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THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 287/25

High Court Case No: 2025-107022

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant
and	
MINISTER OF EMPLOYMENT AND LABOUR	First Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	Second Respondent
COMMISSION FOR EMPLOYMENT EQUITY	Third Respondent

NOTICE OF MOTION: APPLICATION FOR LEAVE TO APPEAL

The applicants apply for the following orders:

1. The applicants are granted leave to appeal against the judgment of the Gauteng Division, Pretoria, in case 107022/2025, delivered on 28 August 2025.

2. The application for leave to appeal and prospective appeal shall be dealt with on an urgent basis in accordance with the directions given by the Chief Justice.

3. The appeal is upheld with costs, including the costs of two counsel.

4. The orders of the High Court are set aside and replaced with the following orders:

"1. Pending the final determination of Part B:

1.1. the operation and implementation of the sectoral numerical targets set by the first respondent in Government Notice No. 6124 in Government Gazette No. 52514 on 15 April 2025 are interdicted; and

1.2. the operation and implementation of Regulations 9(1), 9(2), and 9(8) to 9(12) of the General Administrative Regulations published in Government Notice No. 6125 in Government Gazette No. 5215 on 15 April 2025 are interdicted.

2. The respondents are ordered to pay the costs of the application, including the costs of two counsel."

The affidavit of **RONA BEKKER** will be used in support of the application.

The applicants have appointed the address of their attorneys of record set out below at which they will accept notice and service of all process in these proceedings.

If you intend to oppose this application, you are required to respond within 10 days in writing, indicating such opposition and setting out the grounds for such opposition.

DATED AT PRETORIA ON THIS THE 17th DAY OF SEPTEMBER 2025



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TO: **THE REGISTRAR**
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AND TO: **THE STATE ATTORNEY, PRETORIA**
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THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 287/25

High Court Case No: 2025-107022

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant
and	
MINISTER OF EMPLOYMENT AND LABOUR	First Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	Second Respondent
COMMISSION FOR EMPLOYMENT EQUITY	Third Respondent

FOUNDING AFFIDAVIT: APPLICATION FOR LEAVE TO APPEAL

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I, the undersigned,

RONA BEKKER

do hereby make oath and state:

1. I am an adult female employed by the first applicant as Manager: New Business and Sales. I have been involved in the application that forms the subject matter of this affidavit since its inception and have been responsible for instructing the applicants' legal representatives. I attended the hearing of the application in the High Court.

2. I depose to this affidavit on behalf of the first and second applicants.[1]

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[1] The CEO of the first applicant, who deposed to the founding and replying affidavits in the High Court, is not able to depose to this affidavit this week.

3. The facts in this affidavit are within my own knowledge or derive from documents under my control and are true and correct.

4. Legal submissions are based on the advice of the applicants' legal representatives.

PARTIES

5. The first applicant is the NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA ("*NEASA*"), an employers' association duly registered in terms of the Labour Relations Act 66 of 1995, with its head office at 160 Breed Street, Montana, Pretoria.

6. NEASA's members comprise some 7000 employers in South Africa.

7. The second applicant is SAKELIGA NPC ("*Sakeliga*"), a duly registered non-profit company with registration number 2012/043725/08 and with principal place of business at Block A, Floor 5, Loftus Park, 4162 Kirkness Street, Arcadia, Pretoria.

8. Sakeliga is a non-profit company representing more than 15 000 subscribed businesses and over 50 000 subscribed individuals. Sakeliga's objectives include the promotion and protection of constitutional rights, the rule of law, and a just and sustainable business environment within South Africa, in the interests of its members and of the broader public.

9. NEASA and Sakeliga launched proceedings in the High Court in the interests of their members, in the interests of employers and employees who will be affected by the targets and regulations referred to in this application, and in the public interest.

10. The first respondent is the MINISTER OF EMPLOYMENT AND LABOUR ("*the Minister*"):

10.1 who is the member of the national executive responsible for the administration, implementation and enforcement of the Employment Equity Act 55 of 1998 ("*the Act*");

10.2 who is responsible for the Department of Employment and Labour ("*the Department*"); and

10.3 whose office is situated at Laboria House, 215 Francis Baard Street, Pretoria.

11. The second respondent is the DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR whose office is situated at Laboria House, 215 Francis Baard Street, Pretoria.

12. The third respondent is the COMMISSION FOR EMPLOYMENT EQUITY ("*the Commission*"), an organ of state established in terms of section 28 of the

Act, whose office is situated at Laboria House, 215 Francis Baard Street, Pretoria.

PURPOSE OF THE APPLICATION

13. This is an application in terms of Rule 19(2) for leave to appeal against the judgment and order of the Gauteng Division, Pretoria in case 107022/2025 delivered on 28 August 2025. A copy of the judgment is attached as "**FA1**".

14. In that application, the High Court dismissed the applicants' urgent application for temporary orders interdicting and suspending[2] the operation and implementation of the sectoral numerical targets set by the Minister in terms of section 15A(2) of the Act, together with certain of the administrative regulations that were published to facilitate their implementation.

15. The targets were set in Government Notice No. 6124 in Government Gazette No. 52514 on 15 April 2025 ("*the targets*" or "*the 2025 targets*"). An extract of the notice containing the targets is attached as "**FA2**".

16. The impugned regulations include regulations 9(1), 9(2), and 9(8) to 9(12) of the General Administrative Regulations published in Government Notice No. 6125 in Government Gazette No. 5215 on 15 April 2025 ("*the impugned*

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2 The Notice of Motion read "interdicting and/or suspending". The order sought on appeal in this Court simply reads "*are interdicted*". The substance of the order sought before the High Court and in the envisaged appeal to this Court is a temporary interdict restraining the operation and implementation of administrative action that the applicants claim to be unlawful, pending the review.

regulations").[3] An extract of the notice containing the impugned regulations is attached as "**FA3**".

17. The applicants launched the application to the High Court on an urgent basis on 8 July 2025 because the targets to be implemented from 1 September 2025 are clearly unconstitutional, unlawful and invalid, and their implementation will cause irreparable harm to the constitutional rights of thousands of employers and employees.

18. The applicants now appeal to this Court as a matter of urgency for the same reason.

OVERVIEW OF THE APPLICATION

19. Concisely stated, the targets and impugned regulations are unconstitutional, unlawful and invalid, for the following reasons:

19.1 Firstly, the targets and impugned regulations unfairly discriminate against women:

19.1.1 According to the targets and impugned regulations, women are not permitted to be in the majority in any occupation level of any business that has 50 or more employees in South

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[3] The applicants did not apply to interdict the operation and implementation of section 20(2A) of the Act pending the review, which provides that the employment equity plans of employers must comply with the targets set by the Minister in terms of section 15A. Accordingly, the applicants do not persist in applying for the interim relief, interdicting the operation and implementation of Regulations 9(5)(b), 9(7), 9(13) and 9(14).

Africa, or in any part of public administration.[4] In all sectors and occupation levels, the percentage of employees who are women is limited to a maximum of 46.1%.[5]

19.1.2 In sectors and occupational levels where women are numerically dominant, the targets require the percentage of women to be reduced to the maximum of 46.1%, and the percentage of men to be increased, with the result that men will be the majority.[6] These reductions will seriously disadvantage women of all races, who are recognised by law as a previously disadvantaged group.

19.2 Secondly, the targets were set by the Minister without first publishing the targets in draft form for comment, as required by section 15A(4) of the Act.

19.3 Thirdly, the targets were set without the Minister properly consulting with the sectors for whom they were set, as required by section 15A(2) of the Act.

19.4 Fourthly, the targets are arbitrary in that they were set according to a method that fails to take into account the particular circumstances of

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4 Except the National Defence Force, the National Intelligence Agency, and the South African Secret Service: See section 1 of the Act, definition of "*designated employer*"

5 The range in the targets for women is between 20.8% and 46.1%.

6 In one instance, women currently represent 77.2% of persons employed in an occupation level in the sector – the targets require employers to reduce that number to 46.1% in 5 years.

the sectors for which they were set. The same method precluded the Minister from taking into account relevant considerations.

19.5 Fifthly, the targets are unlawful and invalid because the Minister failed to obtain and consider a comprehensive socio-economic impact assessment on the impact of the targets and the impugned regulations prior to publishing them, in circumstances where this was necessary for the exercise of power to be rational.

20. The constitutional rights that are implicated, and will be irreparably harmed if the High Court judgment is not overturned and the interim relief is granted, are the right to equality, dignity, freedom of trade, occupation and profession and administrative justice contained in sections 9, 10, 22 and 33 of the Constitution.

21. The irreparable harm that the targets will cause to the constitutional rights of employers, employees and prospective employees (and women in particular) began on 1 September 2025, and will occur on an ongoing basis for the next five years, unless interim relief is granted.

22. The interim relief sought will preserve the position as it was prior to 1 September 2025.

23. Employers will continue with their pre-existing employment equity plans or adopt and implement new plans, which include numerical targets and

strategies to implement those targets when required in terms of section 20(2)(c) of the Act. The targets will be set taking into account the particular facts and circumstances of the business, the availability of suitably qualified persons, the economic status and growth in the sector, the rate of attrition of employees etc. All of the robust enforcement provisions contained in the Act will continue to apply.

24. The only difference will be that employers will not be obliged to adopt and implement unlawful and invalid targets in their employment equity plans.

25. The interim relief sought will also not prevent the Minister from withdrawing the unlawful and invalid targets, and setting new targets, that are consistent with the Constitution, in a manner that complies with section 15A of the Act.

26. In this regard, in Part A no interim relief is sought interdicting or restraining the operation of sections 15A, 20(2A), 41(1)(aA) and 56(3)(a) and 56(3)(b) of the Act pending the review. The applicants challenge the constitutionality of these sections in Part B of the application. But these sections will continue to operate unless and until the High Court determines they are unconstitutional and such decision is confirmed by this Court.[7]

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7 There is also a judgment pending in a separate challenge to the same provisions of the Act in *Democratic Alliance v Minister of Employment and Labour and Others* Gauteng Division, Pretoria, Case No. 5759/2023.

EXCEPTIONAL CIRCUMSTANCES

27. The circumstances of this application are exceptional.

28. The targets and impugned regulations require substantial changes to the workforce in the four upper occupation levels of every sector of the economy and public administration over the next 5 years.[8]

29. The targets will impact every designated employer in South Africa, and potentially impact every individual who is employed by a designated employer, or will apply to be employed by a designated employer.

30. A designated employer includes any employer who employs 50 or more employees, every municipality, and every organ of state as defined in section 139 of the Constitution, excluding the National Defence Force, the National Intelligence Agency, and the South African Secret Service.[9]

31. In 2024, there were 15 687 such designated employers in South Africa, who employed an aggregate of 7 357 011 employees.[10]

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8 Top management, senior management, professionally qualified and middle management, and skilled or technical employees. In addition, Regulation 9(12) requires employers to set annual targets with a view to conforming the two lowest occupation levels (semi-skilled and unskilled employees) to the demographic of the economically active population in South Africa.

9 See section 1 of the Act, definition of "*designated employer*"

10 There were 13 582 employers with less than 50 employees. These employers employed a total of 342 654 employees amongst them.

32. In terms of section 20(2A) of the Act, the 5-year targets must be adopted in the employment equity plans of every designated employer. Every designated employer must set annual numerical goals and implement strategies to reach such goals in years 1 to 4, in order to achieve the targets set by the Minister by the end of year 5.[11] In terms of Regulation 9(13), compliance by employers with the targets will depend on the extent to which they meet the annual goals set towards the targets.

33. Accordingly, and by legislative design, the impact of the implementation of the targets will be both comprehensive and vast.

34. Because the targets are unconstitutional and invalid, the number of businesses and individuals that will be adversely affected, and the scale of irreparable harm that will be suffered, will equally be vast.

THE TARGETS UNCONSTITUTIONALLY DISADVANTAGE WOMEN

The reduction of women in the workforce

35. The adverse impact of the targets in general, and how they unlawfully discriminate against women in particular, can be illustrated using the targets of two sectors.

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11 See section 20(1), (2), (2A) of the Act, and Regulations 7(a) and 9(13). Regulation 9(13) provides that compliance with the targets will be assessed against compliance with the annual targets set by an employer towards the 5-year target set by the Minister.

36. The first set of targets are the 2025 targets for the Health and Human Sciences Sector.

37. Below is a table presented by the Department to employers in this sector in a virtual meeting held on 17 February 2025, prior to the setting of the 2025 targets.

9. HUMAN HEALTH AND SOCIAL WORK ACTIVITIES - 5-YEAR SECTORAL NUMERICAL TARGETS						
		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED TARGET	Male	27.6%	39.8%	49.8%	49.8%	3%
	Female	43.7%	46.1%	46.1%	46.1%	
	Total	71.3%	85.9%	95.9%	95.9%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2024	Male	20.9%	23.3%	23.3%	20.5%	1.2%
	Female	42.1%	60.2%	71.1%	77.1%	
	Total	63.0%	83.5%	94.4%	97.6%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2024	Male	23.6%	24.8%	23.4%	20.6%	1.1%
	Female	41.7%	59.2%	71.1%	77.2%	
	Total	65.3%	84.0%	94.5%	97.8%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2023	Male	19.6%	23.8%	23.0%	20.3%	1.1%
	Female	41.0%	59.1%	71.5%	77.3%	
	Total	60.6%	82.9%	94.5%	97.6%	

38. In the top row (in mustard), against the description "*PROPOSED TARGET*", are the targets that were subsequently set by the Minister.

39. In the second row from the bottom (in purple), is the demographic profile of the employees of all designated employers in the Health and Human Sciences Sector as at October 2024. The demographic profile of designated employers in October 2024 will hereafter be referred to as ("*the 2024 workforce profile*").

40. The Court will note, from a comparison of the proposed target with the 2024 workforce profile, that in the Health and Human Sciences Sector:

40.1 The 2024 workforce profile for senior management comprised 59.2% females and 24.8% males. The 2025 target is aimed at reducing females in senior management to 46.1% (**-13.1%**[12]) and increasing males to 39.8% (**+15%**).

40.2 The 2024 workforce profile for professionally qualified and middle management comprised 71.1% females and 23.4% males. The 2025 targets aim at reducing females employed at this level to 46.1%(**-25%**) and increasing males to 49.8% (**+26.4%**). The 2025 targets will have the effect of reducing women to a minority in this occupational level, and placing men in the majority, in 5 years.

40.3 The 2024 workforce profile for skilled or technical employees comprised 77.2% females and 20.6% males. The 2025 targets aim at reducing females employed at this level to 46.1% (**-31.1%**) and increasing males to 49.8% (**+29.2%**). The 2025 targets will have the effect of reducing women to a minority in this occupational level, and placing men in the majority, in 5 years.

41. The second set of targets are the 2025 targets for the Education Sector.

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12 "%" designates "percentage points". As explained in this affidavit, the Minister has increased, decreased and set targets by making changes in percentage points. No consideration was given to the numbers of persons that the percentage points represent, or will affect.

42. Below is the table presented by the Department to employers in this sector on 12 February 2025.

6. EDUCATION - 5-YEAR SECTORAL NUMERICAL TARGETS						
		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED TARGET	Male	27.6%	30.5%	43.0%	49.8%	3%
	Female	46.1%	46.1%	46.1%	46.1%	
	Total	73.7%	76.6%	89.1%	95.9%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2024	Male	20.9%	22.7%	27.9%	24.6%	1.1%
	Female	45.9%	51.4%	58.4%	70.7%	
	Total	66.8%	74.1%	86.2%	95.2%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2024	Male	22.9%	23.5%	28.0%	24.6%	1.1%
	Female	44.8%	50.3%	58.3%	70.7%	
	Total	67.7%	73.8%	86.3%	95.3%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2023	Male	20.8%	22.3%	29.6%	24.9%	1.0%
	Female	46.7%	51.8%	56.1%	70.2%	
	Total	67.4%	74.1%	85.8%	95.2%	

43. The Court will note, from a comparison of the targets with the 2024 workforce profile, that in the Education Sector:

43.1 The 2024 workforce profile for top management comprised 44.8% females and 22.9% males. The 2025 targets cap the increase in the percentage of females at 46.1% (**+1.3%**) and increasing males to 27.6.% (**+4.7%**);

43.2 The 2024 workforce profile for senior management comprised 50.3% females and 23.5% males. The 2025 targets aim at reducing females

employed at this level to 46.1% (**-4.2%**) and increasing males to 30.5% (**+7%**);

43.3 The 2024 workforce profile for professionally qualified and middle management comprised 58.3% females and for 28.0% males. The 2025 targets aim at reducing females employed at this level to 46.1% (**-12.2%**) and increasing males to 43% (**+15%**);

43.4 The 2024 workforce profile for skilled or technical employees comprised 70.7% females and 24.6% males. The 2025 targets aim at reducing females employed at this level to 46.1% (**-24.6%**) and increasing males to 49.8% (**+25.2%**). The 2025 targets will have the effect of reducing women to a minority in this occupational level, and of placing men in the majority, in 5 years.

44. The targets set by the Minister similarly reduce and cap the percentage of women in certain occupation levels in a further six sectors: Accommodation and Food Service Activities Sector, the Real Estate Sector, the Arts Entertainment and Recreation Sector, Financial and Insurance Activities Sector, Professional Scientific and Technical Activities Sector, and the Wholesale and Retail Trade Sector.

The irreparable harm that will be suffered by women and by employers

45. Stated in real and concrete terms, if the implementation and operation of the targets are not interdicted or suspended pending the review, the result will be that women will find it difficult or impossible to be promoted, or find employment, in the above occupation levels in all of the above sectors for the next five years.

46. Since these occupation levels include professionally qualified persons, and skilled or technical employees, women who are at university or completing their tertiary training, will find it difficult, if not impossible, to find employment. This is because women are, according to the targets and impugned regulations, "over-represented". The targets and impugned regulations will oblige employers to employ men over women.

47. Similarly, women who have commenced employment at lower occupation levels will practically not have any prospects of promotion, despite that they may otherwise have become eligible on account of long service. The targets and impugned regulations will oblige employers to promote men over women.

48. The harm suffered by the women who lose out on employment or promotion will be irreparable. Those who rely on women to support them will, in turn, be negatively impacted. The consequences will be most severe for households supported by single women. No remedy that may be granted by a Court in due course will remedy the above loss.

49. The seriousness of the harm that will be suffered by women, and the egregious nature of the violation of the rights of women, is highlighted by what this Court stated in *Affordable Medicines*[13] about the right to choose one's trade, occupation or profession:

> "*What is at stake is more than one's right to earn a living, important though that is. Freedom to choose a vocation is intrinsic to the nature of a society based on human dignity as contemplated by the Constitution. One's work is part of one's identity and is constitutive of one's dignity. Every individual has a right to take up any activity which he or she believes himself or herself prepared to undertake as a profession and to make that activity the very basis of his or her life. And there is a relationship between work and the human personality as a whole. 'It is a relationship that shapes and completes the individual over a lifetime of devoted activity; it is the foundation of a person's existence'.*"

50. The above statement is true for all persons, whatever their gender, who will not be employed or passed over for promotion as a result of the implementation of unlawful and invalid targets.

51. The harm suffered by employers who will be obliged to make changes to their workforce in order to implement the above discriminatory targets will also be permanent and irreparable. After new employees are taken on, or certain employees are promoted over other employees, or employees are retrenched, there is no going back. No remedy that may be granted by a Court in due course will remedy their loss either.

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13 *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) para 59

A limit on the progress of women

52. The targets also unfairly discriminate against women in 12 sectors[14] by capping the maximum percentage of women at a maximum possible of 46.1%.

53. The figure of 46.1% is derived from the national economically active population statistics published by Statistics South Africa in the third quarter in 2024 ("*the EAP*").

54. The EAP includes all South African citizens and permanent residents between the ages of 15 and 64 years of age who are either employed, or are unemployed and are seeking employment. The following table that shows the EAP is extracted from the Department's presentations to the sectors in February 2025.

EAP		AFRICAN	COLOURED	INDIAN	WHITE	TOTAL	DESIGNATED
NATIONAL	Male	43.5%	4.6%	1.7%	4.1%	53.9%	49.8%
	Female	37.5%	4.2%	1.0%	3.4%	46.1%	46.1%
	TOTAL	81.0%	8.8%	2.7%	7.5%	100.0%	95.9%

55. The difference between the 46.1% made up by women and the 49.8% made up by men from designated groups, is 4.1%. This corresponds to the EAP for white males.

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14 The 8 sectors already named, plus the following 4 sectors: Administration and Support Activities Sector, Electricity Steam and Gas Sector, Construction, Public Administration and Defence; Compulsory Social Security Sector, and Water Supply, Sewerage, Waste Management and Remediation Activities Sector.

56. Regulations 9(10), 9(11) and 9(12) oblige employers to avoid employing persons from any particular designated group that exceeds the EAP, and to set targets that bring the percentage down to the EAP in cases of over-representation. These regulations read as follows:

> *"(10) A designated employer must avoid perpetuating the over-representation of any group if their representation exceeds the applicable EAP in a particular occupational level.*
>
> *(11) A designated employer that has exceeded the numerical target set for a particular designated group at an occupational level should continue to set targets that maintain compliance with the EAP.*
>
> *(12) Designated employers must set numerical goals and annual EE targets at the semi-skilled and unskilled occupational levels in their EE Plans in terms of section 20(2) of the EEA, taking into account the applicable EAP."*

57. In this manner, the targets and the impugned regulations prevent women from representing more than 46.1% in any occupation level, in any sector, in the economy and public administration.

58. Where women exceed 46.1%, targets must be set and strategies employed by employers to reduce such percentage in order to bring it into line with the EAP. According to the 2025 targets and impugned regulations, in all businesses and all parts of the administration, women are not permitted to be, or remain, in the majority.

59. The targets and impugned regulations are unlawful and irrational because they disadvantage women, who are a group that the Act recognises as being previously disadvantaged.

60. They are thus contrary to section 2 of the Act[15], and unlawfully infringe sections 9, 10 and 22 of the Constitution.[16]

61. The need for urgent, interim relief interdicting the implementation of the targets pending the review is necessary to prevent irreparable harm to these constitutional rights from occurring.

The new method of setting targets

62. The reason that the targets disadvantage women is to be found in the new method that the Minister has used in setting the targets.

63. According to that method, the targets have been set by adding fixed percentages to the 2024 workforce profile in each occupational level. Top management is increased by 6%, senior management by 7%, professionally

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15 See s 2: "*The purpose of this Act is to achieve equity in the workplace by-*

(a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and

(b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce."

16 *Affordable Medicines* para 58-59

qualified and middle management by 8%, and skilled or technical employees by 9%.

64. These percentages are adjusted when, as in the case of women in a number of sectors, the 2024 workforce profile on its own, or the 2024 workforce profile coupled with the added fixed percentage, is above the national EAP.

65. In such instances, irrespective of the nature of the sector, the nature of the work in the sector, who is employed or who may be employable in the sector, the target is set at the national EAP.

No publication and no proper consultation on the new method

66. This new method of setting targets, and the proposed new and radically[17] different targets produced by it, were not published in draft form by the Minister for public comment as required in terms of section 15A(4) of the Act.

67. They were only presented and explained to employers during a series of virtual meetings between the Department and employers within the 18 sectors in February 2025.

68. Employees from the sectors were not invited to the meetings. The new method and the proposed targets were not shown to them. They had no opportunity

17 Here meant literally, radical coming from the Latin word "*radix*" meaning "root".

to make representations to the Minister on the appropriateness of the method or the proposed targets. The same applies to other interested persons.

THE HIGH COURT'S APPROACH

69. The approach taken by the High Court was alarming and untenable.

70. In summary, the High Court held:

70.1 that the application was not a constitutional matter[18];

70.2 that interdictory relief was not appropriate in circumstances where the targets and impugned regulations had been published[19]; and

70.3 that the applicant's prospects of success in the review are "*extremely weak*".[20]

71. For the reasons that follow, the applicants respectfully submit that the judgment of the High Court is clearly wrong. It is in conflict with the Promotion of Administrative Justice Act 3 of 2000 ("*PAJA*"), the Constitution, and the judgments of this Court and other courts.

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18 Judgment para 21 & 23: "*In this application, there is no constitutional matter involved.*"
19 Judgment para 12-19
20 Judgment para 20

CLEAR UNLAWFULNESS

72. The High Court states that the applicants relied on three grounds of unlawfulness.[21] This is incorrect. The applicants pressed five grounds of unlawfulness in argument.

73. Each of these grounds is discussed below.

First ground: Failure to publish draft 2025 targets

74. Section 15A provides:

> "***15A. Determination of sectoral numerical targets***
>
> *(1) The Minister may, by notice in the Gazette, identify national economic sectors for the purposes of this Act, having regard to any relevant code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa.*
>
> *(2) The Minister may, after consulting the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the Gazette set numerical targets for any national economic sector identified in terms of subsection (1).*

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21 Judgment para 11.

> *(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor.*
>
> *(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon.*"

75. Section 15A(4) requires the Minister to publish the "*draft of any notice that the Minister proposes to issue … allowing interested parties at least 30 days to comment thereon*".

76. As was indicated in the judgment, the Minister published draft targets on two occasions prior to the coming into effect of section 15A.

77. The first draft targets were published on 12 May 2023 ("*the draft 2023 targets*"). The second draft targets were published on 1 February 2024 ("*the draft 2024 targets*").

78. The drafts differed in that the 2023 draft proposed separate targets for different racial groups and proposed national and provincial targets, whereas the 2024 draft proposed collective targets for designated groups, and proposed national targets only.

79. But the numerical targets themselves that were proposed in the 2023 and 2024 drafts, when aggregated, largely corresponded.

80. Apart from a marginal difference in the target for top management in the Information and Communication Sector[22] and several differences in the targets set for the Financial and Insurance Activities Sector,[23] there was only one difference between the draft 2023 targets and the draft 2024 targets.

81. This difference was that the collective target for designated groups in every occupational level and in every sector in the 2024 draft, were 3.5% less than in the 2023 draft. This was the result of a 3.5% reduction in the targets for women.

82. The targets set on 15 April 2025 bore no relation to the draft 2023 and 2024 targets.

83. As I have stated, this is because the targets were set according to a new method, and that method produced materially different targets.

84. The targets were also prepared using information that only came into existence in October 2024, eight months after the draft 2024 targets were published.

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22 The target for top management for designated groups was reduced from 51.5% to 50%.

23 Top management reduced from 54.8% to 46%, senior management reduced from 60.5% to 48%, professionally qualified and middle management from 73.5% to 64%, and skilled employees from 91.7% to 88.2%.

85. Every target for every employment level in every sector was different. The differences in the combined targets for designated groups ranged from **-1%** to **+29%**. The average change across all sectors and occupational levels was an increase of **11.9%**.

86. The tables below showing the differences between the draft 2024 targets and the 2025 targets for the Financial and Insurance Activities Sector and the Professional, Scientific and Technical Activities Sector are typical of the differences in all sectors:

Financial and Insurance Activities

		2024		2025		Change (2024 vs 2025)
DESCRIPTION	GENDER	DESIGNATED GROUPS		DESIGNATED GROUPS		DESIGNATED GROUPS
Top management	Male	26,0%		27,8%		↑ 1,8%
	Female	20,0%		35,3%		↑ 15,3%
	Total	46,0%		63,1%		↑ 17,1%
Senior Management	Male	24,0%		31,7%		↑ 7,7%
	Female	24,0%		45,3%		↑ 21,3%
	Total	48,0%		77,0%		↑ 29,0%
Professionally Qualified & Middle Management	Male	30,0%		40,7%		↑ 10,7%
	Female	34,0%		46,1%		↑ 12,1%
	Total	64,0%		86,8%		↑ 22,8%
Skilled Technical	Male	47,4%		49,5%		↑ 2,1%
	Female	40,8%		46,1%		↑ 5,3%
	Total	88,2%		95,6%		↑ 7,4%
Disability only	All	2%		3%		↑ 1%

Professional, Scientific and Technical Activities

		2024		2025		Change (2024 vs 2025)
DESCRIPTION	GENDER	DESIGNATED GROUPS		DESIGNATED GROUPS		DESIGNATED GROUPS
	Male	25,0%		24,4%		↓ 0,6%
	Female	20,0%		38,1%		↑ 18,1%

Top management	Total	45,0%	62,5%	↑ 17,5%
Senior Management	Male	27,0%	29,9%	↑ 2,9%
	Female	23,0%	46,1%	↑ 23,1%
	Total	50,0%	76,0%	↑ 26,0%
Professionally Qualified & Middle Management	Male	33,0%	35,9%	↑ 2,9%
	Female	32,0%	46,1%	↑ 14,1%
	Total	65,0%	82,0%	↑ 17,0%
Skilled Technical	Male	44,4%	49,8%	↑ 5,4%
	Female	44,0%	46,1%	↑ 2,1%
	Total	88,4%	95,9%	↑ 7,5%
Disability only	All	2%	3%	↑ 1%

87. The High Court held that the publication of the draft 2023 and 2024 targets satisfied the requirement of publication of the draft for public comment in terms of section 15A(4).[24] It reasoned as follows:

> "*It is common cause that in 2023 and 2024, the Minister published notices which contained numerical targets proposed for the 18 sectors already identified after what appears to be a rigorous process. Taking into account the fact that the drafts seek to source comments of interested parties, the notice of 15 April 2025 did not require to still undergo a comment process. After 2023 and 2024, it must axiomatically follow that interested parties were allowed an opportunity to comment. Allow, does not mean compel or even consult per se. Allow, means permit to do something. As indicated earlier an employee in the sector qualifies to be an interested party. A comment is a remark expressing an opinion or reaction. Since there is no dispute that in 2023 and 2024 the proposed drafts were published, it must also axiomatically follow that interested parties were permitted to remark or express an opinion or*

24 Judgment para 37-38.

reaction. The 30-days period was, on the uncontested facts, without any doubt permitted by the Minister."[25]

88. The High Court's reasoning is clearly flawed.

89. The fact that the public had been given opportunity to comment on previous drafts of the targets, did not imply that the Minister was excused from publishing a further set of draft targets in compliance with section 15A(4) when the targets she intended to set were new, and differed materially, from the previous drafts.

90. The public had never seen targets prepared according to a method in which fixed percentages of 6%, 7%, 8% or 9% were added to the 2024 workforce profile, and adjustments were made based on the EAP.

91. They had not been given any opportunity to comment on whether the method was appropriate, or the resultant targets were reasonable or achievable.

92. In addition, the respondents failed to provide evidence of any link between the 2023 and 2024 targets or the comments on those drafts, and the 2025 targets, despite having a full month to prepare their answering affidavit.[26]

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25 Judgment para 37. The High Court also misconstrued the argument for the applicants, suggesting incorrectly that the applicants had argued that the 2025 targets should have been published in final form for comment. The High Court also incorrectly suggested the applicants argued for publication of 30-days from 15 April 2025 after the publication of the 2025 targets in final form.

26 The application was launched on 8 July 2025. In case management, the Acting DJP allowed the respondents until 8 August 2025 to file the answering affidavit.

93. The reasoning of the High Court had already been rightly rejected by the decision of the SCA in *Kouga*.[27] There it was held that where bylaws published by a Municipality were "*markedly different*" from the draft bylaws that were published for comment, "*republication of the revised draft was necessary to meet the legislative requirements of the Constitution and the Systems Act*".[28]

94. The Minister's failure to comply with section 15A(4) is a very strong ground of review.

Second ground: The Minister failed to consult with the sectors

95. Section 15A(2) provides that the Minister may only set targets for national economic sectors "*after consulting the relevant sectors*".

96. Section 1 of the Act defines "*sector*" to mean "*an industry or service or part of any industry or service*". The Minister identified 18 sectors in terms of section 15A(1) on 15 April 2025.[29] The same 18 sectors had first been identified in the draft notice that accompanied the draft 2023 targets.

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27 *Kouga Municipality v Bellingan* 2012 (2) SA 95 (SCA) para 9

28 *Kouga* idem. The same approach was followed by the Constitutional Court in *South African Iron and Steel Institute v Speaker of the National Assembly* 2023 (10) BCLR 1232 (CC), and see also the Full Bench decision in *Earthlife Africa (Cape Town) v Director-General: DEAT & Another* 2005 (3) SA 156 (C) para 64

29 They are: (1) Accommodation and Food Service Activities, (2) Administrative and Support Activities, (3) Agriculture, Forestry and Fishing, (4) Arts, Entertainment and Recreation, (5) Construction, (6) Education, (7) Electricity, Gas, Steam and Air-Conditioning Supply, (8) Financial and Insurance Activities, (9) Human Health and Social Work Activities, (10) Information and Communication, (11) Manufacturing, (12) Mining and Quarrying, (13) Professional, Scientific and Technical Activities, (14) Public Administration and Defence; Compulsory Social Security, (15) Real Estate Activities, (16) Transportation and Storage, (17) Water Supply, Sewerage, Waste Management and Remediation Activities, and (18) Wholesale and Retail Trade; Repair of Motor Vehicles and Motor Cycles

97. The facts before the High Court were as follows:

97.1 The Department had held "*sector engagements*" with isolated industry bodies between June 2019 and November 2022. The Employment Equity Amendment Act 4 of 2022 ("*the Amendment Act*") (that introduced section 15A) was passed on 17 May 2022. Accordingly, almost all of these "*sector engagements*" were held before the Amendment Act became law.

97.2 There were no targets, in draft form or otherwise, on the table between June 2019 and November 2022. The "*sector engagements*", in any event, were only held with isolated industry stakeholders who could not represent the whole sector.[30]

97.3 The only real attempt by the Department to consult with the sectors on the proposed 2025 targets took place in the form of virtual meetings held on MS Teams between 11 February 2025 and 19 February 2025.

97.4 As to these meetings, the following facts contained in the founding affidavit, were not pertinently confronted and contradicted by the respondents[31]:

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30 For instance, in the case of the Transport and Storage Sector, the Department met only with one stakeholder from the sector: the Road Freight Association.

31 *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) para 13

97.4.1 The Department gave notice of the meetings by emailing invitations addressed to "*CEOs & Senior EE Managers*" of employers registered with the Department.

97.4.2 Not all registered employers received the invitations. Affidavits of members who did not receive the invitations were attached to the founding affidavit. Employers in the sectors who were not yet registered, were not invited.

97.4.3 The Department provided some employers with the proposed 2025 targets one or two days before the meeting. The remainder saw the proposed 2025 targets for the first time during the meeting.

97.4.4 Employers had insufficient time to consider the proposed targets or meaningfully make representations on the targets during the meetings.

97.4.5 The meetings were rushed and lasted for a limited duration between 1 to 1.5 hours at a time, save the meeting for the Retail Sector. Attendance was limited by the virtual platform to 1000 participants. In the case of the Manufacturing Sector, employers could not access the platform because the limit had been reached.

97.4.6 The meetings were conducted like information sessions, and not consultations. The majority of the time was taken up

by the Department's presentation and questions of an administrative nature. The Department avoided answering comments in the "chats" that commented on the substance of the proposed 2025 targets.

97.4.7 Less than 20 employers out of the hundreds of employers who attended, had opportunity to speak in the meetings, before the meetings were ended. Employers who wished to speak in the meetings were prevented from doing so by the time limit.

97.4.8 Between 4 and 8 working days were afforded to those attending the meetings to make submissions in writing, depending on the sector.

97.4.9 The Minister and the Department made no attempt at any stage to consult with employees from the sectors.

97.5 The answering affidavit supplemented the above facts with the following:

97.5.1 The Commission finalised the 2025 targets on 3 March 2025. This was less than a week from the last day for written submissions by employers. None of the targets proposed to employers in the virtual meetings were changed.

97.5.2 There was no allegation in the answering affidavit to the effect that the Minister, or the Department, of the

> Commission, considered and took into account the comments or representations made by employers either during the virtual meetings, or in writing afterwards.

98. In its judgment, the High Court first considered which persons or entities were included in the "*sectors*".

99. Contrary to the applicants' submission that "*sectors*" include *at least*[32] employers and employees in a sector, the High Court held that:

> "*An industry or service cannot be confined to an employer or an employee only. The are various stakeholders in an industry and service. Broadly, a sector must include those various stakeholders.*"[33]

100. The High Court did not make clear who these "*various other stakeholders*" were. It did indicate, however, that "*a sector does not necessarily … include employees*".[34] This apparently contradicted what it had stated earlier.

101. The High Court also did not analyse whether there had been proper consultation with the "*various other stakeholders*". It held that the mere fact that there had been "*a consultation process*" prior to the setting of targets, was sufficient:

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32 The High Court incorrectly states that the applicants submitted that "sectors" include *only* employers and employees. See Judgment para 30-31

33 Judgment para 31

34 Judgment para 33

> "*There was evidence of a consultation process since 2019. All of that preceded the setting of the numerical targets. The section does not prescribe as to when and how the envisaged consultation must happen. Of significance is the exercise of statutory power (setting of numerical numbers) ought to happen after the consultation process. It matters not as to when and how the consultation happens, as long as the exercise of power happens after the consultation process. Then and in that event, the section would have been complied with.*"[35]

102. Regarding employees, the High Court held it was not necessary for the Minister to consult with employees, over and above the publication of draft targets for comment by interested parties in terms of section 15A(4).[36]

103. The High Court's approach is contrary to the requirements of PAJA[37], and in conflict with the principles recently affirmed by this Court in *Corruption Watch*.[38]

104. It's finding that "*the consultation contemplated in [section 15A(2)] has happened*"[39] is insupportable. The process followed by the Department clearly prevented consultation in the substantive sense from occurring.[40]

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35 Judgment para 33. See also para 35
36 Judgment para 34
37 See sections 3(1) & (2) and 4 of PAJA
38 *Corruption Watch (RF) NPC v Speaker* of the *National Assembly* and *Others* [2025] ZACC 15, para 1 & 36
39 Judgment para 34
40 *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others* 2013 (3) SA 531 (WCC) para 72 (per Rogers J, as he then was)

105. There was no meaningful consultation on the proposed 2025 targets with the two categories of persons within the sectors who would be most directly and materially affected by the targets: employers and employees from the sectors.

106. The High Court's finding that the duty to consult with employees was satisfied by publication of the draft 2023 and 2024 notices in the Government Gazette was wrong for three reasons:

106.1 First, the 2025 targets were only shown in draft form to employers in the February virtual meetings. They were not published in the *Government Gazette*.

106.2 Second, the High Court erroneously relied on *Electronic Media Network*.[41] The main judgment considered the rationality of the process followed by the Minister on the assumption that the exercise of public power concerned was executive in nature.[42] It is not authority for the proposition that in every case in which a notice and comment procedure is followed, the consultation is genuine and meaningful and passes constitutional muster.[43]

106.3 Third, according to this Court's decision in *Wary*[44], the interpretation of section 15A(2) which places a higher duty on the Minister to consult

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41 *Electronic Media Network Limited and Others v e-tv (Pty) Limited and Others* [2017] ZACC 17
42 *e.tv (Pty) Limited v Minister of Communications and Digital Technologies and Others; Media Monitoring Africa and Another v e.tv (Pty) Limited and Others* [2022] ZACC 22 para 33
43 *Electronic Media Network* para 65-67
44 *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* 2009 (1) SA 337 (CC) para 46

with employers and employees in the sectors, in addition to publication for comment by interested persons who may not be part of the sectors[45] in terms of section 15A(4), must be preferred.

107. The Minister's failure to comply with section 15A(2) is another very strong ground of review.

Third Ground: Arbitrariness and failure to consider relevant factors

108. The facts before the High Court regarding the method used to set the 2025 targets were not disputed.

109. It was also not disputed that the method was new. It had not been employed by the Department or the Minister to prepare the draft 2023 or 2024 targets.

110. The method used by the Minister in setting the targets is best explained using an example. Below is the page of the presentation by the Department to attendees at the virtual meeting for the Administrative and Support Activities sector that contains the proposed 2025 targets.

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45 Such as prospective employees, or persons and entities in other related sectors, who may have an interest in the targets set in a sector.

Fixed percentage

2. ADMINISTRATIVE AND SUPPORT ACTIVITIES - 5-YEAR SECTORAL NUMERICAL TARGETS						
		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED TARGET	Male	33.2%	42.3%	49.2%	49.8%	3%
	Female	36.7%	43.5%	46.1%	46.1%	
	Total	69.9%	85.8%	95.3%	95.9%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2024	Male	26.5%	35.6%	40.9%	56.1%	1.2%
	Female	33.8%	42.5%	45.9%	38.8%	
	Total	60.3%	78.1%	86.8%	94.9%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2024	Male	29.2%	37.3%	41.7%	56.7%	1.2%
	Female	34.7%	41.5%	45.6%	38.4%	
	Total	63.9%	78.8%	87.3%	95.1%	
WORKFORCE PROFILE (ALL DESIGNATED EMPLOYERS) - 2023	Male	28.3%	37.2%	42.1%	55.7%	0.7%
	Female	33.1%	41.3%	45.3%	39.5%	
	Total	61.4%	78.5%	87.4%	95.2%	

111. The 2025 targets were set by adding a fixed, pre-determined percentage to the percentage of designated employees in the 2024 workforce profile, and only adjusting that percentage when the EAP was exceeded.

112. The pre-determined percentage increases were as follows: 6% for top management, 7% for senior employees; 8% for professionally qualified and middle management; and 9% for skilled or technical employees.

113. Thus, in the Administrative and Support Activities sector:

113.1 for top management, the 2024 workforce profile percentage was increased from 63.9% to 69.9% (+6%).

113.2 for senior management, the 2024 workforce profile percentage of 78.8% was increased to 85.8% (+7%); and

113.3 for professionally qualified and middle management, the 2024 workforce profile percentage of 87.3% was increased to 95.3% (+8%).

Adjustment according to the EAP

114. The fixed percentages were trimmed down in cases where the addition of the fixed percentage would cause the target to exceed the EAP.

115. In the third quarter of 2024:

115.1 the total national EAP for males in designated groups was 49.8%;

115.2 the total national EAP for females in designated groups was 46.1%; and

115.3 the cumulative total national EAP for designated groups was 95.9%.

116. In the Administrative and Support Activities sector, the 2024 workforce profile for designated groups in the skilled technical occupational level was 95.1%. Accordingly, 9% could not be added. The target was set at 95.9% (+0.8%).

Adjustments to the targets for genders

117. EAP was also used to guide the adjustment and setting of the targets for the genders.

118. Firstly, where the percentage for designated groups for either males or females exceeded the EAP, the percentage for that gender was reduced and the target for that gender was set at the EAP.

119. Thus, in the Administrative and Support Activities sector, the 2024 workforce profile for males for skilled technical was 56.7%. This exceeded the male EAP for designated groups (49.8%). Therefore, the 2025 target for skilled technical for males in this sector is set at 49.8%.

120. Secondly, where the 2024 workforce profile for one gender substantially exceeded the other gender, the greater portion of the fixed percentage increase was given to the other gender.

121. Thus, in the three highest levels of occupation in Administrative and Support Activities sector the fixed percentage increase was allocated as follows:

121.1 in top management, 2% to females and 4% to males;

121.2 in senior management, 2% to females and 5% to males; and

121.3 in professionally qualified and middle management, 0.5% to females and 7.5% to males.

The targets for persons with disability set at 3%

122. While the targets for the occupational levels were increased, as a rule, *by* pre-determined percentages, the target for persons with disability was increased *to* a pre-determined percentage.

123. The 2025 target for persons with disability in every sector was set at 3%.

No target below the 2024 workforce profile

124. The final part of the method was the rule that the total target set for designated groups could not be below the 2024 workforce profile.

125. In limited instances in several sectors, the downward adjustment to EAP for one of the genders was so dramatic, that even with the addition of the fixed percentage to the other gender, the target would have been below the 2024 workforce profile.

126. In those instances, the other gender would be increased in excess of the fixed percentage to ensure the target set was above the 2024 workforce profile.

Arbitrariness and failure to take into account relevant considerations

127. The targets are arbitrary, and fail to take into account relevant considerations,[46] because pre-determined percentage points are added and adjustments with reference to the national EAP are made, *irrespective of, and without taking into account*:

127.1 the nature of the sector;

127.2 the number of suitably qualified persons from designated groups that are available for employment in the sector;

127.3 the economic status of the sector;

127.4 the rate of growth in the sector, and whether there is sufficient growth to support new employment or promotion in the sector; and

127.5 the rate of natural attrition in the sector.

128. The above information is critical to whether the targets are reasonable, feasible, appropriate or achievable for designated employers in a sector.

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46 See s 6(2)(e)(iii) and 6(2)(e)(vi) of PAJA

129. The Minister could not lawfully or reasonably set targets for the sectors without taking these factors into account.[47]

130. The High Court held that the targets were not arbitrary because the Minister had set them with reference to the EAP, on the advice of the Commission and after consultation.[48] It held:

> "*Owing to the rigorous process that precedes the setting of numerical targets, this Court rejects the argument of arbitrariness. The numerical targets were not and could not have been whimsically set by the Minister. Something is done arbitrarily, if it is based on random choice or person whim rather than on any reason or system. The relevant code published by Statistics South Africa, informs the setting of numerical targets. The advice of the CEE is factored in when numerical targets are set. Consultation with the relevant sectors also informed the setting of numerical targets.*"[49]

131. The applicants submit that the High Court's judgment is clearly wrong. It is tantamount to saying that where a decision-maker consults and receives advice, or uses some published statistics the decision cannot ever be arbitrary.

132. The failure of the Minister to consider relevant considerations, and consequent setting of targets that are arbitrary, is another very strong ground of review.

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47 *Democratic Alliance v President of the Republic of South Africa and Others* 2013 (1) SA 248 (CC) para 36 and 39

48 Judgment para 41. See also Judgment para 36

49 Judgment para 41. See also Judgment para 36

Fourth Ground: Discrimination against women

133. The facts before the High Court have been set out above.

134. The High Court held that the targets do not discriminate against women because women would not be affected *by the targets*, but *by the numerical goals* set by employers in their employment equity plans. It held:

> "*This argument of arbitrariness that disadvantages women clearly ignores the fact that what the Minister is statutorily empowered to do is to set numerical targets as opposed to goals. It will be the setting of numerical goals, which is the statutory function of an employer, that may lead to a disadvantage of women.*"[50]

135. The High Court's reasoning is clearly wrong because it is section 20(2A), and in turn Regulations 9(7)(a) and 9(13), that oblige employers to comply with the Minister's targets when setting numerical goals in their employment equity plans.

136. The High Court then held that the targets did not discriminate against women because, in setting the targets, the Minister had acted on the advice of the Commission.[51] This reasoning is also clearly wrong, because the fact that the Minister may have acted on advice, does not alter the fact that the targets objectively discriminate against women.

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50 Judgment para 44
51 Judgment para 44

137. Finally, the High Court held that the targets do not discriminate against women because employers can justifiably refuse to comply with the targets on the basis that they unfairly discriminate women:

> "*Where an employer, in setting numerical goals chooses not to comply with the numerical targets set by the Minister in terms of section 15A because such will discriminate against women, such a ground is reasonable to justify failure to comply*".[52]

138. This reasoning inverts the constitutional scheme. It is the state's duty to make laws and regulations that are constitutional, and the private citizen's duty to comply with the laws and regulations made by the state. The state has no power to make regulations and laws that are unconstitutional.[53] The state can also not absolve itself from the duty to make constitutional laws and regulations by conferring a right on the private citizen to disobey laws if the private citizen believes they are unconstitutional.

139. The targets and impugned regulations are clearly unconstitutional because they unfairly discriminate against women. This is also a very strong ground of review.

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52 Judgment para 46
53 s 1(c) of the Constitution

Fifth Ground: The Minister's decision was irrational as to process

140. The scheme introduced by the Minister is designed to make every occupational level of every sector a mirror of the EAP. A number of the 2025 targets are already set at the EAP. The remainder are "*milestones towards*" the EAP.[54] This is a radical and dramatic form of social engineering. It is unprecedented in human history.

141. In order to rationally and lawfully introduce such a scheme, it was necessary for the Minister to first obtain and consider a comprehensive socio-economic impact assessment of the social, economic, financial, cultural and human consequences of introducing such a scheme. [55]

142. In the founding affidavit, the applicants showed that they had repeatedly requested the socio-economic impact assessment report conducted in respect of the 2023 and 2024 draft targets, but these had not been provided. The applicants averred that the 2025 targets and impugned regulations had similarly been published without a comprehensive socio-economic impact assessment having been obtained and considered.

143. The respondents did not dispute that they had failed to provide socio-economic impact assessments that had been requested. But they claimed that the Minister had considered a socio-economic impact assessment conducted

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54 Regulation 9(8)

55 *Democratic Alliance v President of the Republic of South Africa and Others* 2013 (1) SA 248 (CC) para 36 and 39

in 2019 ("*the 2019 SEIA*"). The respondents failed, however, to attach the 2019 SEIA to the affidavit.

144. The fact that the respondents were constrained to rely on the 2019 SEIA showed that the Minister had indeed failed to obtain and consider a socio-economic report on the consequences of setting targets in the manner that she had.

145. The 2019 SEIA had been conducted as part of the parliamentary drafting process of the Employment Equity Bill. This was three years prior to the passing of the Amendment Bill in May 2022, and six years before the adoption of the targets in April 2025.

146. The 2019 SEIA could only have been an assessment of the proposed amendments to the Act. These are not the same as the 2025 targets or the impugned regulations. No socio-economic impact assessment, comprehensive or otherwise, was conducted in relation to the latter. The Minister did not obtain or consider a socio-economic impact assessment on the consequences of introducing the targets and the impugned regulations.

147. Accordingly, the Minister's setting of the 2025 targets, in conjunction with the accompanying regulations, was irrational as to process.[56]

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56 *Democratic Alliance v President of the Republic of South Africa and Others* 2013 (1) SA 248 (CC), par 34, and 36–39

148. The High Court failed to deal with this ground of unlawfulness in its judgment, despite that it was pressed in oral argument. The High Court dealt with the matter as if the ground of unlawfulness did not exist. The applicants submit that the High Court erred in doing so.

149. The applicants submit that this is also a very strong ground of review.

THE HIGH COURT'S ERRONEOUS FINDINGS ABOUT REMEDY

150. The High Court held that since the targets and impugned regulations had already been published, interdictory relief was not available.[57] It held that:

> *"[T]he administrative action of 15 April 2025 remains valid until set aside by a Court of competent jurisdiction. Complying with the decision of 15 April 2025 does not amount to an unlawful conduct, which is preventable by way of an interdict."*[58]

151. The High Court held further that interdictory relief was not appropriate because any harm that may be caused by the targets was "*self-inflicted*", and could be avoided by employers the invocation of a reasonable ground as a justification for not complying with the targets.[59]

152. The High Court also held that it had no power to suspend the operation and implementation of the targets and impugned regulations under section

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57 Judgment para 15
58 Judgment para 15. See also para 17
59 Judgment para 18

172(1)(b) of the Constitution for two reasons. First, because the application was not a constitutional matter.[60] And second, because the Minister had not acted "*unjustly or inequitably…or in breach of the EEA.*"[61]

153. In regard to the latter, the applicants can, of course, have no quibble with the proposition that a court will not grant interim relief when the court is of the view that the grounds of unlawfulness raised have no prospects of success in the review. But for the reasons set out above, that is not the case in this instance.

154. The remainder of the High Court's findings are clearly wrong:

154.1 The finding that the application is not a constitutional matter is contrary to section 167 of the Constitution and the decisions of this Court.[62]

154.2 The finding that the court cannot interdict and restrain the operation and implementation of the targets and the impugned regulations pending the review is contrary to section 8(1)(e) of PAJA, and section 38 of the Constitution read with this Court's decision in *Fose*.[63]

154.3 The finding that the court's power to grant "*any order that is just and equitable*" in constitutional matters in terms of section 172(1)(b) of the Constitution does not extend to orders restraining the operation of

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60 Judgment para 21 and 23
61 Judgment para 21
62 *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC) para 25; See also *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) para 107-110. See also idem para 30-44.
63 *Fose v Minister of Safety and Security* 1997 (3) 786 (CC) para 15 & 19

administrative action pending a review is not consistent with this Court's decisions in *Ermelo*[64] and *Economic Freedom Fighters*.[65]

154.4 The finding that the harm is "*self-inflicted*" is clearly wrong. Section 20(2A) of the Act and Regulation 9(7)(a), 9(9) and 9(13) bind employers to adopt the 5-year targets set by the Minister, and to set annual targets towards reaching the 5-year targets.

154.5 The finding that irreparable harm may be avoided by using the reasonable ground defence is misconceived. The reasonable ground defence is only available to employers who are *unable* to comply with the targets.[66] The irreparable harm referred to in this application will result from the implementation of the targets by employers who are *able* to comply with the targets, and implement them because they are bound by section 20(2A) of the Act and Regulations 9(7)(a) and 9(13).

IRREPARABLE HARM AND THE BALANCE OF CONVENIENCE

155. The irreparable harm that will be suffered by women if the targets and impugned regulations are implemented has been identified above.

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64 *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (2) SA 415 (CC) para 97

65 *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) para 108-114

66 Regulation 16(5): "*Justifiable reasonable grounds for not complying with the targets are - (a) insufficient recruitment opportunities; (b) insufficient promotion opportunities; (c) insufficient target individuals from designated groups with relevant formal qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job, as contemplated by sections 20(3) to (5) of the Act; (d) the impact of a CCMA award or court order; (e) a transfer of a business; (f) mergers or acquisitions; and (g) the impact of economic conditions on the business.*"

156. Similar irreparable harm will be suffered by all persons who are not employed, or not promoted, as a result of the implementation of the targets and impugned regulations.

157. For it is undeniable that if the targets and impugned regulations are implemented:

157.1 Individual employees and prospective employees will be employed or not employed, and promoted or not promoted, based on unlawful targets.

157.2 Employers will employ new employees and make other permanent changes to their workforce, and take on the expense that this involves, all based on unlawful targets.

157.3 The harm and loss that will be suffered by employers, businesses, employees and prospective employees across the country will, by its nature, be irreparable. This harm and loss cannot be remedied in due course.

157.4 Because the targets and impugned regulations apply to every designated employer in every sector of the economy, the scale of that irreparable harm and loss will be vast.



158. In addition, there were eight affidavits by members of the applicants who identified the specific manner in which their businesses would suffer irreparable harm if the targets were implemented. No attempt was made by the respondents to pertinently dispute the content of these affidavits.

159. Irreparable harm will also be caused to the right to administrative justice and to review administrative action that is unlawful and invalid. The implementation of the targets for months or years pending the review and subsequent appeals will prejudice the review and prevent the Court from granting effective relief.

160. By contrast, the harm to the Minister and the Department, if interim relief is granted, would not cause harm to the separation of powers.

161. The Minister and the Department would still be able to perform their statutory functions in accordance with the pre-amendment affirmative action provisions in the Act. Those provisions require employers to prepare and implement employment equity plans. All of the robust enforcement provisions contained in the Act, and the powers that may be exercised by the Minister and the Department in terms of those provisions, would remain.

162. The Minister and the Department would also be able to perform their statutory functions in terms of post-amendment affirmative action provisions in the Act. Nothing prevents them from withdrawing the 2025 targets and impugned regulations, and setting new targets that are consistent with the Constitution

in a constitutionally compliant manner if they choose to do so before the review is finalised.

DIRECT ACCESS

163. I respectfully submit that, in the present matter, direct leave to appeal is warranted. The applicants will nonetheless, for the sake of caution, make application for leave to appeal to the High Court in pursuit of an appeal to the SCA. It will be made clear in that application that pursuit of the appeal will be conditional on this Court refusing direct leave to appeal.

164. I am advised that, in general, this Court declines to entertain appeals directly from the High Court, because to do so results in the bypassing of the SCA. However, this Court has repeatedly made clear that each case must be considered on its merits:

> "*Leave to appeal directly to this Court will be granted if it is in the interests of justice to do so. Each case is considered on its own merits. The factors relevant to a decision whether to grant an application for leave to appeal have been listed as including whether there are only constitutional issues involved, the importance of the constitutional issues, the saving in time and costs, the urgency, if any, in having a final determination of the matters in issue and the prospects of success. These must be balanced against the disadvantages to the management*



of the Court's roll and to the ultimate decision of the case if the Supreme Court of Appeal (SCA) is bypassed."[67]

165. In what follows, I respectfully state why direct leave to appeal is warranted on the facts of this case.

166. First, this appeal involves only constitutional issues.

166.1 It concerns whether interim relief should be granted pending a review in order to protect the constitutional rights of thousands of employers, and hundreds of thousands of employees, to dignity, equality, the right to freedom of trade, occupation and profession, and the right to administrative justice.

166.2 There are no material disputes of fact that must be resolved before the Court can determine the matter. Interim relief is sought on the basis of facts that are either not disputed or are incontrovertible.

166.3 This Court will be asked to determine whether there are strong prospects that the targets and impugned regulations will be declared unconstitutional, unlawful and invalid in the pending review, whether the implementation of the targets will cause irreparable harm, and whether a proper case has been made out to interdict and restrain the

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67 *Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others* 2007 (4) SA 395 (CC), at para 21

implementation and operation of the targets and impugned regulations pending the review.

167. Second, the application involves issues of public importance and constitutional significance.

167.1 The subject matter and reach of the application are exceptional.

167.2 It concerns the lawfulness of numerical targets set in the context of a legislative scheme that is designed to compel demographic change in every occupation level of every designated employer in every sector of the South African economy and public administration.

167.3 The targets will have an impact on whether hundreds of thousands of individuals are employed, or not employed, promoted, or not promoted. This, in turn, will determine whether such individuals are able to earn a living and support themselves and those who are dependent on them.

167.4 The implementation of the targets will have an impact on the business and workforce of every designated employer in every sector of the economy.

168. Third, it is urgent that the interim relief sought be granted.

168.1 The application for interim relief was launched and dealt with by the High Court as a matter of urgency because implementation of the targets was set to commence on 1 September 2025.

168.2 Because the High Court dismissed the application, implementation of the targets has commenced. From 1 September 2025, and unless interim relief is granted, employers will be taking active steps to achieve the five-year targets set by the Minister. Irreparable harm to the rights of women, employers, persons from disfavoured groups, and persons from designated groups who the targets may not adequately promote, will occur on an ongoing basis.

168.3 The retrogressive targets that disadvantage women must be decisively interdicted and restrained from operation.

168.4 If leave is granted to the SCA or a Full Bench, it is likely that the application will take many months to be heard (and may be the subject of further appeal). By that time, thousands of women may already have been refused employment or promotion by employers who have no option but to employ or promote men in order to comply with the targets.

169. Fourth, the application for leave to appeal and prospective appeal has strong prospects of success. As this affidavit explains, the targets and impugned regulations are clearly unconstitutional, unlawful and invalid and the approach

adopted by the High Court is not consistent with the judgments of this Court and the constitutional scheme.

170. Finally, this Court will not be disadvantaged by not having the benefit of the decision of the SCA.

171. I respectfully submit that the present case constitutes such a clear case of the unlawfulness of the targets and impugned regulations, with resultant irreparable harm, that this Court should deal with the matter as a direct appeal, as urgently as possible.

CONCLUSION

172. In all the circumstances, I respectfully submit that:

172.1 the prospective appeal concerns constitutional issues that fall within the jurisdiction of this Court;

172.2 the prospective appeal bears excellent prospects of success;

172.3 the application for interim relief is an exceptional one in which a strong case for interim relief has been made out[68]; and

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68 *Economic Freedom Fighters* para 48

172.4 in view of the various features of this case, it is in the interests of justice for leave to appeal to be granted directly to this Court.

173. I therefore pray for the relief set out in the Notice of Motion.

RONA BEKKER

I hereby certify that the deponent has acknowledged that she:

(a) knows and understands the contents of this affidavit;

(b) has no objection to taking the oath;

(c) considers the oath to be binding on her conscience.

THUS signed and sworn to before me, at Pretoria on 17 September 2025, the Regulations contained in Government Notice No. R1258 of 21 July 1972 (as amended), having been fully complied with.

COMMISSIONER OF OATHS

ANRICH MALAN OTTO
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

FA1

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 107022/2025

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

28 August 2025
DATE

SIGNATURE

In the matter between:

NATIONAL EMPLOYERS' ASSOCIATION OF SOUTH AFRICA	First Applicant
SAKELIGA NPC	Second Applicant
and	
MINISTER OF EMPLOYMENT AND LABOUR	First Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF EMPLOYMENT AND LABOUR	Second Respondent
COMMISSION FOR EMPLOYMENT EQUITY	Third Respondent

***Flynotes*: Interdict/suspension of an exercise of a statutory power. The exercise of statutory power had happened – interdict not a suitable remedy. Court lacks powers to suspend the statutory action of another arm of government – principle of separation of powers upheld. Section 172(1)(b) of the Constitution**

not applicable. Interdict *pendente lite* not available as a remedy. The requirements of irreparable harm not established. The available adequate remedy is that of judicial review. Costs – *Biowatch* principle discussed but not applied. Judicious discretion applied. Held: (1) Part A of the application is dismissed. Held: (2) Each party must pay its own costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] This is an opposed urgent application that was launched by the applicants in two parts. In the first part (Part A), the applicants are seeking interdictory reliefs pending the finalisation of declaratory and judicial review remedies (Part B). What came for determination is the Part A relief. Owing to that, this judgment shall direct its attention to the reliefs sought in Part A. The pertinent portions of the notice of motion read thus:

> "2 Pending the final determination of Part B, interdicting and/or suspending the operation and implementation of the following:
>
> 2.1 the sectorial numerical targets published by the first respondent in Government Notice No. 6124 in Government Gazette No. 52514 on 15 April 2025; and
>
> 2.2 Regulations 9(1), 9(2), 9(5), and 9(7) to 9 (14) of the General Administrative Regulations published in Government Notice No. 6125 in Government Gazette No. 5215 on 15 April 2025."

[2] The applicants issued a notice in terms of rule 16A of the Uniform Rules of the High Court suggesting that a constitutional issue had arisen in Part A. Allegedly, such notice prompted Solidarity Union, to launch an application seeking to be admitted as an *amicus curiae* (friends of the Court). The application was opposed by the respondents. At the commencement of the hearing, this Court directed that the *amicus* application be heard first. After hearing it, this Court, in an *ex-tempore* judgment, dismissed the *amicus* application with no order as to costs. Counsel on brief for Solidarity Union remained in attendance on a watching brief instruction. It is

unnecessary to, in this judgment, augment the reasons already advanced *ex tempore* for refusing the *amicus* application.

Pertinent factual matrix

[3] Since this judgment concerns itself with Part A of the application, it is obsolete for this Court to punctiliously narrate all the facts appertaining the entire dispute between the parties. There are two applicants before me. The first applicant is the National Employers' Organisation of South Africa (*NEASA*). As the name suggests, NEASA is an employer's organisation, acting in the present application on behalf of its members, who mainly are employers. The second applicant is SAKELIGA NPC (*Sakeliga*). Sakeliga is a non-profit organisation, acting in the present application in the interests of its members, who mainly are businesses.

[4] The present application is launched against three respondents. Those are, the Minister of Employment and Labour (Minister); the Director-General of the Department of Employment and Labour (DG); and the Commission for Employment Equity (CEE).

[5] Effective 1 January 2025, section 15A of the Employment Equity Act (EEA)[1], became law in South Africa. Pertinent to the present application, section 15A endowed the Minister with certain powers. Amongst others, the Minister is empowered to *identify* and *set* numerical targets for any national economic sector. It is common cause that on 15 April 2025, the Minister identified 18 economic sectors and set numerical targets for them.

[6] Equally common cause is that on 12 May 2023, the Minister published a notice which proposed for the 18 economic sectors certain numerical targets. Again, on 1 February 2024, another draft of a similar nature was published. Although the applicants dispute the adequacy of the consultations held with the relevant sectors, it is common cause that for a period, sector stakeholder engagements had taken place.

[7] It is also common cause that effective from 1 September 2025, as required by section 20 of the EEA, designated employers must prepare and implement an

[1] Act 55 of 1988 as amended.

employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce. I pause to mention that the legal requirement to prepare and implement the employment equity plan has been there for designated employers for several years. Section 20(2A), which took effect from 1 January 2025, provides that the numerical goals set by an employer in the employment equity plans must comply with any sectorial targets in terms of section 15A that applies to that employer.

[8] For present purposes the designated employers in the 18 economic sectors, when complying with the old legal requirement in section 20(1) and (2) of the EEA, must comply with the numerical targets set in the notice of 15 April 2025. The NEASA and Sakeliga, took a view that the setting of the numerical targets is unlawful and the Minister ought to be interdicted for having set those numerical targets. Some months after the 15th of April 2025, on or about 28 July 2025, the present application was launched.

Analysis

[9] In opposing the present application, the respondents contended that the application falls to be struck off the roll for want of urgency. Urgency is regulated by rule 6(12) of the Uniform Rules of this Court. Two requirements ought to be established before an application could be entertained on an urgent basis. Those are (a) sufficient reasons why an urgent relief is required must exist; and (b) reasons why a substantial redress may not be achieved in due course must be advanced. The respondents submitted that the urgency claimed by the applicants is a self-created one. The applicants waited from 15 April 2025, and only launched the present application three months later, so went the submission. On the other hand, the applicants submitted that on 1 September 2025, which is around the corner, should an interdict not issue, designated employers would be compelled to comply with the unlawful and arbitrary exercise of public powers by the Minister.

[10] Hearing an application as one of urgency involves an exercise of judicial discretion. Having had regard to the circumstances of the present application and the

importance of the matter to these parties, this Court exercised its discretion in favour of hearing the application as one of urgency.

Issues arising out of the present application.

[11] Although the applicants submitted prolix heads of argument, as correctly pointed out by Mr D' Oliveira, appearing for the applicants, the present application fulcrums on three points. Those are (a) the alleged failure of the Minister to publish the proposed draft notice; (b) the alleged failure of the Minister to consult (with particular emphasis on the failure to consult employees) or appropriately consult with the relevant employers; (c) the alleged arbitrariness of the numerical targets set by the Minister (discriminating against women). In my view, these issues propel this Court to an interpretation exercise of section 15A of the EEA. Before attempting an interpretation of the section, it is apposite to deal first with the relief sought by the applicants.

Is an interdictory relief appropriate?

[12] In *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* (*UDM*)[2], the following was stated by the Constitutional Court:

> "An interdict is an order by a court prohibiting or compelling the doing of a particular act for the purpose of protecting legally enforceable right, which is threatened by continuing or anticipated harm…
>
> In granting an interdict the court must exercise its discretion judicially upon consideration of all the facts and circumstances. An interdict is not a remedy for the past invasion of rights. It is concerned with the present and the future. The past invasion should be addressed by an action of damages. An interdict is appropriate only when future injury is feared."

[13] Counsel for the applicants conceded, correctly so, that the remedy of an interdict may be problematic, in an instance where the Minister has already exercised what the applicants consider to be unlawful exercise of statutory power. Thus, an interdict would necessarily call for the unscrambling of an egg, as it were. The proverbial horse has bolted. It was for that reason that the notice of motion was couched in such ambivalent

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[2] (CCT) 39/21) [2022] ZACC 34 (22 September 2022) at para 47 and 48.

terms, by mentioning an interdict and or suspension. Clearly, the Minister has exercised statutory powers, lawfully or unlawfully, in April 2025 already. To my mind, this is a typical case of the past invasion. On the authority of *UDM*, an interdict is not an appropriate remedy. During argument, this Court enquired from counsel for the applicants as to what legally protectable rights are the applicants seeking to protect by way of an interdict. In retort, counsel stated that it is the right to judicial review and the rights allegedly mentioned in section 172(1)(b) of the Constitution.

[14] Regarding the right to judicial review, which I must emphasise is the only adequate and available remedy for the applicants, since the gripe about the exercise of statutory or public power is sharply raised. The Constitutional Court in the famous case of *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[3], had the following to say:

> "Under the *Setlogelo* test, the *prima facie* right a claimant must establish is not merely the right to approach a court in order to review… It is a right to which if not protected by an interdict irreparable harm will ensue.
>
> …Therefore, the harm that the applicants rely upon will not be caused by the past decisions they impugn in the review. There is a misalignment between the decision they seek to review and the source of the harm they fear.

[15] Since the *Oudekraal*[4] decision, a principle exists in our law that an administrative action remains valid and is adorned with legal consequences until set aside by a Court of competent jurisdiction. Therefore, the administrative action of 15 April 2025 remains valid until set aside by a Court of competent jurisdiction. Complying with the decision of 15 April 2025 does not amount to an unlawful conduct, which is preventable by way of an interdict. In *Gool v Minister of Justice and Another* (*Gool*)[5], the following was stated:

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[3] (CCT 19/22) [2023] ZACC 24; 2023 (10) BCLR 1189 (CC); 2024 (1) SA 21 (CC) (12 July 2023)
[4] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* (41/2003) [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA) (28 May 2004).
[5] 1955 (2) SA 682 (CPD), which was cited with approval in *OUTA*.

"The present is however not an ordinary application for an interdict. In the first place, we are in the present case concerned with an application for an interdict restraining the exercise of statutory powers. In the absence of any allegations of *mala fides*, the Court does not readily grant such an interdict..."

[16] In *City of Tshwane Metropolitan Municipality v AfriForum and another* (*AfriForum*)[6], the Constitutional Court expressed itself in the following terms:

"Before an interim interdict may be granted, one of the most crucial requirements to meet is that the applicant must have a reasonable apprehension of irreparable and imminent harm eventuating should the order not been granted...

Within the context of a restraining order, harm connotes a common-sensical, discernible or intelligible disadvantage or peril that is capable of legal protection... And that disadvantage is capable of being objectively and universally appreciated as a loss worthy of some legal protection..."

[17] There can be no doubt that in the administrative action of 15 April 2025, the Minister did not act unlawfully. The law empowered the Minister to act accordingly as he so did on 15 April 2025. There are no allegations that in taking that action in the exercise of statutory power, the Minister acted with any *mala fides*. Regarding the harm, the applicants allege that from 1 September 2025, there will be untold mayhem, that will see employees in large scales being displaced or dismissed. Even if the alleged mayhem will unfold, such will have been as a direct consequences of the application of the law. Until that law is declared invalid constitutionally, the rule of law demands compliance. Allegedly, the mayhem will ensue when a designated employer sets numerical goals in compliance with the numerical targets already set by the Minister. The alleged mayhem is not only indiscernible or unintelligible, but it is also one that is not capable of legal protection. Generally no one is above the law. Thus, no one may be spared from the application of the law unless that law has been declared invalid. The majority of apartheid legislations were invalid, yet they were applied because they were valid in the eyes of the law at the time.

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[6] 2016 (9 BCLR 1148 (CC) at para 55 and 56.

[18] On the applicants' version, the alleged mayhem will be caused by the setting of numerical goals as opposed to the setting of numerical targets. Numerical goals are set by the designated employers and not the Minister. The Minister only set numerical targets. He has already done so and no untold mayhem is alleged to have taken place. It is perspicuous that if any harm will occur, it is one which may be occasioned by the setting of numerical goals. The Minister has nothing to do with the employees of designated employers. The legal position as outlined in section 20(2A) is that an employer must comply with the 15 April 2025 administrative action. It must be so that the alleged untold mayhem harm will be a self-inflicted one. As it shall be demonstrated in due course, the alleged untold mayhem harm is avoidable by the selfsame designated employers. Statutory mechanism to do so exists.

[19] Until section 20(2A) is declared invalid, designated employers have no option but to comply with the action of 15 April 2025. Accordingly, for all the above reasons, an interdict is not an appropriate remedy, and it must be refused.

Is suspension of the administrative action appropriate?

[20] This Court was at a complete loss regarding the powers that the Court has to suspend an exercise of statutory powers. Particularly in an instance where the power was exercised many moons ago. On application of the doctrine of separation of powers, a Court is not empowered to, for the sake of what appears to be the convenience of a party, simply suspend powers lawfully exercised by another arm of the State. A temporary interdict pending the outcome of an action, or review is the only available relief[7]. The purpose of such an interdict is to ensure that pending a full investigation by the Court the wrong complained of should not be committed or continued[8]. The conundrum in the applicants' case is that application of the law is incapable of being considered a legal wrong. It may be a legal wrong in an instance where the law was exercised unlawfully. That stage has not been reached. In part B, the applicant is attempting to make a case of unlawfulness. To my mind, the prospects of success on the judicial review case is extremely weak. Since part B is still pending determination, it will be unwise for this Court to expatiate on why it takes a view that

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[7] *Bress Designs (Pty) Ltd v G Y Lounge Suite Manufacturers (Pty) Ltd and Another* 1991 (2) SA 455 (WLD) and *S.A.B Lines (Pty) Ltd v Cape Tex Engineering Works (Pty) Ltd* 1968 (2) SA 535 (CPD).
[8] See *S.A.B* case *supra* at 537E.

the pending judicial review is emaciated prospects wise. The case punted for by the applicants is not one of the clearest cases of unlawfulness. This Court was advised that a decision pends in this Court where the constitutionality of the law applied by the Minister is to be determined. Advisedly, this Court expresses no view on whether there are any prospects of success in the constitutionality challenge.

[21] In support of this suspension relief, reliance was placed on section 172(1)(b) of the Constitution. This Court disagrees with a submission that section 172(1)(b) finds application herein. In the first instance, the section only applies in an instance where a Court is deciding a constitutional matter. In this application there is no constitutional matter involved. The applicants are seeking an interdictory relief and no more. In terms of section 167(7) of the Constitution, a constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution. Section 172(1)(b) empowers a Court to make any order that is just and equitable. It cannot be just and equitable for a Court to suspend the exercise of statutory power by another arm of the state. In this instance, the Minister is not acting unjustly or inequitably. As it shall be demonstrated in due course, the Minister did not act in breach of section 15A of the EEA. That being the case, a Court is not entitled to use its powers to make a just and equitable order in this instance. Accordingly, for all the above reasons, this Court refuses to exercise suspension powers if it possesses such powers. In terms of section 165(2) of the Constitution, Courts are subject to the Constitution and the law. There is no law that empowers a Court to suspend a lawful exercise of statutory powers. According to section 2 of the Constitution, the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. Section 1(c) of the Constitution prescribes that supremacy of the Constitution and the rule of law are values upon which the Republic of South Africa is founded. One of the elements of a rule of law is the respect for the law. The Minister must respect the provisions of section 15A. The question whether section 15A is valid or invalid is *sub judice*. It must be emphasised that section 7(2) of the Constitution imposes a duty on the Minister as a State functionary to protect, promote and fulfil the rights in the Bill of Rights. This Court takes a view that in exercising powers emanating from section 15A the Minister is carrying out an obligation imposed by section 7(2) read with section 8(1) of the Constitution. It must

be remembered that in terms of section 62 of the EEA, the EEA binds the State. The Minister as a State functionary had no option but to comply with section 15A.

[22] In seeking to advance, what respectfully appears to this Court as, a feeble case of this Court allegedly having powers to suspend exercise of statutory powers, counsel for the applicants, placed heavy reliance on the case of *Head of Department, Mpumalanga Department of Education and another v Hoerskool Ermelo and another* (*Ermelo*)[9]. Unfortunately, unlike in the present matter, the *Ermelo* case involved a legality review, where the school and its governing body sought a setting aside of a withdrawal of a function. The present part of the case does not involve a setting aside of the exercise of the statutory powers of the Minister, but the case seeks to suspend such exercise that has already occurred. Counsel for the applicants, drew the attention of this Court to paragraph 97 of *Ermelo*, which read:

> "It is clear that s172(1)(b) confers wide remedial powers on a competent court adjudicating a constitutional matter. The remedial power envisaged in s172(1)(b) is not only available when a court makes an order of constitutional invalidity of a law or conduct under s 172(1)(a). A just and equitable order may be made even in instances where the outcome of a constitutional dispute does not hinge on constitutional invalidity of legislation or conduct. This ample and flexible remedial jurisdiction in constitutional dispute permits a court to forge an order that would place substance over mere form by identifying the actual underlying dispute between the parties and requiring the parties to take steps directed at resolving the dispute in a manner consistent with constitutional requirements..."

[23] What sets this matter apart from *Ermelo*, is that there is no constitutional matter or dispute involved herein. In part B of this case, a constitutional matter or dispute is conspicuously present. Accordingly, what *Ermelo* did was to forge an order after a finding was made that the HoD acted improperly by withdrawing a function. The Court in *Ermelo* had structural interdicts and supervisory orders in mind. Such remedies are clearly impermissible in the present application.

The interpretation of section 15A

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[9] 2010 (2) SA 415 (CC).

[24] This section came into operation as law applicable in South Africa on 1 January 2025. Before the section may be referenced, it is apposite to reference other relevant parts of the EEA. The first is the preamble of the Act. It states:

> "Recognising – that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws;
> Therefore, in order to – promote the constitutional right of equality and the exercise of true democracy; eliminate unfair discrimination in employment; ensure the implementation of employment equity to redress the effects of discrimination; achieve a diverse workforce broadly representative of our people; promote economic development and efficiency in the workforce; and give effect to the obligations of the Republic as a member of the International Labour Organisation."

[25] Regard being had to the above, it cannot be gainsaid that elimination of unfair discrimination in employment is at the forefront of the EEA. The second section to consider is section 2 of the EEA. It states:

> "**Purpose of this Act**
> **2**. The purpose of this Act is to achieve equity in the workplace by –
> (a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
> (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce."

[26] Regard being had to the purpose of the Act, it cannot be doubted that its purpose is to ensure implementation of affirmative action measures. The implementation is purposed to ensure equitable representation in all occupational levels. The third section to consider is section 3 of the EEA. It states:

"**Interpretation of this Act**

3. This Act must be interpreted –

(a) In *compliance with the Constitution*;

(b) So as to *give effect to its purpose*;

(c) Taking into account any relevant code of good practice issued in terms of this Act or any other employment law;

(d) In *compliance with the international law obligations* of the Republic, in particular those contained in the International Labour Organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation.

[27] For completeness sake, section 7(2) of the Constitution, obliges the state to respect, protect, promote and fulfil the rights in the Bill of Rights. Section 8(1) provides that the Bill of Rights binds the legislature as well as the executive. Article 5(2) of the Convention concerning Discrimination in Respect of Employment and Occupation[10] (*Convention No. 111*) specifically provides that:

"2. Any Member may after consultation with representative employers' and workers' organisations, where such exists, determine that other special measures designed to meet the particular requirements of persons, who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination."

[28] Undoubtedly, affirmative action measures suggested in sections 15 and 15A of the EEA, cannot be considered to be discrimination when compliance with the Convention No. 111 is considered.

[29] Having considered the above statutory provisions, I now turn to the provisions of section 15A of the EEA. Section 15A states the following:

15A Determination of sectoral numerical targets

(1) The Minister may, by notice in the *Gazette*, identify national economic sectors for the purposes of this Act, having regard to any relevant code contained in the Standard of all Economic Activities published by Statistics South Africa.

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[10] Convention No.111 Convention concerning Discrimination in Respect of Employment and Occupation, 1958.

(2) The Minister may, after consultation with the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the Gazette set numerical targets for any national economic sector identified in terms of subsection (1).

(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within the sector or on the basis of any other relevant factor.

(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon."

[30] Commencing with subsection (1), the Minister is endowed with a power to *identify* national economic sectors. It is undisputed that the Minister has already exercised this power by identifying 18 sectors. Section 1 of the EEA defines a sector to mean an industry or service or part of any industry or service. The applicants contends that sector must include only an employer and employees. There is no merit in this contention because the legislature afforded the word sector a technical meaning. In *Canca v Mount Frere Municipality* (*Canca*)[11], the erudite Davis J expressed himself in the following sagacious manner:

"The question whether a word in a particular section of a statute should be given its statutory definition or the ordinary meaning has come up for decision in a number of cases... The principle which emerges is that the statutory definition should prevail unless it appears that the Legislature intended otherwise and, in deciding whether the Legislature so intended, the court has generally asked itself whether the application of the statutory definition would result in such injustice or incongruity or absurdity as to lead to the conclusion that the Legislature could never have intended the statutory definition to apply."

[31] Accordingly, in my view, for definitional purposes, reliance ought to be placed onto the statutory definition of the word *sector*. As a noun the word *industry* means an economic activity concerned with the processing of raw materials and manufacture of

[11] 1984 (2) SA 830 (Tk) followed in *Hoban V ABSA Bank Ltd t/a United Bank and others* [1999] 2 All SA 483 (SCA); *ABP 4x4 Motor Dealers (Pty) Ltd v IGI Insurance Co Ltd* 1999 (3) SA 924 (SCA) at paras [17]-[18]; and *University of the North and Others v Ralebipi and Others* [2003] 11 BLLR 1120 (LAC) at para [21].

goods in factories. *Service* means assistance or advice given to customers during and after the sale of goods. When regard is had to the dictionary meaning of the words *industry* and *service*, there is a clear reason why the word sector should not be defined in the manner suggested by the applicants. An industry or service cannot be confined to an employer and an employee only. There are various other stakeholders in an industry and service. Broadly, a sector must include those various stakeholders.

[32] The identification of the national economic sectors cannot happen whimsically. The Minister is impelled to have regard to a code independently developed and published by Statistics South Africa. Howbeit, it is not the case of the applicants that the identification (exercise of statutory power) was done whimsically by the Minister.

[33] Turning to subsection (2), the gripe of the applicants is that the Minister did not consult at all or consulted deficiently. As a departure point, the Minister is required to consult with the relevant sectors. As indicated above, a sector does not, in my view, necessarily include employees. It is, as defined, referring to industry or service. The word consultation has not been afforded any technical meaning in the EEA. Therefore, it must be given its ordinary grammatical meaning. The word *consult* means seek information or advice[12]. The word *consultation* means a process of seeking information or advice. The Constitutional Court in *Electronic Media Network Limited and others v E-TV (Pty) Ltd and others* (*E-TV*)[13], confirmed that a consultation is distinct from negotiations and it is not geared towards reaching an agreement. It is not a consensus seeking exercise. The duty to consult requires no more than that the views of interested persons be obtained. Regard been had to the text of the subsection, the envisaged consultation must precede the exercise of statutory power (setting of numerical targets). The numerical targets involved herein were set on 15 April 2025. Such must imply that a consultation must have happened before 15 April 2025. There was evidence of a consultation process since 2019. All of that preceded the setting of the numerical targets. The section does not prescribe as to when and how the envisaged consultation must happen. Of significance is that the exercise of statutory power (setting of numerical numbers) ought to happen after the consultation process.

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[12] South African Concise Oxford Dictionary Oxford University Press 2005.
[13] [2017] ZACC 17 (8 June 2017).

It matters not as to when and how the consultation happens, as long as the exercise of power happens after the consultation process. Then and in that event, the section would have been complied with. The purpose of the consultation is to ensure that the equitable representation of suitably qualified people from designated groups at the occupational levels in the workforce is taken care of.

[34] The purpose of consultation is achieved if the equitable representation of suitably qualified people is realised. Suitably qualified people refer to persons with formal qualifications, prior learning, relevant experience, or capacity to acquire, within reasonable time, the ability to do the job or the combination of these factors (sections 20(3) and (4) of the EEA). It is not the applicants' case that the undisputed consultation process did not achieve its purpose. The applicants have a view that consultation must take the similar form of public participation envisaged in certain provisions of the Constitution and Municipal legislations. It cannot be so. This Court is satisfied that the consultation envisaged in the subsection has happened. The consultation contemplated in this subsection must be considered within the context of subsection (4) as well. The publication contemplated in subsection (4) is another form of consultation[14]. In *E-TV*, it was confirmed that publishing of a draft policy by notice in the Gazette also satisfies the duty to consult.

[35] Given the meaning and purpose of a consultation, it is difficult for a Court to emerge with a finding that a consultation process is not adequate. What a Court is required to determine is whether consultation as a process happened or did not happen. The question of adequacy will be close to equating consultation with negotiations. The subsection did not prescribe the form a consultation with the relevant sectors must take. All that is required is to ensure that voices are heard during a consultation process. This Court takes a view that even if the word sector does not necessarily refer to employers and employees, the process contemplated in subsection (4) provides employees, as interested parties with an opportunity to

[14] See *Maqoma v Sebe NO and Another* 1987 (1) SA 483 (Ck); *Tlouama and others v Speaker of the National Assembly and others* 2016 (1) SA 534 (WCC); and Central African Road Services v The Minister of Transport and Another (62873/2014) [2019] ZAGPPHC 56 (28 February 2019).

comment. The employees as interested parties ought to respond to the invitation to comment or give input by speaking exhaustively when given such an opportunity.[15]

[36] Subsection (3) refers to "a notice" as opposed to "any notice". Clearly it refers to a notice setting the numerical numbers as contemplated in sub-section (2). In the present instance, it refers to the 15 April 2025 notice. The subsection endows the Minister with a wide discretion as to how the setting of numerical targets should happen. Of significance, the Minister may set the numerical targets on the basis of any other relevant factor. This, in my view, puts paid to the nitpicking exercise engaged in by the applicants. Counsel for the applicants was at pains to compare upward, and downward percentages of targets set by the Minister in the various notices. This is unnecessary because the Minister within his or her discretion may set the numerical targets on the basis of any relevant factor. Taking into account that the setting of numerical targets is supported by the advice of the relevant sectors and the Commission for Employment Equity (CEE) before being set by the Minister, it is difficult to accept that the suggested numerical targets would escape the hawk eye of the CEE and all 18 economic sectors. Clearly, in setting the numerical targets, the Minister does not roam freely or have unfettered discretion. First, the Minister must consult. Secondly, the Minister must obtain advice of the CEE. Thirdly, in identifying the sectors regard must be had to the relevant code, not only issued, but published by Statistics South Africa. With all the above statutory safety pins, it is difficult to fathom arbitrariness in the process of setting numerical targets.

[37] Subsection (4) specifically refers to a draft of any notice as opposed to a draft of a notice. The argument that the notice of 15 April 2025, in the final form it took, ought to have been published within the contemplation of this subsection is without merit. It is a submission that is in conflict with the clear language and the purpose of this subsection. It is common cause that in 2023 and 2024, the Minister published notices which contained numerical targets proposed for the 18 sectors already identified after what appears to be a rigorous process. Taking into account the fact that the drafts seek to source comments of interested parties, the notice of 15 April 2025 did not require to still undergo a comment process. After 2023 and 2024, it must axiomatically

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[15] *E-TV* para 43.

follow that interested parties were allowed an opportunity to comment. Allow, does not mean compel or even consult *per se*. Allow, means permit to do something. As indicated earlier an employee in the sector qualifies to be an interested party. A comment is a remark expressing an opinion or reaction. Since there is no dispute that in 2023 and 2024 the proposed drafts were published, it must also axiomatically follow that interested parties were permitted to remark or express an opinion or reaction. The 30 days period was, on the uncontested facts, without any doubt permitted by the Minister. The view that the thirty-day period ought to be reckoned from the day the 15 April 2025 notice is published in a draft form, which it is common cause did not happen, is rejected by this Court. It must be reckoned from the 2023/4 publications.

[38] To the extent that the numerical targets set on 15 April 2025 are different from those set out in 2023 and 2024, this Court agrees with the Minister that they are bound to differ. The 2023/24 numbers are proposed and not cast in stone. Logic dictates that the process of permitting remarks and expression of opinion must lead to change of data. This Court is not bemused by the change of numbers after the 2023/4 notices; it was bound to happen. It serves as proof of permitting remarks and expression of opinions. The 2023/4 notices qualify as drafts of any notice within the contemplation of the subsection.

[39] Given the above interpretation, this Court comes to an irresistible conclusion that the Minister did not fail to consult or publish as required by the law set out in section 15A of the EEA. Accordingly, there is no legal basis to interdict nor suspend the actions of the Minister. The application for an interdict or suspension falls to be dismissed. Before this Court concludes, it must pertinently deal with the arbitrariness allegation and the issue of the targets discriminating women. I pause to remark that this issue snugly fits in part B as opposed to part A. However, since it was argued before this Court, it must deal with it despite the preliminary view of its relevance at this stage.

The alleged arbitrariness and discrimination of women

[40] The power of the Minister is to set numerical targets and not numerical goals. Numerical targets are numbers that the Minister aims for in any sector. Numerical goals are numbers that a designated employer aims to achieve. By way of example,

a Minister may aim for the appointment of 10 managers over a period of 5 years in a particular sector. A designated employer may aim to achieve the appointment of 2 of the 10 managers every year for a period of 5 years. Section 20(1) of the EEA obligates a designated employer to prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity. The employment equity plan must state the objectives to be achieved for each year, the affirmative action measures to be implemented, and identify by numerical goals to achieve the equitable representation of suitably qualified people from the designated groups and the timetable within which to achieve the numerical goals set by an employer.

[41] Undoubtedly, numerical goals are set out by an employer in an employment equity plan, which is required to be a product of consultation with employees (section 16, 17 and 20 of the EEA). In developing an employment equity plan, an employer seeks to achieve reasonable progress towards employment equity. The purpose of setting numerical targets is to ensure the equitable representation. Owing to the rigorous process that precedes the setting of numerical targets, this Court rejects the argument of arbitrariness. The numerical targets were not and could not have been whimsically set by the Minister. Something is done arbitrarily, if it is based on random choice or personal whim rather than any reason or system. The relevant code published by Statistics South Africa, informs the setting of numerical targets. The advice of the CEE is factored in when numerical targets are set. Consultation with the relevant sectors also informs the setting of numerical targets.

[42] Regarding the discrimination of women, the case in the founding affidavit is that the arbitrariness of the 2025 targets is shown in a particular way in those sectors in which women will be substantially disadvantaged by the 2025 targets. What appears to be the gripe of the applicants is that in their own interpretation of the numerical targets in particular sectors women will be disadvantaged. For the purpose of part A, what requires determination is whether the Minister acted outside the parameters of the enabling section, to a point that the Minister's action is to be interdicted and or suspended. Discrimination does not necessarily equate disadvantage. Section 9(3) of the Constitution specifically provides that the State may not unfairly discriminate.



Impliedly, the discrimination, even if named disadvantaged in another name, must be one that is unfair[16].

[43] Of greater significance, section 9(2) provides that equality includes the full and equal enjoyment of all rights and freedoms. In order to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. In disputing the allegations of arbitrariness, the respondents testified that the setting of sectoral numerical targets was not a mere thumbsuck as the applicants seem to suggest. This Court agrees with the contention by the respondents that this Court cannot be called upon to make a determination as to whether the calculations so employed by the Minister are arbitrary. More importantly, owing to the fact that the legislature chose the Minister as a functionary to set the numerical targets, this Court cannot determine a specific sectoral numerical target that should apply. Such would equate judicial overreach and a disrespect of the separation of powers doctrine.

[44] This argument of arbitrariness that disadvantages women clearly ignores the fact that what the Minister is statutorily empowered to do is to set numerical targets as opposed to goals. It will be the setting of numerical goals, which is the statutory function of an employer, that may lead to a disadvantage of women. It is for that reason that section 15(3) of the EEA, specifically permits numerical goals and exclude quotas. It can only be in the process of setting numerical goals that a designated employer may include consciously or unconsciously quotas[17]. Another aspect that seems to escape the contentions made with regard to arbitrariness is that section 30(2)(b) of the EEA empowers the CEE to research and report to the Minister on any matter relating to the application of this Act, including appropriate and well-researched norms and benchmarks for setting of numerical goals in the various sectors. The provisions of section 30(2)(b) underscore the need of an advice from the CEE when the Minister sets numerical targets. Clearly, it must be accepted that the CEE would advise the Minister accordingly, if the numerical targets to be set by the Minister disadvantages women to a point of unfair discrimination. It is not the case of the applicants that the

[16] *Harsken v Lane NO and others* 1997 (11) BCLR 1489 (CC) at para 43.
[17] *South African Police Services v Solidarity obo Barnard* (2014) ILJ 2981 (CC).

CEE did not dispense with an advice or dispensed with a deficient one. Thus, this Court must accept that, as an expert in the field, the CEE provided an appropriate advice.

[45] Last but not least, section 42(1)(aA) of the EEA, provides that in determining whether a designated employer is implementing employment equity in compliance with the Act, a factor as to whether the employer has complied with a sectoral target set out in terms of section 15A applicable to that employer, may be taken into account. In turn, section 42(4) specifically provides that in any assessment of its compliance with this Act, a designated employer may raise any reasonable ground to justify its failure to comply. In terms of section 53(6)(b), a Minister will issue a certificate of compliance to any employer who has raised a reasonable ground to justify its failure to comply as contemplated by section 42(4).

[46] Where an employer, in setting numerical goals choses not to comply with the numerical targets set by the Minister in terms of section 15A because such will discriminate against women, such a ground is reasonable to justify failure to comply. Therefore, with such valid alternative remedy, this Court cannot exercise its powers to issue a discretionary remedy of an interdict. There is simply no basis for an irreparable harm to be suffered by employers in the circumstances where a justification may be hoisted to save it from the non-compliance wrath by the Minister.

The issue of costs

[47] When it comes to costs, a Court possesses a very wide discretion. Counsel for the applicants argued that when deciding the issue of costs this Court must apply the *Biowatch*[18] principle. A debate ensued as to whether the principle of *Biowatch* finds application or not. Counsel for the respondents submitted that the present application does not seek to enforce a constitutional right guaranteed in the BoR, therefore the principle must not be applied, and its application is being abused by the applicants. I chose not to resolve that dispute but apply my judicious discretion in deciding the issue of costs. Given the importance of this matter, particularly because the same parties

[18] *Biowatch Trust v Registrar Genetic Resources and Others* (CCT 80/08) [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) (3 June 2009).

may lock horns in due course when dealing with part B of this matter, I take a view that an appropriate order to make is for each party to pay its own costs.

Conclusions

[48] In summary, this Court concludes that an interdictory relief is not appropriate in the circumstances of the present case. A suspension of the exercise of statutory powers is inappropriate and the provisions of section 172(1)(b) of the Constitution finds no application. This Court is not in a position to examine whether the numerical targets set by the Minister (exercise of statutory power) are lawful or not. A Court of review is better placed to conduct such an examination, when considering the rationality or otherwise of the exercise of the statutory powers. This Court disagrees with a contention that the numerical targets set by the Minister are arbitrary and discriminatory of women. Regarding costs, the appropriate order is that of each party paying its own costs.

Order

[49] Because of all the above reasons, I make the following order:

1. **The application is heard as one of urgency.**
2. **Part A of the present application is dismissed.**
3. **Each party must bear its own costs.**

GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 28 August 2025.*

APPEARANCES:

For the Applicants:	AJ D' Oliviera with N Fourie
Instructed by:	Kriek Wassenaar & Venter Inc, Pretoria.
For the Respondents:	F Nalane SC with F Karachi
Instructed by:	State Attorney, Pretoria
Date of Hearing	15 August 2025
Date of judgment:	28 August 2025

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DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. 6124 **15 April 2025**

EMPLOYMENT EQUITY ACT, 1998 (ACT 55 OF 1998 AS AMENDED)

DETERMINATION OF SECTORAL NUMERICAL TARGETS

I, **Nomakhosazana Meth**, Minister of Employment and Labour in terms of 15A (1) and (2) of the Employment Equity Act, 1998 (Act No. 55 of 1998 as amended), after consulting the relevant sectors and with the advice of the Commission for Employment Equity, hereby publish this notice identifying national economic sectors and determining the sectoral numerical targets effective from the date of publication.

MS NOMAKHOSAZANA METH, MP

MINISTER: DEPARTMENT OF EMPLOYMENT AND LABOUR

DATE: 10 April 2025

1. Identification of Economic Sectors

In terms of section 15A (1) of the Employment Equity Act, 1998 (Act No. 5 of 1998, as amended) ("the Act"), and having regard to the codes contained in the Standard Industrial Classification of all Economic Activities published by Statistic South Africa, the national economic sectors listed below are identified for the purposes of the Act:

1.1. Accommodation and Food Service Activities

1.2. Administrative and Support Activities

1.3. Agriculture, Forestry & Fishing

1.4. Arts, Entertainment and Recreation

1.5. Construction

1.6. Education

1.7. Electricity, Gas, Steam and Air Conditioning Supply

1.8. Financial and Insurance Activities

1.9. Human Health and Social Work Activities

1.10. Information and Communication

1.11. Manufacturing

1.12. Mining and Quarrying

1.13. Professional, Scientific and Technical Activities

1.14. Public Administration and Defence; Compulsory Social Security

1.15. Real Estate Activities

1.16. Transportation and Storage

1.17. Water Supply, Sewerage, Waste Management and Remediation Activities

1.18. Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles

2. Sectoral numerical targets

2.1. In terms of section 15A(2) of the Act, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, the numerical targets for the economic sectors identified in terms of section 15A(1) are set out in the Table below.

2.2. The targets set out in this notice are operative from the date of publication.

3. Implementation of Affirmative Action measures

For purposes of clarity, it is stated that –

3.1. The 5-year sectoral numerical targets set out in this Notice are not intended to add up to 100%; as the sectoral numerical target excludes white males with no disabilities and foreign nationals as part of the workforce profile.

3.2. The manner in which designated employers must take the targets into account in applying affirmative action measures is specified in the Act, the General Administrative EE Regulations and Codes of Good Practice issued under the Act.

3.3. A designated employer will not incur penalties or any form of disadvantage if in the assessment of compliance of affirmative action in any workplace it shows that there are reasonable grounds for not complying with the EE targets.

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1. 5-Year Sectoral Numerical Targets for All Sectors

The table below contains the 5-year sectoral numerical targets for the various population groups and gender for Top Management, Senior Management, Professionally Qualified and Skilled levels; and for employees with disabilities.

5-YEAR SECTORAL NUMERICAL TARGETS					
		1. ACCOMMODATION AND FOOD SERVICE ACTIVITIES	2. ADMINISTRATIVE AND SUPPORT ACTIVITIES	3. AGRICULTURE, FORESTRY & FISHING	4. ARTS, ENTERTAINMENT AND RECREATION
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	18.6%	33.2%	13.2%	35.1%
	Female	38.1%	36.7%	20.8%	33.5%
	Total	56.7%	69.9%	34.0%	68.6%
Senior Management	Male	32.2%	42.3%	21.6%	40.3%
	Female	46.1%	43.5%	31.0%	43.8%
	Total	78.3%	85.8%	52.6%	84.1%
Professionally Qualified & Middle Management	Male	38.6%	49.2%	34.7%	49.8%
	Female	46.1%	46.1%	41.7%	46.1%
	Total	84.7%	95.3%	76.4%	95.9%
Skilled Technical	Male	49.8%	49.8%	49.8%	49.8%
	Female	46.1%	46.1%	44.0%	46.1%
	Total	95.9%	95.9%	93.8%	95.9%
Disability only	All	3%	3%	3%	3%

5-YEAR SECTORAL NUMERICAL TARGETS					
		5. CONSTRUCTION	6. EDUCATION	7. ELECTRICITY, GAS, STEAM AND AIR CONDITIONING SUPPLY	8. FINANCIAL AND INSURANCE ACTIVITIES
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	30.0%	27.6%	31.7%	27.8%
	Female	24.8%	46.1%	27.9%	35.3%
	Total	54.8%	73.7%	59.6%	63.1%
Senior Management	Male	38.3%	30.5%	42.7%	31.7%
	Female	27.8%	46.1%	39.5%	45.3%
	Total	66.1%	76.6%	82.2%	77.0%
Professionally Qualified & Middle Management	Male	46.7%	43.0%	49.8%	40.7%
	Female	34.4%	46.1%	46.1%	46.1%
	Total	81.1%	89.1%	95.9%	86.8%
Skilled Technical	Male	49.8%	49.8%	49.8%	49.5%
	Female	46.1%	46.1%	46.1%	46.1%
	Total	95.9%	95.9%	95.9%	95.6%
Disability only	All	3%	3%	3%	3%

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5-YEAR SECTORAL NUMERICAL TARGETS					
		9. HUMAN HEALTH AND SOCIAL WORK ACTIVITIES	10. INFORMATION AND COMMUNICATION	11. MANUFACTURING	12. MINING AND QUARRYING
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	27.6%	25.4%	24.1%	33.1%
	Female	43.7%	31.2%	25.0%	24.4%
	Total	71.3%	56.6%	49.1%	57.5%
Senior Management	Male	39.8%	28.6%	32.4%	36.3%
	Female	46.1%	40.0%	33.6%	28.2%
	Total	85.9%	68.6%	66.0%	64.5%
Professionally Qualified & Middle Management	Male	49.8%	37.9%	40.4%	43.2%
	Female	46.1%	38.9%	37.7%	34.4%
	Total	95.9%	76.8%	78.1%	77.6%
Skilled Technical	Male	49.8%	46.0%	49.8%	49.8%
	Female	46.1%	45.7%	39.6%	36.9%
	Total	95.9%	91.7%	89.4%	86.7%
Disability only	All	3%	3%	3%	3%

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5-YEAR SECTORAL NUMERICAL TARGETS					
		13. PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	14. PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY	15. REAL ESTATE ACTIVITIES	16. TRANSPORTATION AND STORAGE
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	24.4%	49.8%	18.9%	32.2%
	Female	38.1%	41.9%	30.3%	30.0%
	Total	62.5%	91.7%	49.2%	62.2%
Senior Management	Male	29.9%	49.8%	22.9%	42.1%
	Female	46.1%	46.1%	46.1%	35.9%
	Total	76.0%	95.9%	69.0%	78.0%
Professionally Qualified & Middle Management	Male	35.9%	49.8%	32.4%	46.3%
	Female	46.1%	46.1%	46.1%	40.7%
	Total	82.0%	95.9%	78.5%	87.0%
Skilled Technical	Male	49.8%	49.8%	38.3%	49.8%
	Female	46.1%	46.1%	46.1%	41.4%
	Total	95.9%	95.9%	84.4%	91.2%
Disability only	All	3%	3%	3%	3%

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5-YEAR SECTORAL NUMERICAL TARGETS			
		17. WATER SUPPLY, SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES	18. WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	49.8%	24.2%
	Female	35.9%	27.5%
	Total	85.7%	51.7%
Senior Management	Male	49.8%	35.0%
	Female	41.0%	38.6%
	Total	90.8%	73.6%
Professionally Qualified & Middle Management	Male	49.8%	42.2%
	Female	46.1%	46.1%
	Total	95.9%	88.3%
Skilled Technical	Male	49.8%	48.1%
	Female	46.1%	46.1%
	Total	95.9%	94.2%
Disability only	All	3%	3%

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DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. 6125 **15 April 2025**

REPEAL OF EMPLOYMENT EQUITY REGULATIONS, 2014

I, **Nomakhosazana Meth**, Minister of Employment and Labour, in terms of Section 55(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998 as amended), and on the advice of the Commission for Employment Equity, hereby repeal the Regulations made in terms of the Employment Equity Act, 55 of 1998, published under Government Notice No. 37873 of 1 August 2014. This Notice will be effective from the date of publication.

MS. NOMAKHOSAZANA METH, MP
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 10 April 2025

DEPARTMENT OF EMPLOYMENT AND LABOUR

EMPLOYMENT EQUITY REGULATIONS, 2025

I, **Nomakhosazana Meth**, Minister of Employment and Labour, hereby under section 55(1) of the Employment Equity Act, 1998 (Act 55 of 1998 as amended), and on the advice of the Commission for Employment Equity, publish the Employment Equity Regulations in the Schedule, which regulations will be effective from the date of publication.

MS. NOMAKHOSAZANA METH, MP
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 10 April 2025

SCHEDULE

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13. EEA 13: Template for Employment Equity Plan in terms of Section 20 of the Act
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1. **Definitions**

In these Regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context indicates otherwise.

"Department" means the Department of Employment and Labour;

"**EAP**" means Economically Active Population;

"EE Plan" means the Employment Equity Plan as contemplated in section 20 of the Act;

"Labour Relations Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended;

"listed ground" means a ground listed in terms of section 6(1) of the Act;

"National Minimum Wage Commission" means the National Minimum Wage Commission as established in terms of the National Minimum Wage Act, 2018 (Act No. 9 of 2018), as amended;

"regional demographics" means the Provincial Economically Active Population;

"temporary employees" means employees who are employed for less than three months;

"the Act" means the Employment Equity Act, 1998 (Act No. 55 of 1998), as amended; and

"work of equal value" includes work that is the same, substantially the same or of the same value as other work, as contemplated in regulation 4 of these Regulations.

EQUAL PAY FOR WORK OF EQUAL VALUE

2. **Equal Pay for Work of Equal Value Criteria**

These Regulations are published to prescribe the criteria and methodology for assessing work of equal value contemplated in section 6(4) of the Act.

3. **Eliminating unfair discrimination**

(1) An employer must, in order to eliminate unfair discrimination, take steps to eliminate differences in terms and conditions of employment, including remuneration of employees who perform work of equal value if those differences are directly or indirectly based on a listed ground or any arbitrary ground that is prohibited by section 6(1) of the Act.

(2) Without limiting sub-regulation (1), an employer must ensure that employees are not paid different remuneration for work of equal value based on race, gender or disability.

4. **Meaning of work of equal value**

For the purposes of these Regulations, the work performed by an employee –

(1) is the same as the work of another employee of the same employer, if their work is identical or interchangeable;

(2) is substantially the same as the work of another employee employed by that employer, if the work performed by the employees is sufficiently similar that they can reasonably be considered to be performing the same job, even if their work is not identical or interchangeable;

(3) is of the same value as the work of another employee of the same employer in a different job, if their respective occupations are accorded the same value in accordance with regulations 5 to 7.

5. **Methodology**

When, applying section 6(4) of the Act –

(1) it must first be established:

(a) whether the work concerned is of equal value in accordance with regulation 6; and

(b) whether there is a difference in terms and conditions of employment, including remuneration.

(2) it must then be established whether any difference in terms of sub-regulation (1)(b) constitutes unfair discrimination, applying the provisions of section 11 of the Act.

6. **Assessing whether work is of equal value**

(1) In considering whether work is of equal value, the relevant jobs must be objectively assessed, taking into account the following criteria:

(a) the responsibility demanded of the work, including responsibility for people, finances and material;

(b) the skills and qualifications, including prior learning and experience, required to perform the work, whether formal or informal;

(c) the physical, mental and emotional effort required to perform the work; and

(d) to the extent that it is relevant, the conditions under which work is performed, including the physical environment, psychological conditions, time when and geographic location where the work is performed.

(2) In addition to the criteria specified in sub-regulation (1), any other factor indicating the value of the work may be taken into account in evaluating work, provided the employer shows that the factor is relevant to assessing the value of the work.

(3) The assessment undertaken in terms of sub-regulations (1) and (2) must be conducted in a manner that is free from bias on grounds of race, gender, disability or on any other ground contemplated in section 6(1) of the Act.

(4) Despite sub-regulations (1) and (2), an employer may justify the value assigned to an employee's work by reference to the classification of a relevant job in terms of a sectoral determination made by the Minister of Employment and Labour in terms of section 55 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) which applies to the employer.

7. **Factors justifying differentiation in terms and conditions of employment**

(1) If employees perform work that is of equal value, a difference in terms and conditions of employment, including remuneration, is not unfair discrimination if the difference is fair and rational and is based on any one or a combination of the following grounds:

(a) the individuals' respective seniority or length of service;

(b) the individuals' respective qualifications, ability, competence or potential above the minimum acceptable levels required for the performance of the job;

(c) the individuals' respective performance, quantity or quality of work, provided that employees are equally subject to the employer's performance evaluation system, that the performance evaluation system is consistently applied;

(d) where an employee is demoted as a result of organisational restructuring or for any other legitimate reason without a reduction in pay and fixing the employee's salary at this level until the remuneration of employees in the same job category reaches this level;

(e) where an individual is employed temporarily in a position for purposes of gaining experience or training and as a result receives different remuneration or enjoys different terms and conditions of employment;

(f) the existence of a shortage of relevant skill, or the market value in a particular job classification; and

(g) any other relevant factor that is not unfairly discriminatory in terms of section 6(1) of the Act.

(2) A differentiation in terms and conditions of employment based on one or more grounds listed in sub-regulation (1) will be fair and rational if it is established, in accordance with section 11 of the Act, that –

(a) its application is not biased against an employee or group of employees based on race, gender or disability or any other ground listed in section 6(1) of the Act; and

(b) it is applied in a proportionate manner.

DUTIES OF A DESIGNATED EMPLOYER

8. **Collecting information and conducting an analysis**

(1) When a designated employer collects information contemplated in section 19 of the Act, the employer must request each employee in the workforce to complete a declaration using the **EEA1** form.

(2) Where an employee refuses to complete the **EEA1** form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data, and persons with disabilities have the right not to declare their disability.

(3) A designated employer must conduct an analysis as required by section 19 of the Act by reviewing its workforce profile and employment policies, practices, procedures and the working environment in order to identify employment barriers which adversely affect people from designated groups from being equitably represented across all occupational levels, and the outcome of the analysis must be reported using the **EEA12** template in these regulations.

(4) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the Act as a guide when collecting information and conducting the analysis required by section 19 of the Act.

(5) When a designated employer conducts the analysis required by section 19 of the Act, the employer may refer to –

(a) **EEA8**, a guide on the applicable national and regional economically active population (EAP); and

(b) **EEA9**, which contains a description of occupational levels.

(6) A designated employer must record on the **EEA12** template whether it is using the national or regional EAP as a basis for conducting its analysis in terms of section 19 of the Act.

9. **Duty to prepare and implement an Employment Equity Plan (EE Plan)**

(1) Designated employers must prepare and implement an EE Plan for the period from 1 September 2025 until 31 August 2030.

(2) Employers who become designated employers, after 1 April 2025, must prepare an EE Plan for the remainder of the period until 31 August 2030.

(3) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the Act when preparing an EE Plan contemplated in section 20 of the Act.

(4) The EE Plan must contain, at a minimum, all the elements contained in the **EEA13** template of these regulations.

(5) When developing EE Plans and setting annual numerical targets in their workplaces in terms of Section 20(2) of the EEA, designated employers must take into account -

(a) their workforce profile,

(b) the relevant 5-year sectoral numerical targets; and

(c) the applicable EAP.

(6) In addition to the factors listed in sub-regulation (5), a designated employer may take into account any of the following to the extent that they are consistent with the purpose of the Act –

(a) the inherent requirements of a particular job;

(b) the pool of suitably qualified persons;

(c) the formal qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job, as contemplated in sections 20(3) to (5) of the Act;

(d) the rate of turnover and natural attrition within the workplace; and

(e) recruitment and promotional trends within a workplace.

(7) A designated employer must –

(a) comply with the numerical targets set in terms of section 15A(3) for the economic sector in which they operate;

(b) refer to the Ministerial notice issued in terms of section 15A and **EEA17** to the regulations to determine the sector they operate in; and

(c) if it operates in more than one sector, apply the numerical targets for the sector in which the majority of their employees are engaged.

(8) The 5-year sectoral numerical targets set in terms of section 15A(2) of the Act are key milestones towards achieving the equitable representation of the different designated groups

within the four upper occupational levels in an employer's workforce in relation to the demographics of the applicable EAP, and for persons with disabilities.

(9) When determining their Annual EE targets towards achieving the 5-year sectoral numerical targets, a designated employer must set numerical targets for all designated groups in each of the four upper occupational levels in relation to the applicable sector targets and EAP, and for persons with disabilities.

(10) A designated employer must avoid perpetuating the over-representation of any group if their representation exceeds the applicable EAP in a particular occupational level.

(11) A designated employer that has exceeded the numerical target set for a particular designated group at an occupational level should continue to set targets that maintain compliance with the EAP.

(12) Designated employers must set numerical goals and annual EE targets at the semi-skilled and unskilled occupational levels in their EE Plans in terms of Section 20(2) of the EEA, taking into account the applicable EAP.

(13) Designated employers' compliance will be assessed against their annual targets set towards meeting the relevant 5-year sectoral numerical targets.

(14) A designated employer will incur no penalty or any form of disadvantage if there are reasonable grounds to justify its failure to comply with any target, as contemplated by section 53(6)(b), read with section 42(4), of the Act.

(15) A designated employer must retain their EE Plan for a period of five years after the expiry of the EE Plan.

(16) A designated employer must refer to the **EEA9** in the regulations for guidance on how to differentiate between the various occupational levels.

10. **Duty to report**

(1) A designated employer must submit a report to the Director-General in terms of section 21 of the Act annually–

(a) by hand delivery of a completed **EEA2** form as specified in regulation 10(2) together with the **EEA4** form in terms of regulation 12; or

(b) electronically by using the online reporting system available on the Department's website: **www.labour.gov.za**.

(2) A designated employer that submits its report by hand must do so by delivering a completed **EEA2** form and **EEA4** form, which are signed by the Chief Executive Officer/ Accounting Officer of the employer–

(a) to the Head Office of the Department for assistance to immediately capture the report into the system and receive feedback; and

(b) in the period from 1 September until the first working day of October.

(3) A designated employer may submit a report electronically using the online reporting EE System from 1 September until 15 January of the following year.

(4) An employer that becomes a designated employer on or after the first working day of April is only required to submit its first report in the following reporting cycle.

(5) A designated employer will not be assessed for compliance with its annual targets in the first report submitted after becoming a designated employer.

(6) A designated employer may not be issued with a certificate in terms of section 53(2) of the Act unless it has submitted a compliant report in the preceding year.

(7) A designated employer that is a holding company controlling more than one registered entity may choose to submit a consolidated report.

(8) A designated employer that chooses to submit a consolidated report contemplated in sub-regulation 10(7) must–

(a) have a consolidated Employment Equity Plan which is supported by individual Employment Equity Plans for each of the registered entities included in the consolidated report; and

(b) adopt a method of reporting that remains consistent for the duration of the plan.

(9) The information contained in a report must be verified and authorised by-

(a) the chief executive officer; or

(b) in the case of an employer falling under the Public Finance Management Act, 1999 (Act No.1 of 1999) or the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), the accounting officer.

(10) A designated employer must inform the Director-General in writing immediately of any changes to –

(a) their trade name; or

(b) details of their chief executive officer or accounting officer and the managers who have been assigned responsibility in terms of section 24 of the Act.

(11) A designated employer that is unable to report in terms of this regulation must notify the Director-General in writing by the last working day of August in the same year giving reasons and providing evidence for its inability to do so using the **EEA14** form.

(12) The Department must provide an employer that has submitted a report with one of the following –

(a) a letter rejecting the report because it does not comply with the requirements of the Act and these regulations;

(b) a letter advising the employer that there are errors in the report and requesting the employer to rectify those errors within a specified period; or

(c) an electronic acknowledgement letter stating that the report is complete and has been submitted into the Department's EE system.

(13) A designated employer that receives a letter advising that there are errors in the report in terms of sub-regulation (12)(b) must submit information correcting those errors within the period specified in the letter.

(14) A designated employer must retain a copy of the report for five years after it has been submitted to the Director-General in terms of section 21 of the Act.

(15) Public companies that are designated employers must publish a summary of their EEA report in terms of section 21 of the Act in their annual financial report in terms of section 22 of the Act, including the information specified in the **EEA10** form.

(16) An EE report submitted in terms of section 21 of the Act is a public document and a copy may be requested by completing and submitting the **EEA11** form online using the Department's website: **www.labour.gov.za**.

(17) The relevant provisions of the Electronic Communications and Transactions Act No 25 of 2002 are applicable in respect of any issue concerning the electronic submission of a report or receipt of a document or e-mail.

11. **Duty to inform**

The notice contemplated in section 25(1) of the Act is contained as the Summary of the Act in Annexure **EEA3** of these Regulations and must be displayed at the workplace.

12. **Income differentials and discrimination**

(1) A designated employer must submit an Income Differential Statement in terms of section 27 of the Act, using the **EEA4** form, to the National Minimum Wage Commission by hand delivery or electronically as contemplated by regulation (10).

(2) An employer, who becomes designated on or after the first working day of April is only required to submit its Income Differential Statement in the following reporting cycle.

(3) A designated employer must retain a copy of the statement of income differentials contemplated in regulation 12(1) for a period of five years after it has been submitted.

(4) An **EEA4** form submitted in terms of these Regulations is not a public document.

ENFORCEMENT MECHANISMS

13. **Requesting a written undertaking**

A labour inspector may request and obtain a written undertaking in terms of section 36 of the Act using the **EEA5** form.

14. **Compliance order**

A labour inspector may serve a compliance order in terms of section 37 of the Act on a designated employer using the **EEA6** form.

14A. Service of compliance order in terms of section 37

(1) A compliance order may be served on an employer in terms of section 37 of the Act by any of the following methods–

(a) handing a copy of the order to the employer or a representative of the employer;

(b) leaving a copy of the order at the employer's premises or registered office; and

(c) e-mailing a copy of the order to the employer's e-mail address.

(2) In the event of a dispute as to whether a compliance order has been served in terms of sub-regulation (1), service may be proved by–

(a) in the case of an order served by hand–

i. a copy of a receipt signed by, or on behalf of, the employer clearly indicating the name and designation of the recipient and the place, time and date of service; or

ii. a statement confirming service signed by the person who delivered a copy of the order to the other party or left it at any premises.

(b) in the case of an order left at the employer's premises, a statement confirming service signed by the person who left it at the employer's premises; and

(c) in the case of an order served by e-mail–

i. a copy of the sent e-mail indicating the successful dispatch to the employer of the email and any attachments concerned; and

ii. an affidavit of the person who effected service, providing proof of the correct e-mail address of the employer and confirmation that the e-mail and any attachments were dispatched to the employer.

(3) If proof of service in accordance with sub-regulation (2) is provided, it is presumed, until the contrary is proven, that the employer on whom it was served has knowledge of the contents of the compliance order.

(4) If proof that the document was posted by registered post to the employer in accordance with sub-regulation (2) is provided, it is presumed, until the contrary is proven, that the employer received the order seven days after the date of posting.

(5) The relevant provisions of the Electronic Communications and Transactions Act No. 25 of 2002 are applicable in respect of any issue concerning service by e-mail.

15. **Review by the Director-General**

A designated employer that has been identified for review by the Director-General in terms of section 43 of the Act must -

(a) complete fully and accurately the DG Review Assessment form (**EEA7**); and

(b) furnish the required records, documents and information within the period specified by the Director-General.

16. **EE Compliance Certificate in terms of section 53**

(1) An employer must request a certificate in terms of section 53 of the Act online by means of the Department's website: **www.labour.gov.za**.

(2) A designated employer may request a certificate in terms of sub-regulation (1) after submitting its annual report in terms of section 21 of the Act.

(3) An employer, that is not a designated employer, requesting a certificate in terms of section 53 of the Act must specify that it complies with Chapter II of the Act and that it complies with the National Minimum Wage Act, 2018 using the **EEA15** form.

(4) A designated employer must specify in its application on the **EEA15** form any grounds that it seeks to rely upon to justify its failure to comply with –

(a) any requirement for the issuing of a certificate as contemplated by section 42(4) of the Act; or

(b) in the case of non-compliance with a sectoral target, any grounds contemplated by section 53(6)(b).

(5) Justifiable reasonable grounds for not complying with the targets are -

(a) insufficient recruitment opportunities;

(b) insufficient promotion opportunities;

(c) insufficient target individuals from designated groups with relevant formal qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job, as contemplated by sections 20(3) to (5) of the Act;

(d) the impact of a CCMA award or court order;

(e) a transfer of a business;

(f) mergers or acquisitions; and

(g) the impact of economic conditions on the business.

(6) An EE Compliance Certificate in terms of section 53 of the Act must be issued to–

(a) a designated employer in the form of **EEA16A**; or

(b) an employer, that is not a designated employer, in the form of **EEA16B**.

(7) A certificate issued in terms of section 53 of the Act is valid for twelve months from the date on which it is issued.

17. **Withdrawal of the EE Compliance Certificate**

(1) The following persons may issue a notice withdrawing a certificate issued in terms of section 53(2) of the Act –

(a) the Minister;

(b) a labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act; or

(c) an official of the Department who has been delegated or assigned this function in terms of section 56 of the Act,

(2) A person contemplated in sub-regulation (1) may withdraw a certificate issued in terms of section 53(2) if they are satisfied that –

(a) the certificate was issued as a result of any misrepresentation or the provision of any fraudulent or inaccurate information; or

(b) any condition necessary for issuing the certificate no longer exists.

(3) A certificate issued in terms of section 53(2) may not be withdrawn unless –

(a) the employer has been given 14 days to make representations upon being served with an **EEA16C** notice; and
(b) any representations by the employer have been considered.

(4) A notice of withdrawal must be issued on an **EEA16D** form.

GENERAL ADMINISTRATIVE MATTERS

18. **Repeal of laws**

The Employment Equity Regulations, 2014 as published in Government Notice No. 595 of 1 August 2014 are hereby repealed.

19. Short title

These Regulations are called the Employment Equity Regulations, 2025.

employment & labour
Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

PAGE 1 OF 1 EEA1

DECLARATION BY EMPLOYEE
(Confidential)

PLEASE READ THIS FIRST

PURPOSE OF THIS FORM

This form is used to obtain information from employees for the purpose of assisting employers in conducting an analysis on the workforce profile. Designated employers should use this form to ascertain which employees are from designated groups in terms of the Employment Equity Act, 55 of 1998, as amended.

WHO COMPLETES THIS FORM?
All employees must fill in this form.

INSTRUCTIONS

All designated employers must ensure that the contents of this form remain confidential, and that it is only used to comply with the Employment Equity Act, 55 of 1998, as amended.

PLEASE NOTE:

'Designated groups', mean black people, women and people with disabilities who-
a) Are citizens of the Republic of South Africa by birth or descent; or
b) Became citizens of the Republic of South Africa by naturalization –
   (i) before 27 April 1994; or
   (ii) after 26 April 1994 and would have been entitled to acquire citizenship by naturalization prior to that date but who were precluded by Apartheid policies.

"People with disabilities" includes people who have a long -term or recurring physical, mental intellectual or sensory impairment, which in interaction with various barriers, may substantially limit their prospects of entry into, or advancement, in employment, and 'persons with disabilities' has a corresponding meaning.

1. Name of employee: ----------

2. Employee workplace No: ----------
(This is the number that an employer /company /organization uses to identify an employee in the workplace).

3. Please indicate to which categories you belong with an '**X**' below:

Male	Female

African	Coloured	Indian	White

People with a disability	YES	
	NO	

Do you require reasonable accommodation: Yes/No

If yes, please specify:

---

4. Please select the applicable option below by referring to the definition of designated groups as defined in Section 1 of the Act:

Foreign Nationals	YES	
	NO	

I **declare that the above information is true and correct.**

Signed: ----------
Employee

Date: ----------

From:	Lireze Day
Date:	9/17/2025 9:38:00 AM
To:	Mulaudzi Vuledzani; Phalatse Ngakana; Modiselle Suzan
CC:	Rohann Eloff
Subject:	National Employers' Association of South Africa (NEASA) & Sakeliga NPC - Minster of Employment and Labour (EE- Appeal Part A) R ELOFF/L DAY/QB1533- REF: 2592/2025/Z54
Attachments:	Notice of Motion & Founding Affidavit - Leave to Appeal to the Constitution Court 2025-09-17.pdf;
Size:	12508.80 KB

Good day,

We refer to the abovementioned matter and herewith serve the following:

- Notice of Motion & Founding Affidavit – Application for Leave to Appeal to the Constitutional Court.

Kindly confirm receipt of same in writing.

Yours faithfully,

LIREZE DAY
lireze@kriekprok.co.za

Candidate Attorney / Kandidaat-prokureur

Kriek Wassenaar & Venter Inc
2012/030418/21
(+27) 12 803 4719
Third Floor, HB Forum Building,
13 Stamvrug Street, Val de Grace, Pretoria

From:	Mulaudzi Vuledzani
Date:	9/17/2025 10:22:55 AM
To:	Lireze Day
CC:	Rohann Eloff; Phalatse Ngakana; Modiselle Suzan
Subject:	Re: National Employers' Association of South Africa (NEASA) & Sakeliga NPC - Minster of Employment and Labour (EE- Appeal Part A) R ELOFF/L DAY/QB1533- REF: 2592/2025/Z54
Attachments:	
Size:	66.15 KB

Good morning,

We acknowledge receipt of your application.

Regards,

Vule

From: Lireze Day <lireze@kriekprok.co.za>
Sent: 17 September 2025 09:38
To: Mulaudzi Vuledzani <VuMulaudzi@justice.gov.za>; Phalatse Ngakana <NgPhalatse@justice.gov.za>; Modiselle Suzan <SModiselle@justice.gov.za>
Cc: Rohann Eloff <rohann@kriekprok.co.za>
Subject: National Employers' Association of South Africa (NEASA) & Sakeliga NPC - Minster of Employment and Labour (EE- Appeal Part A) R ELOFF/L DAY/QB1533- REF: 2592/2025/Z54

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Kindly confirm receipt of same in writing.

Yours faithfully,

LIREZE DAY
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