22nd November 2022

To: Mrs. B P Mbinqo-Gigaba MP

Chairperson: PC on Basic Education

Parliament of the Republic of South Africa

*Att: Mr. Llewellyn Brown*

*Committee Secretary*

*belabill02@parliament.gov.za*

Dear Mrs Mbinqo-Gigaba

**COSAS SUBMISSION ON THE BASIC EDUCATION LAWS AMENDMENT BILL [B2-2022]**

Please find attached the C0SAS comments on the Basic Education Laws Amendment Bill [B2-2022].

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**BASIC EDUCATION LAWS AMENDMENT (BELA) BILL**

**[B2-2022]**

**22.11..2022**

**Introduction**

COSAS welcomes the opportunity to make submissions on the amendments, in response to the shifting education context, in the BELA Bill. COSAS supports those amendments that recognize challenges in the system and provide opportunities to mitigate those challenges. At the same time, we noted that while some clauses address one problem it may also open the door to creating new problems. Submissions were made in the past and although some of these have been incorporated into the bill some were omitted, and the highlighted section (red) refers to omitted considerations. It is in this light that COSAS reviewed and presented comments and recommendations below.

The aim of the proposal is the defending of the adverts and gains of our Democracy from the Right Wing.

**2. CLAUSE -BY-CLAUSE- ANALYSIS**

**Amendments to South African Schools Act, 1996 (Act No. 84 of 1996)**

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| **CLAUSE**  | **CONTEXT**  | **COMMENTS**  | **RECOMMENDATION**  |
| **2.1**  | **Clause 1: Amendment of section 1** |  |  |
| **2.1.2**  | A definition for ‘‘basic education’’ has been inserted to clarify that basic education refers to grades R to 12, as evidenced in the National Curriculum Statement Grades R–12. This was necessary in order to clarify the fact that basic education continues until the end of grade 12 even though a learner who has completed grade 9 is no longer subject to compulsory school attendance. | Supported  | Learners who fail grade 9 twice must be recommended for a TVET on the 3rd attempt. |

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| **2.1.3**  | Definitions for ‘‘benefit in kind’’ and ‘‘other financial benefit’’ are inserted in order to create clarity regarding the provisions of section 38A of the SASA, which prohibits the payment of unauthorized remuneration and the giving of financial benefit or benefit in kind to certain employees.  | We welcome the insertion.  | The clause must be explicit so that ambiguity and unnecessary interpretations are avoided *with the idea that this will establish financial transparency.* |
| **2.1.4**  | Definitions for ‘‘competent assessor’’ and ‘‘home education’’ are included in order to provide more certainty in the home education environment.  | While we understand the provision for home-schooling, it is ideal for students to be in an institution interacting with the other learners and receiving instruction in a school context. It is hoped that that this provision is for special circumstances like parental choice or special learner circumstances.  | None  |
| **2.1.5**  | A definition for ‘‘corporal punishment’’ has been inserted as there exists a gap in regulating this definition in the sector. The incidents of corporal punishment are increasing within the school environment as well as the home environment and it is anticipated that the inclusion of the definition will provide clarity on what corporal punishment entails.  | Supported  | None  |
| **2.1.6**  | The definition for ‘‘Constitution’’ is amended to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005).  | Supported  | None  |
| **2.1.7**  | A definition for ‘‘Department of Basic Education’’ is inserted in order to reflect the new education dispensation.  | Supported  | None  |
| **2.1.8**  | A definition for ‘‘drug’’ is inserted in order to better accommodate the kinds of issues with which schools struggle in relation to drugs and, by means of referencing applicable drug-related legislation, to make provision for recent legislative changes in regard to cannabis. As a result of the insertion of this new definition, the definition of ‘‘illegal drug’’ is therefore deleted.  | Supported with the idea that learners will be protected from the use of any drug or substance that may cause harm.  | Teachers must not be allowed to smoke in school premises as they influence learners.The smoking prohibition sign does not specify if its learners or teachers who are not allowed to smoke |
| **2.1.9**  | A definition for ‘‘education district’’ is inserted in order to facilitate matters relating to a school’s admission and language policies.  | Supported  |  All official South African LAnguages must form part of the curriculum in all subjects |

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| **2.1.10**  | A definition for ‘‘Grade R’’ is inserted in order to clarify that Grade R is a reception Grade that must be completed before Grade 1.  | Supported  | None  |
| **2.1.11**  | A definition for ‘‘home education’’ is inserted in order to explain what home education entails and to distinguish it from school attendance. | Supported  | None  |
| **2.1.11**  | A definition for ‘‘liquor’’ is inserted in support of the proposed amendment to section 8A of the SASA.  | Repetition of number (2.1.11) Supported. | Alcohol should never be sold in school premises |
| **2.1.12**  | The definition of ‘‘loan’’ is amended to allow public schools to deal with the day-to-day business of the school without obtaining the written approval of the Member of the Executive Council (‘‘MEC’’). | What are loan arrangements? This is a cause for concern? How often and for how long will a school operate on “loans” before it gets its act together? When continuous need for loans exists at a school it may indicate improper financial management at the school or insufficient funding of the school by the Education Department. | The Provincial Education Department should institute due diligence and procedures when it detects the continuous need or use of loans at a school. |
| **2.1.13**  | The clause proposes the insertion of a definition for ‘‘other financial benefit’’ which means any benefit of a monetary nature, including an exemption from the payment of school fees in respect of the child of an employee, and a credit card or a petrol card linked to an employee for his or her personal use.  | Rejected | None fee paying schools should not oblige learners to pay school fees in whichever manner. |
| **2.1.14**  | The definition for ‘‘parent’’ is amended in order to align it with the changes in the provisions relating to home education.  | Supported  | None  |
| **2.1.15**  | Finally, the clause proposes the insertion of a definition for ‘‘required documents’’ in order to provide clarity in respect of the documents which must be submitted for the purpose of the admission of learners to schools.  | Supported  | None  |
| **2.2**  | **Clause 2: Amendment of section 3** |  |  |

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| **2.2.1**  | This clause seeks to amend section 3(1) of the SASA to provide that school attendance is compulsory from grade R and no longer only from grade 1. The clause further proposes to increase the penalty provision in section 3(6) of the SASA from six to 12 months in the case where the parent of a learner, without just cause, fails to ensure that a learner, who is subject to compulsory attendance, attends school, or where any other person, without just cause, prevents such a learner from attending school. | The amendment to the SASA to provide that school attendance is compulsory from Grade R is welcomed. Departmental interaction with the erring parent/ person should take place to determine the reasons for such wrongful behaviour before instituting criminal proceedings. • The penalty provision should consider socio-economic conditions, context, literacy levels of caregivers and type of support needed before being administered.  | The EEA must be amended in line with this amendment to ensure that Grade R teachers are employed in terms of the EEA and that provision is made in the PPN for Grade R teachers. |
| **2.2.2**  | The clause proposes the addition of subsection (7) which provides that it is an offense where any person unlawfully and intentionally interrupts, disturbs or hinders any school activity, or hinders or obstructs any school in the performance of the school’s activities. The latter amendment is necessitated by incidents, in several provinces, in which communities, or portions of communities, prevented learners from attending school in an attempt at making a political or other point. | Clarify the position regarding legal strikes within the definition of “wilfully interrupt or disrupt any school activity or to wilfully hinder or obstruct any school in the performance of the school's activities” This clause must make provision for educators and/or members of a union during a protected strike. The clause must therefore, indicate explicitly that it does not apply to  | This clause must be read in conjunction with legislation related to Legal Strikes and other uncontrollable circumstances, e.g., Riots. The clause must be brought in line with the relevant provisions of the Labour Relations Act in particular Section 4 of the LRA which protects union members rights to engage in the lawful activities of the union.Learners must be given the same rights and opportunity in relation to protests, mobilized by the RCL or the Student formation of their choice |

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|  |  | educators and/or union members on school premises during a protected strike. |  |
| **2.3**  | **Clause 3: Insertion of section 4A** |  |  |
| **2.3.1**  | This clause seeks the insertion of section 4A into the SASA to ensure that the educators, principals and school governing bodies (‘‘SGB’’) are accountable and responsible for the learners in their care. Enrolment of learners and their regular and punctual attendance at a school are a prerequisite for an educated nation. Moreover, enrolment and punctual regular attendance at a school is important because a school that successfully curbs absenteeism without valid reason will most likely improve learner retention and performance. This will assist in mitigating the high learner dropout rate. | Both parents and schools are responsible for learner attendance. How do you balance school accountability and parental responsibility? | None  |
| **2.3.2**  | Educators, the principal and the SGB as parentis in loco, must take responsibility and accountability for learners that are within their school community by ascertaining the whereabouts of a learner who absents himself of herself from school for a period of more than three days without valid reason.  | Clarity must be provided on the measures to be applied to ascertain the whereabouts of learners. Will the expectation be those teachers, principal or SGB must visit homes? In some areas safety must be considered.  |  Make it compulsory for Educators, Pricipal and SGB to open a criminal case against any person who is above the age of 16 who has impregnated a minor below the age of 16. |
| **2.3.3**  | The principal, upon receiving a report from the educator that the learner is absent without valid reason, must within 24 hours investigate the matter by making reasonable effort to contact the parents to ascertain the reason as to why the learner is not present at school. Furthermore, the principal has a responsibility to report the matter to the SGB for further intervention. | This provision is supported but we must consider human resources. | None  |
| **2.3.4**  | The reason for establishing such a process is to ensure that learners attend school regularly thereby preventing them from dropping out of school. This requires a collective effort from the immediate school community, starting with the educator, principal and SGB. 2.4 Clause 4: Amendment of section 5  | Supported  | None  |
| **2.4**  | **Clause 4: Amendment of section 5** |  |  |

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| **2.4.1**  | This clause seeks to amend section 5 of the SASA. Section 5(1) is amended to provide that a public school must admit and provide education to learners and must serve their educational requirements for the duration of their school attendance without unfairly discriminating in any way. In order to ensure that no learner is discriminated against in any way, the clause proposes the insertion of subsections (1A) to (1G) which provides for the establishment of the National Intergovernmental Committee and the Provincial Intergovernmental Committee, the main purpose of which will be to provide assistance to schools in obtaining the required documentation for those learners who are admitted without such documentation.  | Supported  | None  |
| **2.4.2**  | The clause substitutes section 5(4)(a) and provides that despite the age at which school attendance is compulsory, as stipulated in section 3(1), a parent may, if he or she so wishes and subject to a few conditions, enrol a child at a school to start attending grade R at a younger age.  | We must consider the maturity levels of learners entering Grade R because it may serve as disadvantage because they are place among other learners whose maturity levels exceeds their own and they may internalise the idea that the others are better than them. How will this provision impact on the compulsory age for Grade 1? Will a child who completed Grade R at a younger age be allowed to enter Grade 1 at a younger age? | This provision must be removed. |
| **2.4.3**  | The clause proposes the amendment of subsection (5) which provides that the Head of Department (‘‘HoD’’), after consultation with the SGB, has the final authority to admit a learner to a public school. It provides that the SGB of a public school must submit the admission policy of the school, and any amendment thereof, to the HoD for approval. The HoD must take into account certain prescribed factors when considering the admission policy or any amendment thereof. In the  | It is the role of the Head of Education to ensure that the provisions of the Constitutions are upheld. • The head need to always act in the interest of the child as prescribed by the courts.  | None  |

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|  | event that the HoD does not approve the admission policy, or any amendment thereof, he or she must return it to the SGB with such recommendations as he or she may deem necessary. Furthermore, the SGB must review the admission policy at certain intervals or under certain conditions.  | • We have noted many schools denying learners access through their admission policies. | None  |
| **2.4.4**  | The clause proposes the insertion of subsections (5A) to (5D) which provides that should the HoD not respond to the SGB within 60 days after receiving the admission policy for approval, the admission policy will be regarded as having been approved and where an SGB submits an amendment to its admission policy to the HoD for approval and he or she fails to respond within 30 days after receiving such amendment, the amendment to the admission policy will be regarded as having been approved by the HoD.  | The capacity of the HOD to meet this provision must be considered. | None  |
| **2.4.5**  | The clause further proposes an amendment to subsection (9) and provides for time periods within which a learner who has been refused admission to a public school, or the parent of such a learner, may appeal to the MEC against the decision. Furthermore, the clause proposes the addition of subsections (10) to (13) which provides that the MEC must respond to an appeal contemplated in subsection (9) within 14 days after receiving such an appeal and provides for an appeal by an SGB to the MEC if the SGB is not satisfied with the HoD’s decision in terms of subsection (5)(c).  | Supported  | None  |
| **2.4.6**  | The aforementioned amendments have become necessary as a result of the confusion created by section 5(5) and 5(7) in respect of the admission of learners to public schools and who has the final authority to admit a learner to a school. When exercising the authority to admit learners, the HoD is not rigidly bound by a school’s admission policy. The general position is that admission policies must be applied in a flexible manner and that the right of a learner to be admitted to a school takes precedence over the right of a school to enforce the criteria set out in its admission policy.  | Supported  | None  |

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| **2.4.7**  | Furthermore, the admission policy of the Department provides that the admission policy of a school must be consistent with the Department’s admission policy. Therefore, the HoD must have an opportunity to study the admission policy of a school to ensure that it is in fact consistent with the Department’s admission policy.  | Supported  | None  |
| **2.5**  | **Clause 5: Amendment of section 6** |  |  |
| **2.5.1**  | This clause seeks to amend section 6 of the SASA to provide that South African Sign Language has the status of an official language for purposes of learning at a public school. The clause also provides that the SGB must submit the language policy of a public school, and any amendment thereof, to the HoD for approval. The language policy of a public school may not list, as one of the languages of learning and teaching of the public school, a language other than one of the official languages provided for in section 6(1) of the Constitution. The language policy of the school must take into account the provision of sections 6(2) and 29(2) of the Constitution. The process that an HoD must follow in this regard, and factors that he or she must take into account when considering a language policy, or an amendment thereto, are also provided. As is the case with the admission policy, the SGB must review the language policy at certain intervals, or under certain conditions. The clause provides the time period for the submission of language policies to the HoD for approval, as well as the time period within which the HoD must respond to the SGB.  | Acceptable  | Provision should be made to unlock stalemates between the HOD and the SGB with regard to the language policy of the school. In instances, where a community within which a school is located raises complains about the SGB using the language for discriminatory purposes, the HOD must then intervene and compel the SGB to adopt a parallel language model to accommodate those that might be excluded because of language. The crux of the amendment is to vest the final authority for the language policy with the Head of Department. The amendment however goes nowhere near dealing with the thorny issue of mother tongue instruction with its adverse implications on the learning process for the majority of the learners. This in our view is a major transformation issue and must somewhat be addressed even partially at this stage. It is our view that clear provisions to regulate the language policy be inserted in the Bill again to facilitate access and uniformity across the system. The school and the governing bodies must remain responsible for its administration. |

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| **2.5.2**  | The clause seeks to empower the HoD to direct a public school to adopt more than one language of instruction, after taking certain prescribed factors into account, and after the prescribed procedures have been followed. The factors to be taken into account, and the manner in which the HoD must act before he or she directs a public school to adopt more than one language of instruction, are set out in the clause. Where a school has been so directed, the HoD must, before his or her directive is implemented, take all the necessary steps to ensure that the public school receives the necessary resources to enable that public school to provide adequate tuition in the additional language of instruction.  | This provision is supported. The resourcing must be taken into consideration, e.g. Human resources and LTSM availability, etc. While the adoption of the additional language is welcomed; the decision to introduce additional language must be taken into considering by considering the holistic development of a child and age capacity.  | Provision should be made to negotiate the language policy between HOD, SGB and parents taking into consideration the complexity related to language policy related to language of instruction, home language, economic language, and competences of the school personnel. |
| **2.5.3**  | Provision is made for an SGB, which is not satisfied with the HoD’s direction to a school to adopt an additional language of instruction, to appeal against the HoD’s direction to the MEC. | Acceptable.  | None |
| **2.5.4**  | The proposed amendments to section 6 of the SASA are consistent with the Constitutional Court judgment of Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo and Another [2010(2) SA 415 (CC)] (‘‘Ermelo judgment’’), which provided guidance with regard to the approval of a school’s language policy. The Constitutional Court made it clear that even though the function of determining a school’s language policy is a devolved function (or responsibility), in terms of section 6(2) of the SASA, it is not the exclusive preserve of an SGB. The devolution of power does not mean that the SGB’s right to decide the language policy is absolute. This power is subject to the Constitution, the SASA and any applicable provincial law. The Constitutional Court in the Ermelo judgment further held that the SGB’s extensive powers and duties do not mean that the HoD is precluded from intervening, on reasonable grounds, to ensure that the admission and language policies of a school pay adequate heed to section 29(2) of the Constitution. | None  | None  |

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| **2.5.5**  | Moreover, the Ermelo judgment, as well as the Constitutional Court judgment of Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another [CCT 103/12 [2013] ZACC 25], made it necessary to incorporate further checks and balances above and 38 beyond those that are currently in the SASA in respect of the language and admission policies of schools | None  | None  |
| **2.5.6**  | The Constitutional Court in the Ermelo judgment held that the SGB of a school must recognise that it is entrusted with a public resource which must be managed not only in the interests of those who happen to be learners and parents at the time but also in the interests of the broader community in which the school is located and in the light of the values of our Constitution. | None  | None  |
| **2.5.7**  | For the above reasons, it is also necessary to empower the HoD to direct a public school to adopt more than one language of instruction where it is practicable to do so. A number of checks and balances have been included in the clause to guide the HoD’s decision in this regard. Furthermore, a comprehensive consultation process is provided for to ensure that the views of all interested parties are obtained and are given proper consideration. | Acceptable. Consider resourcing – curriculum needs must be taken into consideration. The availability of teachers. | None  |
| **2.6**  | **Clause 6: Amendment of section 6A** |  |  |
|  | Clause 6: Amendment of section 6A This clause seeks to amend section 6A of the SASA to empower the Minister to appoint a person, organisation or group of persons to advise the Minister on matters relating to a national curriculum statement and a national process and procedures for the assessment of learner achievement. This allows the Minister to obtain inputs from a broader spectrum of people | This amendment may open the door for those who want to commodify and privatise education. Question: Does the minister not have powers to appoint advisors? Is there a need to legislate the appointment of agencies? Appointment of advisors should in no way undermine/ disregard the broader stakeholder consultations  | It is proposed that provision be made for stakeholders to be represented in any advisory body established by the Minister. This does not in any way present a conflict of interests even if the representatives of the critical stakeholders make representations to any such advisory body. It is in our view that critical |

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|  |  | although it is normal practice that the Minister may appoint people to advise on curriculum matters, it appears that the process becomes too technical and critical stakeholders only play the role of being consulted. Often following the consultations, the decision making may simply ignore the input of those critical stakeholders and important considerations are ignored such as the impact on education staff. The public education interest must always be placed at the forefront when working with outside entities who bring in a privatisation agenda. | stakeholders not only become spectators but participate more meaningfully in the formulation of proposals to the Minister. This will enhance the credibility of the process and will institutionalise the fact that education is a societal issue. |
| **2.7**  | **Clause 7: Amendment of section 8** |  |  |
| **2.7.1**  | Clause 7 seeks to amend section 8 of the SASA by providing that the SGB of a public school must adopt a code of conduct for the learners subject to the Constitution, the SASA and any applicable provincial law. | Supported.  | None  |
| **2.7.2**  | The clause further amends section 8 to provide that the code of conduct of a public school must also take into account the diverse cultural beliefs, religious observances and medical circumstances of the learners at the school. The clause makes provision for an exemption clause, making it possible to exempt learners, upon application and on just cause shown, from complying with certain provisions of the code of conduct. If an application for exemption is refused, the learner or the parent of the learner may appeal to the HoD against the decision of the SGB and time periods within which these actions must take place are provided for. | Acceptable The exemption “Clause” on amending the code of conduct based on accommodating different cultural and religious background of learners is also commended as schools deny learners access to education based on cultural and religious differences under the  | None |

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|  |  | “schools’ code of conduct” policy and therefore was discriminatory for many learners. Making provision to exempt such a learner under the application of such is commendable with the necessary backing from cultural groups.  |  |
| **2.7.3**  | The clause also provides that disciplinary proceedings must be age appropriate, should be conducted in the best interest of the learner, and should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution. | Supported.  | None  |
| **2.7.4**  | This amendment is informed by the United Nations Convention on the Rights of the Child, 1989, and the latest jurisprudence on this issue, as expressed in the Constitutional Court judgment of MEC for Education: Kwazulu-Natal and Others v Pillay [CCT 51/06 [2007] ZACC 21]. The amendment seeks to bring the SASA in line with such jurisprudence | Supported  | None  |
| **2.8**  | **Clause 8: Amendment of section 8A** |  |  |
| **2.8.1**  | This clause seeks to extend the provisions of section 8A of the SASA by providing for conditions under which liquor may be possessed, consumed or sold on school premises or during school activities, and to make consequential amendments to the section in this regard and in regard to the new definition of ‘‘drug’’. Provision is made for certain 39 exceptions to the prohibition to allow the SGB, on application from any person and in consultation with the HoD, to permit the possession, consumption or sale of liquor in certain cases, on certain conditions, and subject to certain restrictions. | Clarity needs to be provided to make the distinction between school events where no alcohol may be consumed or sold and events which takes place outside the school programme. | Review the clause so that it does not negatively impact on school operations.  |
| **2.8.2**  | This amendment was informed by the fact that alcohol has a place in our society, if it is consumed responsibly, by adults and by the fact that events at which alcohol is present form an important part of the fundraising activities of most schools. A further factor that was taken  | We do not condone the use of alcohol for any purpose in schools. | It is our view that there should be a complete prohibition of alcohol on school premises. |

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|  | into account is the fact that many schools rent out their halls or sports fields for religious services, weddings and other private events and that if alcohol was completely forbidden on school premises, schools would lose the income that they currently receive from those events. The clause also makes it clear that a school has the right to search an individual learner and not only a group of learners and consequential amendments in this regard are proposed to the section. |  |  |
| **2.8.3**  | This amendment is necessitated by the fact that learners have increasingly been found in possession of, or abusing, liquor and a variety of drugs, dependence-producing substances, performance enhancing substances and the like and that there are many cases of learners being expelled because of such abuses. | None  | It is our view that there should be a complete prohibition to any dangerous objects, alcoholic drinks and illegal drugs on school premises. It is not clear how any of these can be used for legitimate educational purposes. We need to point out that not only do these threaten the safety of learners but also education staff. Furthermore, possession of illegal drugs, dangerous objects and alcohol is in certain instances an offence. A principal cannot have any authority to authorise the commission of an offence. An exception should only be made in case where such items are required as part of demonstration purposes as part of an approved programme and where possession of such items has already been authorised by a competent authority and the items are handled under very controlled circumstances and clear protocols for the handling of such are in place.  |
| **2.9**  | **Clause 9: Amendment of section 9** |  |  |
|  | Clause 9 seeks to amend section 9 of the SASA by proposing the insertion of a detailed definition of serious misconduct by a learner in order to provide greater clarity in this regard. In particular, the insertion  | Acceptable.  | None  |

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|  | is an attempt at addressing the growing incidents of violence at schools. |  |  |
| **2.10**  | **Clause 10: Amendment of section 10** |  |  |
|  | Clause 10: Amendment of section 10 Clause 10 seeks to amend section 10 of the SASA by extending the prohibition of corporal punishment being administered to learners to include ‘‘during a school activity or in a hostel accommodating learners of a school’’. This amendment is necessary to close an existing gap | Acceptable.  | None  |
| **2.11**  | **Clause 11: Amendment of section 10A** |  |  |
|  | Clause 11: Amendment of section 10A Clause 11 seeks to amend section 10A of the SASA by extending the prohibition of initiation practices to include ‘‘during a school activity’’. As with corporal punishment, the amendment is aimed at closing a gap in the legislation. | Acceptable.  | None  |
| **2.12**  | **Clause 12: Amendment of section 12** |  |  |
| **2.12.1**  | Clause 12 seeks to amend section 12 of the SASA by providing that the SGB of a public school may apply to the MEC to be designated as a public school with a specialised focus on talent. The HoD may also identify a public school to be so designated and may make a recommendation to the MEC in this regard, and the MEC may so designate a public school if it is in the best interest of education in the province and if the school complies with the norms and standards determined by the Minister. The process to be followed before a school may be so designated is also set out in the clause. | None  | None  |
| **2.12.2**  | This amendment is necessary to close a gap in the current legislation and to clarify the process that a school needs to follow to be designated as a public school with a specialised focus on talent. It further clarifies whose responsibility it is to designate such schools and the criteria that will be applied in the case of such a designation. | None  | None  |
| **2.13**  | **Clause 13: Amendment of section 12A** |  |  |
| **2.13.1**  | Clause 13: Amendment of section 12A 2.13.1 Clause 13 seeks to amend section 12A of the SASA to provide that, in instances where  | The merger of schools has both labour relations implications for  |  |

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|  | two or more schools are merged, a new public school will be established. Methods of communicating with interested parties in regard to such a merger are also clarified, and timeframes within which the MEC must act are set out. Provision is made for the case where the MEC fails to act within the stipulated periods, and further details of the process to be followed by the MEC and the SGBs concerned are set out. | education staff. At the least, education staff or their representative union must be given adequate notice of any intention by the MEC to initiate a merger process. If the merged public school will continue with all academic programmes offered by the former schools until the programmes are restructured, then the staff must remain with the merged school until then. This is so because rationalisation must be informed inter alia by the curriculum needs of the merged school. |  |
| **2.13.2**  | The clause further provides that a merger will not affect the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence and further provides for the rationalisation or redeployment of the workforce of the new public school. In addition, after the merger of two or more public schools, the newly formed school will continue with all the academic programmes offered by the former public schools and provision is made for the governance of the new public school. | None  | None  |
| **2.13.3**  | This amendment is proposed for the sake of clarity and uniformity in the manner in which schools are merged. | none  | None |
| **2.14**  | **Clause 14: Amendment of section 18A** |  |  |
|  | Clause 14: Amendment of section 18A This clause seeks to amend section 18A of the SASA by inserting a new clause in order to require members of the SGB to disclose their financial interest annually including that of their spouses, partners or family members. This amendment is proposed in order to prevent corruption and financial mismanagement by SGB members and to promote good governance. | While we agree that corruption and financial mismanagement by SGB members must be prevented, we need further expansion on disclosure of financial interest as it | None  |

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|  |  | pertains to spouses, partners and family members. |  |
| **2.15**  | **Clause 15: Amendment of section 20** |  |  |
| **2.15.1**  | Clause 15 seeks to amend section 20 of the SASA to allow the reasonable use, under fair conditions determined by the HoD, of facilities of a public school for education-related activities, without the charging of a fee or tariff. However, in determining the conditions, the HoD must consult with the SGB of the school, which consultation must include the matter of the payment of necessary and reasonable expenses arising from the use of the facilities. | Acceptable.  | None  |
| **2.15.2**  | The proposed amendment must be seen in the context of the fact that public schools are assets of the State. Flowing from this, provincial education departments should be allowed to use the facilities of public schools free of charge, if such use is for educational purposes, is reasonable and takes place under fair conditions so that the schools in question will not suffer financially as a result of expenses arising from the use of the facilities. In many towns and villages, the public school is the only venue that a provincial education department can use for educational purposes. | Acceptable  | None  |
| **2.16**  | **Clause 16: Amendment of section 21** |  |  |
|  | Clause 16: Amendment of section 21 Clause 16 seeks to amend section 21 of the SASA to empower the HoD to centrally procure identified learning and teaching support material for public schools, in consultation with the SGB and on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards. This amendment is proposed in order to bring about economies of scale. | This proposed amendment is inconsistent with decentralisation and the recommendations of the NDP inter alia to give principals greater powers. There are already uniform norms and standards for the material to be procured and supplied to schools. Centralised procurement does not presuppose efficiency, effectiveness, and economy. It is important to indicate that schools contribute to economic  | Review the clause based on comment provided.  |

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|  |  | activity in the locality of the area of the school. In our view not only is this issue of centralised procurement of LTSM problematic in this sense but we would have expected the department to take measures to ensure that all school based programmes such the NSNP support local business. Schools are allocated funds based on the determined norms and standards allocation per learner inclusive of LTSM and this forms part of a school budget. Unless provision is made that any savings realised from centralised procurement accrue to the school or are used to support school-based programmes such as libraries. It is proposed that provision must be made for the school to consent to any such process of centralised procurement and that local communities and the school must benefit from any such procurement. |  |
| **2.17**  | **Clause 17: Amendment of section 22** |  |  |
| **2.17.1**  | Clause 17 seeks to amend section 22 of the SASA to empower the HoD to withdraw, on reasonable grounds and after complying with 41 prescribed requirements, ‘‘one or more functions’’ of an SGB and not only ‘‘a function’’, as the section currently reads. It also provides that, in cases of urgency, the HoD may withdraw functions without prior communication with such SGB. In such a case, the HoD must  | This clause requires further thinking considering the initial purpose of having School Governing Bodies and the democratic process thereof. | Review clause keeping the comment in mind.  |

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|  | immediately thereafter furnish the SGB with written reasons for his or her actions, grant the SGB a reasonable opportunity to make representations, duly consider such representations, and inform the SGB of his or her final decision. Further provision is made for steps that the HoD must take if he or she acts in terms of this section, including the appointment of sufficiently qualified persons to perform the withdrawn function or functions for a specified period. The appointed persons must build capacity to ensure that the SGB will in future perform the functions that it failed to perform. The clause also deals with the voting rights of such persons and provides for an appeal process. |  |  |
| **2.17.2**  | The proposed amendment will create clarity regarding the powers of the HoD to withdraw functions of SGBs and clearly indicates the processes that need to be followed when functions are withdrawn | Same as the above |  |
| **2.18**  | **Clause 18: Amendment of section 23** |  |  |
|  | Clause 18: Amendment of section 23 This clause seeks to amend section 23 of the SASA by substituting subsection (6) to provide that SGB representatives may co-opt members from within the community, as well as from outside the community, to assist the SGB in discharging its functions. The amendment is proposed to enable the SGB to co-opt experts in relevant fields where such experts may not be found within the community. In this way, the SGB is allowed to co opt members with the requisite skills from outside the community in which the school is located without changing the requirement that the majority of SGB members must be parents. | SASA does make provision for co opting members so clarity needs to be provided as to why existing provision cannot be used to accommodate co-opted members. | Review the clause against existing provision for co-option.  |
| **2.19**  | **Clause 19: Amendment of section 24** |  |  |
|  | Clause 19: Amendment of section 24 Clause 19 seeks to amend section 24 of the SASA by substituting ‘‘Member of the Executive Council’’ with ‘‘Minister’’ and the ‘‘Provincial Gazette’’ with ‘‘Gazette’’ in regard to arrangements for the election of members of an SGB of a public school for learners with special education needs. Currently,  | Acceptable  | None |

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|  | each province deals with these matters in its own preferred way, and this amendment will bring about uniformity across the provinces |  |  |
| **2.20**  | **Clause 20: Insertion of Section 24A** |  |  |
| **2.20.1**  | Clause 20 proposes the insertion of section 24A into the SASA to provide that the provisions of section 23 of the SASA, excluding subsection (5), which deal with the membership of SGBs of ordinary public schools, will apply to a public school with a specialised focus on talent and that the authority to co-opt members includes the authority to co-opt relevant experts in the specialised focus of the public school, whether from inside or outside the community. | None  | None  |
| **2.20.2**  | This amendment is necessary to address a gap in the SASA and to ensure uniformity in the establishment of the governance structures for public schools with a specialised focus on talent. | None  | None  |
| **2.21**  | **Clause 21: Substitution of Section 25** |  |  |
| **2.21.1**  | Clause 21 proposes to substitute section 25 of the SASA in order to empower the HoD to dissolve an SGB that has ceased to perform the functions allocated to it in terms of the Act, if the HoD has reasonable grounds to do so. Provision is made for steps that the HoD must take if he or she acts in terms of this section, including the appointment of sufficient qualified persons to perform the functions of the SGB for a specified period. The clause also deals with the voting rights of such persons and provides that the HoD may act in terms of this section only after following certain prescribed procedures. The clause also provides that the HoD must ensure that a new SGB is elected within one year, and provides for an appeal process. | This provision is supported.  | None  |
| **2.21.2**  | The proposed amendment creates clarity regarding the powers of the HoD to dissolve an SGB and clearly indicates the processes that need to be followed when an SGB is dissolved. | As Above  | None  |
| **2.22**  | **Clause 22: Substitution of Section 26** |  |  |
| **2.22.1**  | Clause 22 proposes to substitute section 26 of the SASA and provides for the declaration of a direct or indirect personal interest that an SGB member, or any of his or her family members, close friends or  | Acceptable. It promotes good governance. | None  |

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|  | business partners has and where such a personal interest exists, the SGB member must recuse himself or herself and withdraw from a meeting of the SGB for the duration of the discussion and decision- making on an issue in which such member has a personal interest. |  |  |
| **2.22.2**  | The clause further provides that should a SGB have knowledge that a member who is present has a personal interest in a matter under discussion, the SGB may not take a decision on the matter until such member has withdrawn from the meeting. Furthermore, the clause provides for the imposition of a sanction, after due process, where an SGB member contravenes the provisions of the section. The amendment also applies to a committee of an SGB and to committee members. A definition for ‘‘family member’’ has also been inserted into the clause. | Acceptable.  | None  |
| **2.22.3**  | The proposed amendment is made to promote the prevention of corruption and to promote good governance | Supported.  | None |
| **2.23**  | **Clause 23: Amendment of Section 27** |  |  |
|  | Clause 23: Amendment of section 27 Clause 23 seeks to amend section 27 of the SASA which provides that SGB members are not entitled to be remunerated for the performance of their duties, by adding the words ‘‘or for the attendance of meetings and school activities’’. This amendment is proposed merely to clarify the matter of remuneration. | Acceptable.  | None |
| **2.24**  | **Clause 24: Amendment of Section 28** |  |  |
| **2.24.1**  | Clause 24 seeks to amend section 28 of the SASA by substituting ‘‘Member of the Executive Council’ ’with ‘‘Minister’ ’and ‘‘Provincial Gazette’’ with ‘‘Gazette’’ in regard to arrangements for the election of members of an SGB of a public school and by deleting the reference to ‘‘any applicable provincial law’’. | Acceptable.  | None  |
| **2.24.2**  | Currently, each province deals with the election of the members of a SGB in its own preferred way and this amendment will bring about uniformity across all provinces | Acceptable.  | None  |
| **2.25**  | **Clause 25: Amendment of Section 29** |  |  |

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|  | Clause 25 seeks to amend section 29 of the SASA to provide that, where reasonably practicable, only a parent member of an SGB, who is not employed at the school, may serve as the chairperson of the finance committee of that public school. This amendment seeks to promote good governance. | Supported.  | None  |
| **2.26**  | **Clause 26: Amendment of Section 32**  | None  | None  |
|  | Clause 26: Amendment of section 32 Clause 26 seeks to amend section 32 of the SASA to provide for a technical amendment that is required as a result of the provisions of the Children’s Act, 2005 (Act No. 38 of 2005), which changed the age of majority from 21 to 18 years. This will ensure that learners 18 years and older are not a party to litigation by virtue of their membership of the SGB. A new provision is also inserted to ensure that learners who are SGB members are not involved in the appointment of educators. | Supported.  | None |
| **2.27**  | **Clause 27: Substitution of Section 33** |  |  |
| **2.27.1**  | Clause 27 proposes to substitute section 33 of the SASA which deals with the closure of public schools. The MEC must embark on a comprehensive consultation process before closing a school. The proposed amendment also empowers the MEC to close a public school in his or her sole discretion if there are no learners registered at that public school. However, the MEC must first verify, by means of a site inspection by an official nominated by him or her, that there are no learners registered at that school. The amendment also empowers the MEC to close a public school after following a prescribed consultation process if, in the case of a primary school, 135 or fewer than 135 learners are registered at that school, and, in the case of a secondary school, 200 or fewer than 200 learners are registered at the school. The MEC must inform interested parties of his or her decision in the above regard and, if the decision is to close a public school, must make arrangements for the learners of the school to attend another school and, where appropriate, make arrangements for the transport of qualifying learners to that school. The MEC must,  | This clause is acceptable provided that its subjected to a proper process. | It is inevitable that schools will close owing to low learner numbers. It is in our view that it is important to distinguish between a natural drop in learner numbers and a drop actuated for instance by dysfunctionality or poor performance of a school. It is in this context that we hold a view that measures must be put in place to ensure the existence of adequate school infrastructure and proper functioning of schools prior to the closure process where learner numbers drop significantly not owing to natural reasons such as demographic. It is also our view that from a planning point of view, legislation must strengthen planning by requiring the existence of area based education plans properly consulted with communities the  |

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|  | furthermore, take certain prescribed factors into account before acting under this section. |  | schools serve. This is related to the service delivery improvement plan we referred to elsewhere in this discussion. Due to the fact that the closure of a school has implications for staff of the school, it is appropriate that they or their representative union are given notice of any such intention by the MEC. |
| **2.27.2**  | The purpose of this amendment is to provide for a proper consultation process and to simplify the procedure when dealing with the closure of a school.  | None  | None  |
| **2.28**  | **Clause 28: Amendment of Section 36** |  |  |
| **2.28.1**  | Clause 28: Amendment of section 36 2.28.1 Clause 28 seeks to amend section 36 of the SASA to provide that the SGB must also seek the approval of the MEC to enter into lease agreements, for any purpose, including loans and overdrafts which are already provided for in the said section. The clause also provides that the approval of the MEC is not required in regard to the lease of immovable property of the school if the lease is for a period not exceeding 12 months.  | This clause needs to be reconciled with clause number 2.1.12 | None |
| **2.28.2**  | With regard to lease agreements, the proposed amendment seeks to ensure good governance, economies of scale, that money is spent economically, and a reduction in the risk that the State will be held responsible for acts or omissions on the part of schools. | Acceptable.  | None  |
| **2.28.3**  | The proposed amendment further reduces the burden on schools to apply for permission when entering into small lease agreements in regard to immovable property | There is a need to understand the difference type of lease agreements so that the idea of small lease could be better understood. What are the limits of small lease?  | The clause should clarify what is meant by “small lease”. |
| **2.29**  | **Clause 29: Amendment of Section 37** |  |  |

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|  | Clause 29: Amendment of section 37 Clause 29 seeks to amend section 37 of the SASA by substituting the word ‘‘directions’’ with the word ‘‘directives’’. The proposed amendment is a technical correction. | Acceptable.  | None |
| **2.30**  | **Clause 30: Amendment of Section 38** |  |  |
| **2.30.1**  | Clause 30: Amendment of section 38 2.30.1 Clause 30 seeks to amend section 38 of the SASA to provide that a document explaining the budget of a school, together with the budget itself, must be made available to parents before the budget is presented to a general meeting of parents for consideration. It also sets out the procedure that an SGB must follow if it proposes to deviate from the initial budget by 10 per cent or more of the initial approved budget, or if it proposes to reallocate funds for a purpose that is different from the purpose set out in the budget originally approved by a general meeting of parents | Acceptable.  | None |
| **2.30.2**  | Reasons for the deviation or reallocation must also be made available to the parents prior to the meeting and parents must be informed that this information will be available for inspection at the school at least 14 days prior to the meeting. A quorum of 10 per cent of the parents is required for the general meetings referred to above. If a quorum cannot be achieved at the first meeting, a second meeting must be arranged, at which no quorum is required. A copy of the notice of the second meeting must also be distributed to every learner at the school with an instruction to hand the notice to their parents. This amendment is proposed to address issues concerning governance and fairness. | Acceptable.  | None  |
| **2.31**  | **Clause 31: Amendment of Section 38A** |  |  |
| **2.31.1**  | Clause 31 seeks to amend section 38A of the SASA to extend its application to a state employee who is paid any additional remuneration or any other financial benefit or benefit in kind. It requires SGBs to provide full details of the nature and extent of the remuneration or benefit; the reasons for the remuneration or benefit; if practicable, the monetary value of the remuneration or benefit; and details of the process that will be followed and the resources that will be used to compensate or remunerate the employee | Acceptable.  | None  |

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| **2.31.2**  | The proposed amendment is necessary to provide clarity and to reduce the financial burden on parents who pay substantial school fees at fee-paying schools. | None  | None  |
| **2.32**  | **Clause 32: Amendment of Section 41** |  |  |
|  | Clause 32: Amendment of section 41 Clause 32 seeks to amend section 41 of the SASA by inserting a new subsection (2A) to provide that when a parent applies for exemption from the payment of school fees, such parent may submit additional documentary evidence in the form of an affidavit in instances where information cannot be obtained from the other parent of the learner. The proposed amendment aims to lessen the burden on single parents whose ex-partners are untraceable or unwilling to provide information on their financial situation | Acceptable.  | None  |
| **2.33**  | **Clause 33: Amendment of Section 42** |  |  |
|  | Clause 33 proposes to substitute section 42 of the SASA to provide that the SGB of a public school must keep detailed records on prescribed aspects of its financial affairs; draw up annual financial statements within a specified time and in a specified manner; and present the financial records and statements to a general meeting of parents. The proposed amendment expands the existing provision contained in section 42 to ensure transparent accounting and good governance | This provision is supported.  | None  |
| **2.34**  | **Clause 34: Amendment of Section 43** |  |  |
| **2.34.1**  | Clause 34 seeks to amend section 43 of the SASA to empower the HoD, if he or she deems it necessary, on just cause shown, to authorise an investigation into the financial affairs of a public school; to request the Auditor-General to undertake an audit of the records and financial statements of a public school; or appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school. All of these steps must be taken in accordance with specified requirements | Acceptable.  | None  |

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| **2.34.2**  | The clause also places a responsibility on the SGB to provide the HoD with quarterly reports on all income and expenditure in accordance with directives issued by the HoD. The provision that the SGB must submit a copy of the annual financial statements within six months after the end of each financial year to the HoD remains unchanged. | Acceptable.  | None  |
| **2.34.3**  | The proposed amendment further expands on the existing provision by creating more options for the HoD if he or she needs to have the financial matters of a school investigated after, for example, receiving allegations of corruption, fraud and the like. In addition, the amendment seeks to create certainty with regard to reporting and to promote open and transparent accounting and financial accountability, bearing in mind that public funds and parents’ money are at stake | Acceptable.  | None  |
| **2.35**  | **Clause 35: Amendment of Section 46** |  |  |
|  | Clause 35 seeks to amend section 46 of the SASA by increasing the penalty provision from six to 12 months in the case where a person establishes or maintains an independent school that is not registered by the HoD. | Acceptable.  | None  |
| **2.36**  | **Clause 36: Amendment of Section 48** |  |  |
| **2.36.1**  | Clause 36 seeks to amend section 48 of the SASA to provide that the subsidy granted to an independent school can be made subject to conditions determined by the MEC. The amendment also provides that an independent school must submit quarterly reports to the HoD on all income and expenditure relating to the subsidy, and must, within six months after the end of each financial year, provide the HoD with a copy of the audited financial statements relating to the subsidy. | Acceptable.  | None  |
| **2.36.2**  | The proposed amendment seeks to create certainty in regard to reporting and to promote open and transparent accounting for the sake of financial accountability when dealing with public funds. | None.  | None  |
| **2.37**  | **Clause 37: Substitution of Section 51** |  |  |
| **2.37.1**  | Clause 37 seeks to substitute section 51 of the SASA to provide clarity with regard to home education. The amendment makes it clear that learners may be educated at home only if they are registered for such  | Acceptable with the proviso that proper credence is given to the  | Every Provincial Education Department, through their districts, must devise and implement a workable plan to oversee |

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|  | education. A parent must, at the end of each of the three school phases, notify the HoD if he or she intends to continue educating the learner at home. The criteria that the HoD must consider, when deciding whether or not to approve an application, are also set out. | registration and administration of home education | the proper management of home education in their respective districts. |
| **2.37.2**  | The amendment provides that the HoD may, when considering an application, require a delegated official to conduct a pre-registration site visit and consultation with the parents and learner to verify the information supplied in the application documentation and to provide support, where necessary, with the application process. It also sets out the main responsibilities of a parent who wishes to educate his or her child at home | Acceptable.  | None  |
| **2.37.3**  | The amendment stipulates that, in the case of learners who are not yet registered for home education, application must be made within 30 days after the section comes into operation. Provision is also made for a time limit within which the HoD must respond to an application for registration for home education. The amendment further stipulates that home-educated learners must be assessed annually by a competent assessor and sets out the options for a home-educated learner after reaching the age of 15 or after completing grade 9. | Acceptable.  | None  |
| **2.37.4**  | Clarity is also provided to ensure that a learner who is educated at home after the age of 15, or after completion of grade 9, will not be at a disadvantage. In the case of a learner who will be writing the NSC, the parent must, before the learner embarks on any studies following grade 9, ensure that the learner complies with the requirements stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination, for a learner receiving home education | Acceptable.  | None  |
| **2.37.5**  | The amendment further provides that the HoD must decline to register a learner for home education if the HoD is satisfied that the parent does not meet certain requirements, or that home education is not in the best interests of the learner; and that the HoD may cancel a learner’s registration for home education if, after investigation, the  | Acceptable.  | None  |

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|  | HoD is satisfied that home education is no longer in the best interests of the learner. Before so cancelling a learner’s registration, the HoD must satisfy certain requirements. Provision is also made for an appeal process |  |  |
| **2.37.6**  | The amendment provides that the Minister may make regulations relating to the registration and administration of home education. The proposed amendment creates clarity on the powers and responsibilities of officials and of the parents of a learner who is educated at home and proposes steps to protect parents who want to educate their children at home in the Further Education and Training Phase (grades 10 – 12) and will ensure that the final qualification obtained will give the learner opportunities for further study at institutions of higher education. | Acceptable.  | None  |
| **2.38**  | **Clause 38: Amendment of Section 59** |  |  |
|  | Clause 38: Amendment of section 59 Clause 38 seeks to amend section 59 of the SASA to provide for a technical amendment and provides that where a parent, or any other person, applies for the admission of a learner to a public school, or applies for exemption from the payment of school fees, and submits false or misleading information, or submits a forged document or a document he or she claims is a true copy of the original but is not, is guilty of an offence. | Acceptable.  | None  |
| **2.39**  | **Clause 39: Insertion of Section 59A** |  |  |
|  | Clause 39: Insertion of section 59A Clause 39 proposes the insertion of section 59A into the SASA to provide for dispute resolution mechanisms in the event of any dispute between an SGB and the HoD, or any dispute between an SGB and an MEC. It is anticipated that this proposed amendment will save costs for all concerned parties and will enable the parties involved to resolve disputes amicably | Acceptable.  | None  |
| **2.40**  | **Clause 40: Amendment of Section 60** |  |  |
|  | Clause 40: Amendment of section 60 Clause 40 seeks to amend section 60 of the SASA. This section deals with the liability of the State for any delictual or contractual damages caused as a result of  | This clause needs further clarification. | Review the clause so that the liability is directed correctly.  |

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|  | any school activity conducted by a public school for which the public school would have been liable. The proposed amendment to section 60 excludes the liability of the State if the provisions of section 36(2) of the SASA have not been complied with. This amendment seeks to protect the interests of the State in the case where a school does not comply with the provisions of the SASA | What does this clause mean? Who is responsible for the liability? Is it the SGB or the Principal who acts on behalf of the state? |  |
| **2.41**  | **Clause 41: Amendment of Section 61** |  |  |
| **2.41.1**  | Clause 41 seeks to amend section 61 of the SASA to extend the powers of the Minister to make regulations on the management of learner pregnancy; on the admission of learners to public schools; on the prohibition of the payment of unauthorised remuneration or the giving of other financial benefits or benefits in kind to employees; on minimum norms and standards for provincial teacher development institutes and district teacher development centres; on the organisation, roles and responsibilities of education districts; and on a national education information system. The clause also provides for the possibility of creating offences in the regulations made by Minister | Acceptable.  | None  |
| **2.41.2**  | The amendment further provides that any regulation contemplated in section 61(1) may provide that any person who contravenes a provision of the regulation, or fails to comply therewith, is guilty of an offence.  | None  | None  |
| **2.42**  | **Clause 42: Amendment of Preamble** |  |  |
|  | Clause 42: Amendment of Preamble Clause 42 provides for the insertion of a phrase into the Preamble of the SASA to facilitate the education of children through the promotion and protection of the right to basic education. | None  | None  |

**AMENDMENTS TO EMPLOYMENT EDUCATION ACT, 1998 (Act No. 76 of 1998)**

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| **CLAUSE**  | **CONTEXT**  | **COMMENTS**  | **RECOMMENDATION**  |
| **2.43**  | **Clause 43: Amendment of Section 1** |  |  |

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|  | Clause 43 seeks to amend section 1 of the EEA by deleting obsolete provisions in order to align the Act with the new education dispensation. The proposed amendment deletes the references to ‘‘adult basic education centre’’ and ‘‘further education and training Institution’’.  | What are the implications of deleting the reference to “adult basic education centre” and “further education and training institution” on the employment of educators in those institutions? The amendment does not make provision for non-teaching support staff in administration to be included in the post establishment of a school. It is important that this be clarified as this is an important part of the staff required for the effective functioning of a school. The current situation presents major challenges for already overworked education staff who must contend with already overcrowded classrooms and lack of adequate teaching personnel. Although the amendment seeks to include these persons under the definition of educator, no provision is made regarding their appointment and whether a post establishment must as a rule include this category. It is our view that this must be the case. The natural implications of this provision necessitate a consideration of whether the PPN applies to this category. The department must provide clarity on this aspect as it is important that specific provision be made for this category and administrative staff in schools. |  |

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| **2.44**  | **Clause 44: Amendment of Section 5** |  |  |
|  | Clause 44 seeks to amend section 5 of the EEA by deleting obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the references to ‘‘further education and training institution’’, ‘‘adult basic education centre’’, ‘‘institution’’ and ‘‘centre’’.  |  |  |
| **2.45**  | **Clause 45: Amendment of Section 7** |  |  |
|  | Clause 45 seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment and to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005). The clause further provides for the possibility that an appointment to a promotional post can be made on probation. The intention is to close the gap and extend the provision to promotional posts in addition to appointments. | This clause should be subjected to review considering it deviates from existing provisions and its implications are not yet understood.  |  |
| **2.46**  | **Clause 46: Amendment of Section 8** |  |  |
|  | Clause 46: Amendment of section 8 Clause 46 seeks to amend section 8 of the EEA by proposing the deletion of the obsolete references to ‘‘council’’ and ‘‘adult education and training centre’’.  | Technical  | None |
| **2.47**  | **Clause 47: Amendment of Section 9** |  |  |
|  | Clause 47: Amendment of section 9 Clause 47 seeks to amend section 9 of the EEA to provide for the secondment of educators to another department.  | Acceptable.  | None |
| **2.48**  | **Clause 48: Amendment of Section 11** |  |  |
|  | Clause 48 seeks to amend section 11 of the EEA by proposing the deletion of obsolete references to ‘‘institutions’’ and ‘‘centres’’.  | Technical  | None |
| **2.49**  | **Clause 49: Amendment of Section 17** |  |  |
|  | Clause 49 seeks to amend section 17 of the EEA by inserting a phrase that expands the list of acts of serious misconduct. This is necessary because ‘‘conducting business with the  | None  | None |

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|  | State’’ is a new act of serious misconduct that is introduced in the Bill in the proposed insertion of section 19 in the EEA and the current section 17 of the EEA is no longer adequate. The new phrase is worded in a manner which will ensure any acts of misconduct that may be identified in future legislation will be covered. |  |  |
| **2.50**  | **Clause 50: Amendment of Section 18** |  |  |
|  | Clause 50: Amendment of section 18 Clause 50 seeks to amend section 18 of the EEA by proposing the deletion of the obsolete references to ‘‘adult learning centre’’ and includes a provincial department of education within the ambit of the section. | Acceptable |  |
| **2.51**  | **Clause 51: Insertion of section 19** |  |  |
|  | Clause 51 proposes the insertion of a new section 19 into the EEA, which prohibits educators from conducting business with the State or from being a director of a public or private company conducting business with the State and provides that a contravention of the aforementioned provision is an offence. Such contravention will also constitute serious misconduct, which shall result in the termination of the educator’s employment by the employer. This proposed amendment aims to promote good governance to protect the financial interests of the State and to prevent corruption. | Acceptable |  |
| **2.52**  | **Clause 52: Amendment of Section 35** |  |  |
|  | Clause 52 seeks to amend section 35 of the EEA to extend the powers of the Minister to make regulations on norms and standards for district staffing.  | None |  |
| **2.53**  | **Clause 53: Repeal of section 19** |  |  |
|  | Clause 53 seeks to repeal section 38 of the EEA which has become obsolete.  | None |  |
| **2.54**  | **Clause 54: Amendment of Schedule 1** |  |  |

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|  | Clause 54 seeks to amend Schedule 1 to the EEA by proposing the deletion of the obsolete references to ‘‘public further education and training institution or public adult learning centre’’.  | None |  |
| **2.55**  | **Clause 55: Amendment of Schedule 2** |  |  |
|  | Clause 55 seeks to amend Schedule 2 to the EEA by proposing the deletion of the obsolete references to ‘‘public further education and training institution or public adult learning centre’’. It also provides for a timeframe within which an appeal contemplated in Schedule 2 must be considered.  | None |  |
| **2.56**  | **Clause 43: Short Title** |  |  |
|  | Clause 56 provides the short title of the envisaged Act and provides that the envisaged Act comes into operation on a date fixed by the President by proclamation in the Gazette. | None |  |

**Conclusion**

Most new additions are supported and the clauses with comments and recommendations point to possible inconsistencies in the amendments in relation to existing events in the system and how they play out in practice. There are also historical reasons why some clauses were put in place but the history was not considered when the new clauses were inse

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