

Clause	Section	Comment: in the opinion of SASLAW	Proposed amendment to Bill
1(b)	21(8)(A) 21(8)(C)	Members are split over these sections. Some support them on the basis that it is appropriate for minority unions to be afforded the rights in question. Others argue that the sections dilute the principle of majoritarianism and will increase competition (and probably friction) between trade unions at workplaces – it thus being debatable whether they will lead to an improvement in industrial relations.	No consensus reached.
4	49(2)-(4)	These subsections do not provide for any mechanism for the registrar or another party to verify the information received from a bargaining council. This means that the Minister will be obliged to extend a bargaining council agreement without proper evidence that the bargaining council is representative.	Provision should be made for the registrar having to verify the information or that the bargaining council should be required to verify the information in some way, for example, by means of an independent audit.
6(a)	64(a)(iii)-(iv)	<ul style="list-style-type: none"> Where a dispute concerns a single employer only, no ballot should be required, even if the employer is a member of an employers' organisation. 	<ul style="list-style-type: none"> Amend to exclude the need for a ballot where a dispute concerns a single employer only, even if the employer is a member of an employer's organisation.

		<ul style="list-style-type: none"> In non-unionised workplaces, the CCMA (or another appropriate body) should be required to organise a ballot. 	<ul style="list-style-type: none"> Amend to provide for the CCMA organising ballots in non-unionised workplaces.
8(a)	67(7)	The replacement of the word 'despite' at the beginning of the subsection with the word 'notwithstanding' would probably more accurately reflect what is intended.	Delete the word 'despite' at the beginning of the subsection and replace it with the word 'notwithstanding'.
8(b)	67(8)	The exclusion should be extended to a picketing agreement and rules established in a collective agreement entered into independently of the CCMA.	Add 'or a picketing agreement or a picketing rule established by way of a collective agreement' at the end of the subsection.
9(b)	69(6)	Subsections (d) and (e) should read (a) and (b).	Amend subsections (d) and (e) to read (a) and (b).
9(c)	69(8)	Sub-sections (c) and (d) should be extended to include material breaches of a picketing agreement and rules established by way of a collective agreement.	<ul style="list-style-type: none"> Add 'or a picketing agreement constituting a collective agreement' at the end of subsection (c). Add 'or a picketing rule contained in a collective agreement' at the end of subsection (d).
9(d)	69(12)	Provision should be made for the Labour Court to be empowered to lift the suspension of a picket, strike, employment of replacement labour or a lock-out on good cause shown.	Add a new subsection (15) reading: 'In the event of the Labour Court granting an order of suspension in terms of subsection (12)(c) or (d), it is empowered to grant an order uplifting the suspension on good cause shown.'

19(b)	115(2)(d)	The BCEA threshold (currently some R170 000 per annum) is too high and will place enormous strain on the CCMA; the service is probably better reserved for only the indigent.	Provide for a reduced threshold.
24	145(5)	This is an issue best dealt with in the Rules or by way of a practice directive developed in conjunction with practitioners. SASLAW has previously endorsed the proposal contained in the draft practice manual developed by the Judge President in this regard, which is modelled on rule 5(17) of the Labour Appeal Court Rules in relation to appeal records.	Delete this subsection.
24	145(6)	The time limit of six weeks within which judges are typically required to deliver judgments in reviews is considered unrealistic; it may well constitute an interference with judicial independence; and it will probably take its toll on the quality of judgments and ultimately our review jurisprudence, which will be counter-productive. If at all, this issue is best dealt with in the Judicial Code of Conduct applicable to all judges.	Delete this subsection.

24	145(7) 145(8)	There is a concern about how the security process is going to be managed, although this is probably best dealt with in the Rules.	Provide for the security process having to be regulated by the Rules.
27	151(2)	The references to 'Supreme Court' should be amended in accordance with this proposed amendment in sections 153(2)(a), 154(7) and 160(2).	Amend sections 153(2)(a), 154(7) and 160(2) by deleting the words 'Supreme Court' and replacing them with the words 'High Court'.
30(b)	158(1B)	There is a concern that this will prevent reviews against jurisdictional rulings, with the result that parties will be locked into arbitrations in relation to which the CCMA does not actually have jurisdiction. Although this could fall within the category of 'exceptional circumstances', the permissibility of jurisdictional reviews should be expressly provided for.	Amend this subsection to read 'save in respect of jurisdictional issues, in the absence of exceptional circumstances ...'
30(d)	158(5)	Reference is made to the comments in relation to section 145(6). Although not considered appropriate, if a six-month time limit is to be imposed on Labour Court judges, this should be extended to the Labour Appeal Court.	Delete this subsection.

33	168(1)(c)	<p>The following consequential amendments should be made in the light of this amendment:</p> <ul style="list-style-type: none"> • section 153(2)(a) should be amended to read that the Judge President and Deputy Judge President of the Labour Court must be judges of the High Court <u>or the Labour Court</u>; and • section 169(2) should be amended to read that judges of the High Court <u>or the Labour Court</u> may be appointed to serve as acting judges of the Labour Appeal Court. 	Amend sections 153(2)(a) and 169(2) correspondingly.
36	187(1)(c)	<p>There is a concern that it is unclear whether the amendment is intended to prohibit retrenchments in relation to changes to terms and conditions of employment.</p>	Clarify this subsection.
38	188B	<ul style="list-style-type: none"> • Although a few members consider the section to be pragmatic, the predominant view is that the explanation given in the explanatory memorandum for this amendment does not justify depriving the employees in question of their right not to be unfairly dismissed. On the face of it, the section appears vulnerable to constitutional challenge as there are other means of addressing the concerns expressed in the explanatory memorandum. 	<ul style="list-style-type: none"> • Delete this section. • Otherwise amend section 41 of the BCEA to provide for the onus being on the employer to prove that an employee earning above the threshold was not dismissed on account of its operational requirements.

		<ul style="list-style-type: none"> If the section is to remain, there is a concern that an employer could invoke it to deprive a long serving employee of severance pay in circumstances where the actual reason for dismissal is the employer's operational requirements. Although such an employee would presumably still be entitled to severance pay in terms of section 41 of the BCEA, the onus should then be on the employer to prove that the employee was not dismissed on account of its operational requirements. 	
39(a)	189A(2)(d)	There is a concern that this subsection may serve to defeat the overall object of the section, which is to attempt to facilitate the conclusion of a joint consensus-seeking process within 60 days.	Delete this subsection.
43(c)	198(4E)(a)	The reference to 'subsection (11)' is incorrect as no such subsection exists; presumably this should read instead 'subsection 4B and 4C'.	Delete reference to 'subsection (11)' and replace with 'subsections 4B and 4C'.
43(c)	198(4F)	The proposed legislation in terms of which a TES is to be registered should be promulgated now so as to enable all stakeholders to comment on envisaged registration requirements since that could affect the approach adopted to this subsection. It is not desirable to legislate piecemeal.	Promulgate related legislation.

44	198A(3)	<p>The words ‘for the purposes of this Act’ have led to controversy within the labour law community regarding whether employees falling within section 198A(3)(b) are actually employees of the client or whether they are only its employees for the purposes of the Act.</p>	<p>Clarify this subsection.</p>
44	198A(5)	<ul style="list-style-type: none"> • The requirement to treat the deemed employee ‘on the whole not less favourably’ than the employee performing the same or similar work is vague and uncertain. The obligation not to treat the employee ‘on the whole less favourably’ could be interpreted to mean more than terms and conditions of employment. It is proposed that the obligation should be limited to terms and conditions of employment (as is the case in section 197(3)(a)). • The definition of ‘justifiable reason’ in section 198D(2), which applies to this subsection, is vague and too narrow for the purposes of this subsection. It is proposed that an open-ended formulation along the lines adopted in section 198B(4), with the necessary changes, should be adopted in addition to the criteria in section 198D(2). In this regard, ‘justifiable reason’ should include the factors listed in section 198B(4)(a), (b), (d), (f), (g), (h), (i) and (j). 	<ul style="list-style-type: none"> • Amend to read: ‘An employee deemed to be an employee of the client in terms of subsection (3)(b) must be employed on terms and conditions of employment which are on the whole not less favourable than the terms and conditions of employment of an employee of the client performing the same work or similar work, unless there is a justifiable reason for less favourable terms and conditions of employment.’ • Amend the definition of ‘justifiable reason’ in section 198D(2) as proposed below.

44	198B(8)	<ul style="list-style-type: none"> It is unclear whether this subsection applies to employees who are permissibly on fixed term contracts for more than six months in terms of section 198B(3), or to employees who are deemed to be on indefinite contracts in terms of section 198B(5), or to both. This requires clarification. The first comment made in respect of section 198A(5) is repeated with the necessary contextual changes. 	Clarify to whom the subsection applies, and amend the balance of the subsection to read: ‘... must be employed on terms and conditions of employment which are on the whole not less favourable than the terms and conditions of employment of an employee employed on an indefinite basis performing the same work or similar work, unless there is a justifiable reason for less favourable terms and conditions of employment.’
44	198C(1)	The description of a part-time employee is unclear. For example, would a secretary working mornings only three days a week qualify as a part-time employee? The definition requires clarification.	Clarify meaning of ‘part-time employee’.
44	198C(3)(a)	Both the comments made in respect of section 198A(5) are repeated with the necessary contextual changes.	<ul style="list-style-type: none"> Amend the subsection to read: ‘employ a part-time employee on terms and conditions of employment which are on the whole not less favourable than the terms and conditions of employment of a comparable full-time employee performing the same work or similar work, unless there is a justifiable reason for less favourable terms and conditions of employment;’ Amend the definition of ‘justifiable reason’ in section 198D(2) as proposed below.

44	198D(2)	The second comment made in relation to section 198A(5) is repeated.	Amend the subsection to include in the definition of 'justifiable reason' the factors listed in section 198B(4)(a), (b), (d), (f), (g), (h), (i) and (j).
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