

Clause	Section	Comment: in the opinion of SASLAW	Proposed amendment to Bill
2	33A(2)	<p>The proposed insertion of section 33A(1)(b) and section 33A(2) raises the following concerns:</p> <ul style="list-style-type: none"> On the plain reading of this section employers would be entitled to require employees, through a 'clothing scheme' or 'tool scheme' to pay, for example, for their own uniforms/hard hats/tools, particularly if by sourcing these through such an employer-run scheme the employee gets them at a discount as opposed to purchasing the items on the open market. The proposed section 33A(2) therefore goes further than providing for share option schemes, and would therefore also potentially cover schemes whereby employees must pay for their own tools, equipment, safety gear, uniforms, etc. Is this what was intended? In addition, group medical aid schemes and retirement schemes will, on a plain reading of this section, be covered. However, there may be an argument that the 	<p>Amend the proposed subsection to read (our suggested amendments are underlined):</p> <p>'Subsection (1)(b) does not preclude ... if –</p> <p>(a) <u>the purchase of the goods or services is a fair and reasonable requirement related to the employee's employment;</u></p> <p>(b) the employee receives a financial <u>or other</u> benefit from participating in the scheme;</p> <p>(c) the price of any goods, products or services provided through the scheme is fair and reasonable; and</p> <p>(d) the purchase is not prohibited by any statute.'</p>

		<p>first proviso in the proposed section 33A(2) may not necessarily be met, namely that the employee must receive a 'financial' benefit from participating in the scheme.</p> <ul style="list-style-type: none"> • It is proposed that this clause be amended to specifically permit group medical aid and retirement schemes. This could potentially be done by providing that the employee 'receives a financial <u>or other</u> benefit'. • It is further proposed that the section be amended to specify that the purchase of the goods, products or services must be a fair and reasonable requirement in the context of the employee's employment. 	
8	55(4)(b)	<p>No consensus was reached within SASLAW on the issue of whether a sectoral determination should be able to prescribe actual wage increases.</p> <ul style="list-style-type: none"> • <u>On the one hand</u> it is argued that employees earning above the prescribed minimum ought also to be entitled to increases at a rate prescribed by the Minister. • <u>On the other hand</u> it is argued that the State should only fix the minimum terms and conditions of employment where essential and leave actual terms and conditions to collective bargaining and contractual negotiation. The 	No consensus.

		<p>effect of this proposed amendment is that the Minister will have the power to determine increases not only in respect of employers paying at the prescribed minimum, but also in respect of employers paying in excess of the minimum. This may also have the unintended consequence that employers would not pay above the prescribed minimum but would simply pay minimum rates, which would obviously be detrimental to employees.</p>	
9, 10 and 12	68, 69, 71-72	<p>The effect of the proposed amendments to these sections is:</p> <ul style="list-style-type: none"> • to make an attempt to secure a written undertaking in terms of section 68 discretionary and to permit the Department of Labour to issue a compliance order without the need to attempt to seek a written undertaking; • to do away with the employer's current right to object to compliance orders and to appeal against such orders; • to enable the Director-General to apply to the Labour Court to have the compliance order made an order of court. 	No consensus.

		<p>There is no consensus within SASLAW in respect of these amendments.</p> <ul style="list-style-type: none"> • <u>On the one hand</u> it is argued that these proposed amendments will expedite enforcement proceedings and will address the abuse of the current system by non-compliant employers. • <u>On the other hand</u> other members argue as follows. <ul style="list-style-type: none"> ○ The proposed amendments do not give employers sufficient opportunity to engage with an inspector of the DoL prior to the drastic step being taken to issue a compliance order. This may infringe an employer's right to fair administrative action. Although it is envisaged that the order itself will make provision for representations these are envisaged after the compliance order has been granted. In addition it merely permits the employer to make representations to the DoL and the Labour Court. Nothing in the proposed amendments obliges the DoL to consider these representations prior to making application to the Labour Court. In any event, there is no explicit provision which empowers the DoL to withdraw the compliance order. 	
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15	77(1)	<p>A consequential amendment to section 93(1) is required. Currently, this section provides as follows: 'Any magistrates' court has jurisdiction to impose a penalty for an offence provided for under this Act.'</p>	Delete section 93.