, their removal from the register of educators was suspended for 10 years on condition that they were not found guilty of similar misconduct. The SACE sanctions policy did not include the option of requiring educators to attend rehabilitative programmes to equip them with knowledge and skills to restore discipline using non-violent measures. As a result, the educators were allowed to return to the classroom without acquiring the tools to change their behaviour, putting learners at continued risk.^{vi}

In 2019, just over one million children aged 5 – 17 years reported experiencing some form of violence, including corporal punishment, at school.² Corporal punishment not only results

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^{vi} The Supreme Court of Appeal (SCA) ordered SACE to review the sanctions imposed on the two educators at the centre of the case. Consequently, SACE later added rehabilitative sanctions to the fines and suspended sentences they had initially received.

in physical injury but is also associated with adverse mental health and behavioural outcomes that can have long-lasting effects. For many children, schools become spaces where they constantly fear being harmed. This environment contributes to school avoidance, difficulty concentrating, impaired learning, poor academic performance, and, in some cases, school dropout which culminate in significantly reduced lifetime earnings.

Corporal punishment must be understood as a structural problem, perpetuated by a broader system that has historically endorsed the use of violence as a legitimate means of disciplining learners. It is often a symptom of inadequate teacher training in classroom management, making it an accessible – albeit harmful – fallback strategy. In contexts where schools are under-resourced, learner-to-teacher ratios are high, and in-class support for educators is limited – the likelihood of resorting to harsh disciplinary practices increases. Addressing this deeply entrenched issue is critical.

Expecting individual teachers to change their behaviour when they work in a school culture where violence is normalised and corporal punishment is rife, is unrealistic if we do not give them the tools. To promote real change within the school environment, the Centre for Child Law (an applicant) and Children's Institute (a friend of the court) argued in front of the court for the inclusion of rehabilitative sanctions in the policy. The Children's Institute's submissions included an expert affidavit that demonstrated that rehabilitative programmes can empower teachers to effectively manage learners' behaviour, making their jobs less stressful and more rewarding, and that these programmes are relatively short in duration, readily available and cost effective, or free in many instances.³

SACE's 2024 Sanctioning Policy

SACE's new 2024 Sanctioning Policy outlines the overarching rationale for imposing sanctions on educators found guilty of professional misconduct, including the use of corporal punishment. It details guiding principles (including the best interests of the child), applicable sanctions, procedural steps and a structured decision-making framework to ensure consistency and fairness in disciplinary processes and outcomes.

The policy includes corrective and rehabilitative sanctions such as anger management and training on non-violent child discipline techniques, and allows for an educator's mandatory removal from the educators register in the case of serious assaults of learners. It also establishes procedures to ensure that the views of children and parents are considered when sanctions are set.

Equipping educators to manage difficult classroom behaviour

Retraining teachers after a guilty verdict helps to protect individual children and change the culture in our schools and society. On a broader level, there is an urgent need to invest in training all teachers to enable them to manage difficult classroom behaviour as this has the potential to shift the experience of millions of children across South Africa. Ideally this should be incorporated into teacher training and continual professional development.

South African Schools Act: Minimum Uniform Norms and Standards for Public School Infrastructure

The 2013 Regulations

On 29 November 2013, the Minister of Basic Education published *Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure*.⁴ These Regulations established legally binding minimum infrastructure norms and standards that needed to be met at each public school to ensure that proper teaching and learning could take place.

The Regulations described norms and standards related to electricity and water supply, sanitation, libraries, sports and recreation facilities and universal design^{vii} that must be implemented in each school. Importantly, the Regulations included timeframes within which these norms and standards were meant to be implemented and clarified the norms and standards that had to be prioritised. More specifically, all schools built from mud and materials such as asbestos, metal and wood; and all schools that did not have access to any form of power supply, water supply or sanitation; had to be assisted by 29 November 2016.

Norms and standards relating to the availability of classrooms, electricity, water, sanitation, electronic connectivity and perimeter security had to be implemented by 29 November 2020, while norms and standards relating to libraries and laboratories for science, technology and life sciences had to be implemented by 29 November 2023.

All remaining norms and standards, such as those relating to sports and recreation facilities and universal design had to be implemented before 31 December 2030.

Unfortunately, the Department of Basic Education (DBE) has not met all the 2013 Regulation's deadlines and infrastructure needs at many public schools remain unaddressed today. Notwithstanding, the Regulations' timeframes remained legally binding and meant that civil society could continue to hold the

vii The 2013 Regulations defines "universal design" as "the design of products, environments, programmes and services to be usable by all people, to address the diversity of learners and teachers with functional limitations."

DBE accountable for missing these deadlines and thereby violating learners' rights to basic education.^{viii}

The May 2024 Regulations

Following a court order handed down in 2018, the DBE was obliged to amend the 2013 Regulations to, amongst other things, revise vague language and strengthen provisions that ensured accountability and transparency.^{ix}

After much delay, new Regulations replacing the 2013 regulations were published on 28 May 2024.⁵ Unfortunately, only three timeframes concerning the implementation of norms and standards were included in these – namely, that schools with no water or power supply or sanitation had to be assisted by 28 November 2025⁶ and schools without perimeter fencing had to be assisted by 28 May 2025.⁷ The implementation of norms and standards to assist schools with insufficient classrooms also had to be addressed and reviewed annually.^{x,8}

The June 2024 Regulations

Without any warning or justification, the May 2024 Regulations were withdrawn and on 27 June 2024, new Regulations were published⁹ which removed all timeframes within which norms and standards had to be implemented, except those pertaining to overcrowded classrooms.¹⁰ In terms of these, all that is now required is that specific norms and standards be included in provincial infrastructure plans by 27 June 2025, and that progress on the implementation of these be reported on annually.^{xi,11}

Notably, the June 2024 Regulations do include stricter, and more detailed, reporting obligations for provincial education

departments (PEDs).^{xii} In particular, PEDs must submit a detailed infrastructure plan to the DBE on the implementation of the infrastructure programme ninety days after the beginning of each financial year.^{xiii,12} In addition, PEDs must submit an End of Year Evaluation Report to the DBE sixty days after the end of the financial year, indicating progress made in implementing the infrastructure programme.^{xiv,13} The plans and reports must also be published on the DBE and PED's websites.¹⁴

In terms of the 2013 Regulations, Members of the Executive Council for Education (MECs) were also obliged to provide the Minister of Basic Education with a detailed plan on the manner in which the norms and standards were to be implemented by 29 November 2014 and thereafter on an annual basis.^{xv,15} MEC's were also obliged to report annually on the implementation of the afore-mentioned plans¹⁶ However, fewer aspects had to be reported on, the submission of annual reports were not subject to express timelines in the regulations, and there was no requirement to make the reports public.^{xvi}

The stricter and public planning and reporting obligations are an improvement. However, without prescribed timeframes, the June 2024 Regulations remain problematic as the prioritisation of norms and standards and the timeframes within which these will be met, will be determined solely by PEDs.

Commitment to review the June 2024 Regulations

The promulgation of regulations in 2013, which included prescribed timeframes, was the result of persistent activism and eventual litigation.^{xvii} The June 2024 Regulations have diluted this hard-won victory and the obligations resting on the

viii For example, in *D.M. Mahuda and Another v Minister of Basic Education and Others* case no. 21/16034, SECTION27 intervened as amicus curiae (friend of the court) and, amongst other things, submitted that the Gauteng Department of Education (GDE) failed to meet the 29 November 2020 deadline in the 2013 Regulations obliging it to provide fencing to schools in the province and ensure security. The matter was unopposed and the High Court of South Africa, Gauteng Division, Johannesburg, granted the applicant's order which included an obligation on the respondents (including, amongst others, the DBE and GDE) to improve security at the affected school to prevent the theft of circuit breakers and earth leakage equipment.

ix See *Equal Education and Another v Minister of Basic Education and Others* 2019 (1) SA 421 (ECB). In this case, the applicants challenged specific subregulations of the 2013 Regulations for their inconsistency with the Constitution, the South African Schools Act 84 of 1996 and a court-order granted in 2013 obliging the Minister to promulgate the regulations. The High Court of South Africa, Eastern Cape Division, Bisho, found in favour of the applicants and declared certain of the impugned subregulations unlawful and invalid, clarified the meaning of other impugned subregulations and ordered the Minister to make specific amendments.

x Notably, the norms and standards contained in subregulations 4(2)(b) and (e) relating to schools built entirely or substantially of inappropriate materials and schools without relevant minimum education areas respectively, merely had to be included in provincial infrastructure plans by 28 May 2025, and reported on annually. Unfortunately, norms and standards related to aspects such as universal design and electronic connectivity were not provided with either an implementation date or a date within which these should be included in provincial infrastructure plans.

xi Notably, again, norms and standards related to aspects such as universal design and electronic connectivity are not provided with either an implementation date or a date within which these should be included in provincial infrastructure plans.

xii Notably, the May 2024 Regulations contained similar requirements.

xiii In terms of subregulation 4(11)(a)-(h) of the June 2024 Regulations, this plan must contain information on the need for school infrastructure, the current status of school infrastructure, the prioritisation of school infrastructure backlogs, the scope of, allocated budget and source of funding for planned projects in the Medium-Term Expenditure Framework, the status of each project and human resources capacity.

xiv In terms of subregulation 4(13)(a)-(f) of the June 2024 Regulations, this report must indicate the overall performance regarding the achievement of practical completion targets, the overall performance regarding the utilisation of budgets, the overall performance according to the nature of investment and commitments, the original budget allocation, revised budget allocation and expenditure to date per project, the status of each project and the projects planned for the new financial year.

xv Subregulation 4(6)(b)(i)-(iv) of the 2013 Regulations indicate that these plans are to make provision for, but not be limited to, the backlogs at district level that each province experiences, costed short, medium and long-term plans with targets, information on how new schools should be planned and maintained and how existing schools are to be upgraded and maintained, and lastly, proposals in respect of procurement, implementation and monitoring.

xvi After requests by civil society organisations, these plans were eventually made available on the DBE's website.

xvii See *Equal Education and Others v Minister of Basic Education and Others* case no 81/2012, which resulted in a settlement agreement wherein the Minister of Basic Education undertook, among other things, to promulgate regulations by 15 May 2013. However, after the Minister failed to do so, *Equal Education* returned to court and another settlement agreement was entered into wherein the Minister undertook to promulgate regulations by 30 November 2013.

DBE to ensure the implementation of the norms and standards in all schools.

The new Minister of Basic Education, Siviwe Gwarube, has publicly undertaken to review the Regulations,^{xviii} which should be followed by the publication of draft regulations for public comment. Civil society is urged to participate in this process and highlight its concerns, so that the Regulations can result in all schools providing a safe, healthy and conducive learning environment.

According to the DBE's 2025 Education Facilities Management Systems (EFMS) Report,¹⁷ only 32% of all public schools have laboratories, while only 57% have libraries and only 49% have computers, with the Limpopo province experiencing the most shortages. Unfortunately, the EFMS report does not indicate the status of overcrowded classrooms in public schools, how many schools are still built entirely or partially from inappropriate materials and, up until recently, does not reflect how many schools still rely solely on plain pit toilets.^{xix}

The severe infrastructure challenges many schools continue to face cannot be denied and the lack of official, consolidated data on critical infrastructure issues underscores the importance of greater accountability. It is therefore crucial that the reviewing of the Regulations commences urgently so that the Regulations are amended to serve as the meaningful and transformative mechanisms they were meant to be.

South African Schools Act: Draft Regulations on School Capacity and Admissions

Despite 31 years of democracy, the education system still faces apartheid-era racial and economic disparities that negatively affect the quality of education for the majority of learners. The Basic Education Law Amendment Act of 2024 (BELA),¹⁸ incorporating the jurisprudential developments in education law over the years, is aimed at addressing discriminatory and unfair practices at schools. Whether its aim can be achieved depends on how it is implemented

The Act came into operation on 24 December 2024,¹⁹ putting a range of amendments to the Schools Act into effect. Regulations still need to be finalised to guide the implementation of the various amendments. The regulations play a central role in implementation of the law because they clarify for education managers, administrators, principals, educators, parents and learners; exactly what the law means and what their roles

and responsibilities are in practical terms. A central rule in law is that the regulations cannot go beyond or conflict with the principal Act. Their role is to enable the implementation of the Act as it was intended.

The Minister of Basic Education announced that she would be releasing at least ten sets of regulations on the following areas:

- Minimum Uniform Norms and Standards for Capacity of an Ordinary Public School
- Admission of Learners to Public Schools
- Management of Learner Pregnancy
- Registration and Administration of Home Education
- National Education Information System
- Election of Members of Governing Bodies
- Prohibition of the Payment of Unauthorised Remuneration or the Giving of other Benefits to certain Employees
- Minimum Norms and Standards for Provincial Education Development Institutes and District Educator Development Centres
- Organisation Roles and Responsibilities of Education Districts
- Guidelines on the Adoption of Code of Conduct for Learners by the Governing Bodies.

On 6 August 2025, the DBE released draft regulations on Capacity²⁰ and Admissions²¹ for public comment. These two sets of draft regulations should be read together with the 2024 Infrastructure Regulations discussed above.

Capacity Regulations

The draft Capacity Regulations limit class sizes to 30 learners in Grade R and 40 learners from Grades 1 to 12. These limits are also stated in the 2024 Infrastructure Regulations. Realisation will require additional budget to be allocated by National and Provincial Treasuries for more classrooms, educators and school resources and improved management of infrastructure spending by provincial departments of education. Realising the equity intent of BELA with regards to the transformation of school admission decisions and policies will also contribute to the realisation of the class size limits.

Admission Regulations

Admission policies

Individual school admission policies, drafted and approved by School Governing Bodies (SGBs), have been used as a

^{xviii} See, for example, the Basic Education Budget Vote Speech for the 2024/2025 financial year delivered by Minister Gwarube before the National Assembly on 15 July. Minister Gwarube also undertook to review the Regulations on 11 March 2025 in a ministerial briefing session on school infrastructure and equipment before the National Council of Provinces. The DBE also undertook to review the June 2024 Infrastructure Regulations in its 2025 – 2030 Strategic Plan and its Revised Annual Performance Plan for 2025/26 presented to the Portfolio Committee on Basic Education on 17 June 2025.

^{xix} The DBE's 2023 and 2024 EFMS reports as well as their predecessors, the National Education Infrastructure Management reports, included national and provincial data on how many schools still operate with plain pit toilets only. The DBE's 2025 EFMS does indicate how many schools operate with plain pit toilets, but these numbers include schools provided with appropriate sanitation and are operating with undemolished pit toilets.

mechanism to prevent Black and underprivileged learners from accessing schools in affluent areas. In particular, the use of feeder zones, language, and proximity have been found to perpetuate apartheid era spatial inequalities by excluding learners in disadvantaged areas from accessing former Model C and elite schools. The result is that schools in disadvantaged areas are overcrowded and under-resourced, while schools in wealthier areas have acceptable class sizes and more resources.²²

Admissions was one of the most contested sections in BELA.²³ Some stakeholders argued that the provisions in the tabled bill diminished the powers of SGBs by including the provision for provincial Heads of Department (HODs) to approve school admission policies.²⁴ In response to these arguments, the National Council of Provinces proposed amendments which removed the requirement of HOD approval of school admission policies.²⁵ Public interest organisations contested this removal, arguing that the watered-down provisions did not give full effect to the High Court judgments that require the HOD to have greater decision-making powers over admissions.²⁶ In the end, the watered down provisions were passed by Parliament: SGBs do not need to submit their admission policies to the HOD for approval, but should consider transformative and rights-based criteria when drafting or amending their admission policies. These include the best interests of the child, whether other schools in the area can accommodate a learner, the availability of resources and the space available at the school. The draft regulations expand on this list of factors that should be considered.

The draft regulations outline the HOD's authority to request an SGB to review and amend their admission policy if the HOD believes that the policy does not comply with the Act or the Regulations. Upon receiving such a request, the governing body must review and revise their admission policy within a reasonable period not exceeding ninety days.

Feeder zones

The draft regulations provide that the HOD has the discretion to determine feeder zones in consultation with SGBs, and define the factors that the HOD should consider when determining zoning. These include the capacity, language and curricula offered at the school and other schools in the vicinity; information and projections regarding area population density; learner population density and learner enrolment; the need for geographical and spatial transformation; and whether the school has boarding facilities and, if so, the need to ensure the school is accessible to learners requiring placement in such facilities.

Feeder zones must also be established in a transformative manner so that the radius covers learners living in disadvantaged areas.

Admission management plans

The draft regulations require the HOD to furnish an admission management plan with timelines and guidance on periods of applications for admissions, and strategies to encourage early applications. The draft regulations neglect however to require HODs to plan for the inevitability of late applications caused by unexpected events in families' lives; such as the death of a parent or caregiver, or a need to move to secure income.²⁷

Undocumented learners

Another contested issue in BELA has been the incorporation of the Eastern Cape High Court's decision in the case of *Centre for Child Law v Minister of Basic Education 2020*.²⁸ The court held that preventing undocumented learners from enrolment at schools was unconstitutional, as it infringed on their rights to basic education, equality, dignity and the best interests of the child. The court held that an affidavit including the learner's details is sufficient for enrolment at school.

BELA amends section 5 of South African Schools Act (SASA), making it clear in the law that a learner who is undocumented must be allowed to access school. It states that principals must advise learners and their parents to obtain the necessary documentation. These provisions were inserted to bring SASA in line with the *Centre for Child Law* judgment.

The National Admission Policy²⁹ that used to govern this area, but is now overruled since BELA came into effect, specified that a parent must present a birth certificate, and non-national parents must produce a study permit for their child. Without these documents, admission was conditional and the parent was expected to submit the documents within three months to finalise the admission. This resulted in parents and learners who did not submit the documents within three months being threatened with exclusion from school and various education activities such as sport, the school feeding programme or writing matric. Many school admission policies still contain these provisions despite this not being in line with BELA.

In alignment with BELA, the draft regulations emphasise that an undocumented learner should be admitted and there is no longer any reference to such admission being conditional. However, the draft regulations add that the school should refer the matter to the HOD and that the HOD, or a person duly authorised by the HOD, should hold the learner's parents accountable for not having the relevant documentation.³⁰ This addition goes beyond what BELA intended and should be removed for that reason alone. A further concern is that there

is no definition of what holding a parent accountable entails. This could range from warning letters, to reporting the family to immigration authorities.

Proof of immunisation

Requiring immunisation records for admission into Grade 1 has been a provision in the National Admission Policy and School Admission Policies for many years and is therefore standard practice in most schools. The immunisation record must include polio, tetanus, measles, diphtheria, TB and Hepatitis B. The draft regulations retain immunisation records as an admission requirement. What is new is that specifying this in the regulations as opposed to in the admissions policy, elevates the requirement to a legal requirement, and the draft regulations also oblige school principals to inform parents that learners without immunisation records will not be permitted to attend school. This change in the legal status of the requirement could cause schools to enforce the immunisation requirement more strictly, resulting in children being refused access to school at both the application stage and on the first day of school, particularly in Grades R, 1 and 7.

Parents who wish to be exempted from this requirement will need to obtain an exemption from the HOD. Exemption is possible on medical grounds if accompanied by a letter from a medical professional or on cultural/religious grounds if accompanied by proof of previous observances of that religion or culture, such as a letter from a religious or cultural leader.

In a case where the learner has not been immunised, or does not have proof of immunisation and does not have an exemption from the HOD, the principal “must” inform the learner’s parents that the learner cannot be allowed into the school until they have been immunised or obtained an exemption, and that they can approach a public health care facility to access immunisation for free.

Immunisation coverage in South Africa remains suboptimal: Only 83.3% of infants under one year were fully immunised in 2023/24, well below the national target of 90% needed to achieve herd immunity – and there are striking inequalities in coverage across provinces and districts. For example, only 74.8% of infants were fully immunised in the Western Cape.³¹

While it is in children’s best interests and in the public’s health interests to use school admissions as an opportunity to identify and address gaps in immunisation coverage, any such intervention should recognise that the majority of unvaccinated children are not as a result of vaccine hesitancy or neglect but are more likely the result of system failures such as vaccine stock-outs or socio-economic factors. A retrospective analysis of data collected in a national immunisation coverage survey,

found that health facility obstacles accounted for 68% of missed vaccinations. These included vaccine stockouts, lack of access to vaccination services (because the clinic was not open after working hours, or was closed on the day of visit, or there was no vaccinator on duty, or no clinic nearby); or caregivers were not told that they needed to return for catch-up doses.³²

The Department of Health’s (DoH) immunisation catch-up plan of 2024³³ provides for when – and if – children can receive a catch-up dose. For example, the plan stipulates that the BCG vaccine for TB cannot be given to children older than 12 months. The remaining vaccines can be given, but the doses should be staggered over a few months to avoid complications. Yet, the draft Regulations prescribe that children who do not have immunisation records should not be allowed into school and that their parents have 30 days to return with their child’s completed immunisation records.

There is currently no recognition in the regulations that there will be cases of learners who may have lost their immunisation records due to being separated from their parents, migration from another country or province, or whose immunisation record has been destroyed in a fire or flood.

Immunisation coverage was extremely low during the first year of COVID (79.5% in 2020/21),³¹ and these children will be turning 5 and 6 years old in 2026. The Grade R and Grade 1 intake in 2026 may therefore be faced with a large number of children who are not fully immunised.

The catch-up plan for children who are not fully immunised should begin long before children are ready to start school, through concerted catch-up campaigns run through the health care system and early childhood development programmes. If a child is still not immunised when they apply for school admission, a supportive approach should be activated to put a catch-up plan in place – in a way that enables the child to access education while completing their vaccine catch-ups, rather than excluding the child from admission to school.

Next steps

Public comments on the draft regulations are due by 5 December. Once public comment has been considered by the Department, the regulations will be finalised. When this will happen will depend on the number of submissions received and the concerns they raise.

Child health

Tobacco, nicotine and cannabis carry higher physical and mental health risks for children than for adults. Any law reform affecting these substances therefore needs to build in adequate provisions

to prevent the use of these substances by children. The Cannabis for Private Purposes Act decriminalises the use of cannabis by adults for private purposes and measures to protect children still need to be put in place. Companies that make profits from products including these substances are increasingly adopting marketing strategies targeted at children, adolescents and young adults to entice them to use their products.³⁴ The state is obliged to regulate business practices such as these that are harmful to children's health.³⁵

The *Tobacco Products and Electronic Delivery Systems Control Bill*³⁶ is aimed at introducing stricter controls on the sale and marketing of tobacco products. It is also aimed at extending the controls to vaping. The National Assembly held public hearings on the bill in 2025 – with big industry and small businesses arguing for less control; while public health advocates and organisations representing the youth motivated for stricter control and enforcement.

Cannabis for Private Purposes Act

The Cannabis for Private Purposes Act [Cannabis Act] was signed by the President in May 2024 but is not yet in effect as regulations still need to be finalised.³⁷ It was passed in response to a 2018 Constitutional Court judgment. The Act decriminalises the use of cannabis for private purposes by adults, while retaining the prohibition on use by children and making it a criminal offence for an adult to use cannabis in the presence of a child. When a drug is legalised for adult use, it becomes more accessible and visible to children. To prevent children from accidentally ingesting cannabis or using cannabis – a range of measures still need to be put in place.

The Prince judgement

In September 2018, the Constitutional Court declared it unconstitutional to criminalise adults' private use and cultivation of cannabis.³⁸ Sections of the Drugs and Drug Trafficking Act^{xx} and the Medicines and Related Substances Act,^{xxi} were declared to be inconsistent with the constitutional right to privacy³⁹ because they criminalised the use or possession in private, or cultivation in a private place, of cannabis by an adult for their own personal consumption.⁴⁰ The Court suspended its order until September 2020, giving Parliament two years to amend the Acts to align with the judgment.⁴¹ The Court also granted interim relief while Parliament passed the amendments.^{xxii} The effect of the interim relief was that as of September 2018;

the use, possession or cultivation of cannabis by an adult for private purposes were no longer criminal offences.

Implications for children

While making cannabis use and cultivation for private purposes legal for adults, the *Prince* judgment explicitly prohibited cannabis use by children, or by an adult in the presence of a child. However, decriminalisation for adults may have made the use of cannabis more socially acceptable, and therefore more visible and accessible for children in their homes and in communities.

Children who accidentally ingest cannabis or adolescents who use cannabis are more at risk than adults to negative health outcomes because of their lower body weight, and the fact that their brains are still developing. Public health experts monitoring the effects of cannabis on children and adolescents are therefore calling for measures to be put in place to protect children from the risk of accidental ingestion of edible cannabis products and to prevent increased use by adolescents.

Accidental or intentional ingestion of cannabis edible products containing THC (trans delta-9-tetrahydrocannabinol), the main psychoactive component of cannabis, can lead to serious health effects among children, including lethargy, impaired concentration, muscle weakness, rapid heartbeat, hypoventilation and psychosis lasting several days.⁴²⁻⁴⁴ Scientific evidence also shows that regular cannabis use (in any form) during adolescence may be associated with persistent neurological changes, cognitive deficits and mental health conditions.⁴⁵

⁴⁶ Compared to adults, the adolescent brain is especially vulnerable to the neurotoxic effects of CBD (cannabidiol) – the non-psychoactive component of cannabis – due to incomplete neuromaturation of certain brain structures.⁴⁷ Adolescents are also at increased risk of diagnosable substance use disorders, psychosis, depression, anxiety and suicidal behaviour.^{48, 49}

The prevalence of adolescent annual cannabis use in Southern Africa among those aged 15–16 is estimated at 7.5%, which is much higher than the rest of the continent (between 3.6 and 4.3%).⁵⁰ In South Africa, national surveys show an increase in cannabis use by individuals over the age of 15 years from 1.5% in 2002 to 7.8% in 2017.⁵¹ Treatment admission data from the South African Community Epidemiology Network on Drug Use (SACENDU) revealed that from 2021 to 2023, just under 20% of total admissions were for those under 18, with the mean age of initiation just under 16 years, and over

xx Drugs and Drug Trafficking Act 140 of 1992. Sections declared unconstitutional were sections 4(b) and 5(b) and the definition of "deal in" in section 1, read together with Part III of Schedule 2

xxi Medicines and Related Substances Act 101 of 1965. The section declared unconstitutional is section 22A(9)(a)(1)

xxii By a 'reading-in' remedy which means the court adds words into the sections to cure the constitutional defect and see Cannabis for Private Purposes Bill, 2020 Memorandum on the Objects of the Cannabis for Private Purposes Bill at para 1.2; Minister of Justice and Constitutional Development and Others v Prince at paras 104–108.

half reporting cannabis as their primary substance.⁵² Given these risks for children and adolescents, any shift in drug law should be carefully assessed and monitored for its impact on children and adolescents, enabling mitigation adaptations to be designed and put in place timeously.

Cannabis for Private Purposes Act

In May 2024, the President signed the Cannabis for Private Purposes Act [Cannabis Act], making South Africa the first country in Africa to pass a law that decriminalises recreational cannabis use for adults.³⁷ The Cannabis Act aligns South Africa with global trends to legalise and regulate adult usage of cannabis, while retaining the prohibition on usage by children, with due regard for the best interest of the child.⁵³

The Act will only come into operation when regulations are finalised – which is planned for the beginning of 2026.⁵⁴ A range of regulations are required, including on the amount of cannabis that an adult can have in their possession for private purposes.⁵⁵ Draft regulations have been prepared by the Department of Justice and sent to a number of other Ministers^{xxiii} and the Presidency for comments before they will be gazetted for public comment.

Key terms and provisions

'Use' of cannabis is defined in the Act⁵⁶ as the consumption of cannabis; including eating, drinking and smoking. 'Cannabis' is defined as the fruiting or flowering part of the cannabis plant, excluding the seeds; and any products made from these parts. The Act therefore covers smoked cannabis products including joints, pipes and vapes; oils; concentrates; and edible products made from cannabis dried product or from concentrates.

The Act retains the legal prohibition on the use of cannabis by a child (anyone under 18) and makes it a criminal offence for an adult to knowingly allow a child to use cannabis or to supply a child with cannabis (unless prescribed by a medical practitioner).⁵⁷

Adults using cannabis are prohibited from using cannabis in the presence of a child,⁵⁸ and if found guilty are liable on conviction to a fine or imprisonment.⁵⁹ Similarly, adults in possession of cannabis must ensure that the cannabis is not accessible to a child and can be fined R2000 if a child manages to access the cannabis.⁶⁰

Commercial sale and purchase prohibited

The commercial sale and purchase of cannabis remains prohibited. However, in reality, private members' clubs (or lounges) exist where cannabis can be acquired by adults for

private use, as well as kiosk dispensaries and online purchases for cannabis-based products. The model of clubs exist due to the *Prince* Judgement, where it was held that the permitted use of cannabis for recreational reasons is not confined to a home or private dwelling.⁶¹ Certain clubs are also dispensaries of cannabis as a medicinal product, provided that they have a s21 permit in terms of the Medicines Act and they are licenced to dispense unregistered medicines. While clubs and dispensaries are not supposed to sell products to children, the existence of these and online outlets may make cannabis more accessible and visible to children and adolescents.

Amount of cannabis allowed for private use not yet specified

The tabled bill specified a maximum allowed amount of 600 grams per adult and 1.2 kilograms of dried flower or cannabis equivalent per household with two adults. One gram of dried cannabis is equal to 5 grams of fresh cannabis and 0,25 grams of cannabis concentrates (solids & liquids).⁶²

However, Parliament decided not to specify the amounts in the Act and instead delegated the authority to the Minister of Justice to decide the amounts in regulations.^{xxiv} These regulations are now in development and will soon be gazetted for public comment.

Cannabis infused foods

Food containing cannabis, including edibles such as gummies, baked goods and chocolates is allowed in terms of the Act for adult private use. The specific amount of edibles or grams of cannabis per edible allowed per adult is likely to be prescribed in the regulations, and should adhere to scientific standard units of what is considered safe per portion.

Sale, manufacture and import of cannabis infused foods

Food infused with cannabis can contain unknown or high levels of THC and pose a higher risk of adverse outcomes for both adults and children. This risk is compounded when edibles are presented in forms that are especially appealing to children, such as cupcakes, chocolates, lollies and sweets.

Food products containing cannabis have often been classified simply as food, which allows them to bypass the usual regulatory systems intended to manage the risks linked to cannabis. South Africa does not yet have any regulations governing imported cannabis-containing foodstuffs, making it difficult to ensure their safety. The Department of Health (DOH) recognised this gap and aimed to align South Africa with global standards, which require that all food products containing cannabis undergo evaluation and approval before

xxiii Police; Health; Agriculture; Trade, Industry and Competition; Social Development; and Small Business Development.

xxiv See Cannabis Bill [B19B – 2020] and Section 6 (1) (a) and (b) of the Act.

being allowed to be sold or imported. To achieve this, DOH sought to create a single regulatory framework for cannabis-containing foods, rather than treating them as ordinary food products. In March 2025, the Minister of Health promulgated regulations in terms of the Foodstuffs, Cosmetics, and Disinfectants Act. However, instead of regulating cannabis-infused food, the regulations imposed a wholesale ban on the sale, manufacture or import of any food or drinks containing ingredients derived from the genus *cannabis sativa* L plant, including hemp seeds, hemp seed oil, hemp seed flour and cannabis-infused beverages.⁶³

These regulations were withdrawn in April 2025 following a backlash over their negative impact on hemp and cannabinoid CBD products that do not contain psychoactive compounds such as THC (for example hemp seeds) and lack of stakeholder consultation.⁶⁴ The government is currently reviewing the legal framework on the manufacture, sale and import of all cannabis-infused food products to regulate the industry and protect adults and children from dangerous levels of CBD and THC.

The National Cannabis Master Plan

Cabinet took a decision in July 2019 that the country needs a national strategy to commercialise cannabis in order to increase economic growth, create jobs and alleviate poverty, hence the development of the National Cannabis Master Plan.⁶⁵ More recently, President Ramaphosa noted in his 2025 State of the Nation Address that government wants South Africa to be leading in the commercial production of hemp and cannabis.⁶⁶

As these developments unfold, it is likely that cannabis will become increasingly available to children and adolescents.

Are current protections for children adequate?

The Cannabis Act and future law reform to commercialise the cannabis industry is expected to have a significant impact on the lives and health of children and adolescents, making strong protective measures essential. Considering the physical and mental health risks, it is imperative for policy and law makers, supported by public health advocates and the public, to continue limiting children and adolescent's access to cannabis.

Enforcement of the Act

The Act prohibits adults from using cannabis around children and bans its possession and use by children. Effective enforcement of these prohibitions is critical to ensure their success. However, policing what happens in private households is not an easy task.

Educating about the risks

As cannabis becomes more available in homes, public

awareness campaigns by government departments, in particular Education and Health, are needed to educate adults, educators, health workers, adolescents and children about the shift in the law and the health risks associated with cannabis use, especially products that contain THC. In particular, education is required on the standard THC unit that is considered 'safe' (ie 5mg for all cannabis products)⁶⁷ and the risks of accidental ingestion by children.

School- and community-based prevention programmes and adolescent-friendly treatment programmes will also need to be developed.

Additional regulatory measures required

Additional regulatory measures should also be introduced and enforced, including:

- prohibiting the sale of cannabis and cannabis-infused foods to children
- regulating the marketing and advertising of cannabis and cannabis infused foods (including by private clubs and dispensaries). In particular, the marketing of cannabis (including edibles) through mechanisms that appeal to children and youth, such as attractive packaging, giveaways and social media promotions should be prohibited
- regulating the labelling of cannabis-infused foods to ensure the amount of THC is clear
- setting limits on the amount of THC allowed per serving, and defining what constitutes a serving.

Improved public health monitoring

Improved public health monitoring will also be necessary to quickly identify and respond to changes in children's use of cannabis.^{46, 68} The state should therefore invest in nationally representative surveys and surveillance systems to monitor youth cannabis use and related harms, assess the impact of legalisation and guide future policy reform.

Tobacco Products and Electronic Delivery Systems Control Bill

The Bill³⁶ aims to reduce tobacco and nicotine related harm in the adult population and to prevent the use of tobacco and nicotine by children. Besides strengthening tobacco control, the Bill aims to fill the regulatory void on the contents, sale and use of nicotine- and non-nicotine-containing electronic delivery devices (commonly called 'e-cigarettes' and 'vapes') and other 'novel' nicotine products such as nicotine pouches and 'heat don't burn' tobacco products; given significant health concerns about their use and the addictiveness of nicotine and its harmful effects on brain development in adolescents and young adults.

Key provisions of the Bill

- 'Smoking' includes both tobacco-based and electronic systems.
- Restrictions on where smoking may take place. Restricted places have been set out in more detail than in the 1993 Act and include motor vehicle transport. The Bill empowers owners of buildings, public spaces and conveyances to prohibit smoking and vaping in these places.⁶⁹
- Stricter prohibitions of advertising, promotion, sponsorship, distribution and display of products. Notably, products may not be visible where they are sold to the public. Online advertising and the associated 'influencing' that takes place online are prohibited.⁷⁰
- Standardised packaging (uniform colour package with simple name of product only) of all products with designated health-related messages.⁷¹
- Broad ministerial powers are given in relation to the manufacturing and other standards in the production and testing of products.⁷² The Minister is also enabled to acquire any product-related information from the manufacturers of products.⁷³
- The sale of any tobacco or nicotine products to children is prohibited and none of these products may be sold online.⁷⁴

Public hearings in the provinces

The Portfolio Committee on Health called for public submissions which elicited considerable interest from those concerned about the health and social effects of tobacco and nicotine as well as from the tobacco and nicotine industries. There have subsequently been public hearings in all provinces. A report on the first seven provinces was presented to the Committee in early 2024. Membership of the Committee then changed after the National Elections, meaning that most of the Members of Parliament (MPs) now responsible for approving and amending the Bill did not participate in the extensive provincial hearings. They are however able to consider the written report.

National public hearings

Further meetings took place in 2024 in which the MPs were orientated to the provisions of the Bill and there was general support for the provisions of the Bill. After some procedural questions were addressed, the Committee held national public hearings from March to August in 2025. Many people and organisations who had sent in written submissions were invited to present. Oral submissions were heard from many quarters, including the local and international tobacco and nicotine industries;^{75, 76} small business organisations;⁷⁷ 'harm reduction' advocates;⁷⁸ public, child and adolescent health

advocacy groups;⁷⁹ organisations representing youth;⁸⁰ and health practitioners and experts on the economic, social and health impacts of tobacco and nicotine.^{81, 82}

Those representing the tobacco and nicotine industries challenged the constitutionality of the Bill in terms of the right to trade and the individual rights of people who use these products. They emphasised the potential for the Bill to increase the illicit trade in cigarettes and drive 'vaping' underground. Many argued that combining 'combustible' products such as cigarettes with electronic and other non-combustible products was incorrect since non-combustible products carry lower health risks (though not as much lower as the statistics that they quoted suggested). They argued that the Bill had one view on harm ('harm is harm') that did not allow for harm reduction approaches. Those individuals and organisations (a majority from outside of South Africa) that spoke to 'harm reduction' expressed similar arguments.

Those representing small businesses were concerned about loss of trade, and their members' likely inability to abide by aspects of the law (e.g. curbing the display of these products and smoking in public spaces). This would make them primary targets for enforcement which they believed to be unfair.

The Congress of South African Trade Unions (COSATU) was fully in support of the Bill, emphasising the need to protect South Africans, especially the young, from the harms of these products. They also called for more vigorous measures to limit the illicit trade in tobacco (such as track and trace systems) to be included in the Bill.

All health, academic and youth presenters were strongly in favour of the tight controls on tobacco and nicotine in the Bill. Specifically, the Bill's potential to further protect children and young people from harm was highlighted, and to prevent nicotine addiction amongst adolescents and young adults. They pointed to evidence of the marked addictiveness of nicotine and its potential impact on brain development in younger people. Evidence of high levels of use of these products and addictive behaviours among school-age children was also presented. Evidence was also presented on aerosols from electronic systems revealing that they are not as harmless as the industry claims. Apart from nicotine, they contain many chemicals known to be toxic and others for which there is minimal knowledge of what would happen with long term use. These groups also alerted the Committee to the self-serving and underhand ways of the tobacco and nicotine industries. The industry's approach of promoting 'harm reduction' rather than preventing harm was one of these strategies. Yet the role of electronic devices and pouches in reducing smokers' use of tobacco (let alone helping them to give up tobacco and nicotine altogether) is far from clear,

and other countries such as Uganda have succeeded in reducing tobacco use through control legislation without allowing other nicotine products to be used as a 'harm reduction' strategy. In summary, these groups all strongly asserted that stringent regulations were necessary to curb the tobacco and nicotine industries deliberate targeting of young people through their advertising strategies and the flavouring of their products.

Children's right to a safe environment was highlighted to the Committee. Evidence was presented that, even before they are born, infants can be affected by tobacco and nicotine in ways that can have lifelong negative effects on lung and other organ function. Ensuring clean and safe air in all public spaces and modes of transport are essential to realising this right. South Africa also has an obligation to protect children from harmful business practices and uphold their right to be protected from harmful drugs. The Bill is well placed to promote all these aims.

The children, youth and public health submissions reminded parliament that the Bill and its regulations must be worded such that they control all forms of commercial nicotine products. This would include those designed for oral or nasal use such as nicotine pouches and 'snus'. These groups noted their support for bans on advertising, the use of standardised packaging, greater controls on smoking in public places, and restrictions on sales and youth-oriented formulations of all products covered by the Bill, noting the urgent need to use this opportunity to regulate all nicotine products. Protecting youth and preventing harm from tobacco and nicotine exposure must be prioritised, above the interests of tobacco and vaping companies.

Next steps

With the public hearings over, the Portfolio Committee will soon begin its deliberations on the clauses of the Bill. Once passed by the National Assembly, the Bill will be referred to the National Council of Provinces where public hearings will again be held and further deliberations.

National Strategy to Accelerate Action for Children

The draft National Strategy to Accelerate Action for Children (NSAAC) is the outcome of a consultative process initiated in the Presidency in 2023 to fast-track change for children by working with and galvanising the whole of society around ten key priorities to advance the rights and well-being of children. This process was prompted by the general observation that greater political prioritisation is critical for proper resourcing and scaling of programmes for children⁸³ and the specific realisation that while child outcomes for children in South Africa have improved over the past thirty years, there are concerning signs that some of those gains may be starting to reverse.⁸⁴

The implication is that government should move fast to prevent the further erosion of progress for children and intensify its existing efforts to improve child outcomes, and it should also identify and implement catalytic strategies to accelerate changes in the lived experience of children in South Africa.

International experience shows that accelerated action for children and adolescents requires strong central leadership in convening a national programme of action across all sectors of society. In his capacity as Chairperson of the Global Leaders Network for Women's, Children's and Adolescents' Health, President Cyril Ramaphosa has challenged global leaders to agree on bold steps to accelerate the actions needed to achieve the Sustainable Development Goals (SDGs) related to their health and well-being worldwide.⁸⁵

The General Measures of Implementation of the Convention on the Rights of the Child outline the need for a "unifying, comprehensive and rights-based national strategy, rooted in the Convention".(para 28)⁸⁶ The Department of Social Development is responsible for the development of a National Plan of Action for Children (NPAC) which sets targets and consolidates the sectoral implementation plans of various government departments, but there was a need for an overarching strategy led by the Presidency to coordinate policy and establish national priorities for children and give direction to the next NPAC-5 which will detail the operational commitments of the different government departments. The Medium Term Development Plan 2024 – I 2029 notes that the NSAAC "will fast-track essential child rights delivery through strengthening institutional mechanisms and intersectoral collaboration" (p.87)⁸⁷ together with the Department of Planning, Monitoring and Evaluation. Guided by the global frameworks of Nurturing Care and Adolescent Well-Being, the National Strategy to Accelerate Action for Children aims to:

- build a common understanding of the national priorities for children and adolescents;
- establish effective interfaces with civil society and the private sector to enable participation in child rights governance and to support the implementation of national priorities that do not fit neatly into single departmental mandates, and which require a high degree of intersectoral collaboration; and
- strengthen institutional mechanisms and accountability, responding in part to the concluding observations and recommendations of the United Nations Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child.

The Presidency led a national process of consultation, involving all relevant government departments, representatives from non-

Box 1: Ten priorities to accelerate action for children and adolescents

1. Strengthen families and enable parents & caregivers to care for their children.
2. Reduce infant and child deaths.
3. Eliminate HIV transmission to babies.
4. Improve child nutrition.
5. Grow children's brain power through early learning and language development.
6. Prevent disability in children and give those with disabilities the same opportunities as others.
7. Protect children and adolescents from all forms of abuse, violence, injuries and harmful substances.
8. Give adolescents good access to health care, including sexual and reproductive health.
9. Increase participation in quality education and training and link school-leavers to work.
10. Build adolescents' sense of identity, agency and connectedness.

government organisations and coalitions, as well as children and adolescents themselves through learner representative councils and other organised groups. This culminated in a national meeting of stakeholders in October 2024 which considered the draft document, and the ten priorities identified through consultation.

For each domain of child and adolescent well-being, the NSAAC outlines both the existing programmes which need to be strengthened, as well as catalytic strategies that could accelerate improvements in child outcomes. It goes further to list ten interventions that would make the biggest impact for children and adolescents – some of which are not yet government policy – which the relevant government departments should consider for implementation along with collaboration with other departments.

In his State of the Nation Address on 6 February 2025, the President announced that Cabinet would soon approve the National Strategy to Accelerate Action for Children.⁶⁶

Unfortunately, the NSAAC has, as of September 2025, yet to be presented by the Minister of Social Development to National Cabinet for approval due to delays in the finalisation

Figure 1: Ten interventions that would make the most difference to children and adolescents

	Intervention	Responsible department
1	Restore the Child Support Grant to the Food Poverty Line	DSD National Treasury
2	Provide matching subsidy for a basket of protein-rich food staples, discounted through industry collaboration	DTIC/DoA National Treasury
3	Ensure the Nutrition Therapeutic Programme (NTP) is adequately funded and implemented in all provinces	NDoH
4	Strengthen childcare and protection systems	DSD (lead)/DBE/DOJ&CD/SAPS
5	Drive a responsive care campaign, incl. early language development and cognitive stimulation for children <3 yrs	NDoH DBE
6	Ensure access for every child (3 – 5 yrs) to a quality early learning programme	DBE
7	Ensure universal neonatal hearing screening and visual screening for Grade R learners	NDoH (lead)/DBE
8	Ban alcohol advertising (except at point of sale), introduce a minimum unit price for alcohol and restrict on-site liquor hours to midnight	DTIC (lead) / DSD / SAPS
9	Expand prevention and early intervention of basket of services including sexual & reproductive health services for adolescents, including community-based supply of contraceptives	NDoH DSD/DBE
10	Build a national network of support promoting a sense of meaningful participation, agency and Identity among adolescents	NDoH

Critical interventions to prevent erosion of gains in poverty reduction, nutrition and child protection

Other key interventions to accelerate gains

Source: Republic of South Africa. The National Strategy to Accelerate Action for Children [Draft 2025].

of the decision about the future position of the Office of the Rights of the Child (ORC). Established in 1998, the ORC is the institutional mechanism responsible for overseeing South Africa's child rights governance framework and monitoring of its implementation obligations. Originally located in the Presidency, the ORC was moved to the Department of Social Development in 2014, against the advice of the children's sector. The National Plan of Action (4) 2019 to 2024 recommended that the ORC be relocated back in the Presidency.⁸⁸ The configuration of government and the state departments, and hence the ORC is at the prerogative of the President. This matter was escalated to the Forum of Directors-General in 2023.⁸⁹ However, to date, there has been no progress in moving the ORC to the Presidency.

Key takeaways

- Educators need to be equipped to use non-violent strategies to manage difficult classroom behaviour, especially in the context of overcrowded classrooms.
- The Infrastructure Regulations should be reviewed and revised to include timeframes to ensure that all schools are able to meet the minimum norms and standards.

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