



Board: Prof Mary Metcalfe, Prof Crain Soudien, Zackie Achmat, Nathan Geffen, Doron Isaacs, Dr Peliwe Lolwana, Prof Paula Ensor, Graeme Bloch, Sean Feinberg, Andiswa Kolanisi, Ntuthuzo Nzomo, Phatiswa Shushwana, Ntsikelelo Dlulani.

17 February 2012

The Director-General
Att: Adv. Moribishane Ramafoko
Private Bag X895
Pretoria
0001
Ramafoko.m@dbe.gov.za
Fax: 012 323 9430

COMMENT

EQUAL EDUCATION SUBMISSION ON THE NATIONAL EVALUATION AND DEVELOPMENT UNIT BILL, NOTICE 907 OF 2011

INTRODUCTION

1. The following are comments by Equal Education (EE) on the National Education Evaluation and Development Unit Bill, Notice 907 of 2011 (“the Bill”), submitted in response to release of the Bill for public comment.
2. EE is a movement of learners, parents, teachers and community members working for quality and equality in the South African education system through research, analysis and activism. Its head offices are in Khayelitsha, Cape Town, but has members in most provinces across South Africa.
3. EE welcomes the establishment of the National Education Evaluation and Development Unit (NEEDU) to operate, as the Preamble of the Bill proclaims, as an “*external agency*” to conduct “*independent evaluations and to report on the state of school leadership, management, teaching and learning, and on the support provided to schools and educators by districts and provincial and national departments*” and as a source of “*reliable information on whether the school system is serving learners’ educational needs.*” Such evaluation is intended to provide the Minister and the public with

“independent expert advice on developmental interventions to repair dysfunction in schools.”

4. As it is recognised in the preamble of the Bill, monitoring and evaluating the performance of the education system is important as a means to inform strategies and interventions aimed at addressing the challenges in the system. Importantly, the preamble of the Bill notes that such monitoring and evaluation must be focused both on schools as well as the support that they receive from district, provincial and the national departments of education. EE supports the establishment of an independent agency that will be able to provide independent and reliable expert information on the state of South African schools. We therefore support the introduction of legislation aimed at the establishment of such an entity.
5. While EE supports the creation of NEEDU, we are concerned that certain provisions in the proposed Bill fail to provide for the necessary independence called for in the Bill's preamble. Universally recognised principles of institutional independence require that an independent entity has a sufficient level of both structural and operational autonomy so that it is able to manage its affairs and fulfill its mandate without being stifled by undue interference and unwarranted external pressures, including political pressure. This in turn is closely related to the accountability and oversight mechanisms provided for, the conditions of service such as remuneration and security of employment that have been put in place, and funding and budgetary processes.
6. EE's primary concern is that the Bill falls short of ensuring that NEEDU has the necessary independence in order to effectively perform its functions as envisaged in the Preamble and as listed in section 6(1) of the Bill. This comment is therefore focused on addressing whether the Bill provides for adequate safeguards to ensure that NEEDU is sufficiently insulated so as to preserve its independence.

GOVERNING PRINCIPLES OF THE BILL

7. Section 5(1) of the Bill states that *“NEEDU must be impartial”* and thus explicitly recognises the need for NEEDU to retain impartiality in discharging its functions as one of the governing principles of the Bill. EE notes that the significance of NEEDU maintaining impartiality is reinforced by the governing principle in section 5(2) of the Bill, which forbids any person or organ of State from interfering with the functioning of NEEDU. EE is concerned that the provisions highlighted below conflict with these governing principles.

MINISTER'S POWER TO REMOVE BOARD MEMBERS



8. Section 9(2)(a) of the Bill confers on the Minister the power to remove a member of the board before the expiry of their term of office on the basis of “*misconduct, incapacity or incompetence.*” EE submits that a provision conferring upon the Minister the sole discretion to determine whether a board member should vacate his or her office undermines NEEDU’s independence.
9. By conferring upon the Minister the power to remove board members, the Bill fails to sufficiently secure NEEDU’s board members’ ability to function independently. That individual board members must be free to discharge their functions absent the potential threat of removal from office is directly linked to ensuring their unimpeded fulfillment of their responsibilities under the Act.
10. EE acknowledges the need to remove board members in the instances set forth in Section 9(2) of the Bill. However, EE suggests that the provision be reworked so as to allow for a separate internal body, possibly a NEEDU disciplinary committee, to conduct an enquiry and to make a formal finding on whether a particular board member is guilty of misconduct, incompetence or incapacitated to the point that he or she cannot discharge his or her functions.
11. Upon such a finding being made, the Minister should then be obliged to remove the particular board member.
12. Section 9(2)(b) permits the Minister to remove a board member “*for any other reasonable, sound and compelling reason*”. In addition to suffering from the same flaws as section 9(2)(a) this provision is further problematic given the vague terms in which it is coached.
13. EE recommends that section 9(2)(b) be deleted in its entirety.

DISSOLUTION OF AN ENTIRE BOARD BY THE MINISTER

14. Section 9(4) permits the Minister to dissolve the board for various reasons. EE submits that the continued existence of an incumbent board cannot be subjected to a decision by the Minister as this would defeat the very purpose of having an independent institution. This provision, as it is currently stands means that all board members would be forced to operate under the constant threat of possible disbandment of the board. The dissolution provisions are contrary to the requirements of independence and impartiality which have been recommended by the Ministerial Committee of NEEDU and which are called for in the Preamble of the Bill.
15. EE therefore strongly recommends that section 9(4) be deleted its entirety and that further consideration be given to mechanisms to allow for the dissolution of the board while maintaining the independence and impartiality of NEEDU.



APPOINTMENT OF CHAIRPERSON OF THE BOARD

16. Section 8(7) further compromises NEEDU's institutional independence in the appointment context by conferring upon the Minister the power to designate a chairperson from amongst the board members.

17. EE recommends that the power to elect a chairperson from amongst board members should be conferred upon board members themselves and not solely at the discretion of the Minister.

TENURE OF BOARD MEMBERS

18. Section 8(6)(b) allows for the Minister to reappoint board members for one further five year period if their initial term has expired. In the context of a renewable term for a chairperson, whose renewal of office and continuation in the chairperson position are both dependent upon the Minister's authority, this risk is heightened even further.

19. EE recommends that this discretion not be placed solely with the Minister, but that the Bill incorporates a mechanism for the oversight from Parliament through the Portfolio Committee on Basic Education.

REMUNERATION

20. Section 12 provides that the board and committee members not in the full time service of the State may be paid by NEEDU an allowance for services rendered and in the case of the board chairperson, NEEDU may pay additional remuneration. However the power to determine these amounts is conferred on the Minister who must do so in consultation with the Minister of Finance.

21. Section 13(5) provides that the remuneration, allowances and subsidies received by NEEDU's Chief Executive Officer must be determined by the board. This determination, however, is subject to the approval of the Minister granted in concurrence with the Minister of Finance.



22. Section 18(a) confers on the Minister the power to make regulations regarding the allowances and remuneration of board and committee members.
23. Allowing the Minister control over the remuneration levels of board and committee members and rendering the board's determination of the CEO's conditions of service subject to the Minister's approval give rise to similar difficulties as those highlighted in respect of renewable terms of office.
24. In order to overcome these difficulties EE recommends that a provision should be introduced which provides that once conditions of employment have been determined, the Minister cannot, during the incumbent's term of office and without the incumbent's written consent, alter those conditions of employment to the incumbent's detriment. Alternatively, the bill should include statutorily entrenched minimum remuneration levels or a similar provision.

BUDGETARY PROCESSES

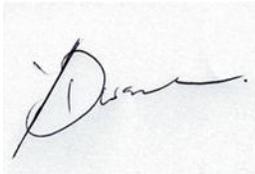
25. Section 15(2)(b) of the Bill requires NEEDU to submit a budget for the ensuing financial year to the Minister for approval. Section 15(3) states that in the event of the Minister withholding approval, NEEDU must submit a revised budget within a specified period of time.
26. The Ministerial Committee in its final report emphasised the significance of budgetary allocation as central to NEEDU's legitimacy and its ability to deliver on its mandate, stating "*[t]he Committee feels strongly that the real test of the legitimacy, viability and capacity of the unit to deliver on its mandate will be the extent to which it is adequately prioritised and budgeted for in the national government.*"
27. EE recommends that, at least, the process for the approval of the NEEDU budget makes provision for input and oversight of Parliament, through the Portfolio Committee on Basic Education and any other relevant Portfolio Committee.



CONCLUSION

28. Equal Education reiterates its support for the establishment of NEEDU as an independent entity providing expert independent advice to the Minister and the public.

29. Equal Education calls for the provisions and recommendations highlighted above to be considered by the Department of Basic Education before the Bill is tabled in Parliament. During such reconsideration it is submitted that a special focus be given to the factors impacting on the independence and impartiality of NEEDU.



YOLISWA DWANE

HEAD: Policy, Communication & Research

