		The impact of fines for those designated employers who are not compliant will directly impact the financial stability of the sector. How will this be managed? The amendments do not seem to have taken cognisance of section 17 to 28 of the Financial Sector Regulation Act, no 9 of 2017 ("FSRA") especially section 28 which provides as follow: *Roles of other organs of state in relation to financial stability 28. An organ of state, other than a financial sector regulator, must— (a) in performing its functions, have regard to the implications of its activities on financial stability; and* *(b) Provide such assistance and information to the Reserve Bank and the Financial Stability Oversight Committee so as to maintain and restore financial stability as the Bank or the Committee may reasonably request.* The implementation of the sectoral targets seems to amount to rigid quotas as opposed to flexible targets. This has been determined by the Employment Equity Commission to amount to a misalignment with the constitutional objective of achieving substantive equality between the different race groups who form the workforce in South Africa. The Employment Equity Commission further concluded that, this practice might inadvertently set the foundation for new patterns of future inequality and economic exclusion within and amongst vulnerable population groups. • Section 15A (2) states *"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".* The sector targets gazetted for the Financial and Insurance Services on 12 May 2023 deviate from the targets that were agreed to by the DoEL, BASA, ASISA and SAIA in 2020. • However, the DoEL has had two meetings with BASA to discuss the sector targets. The department has since revised the sector targets.
	SOUTH AFRICAN INSURANCE	While SAIA industry welcomed the recent assent of the Employment Equity (EE) Bill by the President and the subsequent publishing of the draft EE regulations for public comments, we remain hugely concerned of the

	ASSOCIATION (SAIA)	ambiguity of certain provisions in the amended Act, which has not provided the required legal certainty around its implementation. SAIA recommends the following: • It is our submission that the Minister should consult with the relevant sectors prior to publishing these targets in the Gazette. The lack of consultation poses potential constitutional and administrative challenges for the DEL. We therefore recommend that the necessary consultation process takes place in light of the amendment of the previously agreed targets. • DEL to provide clarity on the above interpretation and propose the consideration to include relevant transitional measures in the Regulations for clarity and to create legal certainty for all parties involved. DEL to provide clarity in terms of the implementation of the regulation in so far as the annual targets are concerned and ensuring the provision of the regulations are adopted appropriately. DEL to clarify its intentions as they pertain to the treatment of the current "non-designated employees" and ensure that the implementation of the regulation will not result in impediments that would negatively impact the sustainability prospects of the designated employer • The DEL to provide clarity in terms of this provision on flexibility vs hard-coded/quota compliance requirements, as it potentially carries the risk of litigation on Constitutionality grounds. • The DEL to be cognisant of the potential abnormality that may exist in terms of overrepresentation of Coloureds and Indians in certain industries (the financial sector being one of them), therefore resulting in

		unintended regression with regards to the broad representation of Black People, if such candidates cannot be considered due to strict application of targets in reference the Economically Active Population (EAP).
	FINANCIAL SERVICES AUTHORITY (FSA)	As indicated in the previous submission, we are of the view that the targets proposed by the DEL, in so far as Top Management, Senior Management and persons with disabilities (with gender split) are not reasonable for the sector and it is unlikely that they will be achievable over a 5-year period. It is important to note that FSA has engaged their members at length on the above proposal. Some employers remain of the view that the above may be difficult to achieve given the lack of economic growth in South Africa, the availability of forestry skills and the current EE levels within individual employers in the agricultural sector.
	SHARE TRADING TRANSACTIONS TOTALLY ELECTRONIC (STRATE)	Firstly, some of the proposed sectorial targets do not add up to 100% for top management, senior, professionally and skilled. Further clarity is required in this regard. Secondly, it is unclear how the percentages will be computed. For example, how would a national company which elects to use its provincial demographics, having its head office being in Gauteng and senior management residing and working remotely in the Western Cape, be computed? Again, further clarity is required in this regard. The proposed targets pose a challenge for entities which require critical and/or scarce skills and qualifications within the financial sector, in that it will typically require more than 5 years to appoint individuals from designated groups who are suitably qualified and experienced in order to meet the proposed targets. For a company average size 140 the employee number split does not quantify a whole due to size per professional level, would rounding principle apply – please clarify.

		Strate is concerned that the Regulations may amount to a "rigid quota" which may possibly render the application of the targets unconstitutional. The Constitutional Court held that an EE plan must be properly formulated and applied in a lawful manner. Whilst the Constitution does not take issue with EE plans that rigidly allocate positions along the lines of race and gender, the EE plan must however, provide for certain specific deviations or exclusions, based on the operational requirements of the employer, or where an individual holds scarce skill. Companies doing business with state-owned entities will be required to submit a certificate from the Department of Employment and Labour confirming that they comply with the act and its objectives. Strate and/or its affiliated companies' failure to comply with the prescribed targets, without being exempt / permitted to deviate where there are reasonable grounds to justify a failure to meet the sectoral targets, will have an effect on Strate's ability to trade and will ultimately have an effect on the proper functioning of the financial market. Furthermore, it is trite in our law that it is unconstitutional to dismiss employees on the basis of gender and race, in order to achieve affirmative action. Therefore, individuals who hold positions in Top and Senior Management Levels tend to serve the organisation for longer than 5 years and therefore, it will become challenging to meet the proposed targets within the prescribed 5-year period.
	SOUTH AFRICAN INSTITUTE OF STOCKBROKERS (SAIS)	The SAIS considers this legislation to be ultra vires, i.e. exceeding its legal authority. The SAIS furthermore severely criticizes the DELs lack of inclusivity in the consultation process with respect to the sector. The draft legislation, in its current form, is deemed unconstitutional due to its ambiguity and lack of clarity and the potential exclusion of certain population groups. To promote certainty and avoid confusion, it is essential to establish clear definitions and principles that govern the proposed amendments. The importance of practicality to facilitate compliance, ensuring that the amendments serve the best interests of the country and the financial industry, is emphasized.
	Ozow	If the DEL were to proceed with the proposed sector targets Ozow would be unable to comply and would inevitably be subject to compliance orders and fines. Ozow is in a growth phase which means that it relies on investments from shareholders to develop new products and grow our business. Revenue based fines would impact hugely on our availability of growth capital. If forced to comply with the proposed sector targets, we would be hugely restricted on the talent that it would be able to hire, in the absence of necessary skills.

	South African Institute of Chartered Accountants (SAICA)	SAICA SUBMISSION ON SECTORAL TARGETS 2.SAICA as the professional body for Chartered Accountants (CAs(SA)) would first and foremost express our support to the DOEL for the notion of targets and support for the equitable representation of suitably qualified people from designated groups at all levels in the workforce. 5.Whilst acknowledging that transformation is an ongoing and intentional process, we have concerns regarding the proposed targets as they currently stand, as they do not adequately consider the challenges, many of which are outside of the control of the audit firms, which may hinder the profession from meeting the proposed numerical targets. The profession is highly regulated with strict entrance requirements, and the proposed targets, as they stand, might have unintentional consequences. 6. The audit profession falls within the Professional, Scientific and Technical Activities economic sector, Sector 13, and more specifically sub-sector 1 that encompasses Legal and accounting, bookkeeping, and auditing activities, tax consultancy. The circumstances in the broader sector and even in the sub-sector are very different and consideration of appropriate targets for the audit profession is necessary. ***SAICA currently has ±52 000 registered CAs(SA), of which only ±30% are employed in public practice/firms, with members in business/commerce and industry (±50%), in the public sector (±5%) and other sectors (±15%). Of this number of registered CAs, 20% are employed outside of South Africa.*** ***Audit firms must compete with lucrative salaries offered to CAs(SA), especially in commerce and industry. This is especially evident in African candidates, as businesses compete to fill management positions to comply with their***

		own B-BBEE codes and targets. In addition, the CA(SA) qualification is a highly sought after qualification internationally, and several CAs(SA) are leaving South Africa for international opportunities. ***Working in public practice is becoming less attractive, with the increasing regulation and risk as a deterrent for current auditors, and it may be prohibitive for qualified CAs(SA) to qualify as a RA. There has been a 12% decline in RAs since 2017.*** ***8. We recommend that the DOEL considers creating a sub-sector code within the Professional Scientific and Technical Activities Sector (Sector 13) to recognise the unique challenges the audit profession faces and have numerical targets that reflect the profession's demographics. By implementing a tailored transformation plan organisations can actively work towards meeting the set targets and positively motivate their journey towards a transformed and represented workforce. Our suggested targets for such a sub-sector are set out in Annexure A.*** ***9. For ease of reference, we set out below in Annexure B, our main points and detailed comments and Annexure C more information on the actual numbers and pipeline.*** ***10. SAICA would avail itself to meet with the relevant officials of the DOEL to discuss the contents of this letter.***
	ASISA (Association of Savings and Investments SA)	In between the assenting to of the Amendment Act and the publication of the draft Regulations, there had been no sector wide consultation process (this will be discussed further below). Additionally, and surprisingly, Item 5 to the draft Regulations contained new proposed targets. These differed from those the Department had claimed had been agreed to by the sector. Here the Court held that "public notice of the intended decision should be given prior to its taking in such a way that interested parties are allowed a proper opportunity to comment prior to the decision being made" (our emphasis).

		The Court went on to state that "the 1 Section 14 of the Interpretation Act, 1957 makes it clear that "where a law confers a power- (a) to make any appointment; or (b) to make, grant or issue any instrument, order, warrant, scheme, letters patent, rules, regulations or by-laws; or (c) to give notices; or (d) to prescribe forms; or (e) to do any other act or thing for the purpose of the law, that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so The lack of clarity regarding the methodology used to calculate targets, the data supporting these targets, and the factors taken into consideration leads to confusion that must be urgently clarified. 6.2. Clarity on Definitions: ASISA members hereby request more detailed definitions and clarity in the regulations. We observe with concern that many of the details one would typically anticipate in a set of regulations are missing. Active Population (EAP) as per previous requirements. • There is no clear indication of what the reporting year would be in the future if the implementation date is set for September 1, 2023, and thus we request formal announcements on the effective dates of implementation of these regulations. The regulations provide targets for national and provincial levels, but they don't offer clear definitions of when an entity is considered a national or provincial employer (repeated for emphasis). We are concerned about the practical implications of choosing national or provincial targets, especially for companies with national operations but certain regional focuses. We would like to understand why the targets do not add up to 100%, and what becomes of the residual staff once targets are met? The regulations must also explicitly state whether the targets set by the Minister are the minimum, as they do not add up to 100%.

	Business Partner (Financial Services)	Several percentage discrepancies can be found in the national targets for the financial and insurance activities sector. At a top management occupational level, the sectoral targets set do not total 100%. The sectoral targets are effectively saying that certain racial groups do not belong in certain industries. This goes against the objectives of the Employment Equity Act which aims to promote equality and fairness in the workplace by Over and above the financial and insurance activities , percentage discrepancies can be found in the targets for other sectors. The draft regulations aim to provide clear direction to race and gender representation across the sectors in each of the provinces. The targets are however inconsistent and incomprehensibly constructed
6.	**TRANSPORTATION AND STORAGE**	
	South African Express Parcel Association (SAEPA)	1. Please clarify whether the EAP targets have been set on Transport or General Transport which includes storage, shipping, rail and air and the Communications Sector. We propose consultations regarding EAP targets for the express logistics transport industry. 2. We propose that the Employment Equity Elements (Management Control) of the various departments e.g. BBBEE DTIC and the Generic Scorecard, BBBEE Department of Transport with Transport Sector Scorecard and DEL with EAP targets ought to be aligned and the same methodologies and verification for achieving targets be used e.g. the DEL have a 5-year target whereas the BBBEE targets are annual targets. We propose that we jointly consult on the targets, time periods and evaluation processes. 3. We strongly believe that the formula regarding the racial segmentation should be aligned to the BBBEE definition of Black as Defined. We believe that this would better serve the transformational agenda as it would be less controversial and be more inclusive.

		4. To assist the positive experience of implementing transformation we recommend that a variety of tax incentives be designed as an alternative to the punitive measures of the current fines as it is detailed in the Employment Equity Act. We propose a joint consultation on designing appropriate incentives. 5. In respect of the disability targets, the 2% target should be based on the headcount to exclude the occupational levels where drivers are included.
	The Road Freight Association (RFA)	Proposal The Association proposes: • Engagement with the DoEL on aligning these disparate targets and assessment methodologies to achieve a unified standard set of goals and verification periods, so as to serve the same transformational mission, • Alignment of Government Department targets to that of the DoEL as well as the sector timeframes in which it should be achieved, ie over a period of 05 years, • In terms of B-BBEE: Measured Entities (ME) are measured according to their 05 year DoEL sector Numerical Targets, • Annual measurement of the ME against the achievement of its own set target for that particular year towards the 05 year target. 2 Incentivisation Road freight transport sector companies will positively respond to incentive programmes as opposed to punitive measures. Proposal The Association proposes: • Engagement with the DoEL to jointly design incentives that underpin the commercial aspect of the transformational goals, • Movement away from a punitive approach, • Introduction of "tax breaks" for businesses who have achieved their annual targets. 3 Definition of Black

		The proposed regulations segment Black people into racial groupings. Proposal We propose the use of the B-BBEE definition of "Black as Defined" as opposed to the segmentation of Black people into racial groupings. This will be less controversial and be seen as a more inclusive approach. 4 Calculation of the EAP for the Road Transport Sector The Association requests to have sight of the empirical evidence & statistics that were drawn upon to calculate the EAP for the road freight transport sector – for example how wide the DoEL road freight transport sector definition actually is, and whether it includes any other sectors (it is imperative that it excludes warehousing, international clearing & forwarding (customs related), maritime (shipping, port, stevedoring, support functions), rail and air cargo, etc. Proposal The Association proposes an engagement with the DoEL to ensure that it is involved in the profiling of the road freight transport sector EAP (the sector the Association represents and is active in) so as to ensure that it is able to understand, communicate, explain and thereby support the basis on which the EAP goals will be set. This will assist the Association in driving transformation in the specific road freight sector and allow for alignment with the subsector codes in the Integrated Transport B-BBEE Codes as well as the structure of the various categories of Chambers in the TETA (Transport SETA). Implementing the above will enhance the implementation and focus of road freight sector and Association aligned companies to focus on standardised, uniform and clearly defined goals and assessment criteria.
	BOLT	Bolt, being an employer of more than 50 employees, is a "designated employer" in terms of the Employment Equity Act 55 of 1998 ("the EEA"). As such, Bolt is subject to the principal provisions of the EEA, and amendment thereto, as well as regulations promulgated thereunder. BOLT'S STANCE ON EMPLOYMENT EQUITY 7. Bolt's principled views regarding employment equity are as follows: 7.1. Bolt recognises South Africa's unique history and the Constitutional imperative to rectify the ills of the past with regard to race-based employment. 7.2. We acknowledge the importance of these constitutional principles in seeking to address historical dispossession and discriminatory practices, and the broad purpose that the Employment Equity regime is seeking to remedy.

		7.3. Bolt also acknowledges that the primary purpose of the EEA is to redress inequity in the South African employment context. 8. Accordingly, Bolt has always, and will in future, apply the key principles that pertain to employment equity. However, this is expressly subject to what is stated below. Section 4 of the Employment Equity Amendment Act 4 of 2022 ("the EEAA") seeks to introduce section 15A to the EEA, which states: *"15A (1) The Minister may, by notice in the Gazette, identify national economic sectors for the purpose of this Act, ...* *(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).* *(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupation levels, subsectors or regions within a sector or on the basis of any other relevant factor.* *(4) A draft notice that the Minister proposes to issue in terms of subsection (1) and (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon."* 10. The Draft Regs accordingly expressly seek public comment pursuant to "Section 15A [of the EEAA]". 11. We are cognisant of the current public discourse relating to whether the Draft Regs imposes race-based "quotas", or merely a "targets" to be achieved. 12. In our view, the distinction appears to be mere semantics, because it is evident that when the EEA, the EEAA, and the Draft Regs are read together, it is apparent that: 12.1. First, peremptory requirements are placed on designated employers, such as Bolt, to enforce race-based targets at the upper-levels of its employment structure. Secondly, non-compliance therewith renders Bolt and other designated employers potentially liable for fines. This is so, because section 6 of the EEAA which seeks to amendment section 20 of the EEA by inserting section *"(2A) The numerical goals set by an employer in terms of subsection (2) must comply with any sectorial target* *in terms of section 15A that applies to that employer".* 12.3. Thirdly, non-compliance therewith also renders designated employers potentially incapable of receiving state contracts (pursuant to section 53 of the EEA). 13. Accordingly, it is Bolt's view that the EEAA and accordingly the Draft Regs (which is subsidiary thereto) are *prima facie* unlawful and open to challenge.
	ONELOGIX	OneLogix is a logistics and supply chain solutions provider, whose business transports agricultural produce, general freight, vehicle transportation, bulk liquids, refrigerated products, specialised abnormal and agricultural equipment

		and which also provides warehousing and other value-added services. It is our understanding that OneLogix would fall under the "Transportation and Storage" sector (noting that these sectors have been identified prematurely). The draft regulations require a full explanatory memorandum inter alia with regard to the scientific basis that the Minister used to arrive at the proposed targets as well as how these targets should be implemented. Without this information, it is virtually impossible to make any meaningful input in terms of these submissions or otherwise. Since the effective date of the EEAA (the enabling legislation for the determination of sectoral numerical targets) is yet to be proclaimed, we submit that anything done in terms of these amendments prior to such effective date, including the publication of the draft regulations, is technically premature and ultra vires. First, section 15A of the EEA provides the basis for the delineation of national economic sectors, which requires the following steps: First, the Minister may, by notice in the Gazette, identify national economic sectors having regard to relevant codes contained in the Standard Industrial Classification of all Economic Activities published by Statistics SA. Any such draft notice must be published in the Gazette allowing 30 days for the public to comment. Secondly, once these national economic sectors are identified (after following the legally prescribed process), the Minister may, after consulting with the relevant sectors and with the advice of the Commission for Employment Equity (Commission), for the purpose of ensuring 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. Any such draft notice must be published in the Gazette allowing 30 days for the public to comment. This is precisely what the Minister purported to (prematurely) do in terms of the draft regulations. Section 42 of the EEA provides the factors to be taken into account in determining whether a designated employer is implementing employment equity in terms of the EEA. This is in addition to the affirmative action measures set out in section 15 of the EEA. Some of these proposed targets are impossible to achieve, which makes it necessary to consider how such non-achievement would be considered in terms of the EEA. In its amended form (including the EEAA amendments), this will include consideration of a number of factors, including assessing whether the employer complied with a sectoral target as set out in terms of section 15A of the EEA. It is apparent from section 15 that numerical targets may not amount to quotas. However, the unrealistically high targets proposed in the draft regulations would have the same impact as quotas and would require arbitrary employment policies, procedures and practices to implement. Our case law also requires that any numerical targets must not be applied haphazardly. In

		this case, the lack of scientific basis for the proposed targets issued by the Minister amounts to such haphazard application. It is apparent from our case law that: numerical goals must not amount to quotas; and numerical goals must account for national and provincial demographic profile within the economically active population?. That being said, it is difficult to understand why the draft regulations. To measure employment equity compliance against the achievement of sector targets — which have no scientific basis, and which effectively amount to quotas — is irrational and unconstitutional. It fails to consider specific business challenges, which may result in countless designated employers failing to comply with employment equity in terms of the EEA, despite their best efforts. This is nonsensical, irrational, administratively flawed and detracts from the true achievement and realistic achievement of the transformational objectives of the EEA.
	Fly SAFair	We note that the 30-day time period is inadequate for industry to provide cogent and useful submissions and comments. The proposed targets have ignored or failed to take into account the following: Pool of suitably qualified professionals within designated groups; Time constraints in training personnel; Economic and financial factors faced by the industry; and FlySafair Experience. Labour turnover. Since the effective date of the EEAA (the enabling legislation for the determination of sectoral numerical targets) is yet to be proclaimed, we submit that anything done in terms of these amendments prior to such effective date, including the publication of the draft regulations, is technically premature and ultra vires. Section 42 of the EEA provides the factors to be taken into account in determining whether a designated employer is implementing employment equity in terms of the EEA. This is in addition to the affirmative action measures set out in section 15 of the EEA. The proposed targets are perceived as quotas that must be reached.
	DHL Express SSA	DHL Express SSA requests clarification as to how to determine whether an employer has a national or provincial business. No guidance is provided as to what might constitute a "national" employer. The question which arises is

		whether an employer must have a certain number of employees or operations across a certain number of provinces for this definition to apply. If an employer operates different types of businesses / operations in all nine (9) provinces, can the employer choose provincial targets for each of its different types of businesses / operations or must the employer choose the national target? If an employer conducts its business / operations in three (3) out of the nine (9) provinces, can the employer choose to use three (3) different provincial targets for each province within which it operates or must the employer choose the national target? Is there a threshold of the number of provinces in which the employer must do business / operate which requires the employer to choose national targets? To meet the employment equity targets in question would mean the exclusion of employees from other countries. DHL Express SSA is already faced with a significant challenge of employing staff from its region owing to the availability of work permits. These challenges will be unduly exacerbated by the proposed sectoral targets. In the circumstances, the proposed targets are untenable and unreasonable. The draft targets pertaining to females are also unreasonable as there is an underrepresentation of females that is largely due to the industry traditionally being male dominated and further exacerbated by low labour turnover at this occupational level.

		This does not take into account that an employer is likely to have employees at the unskilled and semi-skilled occupational levels. In this regard, the Draft Sectoral Targets are not designed to cater for small businesses, even if they meet the threshold of a designated employer of 50 (fifty) employees and small businesses will, in all likelihood, be prejudiced if they were to attempt to try meet the targets and compete for talent with much bigger organisations whose workforces do not need to cater for the impact of the "fractional" employee. For the reasons set out above, DHL Express submits that the Draft Sectoral Targets, in their current form, are not achievable and are irrational. The Draft Sectoral Targets do not take into account the disparate challenges that specialised businesses, such as DHL Express SSA, face in relation to the availability of skills and the requirements in terms of workforce numbers. DHL Express SSA has assumed that, because the total percentages in the Draft Sectoral Targets do not add up to 100%, the Draft Sectoral Targets are sub-minimum targets, which the designated employer must aim to achieve as a minimum. This means that, on the assumption that DHL Express SSA's understanding is correct, the goals and targets set out in the Employment Equity Plan will be to represent the minimum percentages in the Draft Sectoral Targets (in their final form).
	Southern African Bus Operators Association (SABOA) SABOA	The above challenges faced by the bus industry poses an undeniable critical risk to all bus operators of ever achieving a certificate of compliance 3.4. Member companies that are confined to for instance in the metropolitan area of Cape Town would according to the gazette, be required to comply with the Economically Active Population (EAP) targets of the Western Cape Province rather than those of the National EAP. For example, applying the targets indicates that in certain categories, particularly at the Junior Management level, a significant overrepresentation in the CM category is prevalent.

		3.5. This is also pertinent in the critical skills job categories Top Management (TM), Senior Management (SM) and Middle Management (MM) albeit in smaller numbers, as it poses more of a risk since these these individuals perform critical functions in the company's operations. 3.6. The commuter bus industry was not consulted enough regarding the targets for the "Transport & Storage" sector. 3.7. An explanation as to how the targets have been computed and their precise intended operation is required. 3.8. It is not clear how the targets were worked out. For example, the total number of black people (50% in Top Management) plus the total of white people (13.3% in the case of the Western Cape in the Transport & Storage sector) do not add up to 100%. This is a feature replicated in the entire sectoral target table. As this invariably has an impact on the computation of the numbers, clarity is sought. 3.9. The 13.3% White representation is also not split between Male & Female. 3.10. Please also provide clarity as to whether the Top Management job category include Board Members 3.11. Clarity is also sought as to whether there would be an obligation to reduce 'over-representation' in a category where the minimum targets are met. And if there would be sufficient grounds to justify the termination of overrepresented groups to pave the way for the appointment of others to be compliant with the race-based quotas enforced by the sectoral targets.

		3.12. The BBBEE Management Control, Employment Equity and Disabled numerical targets of the Transport Sector Codes do not equate to the numbers in the EEA Sectoral Targets. Please provide clarity as to which of the two pieces of legislation have precedence. Directors: KV Murugan (President), (MS) I Mncwango (Vice-President), FE Meyer, MH Heyns, S Maharaj, MN Dollie, (MS)M Motloung, E Motshwane Company Registration No.: 2003/030888/08 / NPO Registration No.: 033-378-NPO / VAT Registration No.: 4080121843 3.13. Under the heading 'VERY IMPORTANT INFORMATION" a statement is included that "The proposed sector EE numerical targets for the various population groups (African, Coloured, Indian and White) and gender must, where applicable, be proportional to the demographics of the Economically Active Populations (EAP), whether national or provincial." The statement is qualified by the phrase 'where applicable', but it is not clear when it would or would not be applicable. It may be that this is intended to mean that this only does not apply to the occupational categories for which no specified (minimum) targets are set (i.e. semi-skilled and unskilled). It is not completely clear how this statement is intended to interact with the specified (minimum) targets and clarity is sought. 3.14. The supply of suitably qualified individuals in the designated groups within the country and more particularly geographical regions, falls well below the prescribed targets specified in particularly Top, Senior and Professionally Qualified job categories. 3.16. As Top Management is usually not a large group, meeting the EAPs in all aspects in the short (or even long) term, is almost impossible without a significant risk to business (replacing people and finding "suitable" alternatives based on race/gender). 4. We believe that there may be sufficient grounds for the EEAA and the gazetted sectoral targets to be challenged as being unconstitutional.

		5. SABOA is strongly committed to transformation and promoting equity in the workplace and requests urgent consultation with the Department on the targets that have been determined for the Transport & Storage sector as the draft regulations will have far reaching consequences for the bus industry if implemented in its current form.
7.	**INFORMATION AND COMMUNICATION**	
	MIP HOLDINGS	**PROGRESS SOFTWARE – AN OVERVIEW AND ANALYSIS OF AVAILABLE PROGRESS SKILLS IN SOUTH AFRICA** The total number of software engineers working for the aforesaid 28 companies (excluding MIP) number 128. The company with the largest number of software engineers, other than MIP, employs a total of 27 software engineers. The consequence is therefore that MIP's senior and mostly white Software engineers tend to not resign easily unless they are offered positions in the global market (which is happening). MIP is also of the view that the new EE legislation will further discourage white staff from resigning but rather hold onto what they have until retirement age. By law, we cannot "get rid of" a white senior person to make space for a black senior person. We have to wait for a resignation or retirement to do so. The vast majority of MIP's staff in occupation levels 1 and 2 have between 7 and 20 years of work left before they retire, causing the attainment of the set targets an impossibility. Black staff, on the other hand, are in higher demand due to the EE targets which makes it increasingly difficult to retain them. Our challenges have further been compounded by the Covid Pandemic on the one hand and our weakening currency on the other. The Covid Pandemic taught the world that working remotely and working from home is not only feasible, but it has led to productivity increases for many organisations. Software engineering companies are in fact perfectly suited to working remotely as the code that the engineers develop can be "shipped" anywhere in the world with the press of a button. Remote work coupled with the weakening Rand has placed South African based software engineers in high demand across the globe, in particular at the senior levels.

	Nomvuyiso Batyi **nbatyi@actforsa.co.za** **Association of Comms & Technology**	We are the Association of Comms and Technology ("ACT") an association within the ICT sector. As a telecommunications network operators' industry association, ACT's main objectives are to promote and develop telecommunication infrastructure networks, contribute to the development of a conducive South African policy and regulatory environment, promote education, and through informed research, promote industry stakeholder investments in the South African telecommunication infrastructure network. ACT also seeks to advance socio-economic development of the country against the South African government's Fourth Industrial Revolution vision and National Development Plan 2030. The founding members of ACT are Cell C, Liquid Intelligent Technologies, MTN, Rain, Telkom, and Vodacom. As you are aware, the telecommunications industry plays a critical role in driving economic growth, job creation and innovation. The industry has been a key driver of digital transformation in South Africa for 29 years and empowering citizens and businesses with access to information, education, and providing quality communication services to the citizens of South Africa is at the forefront of our collective agenda and mandate. The ICT sector request that the Department of Labour hosts a consultative session with it before it makes written representation to the above draft regulations. The reason for the request is that the sector would like to ensure it has full understanding of the draft regulations.
	SEIMENS	**Discrepancies in total percentages for he Black population group:** Siemens has assumed that, because the total percentages in the Draft Sectoral Targets do not add up to 100%, the Draft Sectoral Targets are sub-minimum targets which the designated employer must aim to achieve as a minimum. This means that, on the assumption that Siemens' understanding is correct, the goals and targets set out in the EE Plan will be to represent the minimum percentages in the Draft Sectoral Targets

		Individual Race and Gender Targets v Overall Targets: Siemens requires clarification as to the manner in which the overall targets are to be applied under the column "Black" in the Draft Sectoral Targets. In this regard, if a designated employer is unable to meet the individual targets for any particular demographic (designated) group or the overall targets for the designated group per gender, would the designated employer be found to be compliant if it meets the overall (total) targets under the "Black column? Similarly, would it be found to be compliant if it were comply with the overall gender targets, but not the individual gender targets? **National v Provincial Demographics:** Siemens requires clarification as to how to determine whether an employer has a national or provincial business. There is no guidance which is provided as to what might constitute a "national" employer. The question which arises is whether an employer must have a certain number of employees or operations across a certain number of provinces for this definition to apply. **Disability Percentages:** Siemens requires confirmation that the 2% target for employees with disabilities applies to the total workforce (including the semi-skilled and unskilled occupational levels which are excluded from the Draft Sectoral Targets) Siemens submits that the Draft Sectoral Targets, in their current form, are not achievable and are irrational. the Draft Sectoral Targets do not take into account the disparate challenges that specialised businesses, such as Siemens, face in relation to the Sectoral Targets will be impossible for Siemens and aiming to do so in occupational levels where there are sufficient positions to achieve them will cripple Siemens financially, in an already struggling market. Increased labour costs will have a knock-on effect on the price of its products that will ultimately be passed on to consumers.

	NOKIA	Finally, the potential overlaps between the provisions in the Employment Equity Act and the implementa-tion of other government policies and regulations, such as Broad-Based Black Economic Empowerment (B-BBEE), must be considered. Take, for example, any new investment in the energy sector. Not only will investors need to comply with B-BBEE and the Renewable Energy Independent Power Producer Procure-ment (REIPPP) Programme local content requirements, but their ongoing ability to sell to Eskom will now also hinge on their ability to obtain an Employment Equity Certificate of Compliance from the Department of Employment and Labour on an annual basis, against targets which may not have been set and which can be changed by the Minister at any time by notice in the Gazette.
	Vodacom	**1. Procedural concerns:** Vodacom holds the view that the publication of the draft regulations as prescribed in Section 15(A) have been published prematurely based on the following reasons: - 1.1 The amended Act whilst signed into law has not yet been given a date upon which the Act becomes effective. Vodacom submits that it is only once the effective date has been promulgated can the consultation process as prescribed under Section 15(A)(2) be undertaken by the Minister following which sub-section (3) can take effect. This position is held because the Act does not prescribe for the draft regulations to be in place prior to the effective date of the Act being promulgate. 1.2 As a key industry player in the ICT Sector, Vodacom confirms that it has not received any official or unofficial requests for consultation whether as a standalone entity or as part of the collective ICT Sector prior to the publication of the draft regulations. Vodacom is however aware that the Department of Employment and Labour engaged with the ICT Sector Code Council on 26 March 2021, albeit that the concerns of the Council were not considered. Notwithstanding this engagement it must be noted that the Council does not represent the operations of the ICT industry and engaged based on concerns relating to the impact on ICT Sector Code on B-BBEE, and as such does not and cannot be construed as the Department having consulted with the ICT Sector. **2. Conflict between B-BBEE and the draft Regulations** Vodacom notes with concern the disconnect between the targets as set out by Section 9.1. ICT Sector Codes on B-BBEE and the draft Regulations. For ease of reference, the table herein below outlines the distinctive conflict between the two subordinate legislative instruments: - **ICT B-BBEE Targets** | **Draft Regulations**

Single EAP mechanism based on EAP targets as published annually by Commission for Employment Equity (CEE) irrespective of the occupational levels. Based on the CEE release in August 2022, the EAP breakdown is presented as

Race	Male	Female
African	43.6%	35.8%
Coloured	5%	4.1%
Indian	1.8%	0.9%
White	4.9%	3.9%

Multiple EAP mechanism based on 2022 EAP set for each occupational level. In summary the targets range.

Race	Male	Female
African	24% - 41,7%	16% - 32%
Coloured	2.9% - 4.9%	2.2% - 3.7%
Indian	0.8% - 1.4%	0.6% - 1.1%
White	4.5%	3.5%

No EAP application prescribed for **Top Management** – instead Black people are measured as the collective of A,C,I against total base	**EAP targets set for Top** Management where black people are measured excluding White people as being part of the base
Black is measured as A,C,I against total employee base including White/NSA	Black is measured as A,C,I against total employee base per level and White/NSA is measured as standalone against same employee base

Considering the above,

		2.1 Vodacom notes that a Designated Employee will find itself in a state of double jeopardy based on the compliance discrepancies of these two sub-ordinate instruments. 2.2 From the outset, B-BBEE targets specific to Employment Equity have been in place since 2007 and for those sectors who have developed their own B-BBEE codes in terms of Section 9.1 read with Section 10.3 of the B-BBEE Act, have had these targets set to address the specific employment equity shortfalls relevant to such a sector. It is for this reason that targets differ across the various sectors where B-BBEE Codes are in place. 2.3 Employment Equity is a key component under the B-BBEE Codes and influences the overall outcome of the contributor status a company is awarded. This B-BBEE overall status is key to doing business not only from public sector but also from private sector and is used as a competitive leverage tool in addition to price, product, and service delivery. 2.4 The above potential discrepancies may lead to fragmentation of policy objectives and enforcement mechanisms within government. Certain organisations may find themselves in a position where they may be expected to comply with different transformation targets administered by different government departments or entities. These complex arrangements increase the compliance burden, which, in turn, may derail transformation, especially at a time when South Africa desperately needs economic growth to generate much needed employment. 2.5 Assuming a company does not engage with Public Sector but is deemed a Designated Employer under the Employment Equity Amendment Act and complies with the draft Regulations, such company runs the risk of failing to meet the targets prescribed within its sector's B-BBEE Codes. 2.5.1 It must be noted that the way the targets under the B-BBEE Codes are measured does not afford a company recognition for exceeding the targets as may be in the case of certain draft occupational level targets. 2.5.2 On the other hand, companies will be penalised under the B-BBEE Codes when implementing the draft Regulations in the event of under-representation of a particular EAP grouping. For example, in terms of the draft target for the ICT Sector for Senior Management, the EAP for Coloured Female is 2.5% whereas the ICT BBBEE Codes is 4.1%. 2.6 In addition, B-BBEE Sector Code Councils will not be able to measure the extent of transformation under Employment Equity against the targets as contained in the respective Sector Codes, resulting in a misalignment in reporting to their respective Ministry. 2.a. **Province versus National targets** In terms of B-BBEE, where a company operates in more than one province, such company can either apply the National EAP targets or where most of their employees are located, adopt the Provincial EAP. It is noted that under

		the draft regulations, a company can elect to implement targets either using the National or Provincial EAP. However, what is not clear is in the instance where a company holds operations in two or three provinces, whether in such instance, the company still has the discretion to choose either option. Vodacom therefore submits that the draft regulations must provide the necessary clarification in this regard, ensuring certainty within the law. **3. Methodology for calculation of EAP approach** The draft regulations under the heading "Very Important Information" and the fact that the ICT Sector was not consulted prior to the publication of the draft regulations, Vodacom submits that the draft regulations fail to provide any insight (nor methodology) into how the EAP targets were determined and what the relationship is between the "Workplace profile 2022", the published 2022 EAP targets and the draft EAP settings. In addition, and of further concern is the realisation that the proposed targets do not amount to 100% and in some instances do not total to the desired total black representation across the various occupational levels. Case in point is seen under Top Management and Senior Management where the total targets are short 0.2% respectively. Under Top Management where the overall black target is 50% the result shows 49.8% and under Senior Management against a target of 60%, the result is 59.8%. It is therefore unclear as to whether the intention is to round the percentages up or meet the exact percentages. Furthermore, when calculating how many employees are required to fulfil the draft targets, the calculations result in scores with a decimal factor e.g. 3.6 persons or 0.28 person. The challenge this presents is that in the event a company elects to round off the number where it is greater than decimal 5 (five) the company will exceed the target or alternatively, where they elect to ignore the decimal number, the target will not be met. **3.a Foreign assignments versus proposed EAP targets** Vodacom is not just a South African organisation, but a multinational business and therefore, as part of its Talent Agenda, will always have a certain percentage of its employee population being foreign nationals, which is related to talent mobility, skills transference or upskilling the talent capability. This is especially important as Vodacom evolves from a Telecommunications company to a Technology company. Vodacom's international business footprint requires that we ensure that key critical skills are provided for in all our markets through our foreign assignment programme both into and out of South Africa, a practice that positively enhances the skill sets of all our employees. This aspect is permissible under the current legislative regime; however, it is not clear as to the treatment of foreign assignments in terms of the draft regulations.

		4. **Tre .ment of S42** In summary, Section 42 of the amended Employment Equity Act, No 55 of 1998, (EEA), as amended by the Employment Equity Amendment Act, No 47 of 2013, deals with the assessment of compliance with employment equity by a designated employer in accordance to the designated employers' Employment Equity plan. The recently enacted Employment Equity Act, No.04 of 2022, inserted an additional requirement being. "(aA) whether the employer has complied with a sectoral target as set out in terms of section 15A applicable to that employer;". Vodacom notes that multiple social media releases by the Department purports that Designated Employers still have the discretion in setting annual targets against the overall proposed 5 (five) year targets. However, the read of the new insertion, is that the employer must comply with the targets as set in terms of Section 15(A) as published in the draft regulations. That said, it is unclear what constitutes compliance to the targets if such targets are to be attained over a 5 (five) -year period. Questions arising from this uncertainty are - How much discretion does an employer have in determining what is reasonable to attain over the period? Would the employer be required to provide justification if what it deems reasonable is determined to not be sufficient compliance in line with the requirements of the Act and/or Regulations? Vodacom therefore submits that it is imperative that the draft regulations provide clarity to this component to prevent any unintended consequences that could potentially prejudice the employer. Our assumption is that current practices of monitoring processes, annual submissions and/or Inspections and/or DG reviews are mechanisms that will remain part of the Employment Equity process going forward. Confirmation and clarification of these processes is critical in facilitating compliance with the amended Act and/or Regulations. Furthermore, **section 36 of the amended Act provides that compliance** inspectors may have enhanced powers in the future. Vodacom submits that the draft Regulations must provide the detail and extent of these enhanced powers which must include reasonable governance measures to ensure that the powers comply with the purpose of the Act and in accordance with the Promotion of Administrative Justice Act. **5. Equal Pay (Salary differentials based on performance)** The existing Employment Equity reporting guidelines are clear on how a company monitors and reports on salary differentials across occupational levels and demographic groups. Vodacom in its reporting submits differential reward for merit / performance purposes. Vodacom therefore seeks clarity as to whether the proposed approach will continue to acknowledge pay differentials based on performance or whether there are other mechanisms that

		may be introduced intended to track equal pay? If other mechanisms are to be introduced, when will such be done to afford Designated Employers sufficient opportunity to implement? 6. **Double Jeopardy** An amendment to section 53 of the Employment Equity Act dealing with state contracts provides that the Minister may only issue a compliance certificate if the employer has complied with the sectoral numerical targets set by the Minister for the relevant sector or has demonstrated reasonable grounds for non-compliance. This requirement will impact an employer's eligibility for the awarding of state contracts. In terms of the amendments, a compliance certificate may only be issued if the Minister is satisfied that the employer has complied with any sectoral numerical targets applicable to the employer, or has raised a reasonable ground justifying its failure to comply; the employer has submitted its annual employment equity report; there have been no findings by the CCMA or a court that the employer breached the unfair discrimination provisions of the EEA in the previous 12 months; and the CCMA has not issued an award against the employer in the previous 12 months for failing to pay the national minimum wage. Vodacom holds the view that an employer should not be subjected to double punishment by the CCMA or Labour Court and the Department of Employment and Labour (DEL) for the same issue, which could lead to unnecessary litigation and derail our objective of transformed workplaces; especially given the fact that some matters take more than 12 months to land a ruling.
	MTN- SA	**1. Current status of the amendments** • As previously indicated, the Amendments to the Act have not yet entered into force.[1] The amended provisions are currently in a state of abeyance and are suspended until such time as the President formally declares them to be effective, by Proclamation in the Government Gazette. Until such time as the commencement date of the primary legislation which authorises the Minister to propose targets has been determined and this date actually occurs, we humbly submit that the Minister has unfortunately acted prematurely, and that this conduct may be seen to be *ultra vires* and unlawful. • In addition to this administrative law procedural fault-line, there is the risk that the premature proposal of targets, may also have substantive adverse effects. Allowing for a potentially extended period of time between the proposed targets being set and the entry into force of the amendments may place the targets out-of-synch with

[1] *President assented to Act No 4 of 2022: Employment Equity Amendment Act, 2022 in* (Government Notice in *GG 48418* of 12 April 2023).

		the prevailing economic and labour-market reality when they eventually come into effect. This risk is underscored by the current global and local macro-economic volatility. **3. Queries on the proposed targets and the underlying process** Section 15A of the Act, enables the Minister to propose targets, 'after consulting with relevant sectors and on the adv The Minister has indicated in the Notice that he obtained advice from the Commission for Employment Equity and pu advice.[3] No reference is made to the sectoral consultations, nor the identity of the stakeholders consulted. Neither is outcomes of the engagements with the Commission or sector stakeholders. • Additionally, the Minister has not provided any insight into the actual data sources, inputs, assumptions, and methodology employed to identify and determine the sectors, the proposed targets or how the current workforce profile was determined. • Similarly, no guidance is provided into how the proposed targets should be understood, considered or ultimately applied– ○ It is unclear why neither the proposed targets nor the current workforce profile numbers aggregate to 100%. There is also uncertainty about why the proposed target for employees in the white population demographic is 8% across all sectors and for all levels of seniority; but the targets for other population groups differ between sectors and occupational levels.[4] ○ Low targets are difficult to interpret, as it may amount to a fraction of a single employee. For example, 0.6% Indian Female representation in a Top Management team of 50 would amount to 0,3 or less than one-third of an employee. A designated employer cannot practically comply with this requirement. The lack of insight into the process followed and arithmetic irregularities in both the current workforce profile and proposed targets, render the proposal difficult to interpret and unfortunately constrain one's ability to provide more insightful submissions. Consequently any commentary must be informed by assumptions and deductions, which may vary between various stakeholders.

[2] Employment Equity Act 55 of 1998 ("EE Act") s 15A(1).

[3] *Employment Equity Act, 1998 (Act 55 of 1998) as amended) Draft Employment Equity Regulations 2023 for Public Comment* (GN 3407 in *GG* 48589 of 12 May 2023) ("Notice").

[4] *Employment Equity Act, 1998 (Act 55 of 1998) as amended) Draft Employment Equity Regulations 2023 for Public Comment* (GN 3407 in *GG* 48589 of 12 May 2023) ("Notice").

- Section 15A of the Act contains participatory features. It enjoins the Minister to consult various stakeholders before proposing targets and to invite comments from the public thereafter.
- The Constitutional Court has explained that the consultation process requires that 'citizens have [both] the necessary information and the effective opportunity to exercise their right to...participation.'[6] Unfortunately, the proposed targets and supplementary information in the Notice are difficult to interpret and contextualise. It does not provide necessary information that we require for an effective opportunity to participate. From the information provided we are unable to fully establish 'the issues and to have an adequate say.
- We request that the Minister, reconsider the Notice and provide more information on both the target-setting process and the application of the targets to enable us to comment meaningfully.
- Notwithstanding the abovementioned challenges in understanding and interpreting the proposed targets; we have attempted to submit comments, to the extent possible. In the next part, we reflect on the practical complexities, potential unintended consequences which may arise from implementing the proposed targets and scope for prejudice to designated employers and the State.

4. Practical complexities, potential unintended consequences and scope for prejudice

- **Sectors**

- The List of Economic Sectors (EEA17) was published as part of the Notice and indicates eighteen sectors identified by the Minister.[7] The List does not include definitions of which types of entities or economic activities fall within the scope of each sector. It does however resemble the list of sectors identified in EEA17 gazetted by the then Minister of Labour, Hon. Oliphant as part of the 2018 Draft Employment Equity Regulations ("Draft EE Regulations"), which to date have not been finalised.[8] The EEA17 as it appeared in the Draft EE Regulations included various subsectors and divisions within each overarching sector.[37]

- The Minister's Notice does not identify any sub-sectors or divisions; and no targets are proposed at any level of granularity.[9] There is unfortunately no guidance provided as to why this may not have been seen as necessary, despite section 15A empowering the Minister to set distinctive targets for sub-sectors or divisions based on any

[5] Employment Equity Act 55 of 1998 ("EE Act") s 15A(4).

[6] *Doctors for Life International v Speaker of the National Assembly & others* 2006 (6) SA 416 (CC) para 92. [34] Ibid para 125.

[7] *Employment Equity Act, 1998 (Act 55 of 1998) as amended) Draft Employment Equity Regulations 2023 for Public Comment* (GN 3407 in *GG* 48589 of 12 May 2023) ("Notice").

[8] *Publication of the Draft Employment Equity Regulations, 2018* (GN 993 in *GG* 41923) of 21 September 2018 ("Draft EE Regulations"). [37] Ibid EEA17.

[9] *Employment Equity Act, 1998 (Act 55 of 1998) as amended) Draft Employment Equity Regulations 2023 for Public Comment* (GN 3407 in *GG* 48589 of 12 May 2023) ("Notice").

		relevant factor.[10] Consequently, it is difficult to make extensive and informed submissions on this aspect of the proposed targets due to a paucity of information. • There are also further practical complexities associated with identifying the applicable sector, this in-turn impacts the sectoral target which should be used by the designated employer as well as the 2022 workforce profile baseline demographics used by the Minister when formulating the proposed targets. Our concerns are two-fold- First, the Information and Communications sector appears to be defined too broadly: The parameters of the sector include not only the Information, Communications and Telecommunications ("ICT") sector; but also, the Media, Advertising and Communications ("MAC") sector. These sectors are fundamentally different. Various activities listed as forming part of the Information and Communication sector are largely unrelated to MTN-SA's operating activities, for example –'publishing activities; motion picture, video and television programme production, sound recording and music publishing activities; programme and broadcasting services; computer programming, consultancy and related activities.'[11] The practical concern around aggregation of these sub-sectors is that the skills profile, and racial demographics of each subsector differs fundamentally. This detracts from accurately determining the current workforce profile as well as formulating appropriate targets for a specific sector. Secondly, MTN-SA's operating activities span across a multiplicity of identified sectors –Given that the sector designations have not been designed using principles of mutual exclusivity; and that each sector has its own distinct proposed targets –it is unclear which set of proposed targets a designated employer should apply. Similarly, we are uncertain about how the 2022 workforce profiling, contained in the Notice, was captured, as a designated employer's activities can span across multiple sectors.The Minister is requested to reconsider the parameters of the Information and Communication Sectors, and more specifically to disaggregate the MAC and ICT sub-sectors; as well as to reconsider the 2022 workforce profiles and targets; and to provide guidance for multi-industry or multi-sector designated employers.

[10] Employment Equity Act 55 of 1998 ("EE Act") s 15A(3).

[11] *Publication of the Draft Employment Equity Regulations, 2018* (GN 993 in *GG* 41923) of 21 September 2018 ("Draft EE Regulations") EEA17.

5. The treatment of foreign nationals and local minority groups

- The Employment Equity reports currently submitted to the Department of Employment and Labour include reporting on Foreign Nationals employed by the designated employer. For example, the "EEA1 Declaration by Employee", contains a specific box which can be selected by Foreign Nationals. The proposed targets do not contain any proposed target (not even 0.0%) for Foreign Nationals; nor does the existing workforce profile data for 2022, also contained in the Notice, reflect any Foreign Nationals.[12] It remains unclear whether this is an oversight or how foreign nationals should be treated under the amendments.

- Additionally, the various racial groups for which proposed targets have been set (African, Coloured, Indian and White) are not defined in the Act, nor are they defined in the Amendments or the Notice. It is unclear how other South African minorities are to be treated. For example, mixed race South Africans who do not identify in any of the designated racial groups or South Africans of Chinese origin are also not catered for in the proposed targets. The Minister is encouraged to revise the proposed targets, considering these groups, which currently form part of the workforce profile.

5. Attainability of 5-year targets

- Some of the proposed targets suggest that a 90% difference between the current workforce profile and the target. This should be achieved within five years. It is unclear to what extent this can be attained through natural and voluntary attrition. Particularly, in light of the prevailing global macroeconomic situation; further exacerbated by South Africa's ongoing energy crisis. The prospects of growing and creating new jobs, which would provide an opportunity to employ people from underrepresented groups will therefore remain severely constrained.

- Additionally, a designated employer cannot by law rely on race as the sole 'ground for retrenchment'.[13] Although this principle remains judicially untested after the amendments, it is likely to remain. The Draft EE Amendment regulations, which it must again be emphasised remain a mere draft and have not been settled, includes Draft Regulation 16(4)(a).[14] This provision relates to justifiable reasonable grounds that an employer may raise for

[12] *Employment Equity Act, 1998 (Act 55 of 1998) as amended) Draft Employment Equity Regulations 2023 for Public Comment* (GN 3407 in *GG* 48589 of 12 May 2023) ("Notice").

[13] *Robinson & others v PriceWaterhouse Coopers* 2006 (5) BLLR 504 (LC) para 21.

[14] *Publication of the Draft Employment Equity Regulations, 2018* (GN 993 in *GG* 41923) of 21 September 2018 ("Draft EE Regulations") Reg 16(4)(*a*).

		hav. ,failed to comply with their Employment Equity Plan aligned to the five-year sector targets. These reasons include 'insufficient recruitment and insufficient promotion opportunities.[15] This Draft EE Regulations seems to intimate that a designated employer will not be required to dismiss employees in pursuit of the employer's compliance with the proposed targets. Again, it is important to note that the regulations have not been passed and may be revised. Additionally, the Minister must be satisfied that a reasonable justifiable ground for non-compliance has been raised by the designated employer before a Certificate of Compliance can be issued. **6. Certificate of Compliance** • The process and timelines to obtain a Certificate of Compliance remain ambiguous, including the nature and extent of supporting evidence the designated employer will need to provide to the Department of Employment and Labour when a justifiable reasonable ground for non-compliance is averred; the capacity of the Department to evaluate the information and grounds placed before it and whether additional resources will be made available to bolster capacity; and the timeframes within which the assessment should be completed, and the certificate issued. A delay in the issuing of a Certificate of Compliance may prejudice the designated employer in securing a contract with the State as tender documents must usually be submitted within relatively short timeframes. This in-turn may potentially threaten the financial performance and sustainability of the employer and could jeopardise the job security of its employees. It should be borne in mind that an annual certification programme is envisaged; and should the assessment of justifications take long, the process may be rendered unworkable. Additionally, extended delays in issuing a Compliance Certificate may also adversely impact the State who will be limited in the number of entities from whom it can procure necessary goods and services to fulfil its service delivery mandate. We therefore recommend that the Minister allow for the issuance of a Certificate of Compliance on an interim basis, as soon as the designated employer has averred and submitted evidence in support of a reasonable ground to justify non-compliance with the sectoral targets. The interim certificate can then be confirmed or revoked once the officials have had the opportunity to evaluate the employer's justification. This will limit the risk of undue prejudice to both the designated employer and the State. **7. Quotas** • The EE Act expressly proscribes the use of racial quotas.[16] This was affirmed by the Constitutional Court in *Barnard* –'Quotas amount to job reservation and are properly prohibited by ...the Act.'[17] In contrast numerical

[15] Ibid Reg 4(a) (i) and (ii)

[16] Employment Equity Act 55 of 1998 ("EE Act") s 15(3).

[17] *South African Police Service v Solidarity obo Barnard* 2014 (6) SA 123 (CC) ("*Barnard*") para 54. [50] Ibid.

		goals are authorised and endorsed by the Act as a positive measure to advance affirmative action. Importantly the distinction between impermissible quotas and permissible targets turns on the 'the flexibility of the standard.'[50]The flexibility aspect must be assessed at two levels – The principles and design of the law and regulations; and how rigidly or flexibly the principles are interpreted and practically applied. • Proposed targets for certain groups are set at very low percentage targets or even at 0,0%.[18] These may constitute an 'absolute barrier'[19] to the employment of these groups and in doing so be construed as a quota by design.Similarly, the Department of Employment and Labour should also ensure that the interpretation and implementation of the justifications and exemptions process is pragmatic and expeditious. A failure to have the practical processes and resources in place could also result in the proposed targets constructively becoming quotas. This is especially so in light of the severe sanctions that a designated employer could face for failing to meet the targets, including a significant fine and being precluded from doing business with the State. We request that the Minister reviews the targets and puts in place the practical systems and structures to ensure that the targets are not applied as quotas. **8. Mismatch between B-BBEE and Employment Equity targets** • The B-BBEE targets differ from the proposed employment equity targets. The mismatch between the B-BBEE and the proposed Employment Equity targets, places designated employers in an untenable position. Pursuing the proposed Employment Equity targets will adversely impact their B-BBEE score on the Management Control and Skills Development dimensions. On the other hand, driving the B-BBEE target, will likely result in the Employment Equity target being forfeited. Since both a B-BBEE Certificate and Employment Equity Certificate of Compliance will now be required to do business with the State, designated employers are faced with a dilemma on which target should be prioritised. We urge the Minister to reconsider the proposed targets holistically, and with due regard to the interplay between various pieces of transformation legislation.
	MiX Telematics	It is our view that the implementation by Corporates becomes challenging due to the fact that STEM skills are not adequately developed in our Basic Education System which gap is furthermore often not adequately addressed at tertiary level.

[18] *Employment Equity Act, 1998 (Act 55 of 1998) as amended) Draft Employment Equity Regulations 2023 for Public Comment* (GN 3407 in *GG* 48589 of 12 May 2023) ("Notice") see for example targets for Coloureds in Limpopo.

[19] *South African Police Service v Solidarity obo Barnard* 2014 (6) SA 123 (CC) ("*Barnard*") para 42.

		• ..e support the implementation of the sector targets for Blacks (African, Coloured and Indian) over the proposed 7-year period. • It is recommended that for the White National Sectoral Targets, the Corporates should be governed by an in-principal rule. This rule should aim at a progressive reduction of the over-representation of White employees across the said categories over the proposed 7-year period. We propose the progressive reduction to be implemented as follows: For every year of reporting towards the 5 or recommends 7 – year targets, the White Males and Females numbers must reduce by a set percentage until they reach 50% at the end of the given period. The target 50% White numbers, is recommended to reflect half of the White numbers reported in the last EE Report submitted before the implementation of the sectoral targets. • As the White employees' numbers decrease, the Black employees' numbers will therefore increase proportionally towards the given sectoral targets over the given period.
	LABOUR NET	We believe the proposed Sectoral targets have been concluded with insufficient stakeholder consultation surrounding the relevant sectors and sub-sectors. The proposed targets are too broad and generalized across the various sectors and do not consider the various sub-sector specific challenges employers may find themselves with.
	NETSTAR	Sub-sector targets are lacking: our company operates within a specialized sub-sector and is subject to the general targets set by the Minister for the Information and Communications sector. This poses challenges for our operations, as we require specialized skill sets that may have limited availability within the talent pool or extended training duration aligned with the set timeframes for achieving these targets. It is therefore quantifiably shown that the targets must be at least halved for the next 5 years. Should the education sector then produce the require skill at high school and graduate level, to develop further the purpose targets can then be implemented in the following ten years.

8.	**WATER SUPPLY, SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES**		
9.	**ELECTRICITY, GAS STEAM AND AIR CONDITIONING SUPPLY**		
10.	**HUMAN HEALTH AND SOCIAL WORK ACTIVITIES**		
	Hospital Association South Africa (HASA) – 07 June 2023	**HASA Submission on Draft Employment Equity Regulations 2023** HASA, under the auspices of the Human Health & Social Services Sector, has previously done comprehensive work which led to a well-informed submission as reflected in the accompanying documents that were submitted over the period of public engagement on the EE targets over the past couple of years. In this regard, we hereby attach, with this covering letter, the following documents: • Presentation – Human Health and Social Work Activities Sector (Counter proposal) (31 March 2021) • HASA on behalf of the Human Health and Social Work Activities Sector – Letter of Appeal to DoEL (18 March 2022) • HASA response to DoEL. (8 July 2022) HASA is hereby presenting the abovementioned documents once more to the Department because their content and their merits remain true for our sector now as they did before. We appeal to the Department to consider these submissions and take them on board in the interest of an orderly and implementable application of our country's EE policies.	
	The Association for the Aged (TAFTA)	The Association for the Aged was not afforded the opportunity for consultations and are not aware of any consultations held with Non-profit Organizations in the sector. In light of the diversity of the sector and without the	

		opportunity to engage and consult, it is unclear how the targets were determined and, if they can therefore be reasonably, rationally and fairly applied to our organization. In terms of gender, we have a total of over 80% representation of females in these categories. The population targets require a reduction of black female employees to accommodate for the overall 53% black male target. This is a negative impact on gender rights for females. White females are not included in equity targets. Top management targets don't add up to 100%. Whilst we are 100% black representation at this level, the targets within the population groups are of concern. Our average age at top management level is 48 years and our rate of attrition over the last five years is under 12%. Majority of these were for retirement and allowed for transformation at this level
	Life Healthcare Group	Life Healthcare notes with concern, the contents of the Government Gazette No 48589 that was published on 12 May 2023. Life Healthcare as a member of the Hospital Association of South Africa (HASA) and coordinator of the submissions made to the Department of Employment & Labour (DoEL), is concerned by the lack of accommodation of previous submissions made, relating to the Employment Equity (EE) targets that are currently open for public comment. From the commencement of the sector consultations with the DoEL on the EE targets over the past couple of years HASA, under the auspices of the Human Health & Social Services Sector and representing inter alia the Life Healthcare Group compiled comprehensive and quantifiable evidence that translated into well-informed counterproposals for consideration and reflection. In this regard, we hereby attach, with this covering letter, the following documents for review yet again: • Presentation – Human Health and Social Work Activities Sector (Counter proposal)(31 March 2021) • HASA on behalf of the Human Health and Social Work Activities Sector – Letter of Appeal to DoEL (18 March 2022) • HASA response to DoEL (8 July 2022) The Life Healthcare Group is hereby presenting the abovementioned correspondence once more to the Department, as the contents of the documents and their merits remain true for our sector now as they did before. We appeal to the Department to consider these submissions and take them on board in the interest of an orderly and implementable application of our country's EE policies.

	COMMENTS FROM MEMBERS OF THE HUMAN RESOURCES COMMITTEE OF THE GENERIC AND BIOSIMILAR MEDICINES ASSOCIATION OF SOUTHERN AFRICA (GBMSA)	COMMENTS FROM MEMBERS OF THE HUMAN RESOURCES COMMITTEE OF THE GENERIC AND BIOSIMILAR MEDICINES ASSOCIATION OF SOUTHERN AFRICA (GBMSA)– PROPOSED ECONOMIC SECTOR TARGETS Consideration be given to an incremental introduction of the targets by using minimum and maximum thresholds instead of what appears to be a rigid mathematical target. Rigid application or implementation without a proper balance of availability of skills set and experience relative to the numerical targets, which might, in certain circumstances, be interpreted as a quotas system (which brings about Constitutional challenges). It would appear that the professional employees conducting Research / Laboratories work or Sales and Marketing of the pharmaceutical industry could possibly fall under both "manufacturing" and "professional, scientific and technical activities" economic sectors. There has to be a consideration for a hybrid model of both sectors. The Targets are not consistent with the demographics of the Sector or Industry and should be brought in line. The Targets do not mirror the same or similar industry or Sector statistics for suitably qualified designated groups and should be brought in line. The Targets are not aligned with the anticipated growth within the different segments of the Industry or Sector and should be brought in line. The Targets do not take into account demographics and/or previous and current economic and/or Sectoral challenges and should be accommodating. The Targets are unrealistic and unattainable in the proposed timeframe and should be amended to read the next ten (10) years. The Targets lack clarity and create uncertainty that is unreasonable and cannot be practically applied. The Minister should publish a comprehensive explanatory

		memo.....dum on the practical application of these Ta.gets and how businesses can justify them under the EEA. The Amendments are prejudicial and burdensome on designated employers and the public. The Minister should give businesses and the public more time to comply with these proposed EE Targets. The justifiable reasons for noncompliance should be a list that is not exhaustive and flexible No provision is made for the economic sectors to apply for exemption, whether blanket or on a case-by-case basis. In terms of the proposed regulations, the Minister is required to first develop economic sectors prior to developing the targets. It would appear that no new list was developed, but the list is copied directly and verbatim from the current list of economic sectors listed in form A1117 (EEA17).
	SOUTH AFRICAN LABORATORY DIAGNOSTICS ASSOCIATION (SALDA)	<u>Relevant queries to be considered by the Minister.</u> 1. Whilst the definition of "disability" has been extended, the context of how disabled candidates are taken into consideration in meeting sector targets, has not been provided. The position historically (and currently) is that disabled persons are considered to form part of "designated groups". Clarification is required as to whether disabled candidates are taken into consideration and if so, how as the targets currently only cater to race-based groups. 2. Whilst the "second" set of Regulations may address it, in circumstances where a company has a national presence, but is also represented provincially with smaller offices of one or two staff members, it is unclear whether the company is required to assess compliance at a national level or against provincial targets. This will need to be clarified. 3. Since compliance certificates are issued annually, how will this work on a practical level, considering CCMA information also has to be accounted for? Is it automatic or will there be an inspection? It is unclear. 4. Assuming the effective date is proclaimed as 1 September 2023, what will the reporting period(s) be?

	LENMED	The Lenmed Group's head office is in Gauteng where top and senior management are based with each hospital having its own structures including a full management structure. The regulations prohibit the ability to apply both the National EAP and the Provincial EAP's, which creates difficulties for the Lenmed Group with reference to its method of operation and would be legally unenforceable as factually national business, has by definition provincial components. The current targets cannot be addressed and / or implemented in isolation. The legal test for employers in terms of the EEA is whether reasonable progress has been made in achieving the targets set. Where such targets are unachievable with reference to chronic skills shortages, employers will be adjudged within such a context. Accordingly little value would be achieved in assessing progress against a skills shortage in 5 years' time. Instead, skills need to be urgently built and maintained, this is where the focus should lie for this sector of the economy.
	NATIONAL PATHOLOGY GROUP (NPG)	Pathology, and with specific reference to the private pathology role-players, cannot be regarded as similar, nor compared to the other organisations included in the Human Health & Social Services Sector. We would therefore urge the Department of Employment and Labour to view Private Pathology as a distinct sub sector within the Human Health & Social Services sector; the main reason for this request being, the unique character of skills required within the pathology field and the time it requires to obtain such. Pathology in South Africa has been experiencing a critical and severe shortage of suitably qualified and experienced people with specific reference to Pathologists and Medical Laboratory Scientists. The DOEL should provide a list of 'justifiable reasons' which an organisation could select from in the event of such organisation not having achieved the targets as set by the Department of Employment and Labour. Receiving such a list would not only provide more clarity as to what would be regarded as 'justifiable reasons', but would enable an organisation to implement and follow a focused transformation strategy.
11.	**ARTS, ENTERTAINMENT AND RECREATION**	
12.	**REAL ESTATE ACTIVITIES**	

	SAREIT (South African Association of Real Estate Investment Trusts)	The listed sector supports promoting fairness in the workplace. However, we are concerned about the unclear compliance requirements and enforcement methods required to comply. Officer level. ▪ Confirmation is required from the Department of Employment and Labour if they intend that designated employers must utilise the Labour Relation Act's Sec 189 relating to retrenchment proceedings to meet the targets. ▪ There needs to be clarity on the other ramifications of non-compliance. It was noticed that some of the schedules for some sectors in the Government Gazette do not add up to 100, and in some data fields, there is zero.
	SA REIT Association	The listed sector supports promoting fairness in the workplace. However, we are concerned about the unclear compliance requirements and enforcement methods required to comply. REITs are required to meet different targets set by various departments. These complications make it onerous to comply with the rules and slow improvements. This hinders job creation and economic growth in South Africa. We ask the government to make these targets and methods clearer and more consistent to ease these problems and help us make positive changes. Alignment between the Property sector BBBEE codes and the Department of Labour requirements Draft regulations published in 2018 outline a procedure for acquiring the certification and the factors that may justify non-compliance. However, these regulations have not been finalised and implemented thus far. ▪ Section 53 of the Employment Equity Act addresses state contracts and outlines the conditions under which the Minister of Labour may issue a compliance certificate. The employer must adhere to the sectoral numerical targets established by the Minister for the relevant sector or, alternatively, provide valid reasons for not meeting those targets.

		It was noticed that some of the schedules for some sectors in the Government Gazette do not add up to 100, and in some data fields, there is zero.The retention of employees from designated groups continues to be a cause for concern, as there has been a decrease in employee tenure, particularly among these individuals.
13.	**PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES**	
	Independent Regulatory Board for Auditors (IRBA) (professionally and Scientific)	The prescribed five-year period to achieve the targets will pose economic and quality risks, as professional development could be rushed to avoid incurring penalties for missing the set targets and deadlines. This is particularly so, since it can take up to 15 years for a professional to acquire the necessary skills to be considered as suitably qualified for entry into top and senior management positions. **We reiterate our earlier suggestion to extend the comment period because that will give all relevant stakeholders time to give in-depth and valuable insights. To that end, we recommend:** that a broad consultation phase be considered with the accounting and auditing subsector, to afford various role-players within this subsector an opportunity to assist with the definitions and scope of these occupational levels. Further, such consultation could also be extended into a discussion that will help both the department and the subsector to arrive at targets that are more feasible for the next five years, considering the current statistical analysis of the demographics and the forecasts for the accounting and auditing profession. The department should also consider refining the subsector categorisation and the proposed occupational levels, as that will allow it to draw more accurate statistics and conclusions, in addition to ensuring that focused interventions are developed.
14.	**WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES**	

	MOTUS MERCEDES-BENZ PASSENGER CARS GAUTENG WEST	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	MITSUBISHI MOTORS	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	MERCURIUS MOTORS PASSENGER CAR LIMPOPO	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	MOTUS CAR RENTAL	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	MAEMO MOTORS PASSENGER CAR RUSTENBURG	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	CHRYSLER JEEP DODGE - RUSTENBURG	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	MOTUS RETAIL	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	CARGO MOTORS KLERKSDORP PASSENGER CAR KLERKSDORP	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	MOTUS HONDA	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	
	MOTUS TOYOTA	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.	

	MOTUS HINO	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	HYUNDAI AUTOMOTIVE SA	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS NISSAN	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS GROUP LTD-MENLYN FRANCHISE	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS BMW DIVISION	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	KIA SA	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	CHERRY INTERNAYIONAL LTD	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS JAQUAR LAND ROVER	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS VEREENIGING	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS AUTO AUCTION	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	EUROPCAR	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.

	AUTO PEDIGREE	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	TEMPEST CAR RENTAL	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	EZGO	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MAGNIS TRUCK	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MAN TRUCK & BUS CENTRE	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS RETAIL DIVISION	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS MOBILITY SOLUTIONS	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS GROUP LIMITED T/A MOTUS ISUZU	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	GETWORTH (PTY) Ltd	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	F AND I MANAGEMENT SOLUTIONS (PTY) LIMITED	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	MOTUS FORD	**We support the submission by the Retail Motor Industry Organization (RMI)** wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.

	MOTUS HOLDING	To this end, we support the submission by the Retail Motor Industry Organization (RMI) wherein our procedural and legal concerns relating to the Draft Regulations are ventilated in full, leading to the view that these are ultra vires and potentially unconstitutional.
	Retail Association	The proposed sectoral targets have, in our view, been published with a lack of proper consultation. To be clear, the Retail Association is not objecting to the concept of numerical targets being prescribed provided that: • The Minister follows the correct statutory process outlined in the Amendment Act • The targets are based on accurate, credible and up to date data; The EAP is not used to the extent that the DeL appears to be under the impression that all people who fall within a category of the EAP, are suitably qualified for whatever job they may want to apply for.
	MOTUS **MERCEDES-BENZ** **PASSENGER CAR** **GAUTENG EAST** **FUSO TRUCK** **MAEMO MOTORS** **COMMERCIAL** **VEHICLES** **RUSTENBURG** **FUSO TRUCK** **CARGO**	We refer to the draft Employment Equity Regulations 2023 for public comment issued on 12 May 2023 (Draft Regulations) and we thank the Department of Employment and Labour (DoEL) for allowing us the opportunity to make a written submission detailing our comments on the Draft Regulations. 2. As a division of Motus Holdings Limited, a JSE-listed company, we are committed to the pursuit of transformation within the automotive sector, and we fully support the objectives of transformation in South Africa. 3. To place the above context, our ultimate holding company, Motus, currently employs over 14,000 people in South Africa and since Motus listed on the JSE in 2017, there has been a considerable improvement with top management moving from 17% to 50%, senior management from 24% to 53%, middle management from 36% to 50%, and junior management from 56% to 71%.

	COMMERCIAL VEHICLES GERMISTON **FUSO TRUCK MERCURIUS POLOKWANE** **MERCEDES-BENZ TRUCK MERCURIUS POLOKWANE** **MERCEDES-BENZ TRUCK MOTUS GAUTENG WEST** **MERCEDES-BENZ VANS CARGO COMMERCIAL VEHICLES AIRPORT**	4. The above section illustrates our group's level of commitment to ensuring transformation in our businesses and our support of the DoEL's ultimate mandate to reach a more representative and inclusive workforce. However, we believe that the targets contained in the Draft Regulations need further engagement and revision. 5. It is our view that the Draft Regulations have been published prematurely and the procedures followed are not in compliance with the requirements of section 15A of the Employment Equity Act which specifically requires the Minister to issue draft targets for comment after there has been consultation with affected parties. As the Amendment Act was only signed by the President on the 11th of April 2023 (with no date of application yet), any engagement prior to that date Sensitivity - Operational will not meet the standard of a consultation and therefore the requirements of the section have not been me 6. In addition, the sectors and sub-sectors set out in the Draft Regulations have not been properly considered (despite submissions made by many industry associations since 2017), resulting in combined industries that are irreconcila 7. Flowing from the above, it is our view that the Employment Equity Amendment Act must come into force first, and then the steps contemplated in section 15A must happen in a pre-defined sequence as set out in Annexure A below. 8. The targets contained in the Draft Regulations do not add up to 100%, either nationally or provincially, and there is no instruction or reasoning provided for this. The current EE Plans are to be kept for semi-skilled and unskilled

		levels, but no mention is made as to how to apply the targets in the Draft Regulations which is unreasonable and likely void due to vagueness. 9. Finally, if implemented in their current form, especially at Provincial level, the Draft Regulations will have an overwhelmingly negative impact on employment and transformation in South Africa. It is inconceivable that in areas such as Limpopo, for example, no Coloured persons are permitted at any level of Management (with a target of 0.0%, a single Coloured person employed will negatively affect the other targets, leading to these not being met). 7.2.5 Section 14 of the Interpretation Act 33 of 1957 (the Interpretation Act) permits certain actions prior to the commencement of the law concerned. These actions would include, for example, the making of regulations, giving of notices and the performance of other acts for the purpose of the law. The publication of the Draft Regulations are not regulations contemplated in section 14 of the Interpretation Act, as the conduct of the Minister goes further than what is permitted in terms of that section. The publication of the Draft Regulations is not for the purpose of bringing the law into operation at the commencement thereof, but rather is the exercise of a power granted under the Amendment Act, which power may have a substantive impact on designated employers. This power can only be exercised once the empowering provision is in force. Once that occurs, various procedural steps must be taken prior to the publication of proposed sectoral targets (as more fully detailed below).
15.	**ACCOMMODATION AND FOOD SERVICE ACTIVITIES**	
	Vacation Ownership Association NPC (VOASA)	We respectfully bring to your attention the challenges arising from the absence of guidance in the regulations regarding the interpretation of sectors. The lack of clarity on how designated employers should allocate themselves when their revenue is generated from services falling under multiple sectors will no doubt result in considerable confusion and compliance difficulties and the draft regulations left our members uncertain about how to navigate these complex scenarios. It is crucial that employers have a clear understanding of how the regulations will apply in these scenarios and we therefore request that the sectors are clearly defined and that guidance is given on how sectoral targets will apply to businesses offering services spanning multiple identified sectors to facilitate effective implementation and to prevent unnecessary litigation.

		To keep our comments short and concise, we will specifically focus on the top management section unless otherwise stated, as this is also the area where the most transformation will have to take place in terms of the proposed targets. The percentages that have been gazetted contain arithmetic errors, as illustrated by the table below in the National bracket of the Top Management section: **Gazette / Actual / Gazette / Actual / Gazette / Actual / Gazette / Actual / Gazette / Actual** **19.6% 2.3% 0.7% 4.5% 22.5% 22.6%** **19.6% 2.3% 0.7% 3.5% 22.5% 22.6%** **39.2% 39.2% 4.6% 4.6% 1.4% 1.4% 8.0% 8.0% 45.0% 45.2%** It is further unclear whether "*Black*" refers to African, Coloured, and Indian and Chinese (as per the definition and in the Act and interpretation) or if it is an additional item, as each line does not equate to 100%. These errors/discrepancies should be addressed to allow for more accurate employment equity plans to be drawn up in compliance with these targets. Furthermore, it is submitted that the set targets are unattainable. As an example, the lowest target in the top management section aims for 1.4% representation of Indian individuals, which can be further divided into 0.7% for males and 0.7% for females. Achieving this target would necessitate having 143 (rounded up) top management employees, a number that is impractical for most designated employers, particularly considering the threshold of 50 employees. Consequently, smaller companies or those with lean organisational structures would face significant challenges in providing Indian employees with managerial positions
	Petousis Group of Hotels	ACCOMMODATION AND FOOD SERVICES SECTOR RESPONSE TO DOE&L PROPOSED SECTOR TARGETS 31 March 2021 7 3. Comments on the targets Whilst the Company is not objecting to the need to speed up progress with EE Transformation, the achievement of the Sector Targets, in our opinion, are impossible to meet. The Company would like its comments to be considered as reasons why the Company sees the Sector Targets as unachievable.

		Problems with Sector Targets in Principle 3.1.1 Problems with percentages The sector targets (as set out in section 2 above) percentages do not total 100% for each occupational category:
16.	**PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY**	
	LEADING MUNICIPAL DISTRICT DEVELOPMENT AGENCY (LDA)	LDA further hopes that clarity will be provided in respect of the aspects on which clarity has been sought to better enable LDA, and other employers, to apply any sectoral targets in a manner which is fair and reflective of the demographics of the sector and region within which they operate. LDA hopes that its submissions, together with the submissions from other employers in the Manufacturing Sector will be thoroughly considered by the Minister and that this consideration will result in the setting of more achievable targets and/or introduction of other initiatives. It is unrealistic to expect employer's to nearly double their workforce to enable them to meet their targets. In addition, even if LDA were to have sufficient number of roles to satisfy the targets, in its view, it would have extreme difficulties in sourcing candidates to meet the demographic requirements given the reasons above. LDA requires confirmation that the 2% target for employees with disabilities applies to the total workforce (including the semi-skilled and unskilled occupational levels which are excluded from the Draft Sectoral Targets).
	The Mossel Bay Municipality	The Mossel Bay Municipality has perused the draft Employment Equity Regulations 2023 and would like to make the following general comments on the proposed sector Employment Equity targets: For a number of South Africa's key social challenges, sustained and **intensified focus on education would be the first step towards natural solutions**. This applies to crime, poverty, unemployment and also to a fairer demographical distribution in the workforce. Forcing the majority of sectors in the country to employ candidates according to race, instead of relevant skills, is a leap towards a national workforce characterised by under-skilled workers. This is bound to elicit international mistrust in South African services, products, intellectual contributions, views or just about anything South Africa wishes to offer at a global level.

17.	**EDUCATION**		
	CURRO	Curro did not have an opportunity to participate in any governance processes to consider and consult on the proposed legislation and targets set therein. Curro aligns itself with the generally expressed concern that sectorial numerical targets set by the Minister may constitute a rigid quota and, therefore, potentially render the application of the sectorial numerical targets unconstitutional. It appears that the Minister fulfils a due role of rule maker and decision taker. This cannot be ad ministerially fair and just. The independent education sector has been able to respond to this demand by matching the rising crisis with capable and inspired teachers, regardless of their designation, particularly in expert subjects such as Mathematics and Science where there is a dearth of qualified teachers from certain designated groups relative to the number of learners in the same groups. Rigid regional targets will ruin inter-regional promotion and relocation opportunities for our employees and derail the very employment equity objectives we are trying to advance. The proposed targets and enforcement of fines for non-adherence prejudice the continued success of the independent education sector and therefore directly threaten education excellence and the development of scarce skills in South Africa. The imposition of numerical targets risks perpetuating tokenism within the education sector and alienating current and prospective teachers. Instead of fostering genuine diversity and inclusion, there is a risk that individuals may be hired solely to meet the imposed targets, without addressing the underlying systemic and quality issues that contribute to inequality. The amendments require companies operating, such as Curro, to meet transformation targets that will reflect a fair representation of the population dynamics in the areas of their operations over the next five years. However, when Curro acquires its schools, it inadvertently adopts a staff composition that may not comply with the transformation	

		targets because of the location of the school. In order to comply with the transformation targets within the 5-year period Curro will be faced with the difficulty of having to dismiss or retrench experienced, trained and qualified teachers in order to hire teachers of different race in order to meet the targets and avoid being penalised.
	INDEPENDENT SCHOOLS ASSOCIATION OF SOUTHERN AFRICA (ISASA)	While ISASA notes the rationale and the spirit behind the Draft Sectoral Targets, namely to ensure that transformation in education is put in place in a manner which respects, protects, promotes and fulfils the rights of all people in terms of the Constitution, ISASA is concerned regarding the lack of sufficient understanding and consultative processes that include the independent schooling sector. In order to achieve this, ISASA is of the view that legislators and drafters of the Draft Sectoral Targets are implored to continue meaningful engagements with the independent school sector and to reach out to key stakeholders for technical and drafting support where required before the Draft Sectoral Targets are promulgated.
	SUID AFRIKAANSE ONDERWYSERS UNIE (SAOU)	We concur with the principle to rectify the past injustices implemented by a previous political dispensation, i.e. affirmative action. However, the proposed regulations with specific reference to sector 17, Education, requires further consideration. • In light of the aforementioned 94% representivity of "black" educators, the motive for further racial quotas is not rational. • Education is already fully representative and therefore the setting of strict racial targets on the various levels is superfluous. • We also note that the percentages (%) do not add up to 100%. The reason is unclear and is a further testimony of the irrationality. • It needs to be recorded that we do not agree with the principle of race as a method of classifying educators. It exceeds the principle of "fair discrimination" and is regarded as "unfair discrimination". • If the performance of the SA education system in comparison with international standards, as reflected in terms of the most recent PIRLS results is compared, we need to consider only one criterium, i.e. merit. If we do not follow this approach, education will continue to flounder in the shallows. • We also need to record that the only definition of "work place" that can be considered, is on the level of the provincial department of education. To regard the educational institution as the "work place" will be regarded as

		social engineering and will definitely be regarded to be in conflict with the SA Schools Act and be regarded as unlawful and unconstitutional.
	UNIVERSITIES SOUTH AFRICA (USAF)	These representations are made on behalf of Universities South Africa (USAf), formerly known as Higher Education South Africa (HESA). The organisation represents all 26 public universities in South Africa and is a Section 21 non-profit company (NPC). 1. While the focus on sectoral goals in the education sector is commendable, we need to ensure that these targets and goals are realistic and achievable. Considering existing resources and infrastructure, adequate funding and support should be provided, and institutions should be able to effectively achieve these goals without impacting job security and retention. 2. The targets are silent on the guidelines for the appointment of international persons, specifically as universities' mandate to incorporate internationalisation of the curriculum and research as well as global diversity in its staff portfolio to give effect to this mandate. Universities would advocate for an engagement with Department of Employment and Labour on this critical matter. 3. Universities in the main conduct their business in one/two provinces (in some instances) and the application of an Economically Active Populations (EAP) specific to the province may place some unintentional limitations on the university's selection processes. It is requested that universities be able to apply an EAP different from provincial EAP for management occupational levels. Would universities be able to do this? 4. Universities have made considerable progress in the appointment and retention of staff with disabilities. Whilst there is a significant drive to achieve the 2% target, consideration will need to be given to the university's funding for reasonable accommodation measures to ensure the inclusivity of persons in the workplace. 5. The proposed targets should also consider the issue of gender non-binary self-identification, as well as race.
	FEDSAS - Federation of Associations of Governing Bodies	In light of the fact that the provision contained in Section 15A has not yet commenced and will only take effect once the president proclaims a specific date for its enforcement, the Minister's action of publishing the targets is premature as the section itself is not yet in effect. Given that the provision is not yet legally enforceable, it would have been more appropriate for the Minister to wait until the president proclaims the commencement of Section 15A before publishing the proposed targets. This would

	of South African Schools)	ensure that the targets align with the officially recognized legal framework and provide clarity on their enforceability. By publishing the proposed targets prior to the provision coming into effect, there may be confusion and uncertainty regarding the status and validity of these targets. It would be more prudent for the Minister to follow the prescribed process and wait for the proclamation of the commencement date before taking further actions related to the Employment Equity targets in sector-specific contexts. Until the enabling provision, specifically, Section 15A of the Employment Equity Act ('EEA'), comes into effect, the regulations do not hold legal force. The enabling provision will take effect on the date fixed by the president through proclamation in the Gazette. Only upon this occurrence will the legislation officially become enforceable and applicable. It is crucial to note that compliance and adherence to the regulations should only commence once the enabling provision is in effect as determined by the president's proclamation in the Gazette.
18.	**ADMINISTRATIVE AND SUPPORT ACTIVITIES**	
	Mr. Jonathan Goldberg CEO Confederation of Associations in the Private Employment Sector (CAPES) - **ANNEXURE 3**	**OBJECTION TO SECTORAL TARGETS – ADMINISTRATIVE AND SUPPORT SECTOR** We do not believe that nearly sufficient consultation took place and there was no logical explanation given by DEL in regard to the new targets introduced. There has been no analysis in regard to economic circumstances, skills availability, and employee turnover in the sector. CAPES engaged in the consultations in 2021 and 2022 in good faith, but always on the understanding that proper consultation would take place once the Amendment Act came into force. Any consultations prior to the effective date of the amendments cannot be regarded as compliance with the section 15A obligations of the Department.

	Employment Equity Compliance Management Services(EECM)	Our Company operates in the Agricultural Industry, and we do not believe we will achieve the National Sectoral Targets set for year 5 on Middle Management as we found that we employ 40% Coloured Males compared to the target of 6.1%. We cannot just lay off the Coloured Males to adhere to the Sectoral target as set in the Gazette, Page 23 (Agriculture, Forestry and Fishing). We fall within the Mining and Quarrying Industry for EE purposes. We noted that the target for the Disabled is 2% of total workforce as set in the Gazette (Page 25, 5-year Sectoral target for employees with disabilities). Even though we urge our Recruitment Department to try their utmost best to employ the Disabled to achieve the Sectoral target, it must be noted that it is extremely difficult due to the safety hazards in our Industry. We therefore propose a Sectoral Target of 1,5% of total workforce for employees with disabilities. We are classified as a wholesale and retail company, but we buy a specialised fire suppression system and sell it to the various mines. We then install the system on their mining machines to protect their assets against fires. We are thus a services provider in the mining industry, but not a mining company. The skills and knowledge required in our company is specialised and we train our staff and cannot be found in the labour market. This will make it extremely difficult to adhere to the targets as proposed by the Minister. Our business, in the Information and Communications sector, operates in a highly competitive and niche market (cyber security). Achieving the proposed national Sectoral Targets across all occupational levels, whilst ensuring the necessary skills and qualifications are in place to meet customer demands and maintaining balanced pay scales is unrealistic. Our company is sectored under the Wholesale and Retail Sector. We are concerned that there are no separate targets for each subsector, rather all subsectors classified under Wholesale and Retail Sector must meet the same target at the end of year 5. We are of the view that different entities operating in different industries although classified under Wholesale and Retail requires different targets to be set. Example: A target set for an entity operating withing the Motor Industry may be reasonable, yet for an entity in the Tobacco Industry, it may be deemed unreasonable or even impossible to achieve. Our company falls under the Manufacturing sector sub selector, *Manufacturing of food products, beverages, and tobacco products*, when looking at the sectoral targets the following stakeholder intervention that we know of as March 2022 were involved in the targets: i. SEIFSA (Steel and Engineering Industries Federation of Southern Africa)

		ii. SAPIA (South African Petroleum Industry Association) iii. SATMC (South African Tyre Manufacturers Conference) iv. Textile Employers Association v. Transvaal Clothing Manufacturers Assoc vi. Printing SA vii. Naamsa (Automotive manufacturers Emp Asc) viii. NAACAM (National Association of Automotive Component and Allied Manufacturers) None of the above stakeholders mentioned above are in the food product industry, where we most of our work is delicate work which has created a female dominated industry. Due to the nature of our business, our employees are required to work at heights, go underground, carry heavy equipment and therefore it makes it extremely difficult to employ disabled people as our clients need them to be medically fit and if they for example have high blood pressure, they are not allowed on the mine's premises. We noted that we have a challenge recruiting disabled staff (target is 2% of total workforce). Possible reasons include, but are not limited to: Our working environment requires able bodied employees to occupy the positions due to the nature of the business; our business premises lack facilities for disabled employees and this limits recruitment of disabled candidates due to the high cost of implementing these facilities; positions that require travel for business purposes are difficult to fill by disabled candidates due to their problems with mobility. We noted that the National Sectoral Targets are not totalling 100% when we add African Males, African Females, Coloured Males, Coloured Females, Indian Males, Indian Females and Whites. Refer to Manufacturing, Top Management employees, Page 26 of the Gazette. It is noted that African total = 34,8%, Coloured total = 4,0%, Indian total = 1,2%. Total Black is therefore 40%, total Whites = 8%. This is a total of 48% of the specific occupational level. We need you to please clarify the remaining 52%. We also noted that these calculations are not adding accordingly within other Sectoral targets. Please advise accordingly.
	TOURVEST	Should the Draft Sectoral Targets constitute sub-minimum targets and not final targets which designated employers are required to achieve for each designated group that these are the minimum percentages we will be required to present as they do not add up to 100% per target level.

		Location, being that the majority of our business is based in Gauteng and due to the COVID-19 pandemic introduced remote working for longstanding, experienced and trustworthy staff, we cannot employ new staff to various provinces where there is no supervision. Skills Shortage; in our business we have further skills shortages in terms of foreign language proficiency (German, Italian and French), computing in Structured Query Language ('SQL"), Cold Fusion and other languages. Demographics of available candidates; There is a disproportionate amount of males within the Travel and Tourism sub-sector. These businesses do not attach a high number of male candidates and companies operating within this sub-sector will have difficulty in achieving the male targets set out. Availability of candidates in the market; many of our employees that were retrenched have either found employ with a competitor or have left the industry after having been unemployed for up to two years, this has resulted in a reduced pool of available, skilled and experienced candidates from which to recruit.
	TOURVEST TRAVEL SERVICES (TTS)	It is important to mention that none of the other sub-sectors of the Administrative and Support Services Sectors fall within the ambit of the CATHSSETA, which in TTS's view, is indicative of the specialised nature of the Tourism and Travel Services industry. As will become evident in its submissions below, TTS is of the view that the targets set for a sector which covers such a broad range of activities are incapable of application to its sub-sectors. The availability of the relevant skills is one of the key considerations relevant to an employer's ability to achieve a workforce that is representative of employees from designated groups. In this regard, the CATHSSETA Report identifies that the supply of skills is a significant challenge for the sector. In examining the drivers for the skills shortage, the CATHSSETA Report examines the occupational supply and state of the education available in the sector. TTS has assumed that, because the total percentages in the Draft Sectoral Targets do not add up to 100%, the Draft Sectoral Targets are sub-minimum targets which the designated employer must aim to achieve as a minimum TTS requires confirmation that the 2% target for employees with disabilities applies to the total workforce (including the semi-skilled and unskilled occupational levels which are excluded from the Draft Sectoral Targets).

		Due to the small pool of suitably qualified employees which are available within the labour market, there is fierce competition amongst top employers within the Tourism and Travel Services subsector to attract and retain the best talent. There is also a high prevalence of employees being poached by competitors within the sub-sector.
	Private Security Sector (PSI) (Administrative Support)	It is submitted that the consultation provided for in Subsection (2) of Section 15 A of the Act requires the Minister (through the Department) to consider all representations based on rational reasoning supported by reliable data provided, and to only reject such representations on rational grounds or if the data relied on is not reliable. It is submitted that the Department did not, in refusing the PSI's request for the Subsector 7 to have its own Subsector Targets, do so on any rational basis, or on the basis of the PSI's data being unreliable, as will be substantiated below.
		GENERAL COMMENTS
1.	**Southern African-German Chamber of Commerce and Industry**	South Africa is the most important trading partner for Germany on the African continent. Approximately 600 German companies, which are members of the chamber, employ over 100,000 South Africans having directly invested approximately 5.4 billion Euro. Localisation of Equity and Employment: The proposed new Employment Equity Act (EEA) risk introducing an inflexible and rigid system of employment quotas and administrative controls and penalties that is reminiscent of the forever failed command economy precedents. The existing skills gap makes it practically impossible to comply with the proposed EEA targets. The existing skills gap makes it practically impossible to comply with the proposed EEA targets. The skills gap cannot be overcome within the short term of 5 years. Overcoming the skills gap will necessitate heavy investments in training and education, including on the managerial and technical levels. The challenge cannot be overcome by private alone.

		The proposed new Employment Equity system risks leading all sectors of industry down the dangerous path of more equity hires without requisite skills levels. Penalties practiced by the Department of Labour of two or more percentage of turnover for minor deviations in the future from inflexible targets risk driving companies that operate with narrow profit margins into disinvestment from country or even worse, insolvency.
2.	**Democratic Alliance Political Party**	The DA cannot support the Employment Equity Amendment Act outright due to the party's adopted principle of non-racialism. The DA believes in non-racialism, which entails a rejection of the classification of persons along racial lines and asserts that there are no essential or fundamental biological differences that entail racial groupings. As the Employment Equity Amendment Act reinforces these artificial classifications between people, the Act and its regulations are rejected outright by the Party. **The Further Enrichment of Politically Connected Individuals** The racial quotas outlined within the Act and its regulations will result in a circulation of elites, particularly in upper levels of businesses. The Act and its regulations will drive cadre deployment into the private sector, placing connected ANC elites into high paying positions in return for contracts in government. **An Exodus of Skills** The EEA regulations will catalyse an exodus of human capital, negatively affecting South Africa's comparative advantage in sectors that rely on specific skills and expertise. The Act's racial quotas will result in a tacit form of labour market intervention, where businesses are discouraged from hiring proficient individuals due to the potential risk of non-compliance. **Reduced Investment, Economic Growth and Efficiency** The Act's provisions will disrupt the process of capital accumulation and the efficient structure of production. By imposing additional regulatory burdens on enterprises, the Act will create a disincentive for both domestic and foreign investment. Capital, like all resources, is scarce and has alternative uses. The Act's onerous requirements will lead to a misallocation of resources, where capital is channelled towards meeting administrative and compliance costs rather than productive investments. **Reduced Recognition of Achievement** One of the insidious effects of race-based empowerment policies is that they serve to undermine the legitimate career achievements of outstanding individuals considered part of the targeted 'race' grouping. A person who

		achieves a role within a company through their hard-work, talent and skill should not have their achievement undermined by the possibility that they were only awarded the position to achieve a racial quota. The DA believes that all individuals should be recognised in the workplace for their hard-work, abilities and character. **Reduced Social Mobility and Integration** The Act and its amendments set varying racial quotas based on industry and province. This means that in some provinces, for particular industries, the quota for certain race groups may be extremely low. The effect of this will be to discourage workers from moving to areas where the quota for their 'race' is lower – as businesses may be less enthusiastic to hire workers of their 'race' in these regions. In addition, some of the quotas are set at or near 0%, which effectively bans some groups from employment in certain sectors and provinces. As a result, the Act may, counter to its aims, result in reduced social mobility and further division and fragmentation of our nation. **Entrench Racial Divisions** The Act, in stipulating numerical race-based employment quotas, will entrench racial divisions within South Africa's socio-economic landscape. By stipulating employment quotas based on race, the Act will reinforce the very racial categorisations that the principle of non-racialism seeks to overcome. Instead of promoting a unified workforce where individuals are valued for their skills and contributions, the Act risks propagating a narrative that racial identity is a determinant of opportunity and advancement. This could perpetuate racial divisions and hinder the process of social cohesion and national unity. The dangers of such racial entrenchment are manifold, potentially undermining social stability and exacerbating societal divisions in the long-run.
3.	**MCKENZIE**	In conclusion, we acknowledge & respect the introduction of the Employment Equity Act we feel that we as a business should be afforded the opportunity to gradually absorb under-represented designated groups, with potential, business acumen and the ability to take an organization to greater heights & not merely based on their racial & ethnic orientation. In order to achieve the targets reflected in the Employment Equity Amendment Act the economy either needs to grow thereby creating jobs, which are highly unlikely to be achieved, or alternatively, existing loyal & long serving

		members of staff will have to be retrenched & replaced with under-represented groups. This is in itself unfair discrimination & unfair labour practice.
4.	ESA	**The targets are impossible to achieve** The targets presented are too lofty and will be impossible to achieve. Businesses will struggle to attain those numbers in the given timeframe (five years will not be a sufficient time especially for top and senior positions as there is a natural attrition rate, which tends to take at least 10 years). The impact of this is that a particular business like ours will suffer, because in order to achieve the predetermined targets set by the Minister, it would require businesses like ours to reduce our current staff composition at managerial levels in terms of minority races, in favour of the employment of Black management staff. In doing so, businesses are likely to be compelled to breach several provisions of the LRA and related labour law principles and act unfairly towards their current employees. Who will take accountability for retrenchment/severance costs if business is compelled to retrench current employees in order to achieve these impossible targets? The Targets are "quotas" and Unconstitutional The targets, as they stand are currently misaligned to constitutional and economic imperatives, including the EEA objective of "promoting economic development and efficiency in the workforce". Where special measures such as these employment equity targets are instituted with disregard to the employment market, including the absence of available skilled workers in a given field, they are incapable of achieving substantive equality, are of no benefit to anybody and do not achieve a legitimate government purpose. Prior to the proposed amendment, employers had some flexibility in setting their own targets in their employment equity plans. However, the EEAA removes this flexibility, because the numerical goals set by an employer must now

		comply with the inflexible targets set by the Minister. In the absence of compliance, there is the prospect of heavy fines.
5.	**S Chetty**	I am object to the percentage of Indians proposed for senior and top management Positions. This number hovers around the 1% level. If representation is the issue the last census in 1985 showed that Indians are above 3%, hence the number does not appear consistent. Please advise further your sources of data.
6.	**Kwanalu**	An outline of the mis-construction of 'Targets' as 'Quotas' rather than true 'targets' A key consideration may be the establishment of criteria for exemption of otherwise, 'designated' employers. This may be to do with the volume of unskilled labour and/or the fact that the senior management are all within a family business.
7.	**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (IRR Legal)**	The Regulations are subordinate to the Act, which conflicts with fundamental values of the Constitution of the Republic of South Africa, the Bill of Rights enshrined by the Constitution, and other constitutional provisions. The Act is faulty in such ways already addressed by the SAIRR, which is a separate but affiliated entity with IRR Legal, to the Department. These demonstrations of fault in the Act will not be regurgitated. Nor will the economic arguments against increasingly illiberal intrusions into the free sale of labour. Suffice to say, given the fundamental flaws of the Act it is unsurprising that the Regulations are defective as well. This submission merely addresses the specific ways in which it does err rather than the full range of faults that could be made under the Act.
8.	**Joint submission on behalf of six of the largest law firms in South Africa: Bowman Gilfillan Inc, Cliffe Dekker Hofmeyr Inc, Edward Nathan**	At the outset, it must be emphasised that we have been, and remain, fully committed to the transformation project and achieving a more equitably representative workplace. This is a necessary and aspirational constitutional ideal that must be advanced through legislation and regulations that are constitutionally sound. Unfortunately, the draft Regulations, we submit, do not meet this threshold. Instead, they are fatally flawed, both procedurally and substantively. We, therefore, make these submissions in the spirit of constructive engagement and call on the Honourable Minister not to publish the draft Regulations in its current form but to conduct the processes envisaged in section 15A of (yet still to be inserted in) the Employment Equity Act (the "EEA") afresh in a manner that complies with the EEA, and the applicable administrative law regime.

	Sonnenbergs Inc, Norton Rose Fulbright South Africa Inc, Webber Wentzel, and Werksmans Inc.	The draft Regulations containing the draft notice, as a species of administrative action, are required to be lawful, reasonable and procedurally fair (section 33 of the Constitution of South Africa, 1996 ("the Constitution")). The Promotion of Administrative Justice Act, 2000 ("PAJA"), the constitutionally mandated legislation which gives greater content to the right to just administrative action enshrined in section 33, provides that "administrative action which materially and adversely affects the rights or legitimate expectation of any person must be procedurally fair". Section 55(1) of the EEA provides the Minister with the power to make regulations (i.e., subsidiary legislation). Although, the draft Regulations are such regulations (subsidiary legislation), it, as a single (subordinate) legislative document, is nothing more than the following three constituent tabular parts: • A table entitled "List of Economic Sectors (EEA17)" listing 18 'national economic sectors. • A table entitled "Very Important Information". • Several tables containing 'sectoral numerical targets'. The draft Regulations do not differentiate between numerical goals and numerical targets as is the case in the 'Code of Good Practice. The draft Regulations provide for "... proposed 5-year sector targets ...", which is in conflict with the Code of Good Practice as it does not provide for numerical (annual) goals. Even though the proposed target is over 5 years, a designated employer will be annually measured for compliance. It is, at this stage, unclear how the sector targets must be measured in one-year increments to align with the one-year increments in which compliance with the EEA must be measured. In light of the above we ask the Minister to withdraw the draft Regulations, commence fresh consultation processes that comply with section 15A and, ultimately, publish lawful targets (which should be accompanied by the applicable regulatory framework).
9.	**Aon globally**	Based on attrition rates and the hierarchical nature of the organizational structure – we propose to focus efforts on internal skills development to transform the Middle management level. This will then position talent in this level for senior management roles. It takes on average two years for an unskilled employee to get the right qualifications to operate at a skilled level. It then takes on average 5 years for a skilled junior employee to be ready for a middle management role – with a further minimum of 2 years to develop senior management level competencies.

		While large brokers have the capability to place complex risks, the bulk of government spend paid in premiums is absorbed by insurers and not brokers. Can the requirement for a certificate of compliance be reviewed for intermediaries specifically, in an effort to take into account the key players in the value chain.? In planning and executing on the sectoral EE targets – how will the split between the different ACI and gender groups be treated? For example – if an organization reached the requisite 64% on Middle Management but the split is not exactly as prescribed, will this effectively mean non-compliance? Aon proposes that only the totals be considered in the initial 5 to 7 years of the plan – as trying to meet the exact quotas will deflect from the overall transformation objectives and will increase the time and cost of acquiring talent in the specific groups. This can be reviewed after the first compliance period.
10.	**BEE CHAMBER**	• The 2022 results versus the set targets do not make sense as some race groups benefit more, and some race groups only receive a slight/lowered increase in targets which are not justified. • Were the Draft Sectors not supposed to have been finalised before they could publish Draft Sectoral Targets? What if the Sectors need to change – what will happen to the Sectoral Targets? • Will companies be required to develop 5-year Plans, or can they still be between 1 and 5 years? How would that work? • We have had a number of queries related to the sectors not covering particular businesses. Will these be addressed and how will this be done? • If the Final Targets are to be gazetted only after mid-July 2023, September 2023 effective date is unrealistic for large companies. • There is a need for more explanation on how the targets will work, with worked examples. • In the media, there are a number of articles written about the Draft Sectoral Targets – There also seems to be a court case that may be underway soon to challenge the Draft Sectoral Targets – Would this halt the process of Implementing the Draft Sectoral Targets? • Will the Department of Equity & Labour be hosting road shows / information sessions to discuss the practical application of the Sector Targets once Gazetted for implementation?
11.	**WEBBER**	The Companies submit that all previous attempts to engage with the DoEL to produce statistics that can be used for realistic projections over five years, have been ignored.

		The only consultation with the DoEL on the numerical targets in the draft Regulations was on 26 March 2021 at which meeting Construction Industry members engaged with the DOEL as part of CASA. This meeting was unfortunately conducted in an adversarial atmosphere and the undertakings provided by the DoEL in the meeting for the Construction Industry to provide input into the drafting of the revised regulations, never materialised. The Companies submit that the numerical targets cannot be published prior to the commencement of the EEAA and, importantly, that they should not precede finalised, substantive regulations. This is procedurally flawed with the result that the proposed "Sectoral TargetS' lack contextual application in that, inter alia, (i) there are no detailed procedural and substantive guidelines; (ii) no detail as to the powers of the inspectors; (iii) no indication as to how justifications for no achievement of the numerical targets will be considered or (iv) what recourse options would be available in respect of decisions regarding justifications for non-achievement. The Companies submit that these deficiencies also undermine the ability of stakeholders to meaningfully comment on the draft Regulations.
12.	**CENTRE FOR TRANSFORMATIVE REGULATION OF WORK (CENTROW)**	Choice of provincial / national demographics is rigid & impractical. This instruction is rigid and does not align with the practical realities of many businesses that may operate in one or more provinces, The proposed approach may lead to difficulties with implementation; and will not incentivise employment of local talent and may result in an increase in internal migration of labour.

		There are demographic targets in the notice that add up to 104.5%. A target that exceeds 100% is not rational; is impossible to meet. Regrettably, the target-setting, in many instances (see also below), appears to have been done in a haphazard fashion and without checking the accuracy (and lawfulness even) of the targets. Disaggregation of designated groups discriminates against minority groups. A '0.0 %' TARGET set by government for designated (race and gender) groups is not rational and is likely to result in significant prejudice to vulnerable groups. Targets that promote sex-based discrimination. It is not rational to set targets, where the implication/ implementation of the target undermines the employment of women and promotes the dominance of men in an occupation that is female dominated – while it may be appropriate to promote the employment of more men at the occupational level, it cannot be justified to change the status quo from female to a male-dominated occupation. Operationalising s 53 of the EEA: how will the targets apply? There is a lack of clarity on what 'compliance with a numerical target' requires in terms of s 53 EEA certification for contracting with the state; and the criteria for 'justifying' failure to comply; and the mechanisms for obtaining certification etc; and an impact assessment on how many businesses (and services) will be impacted when s 53 is operationalised.
13.	**CompSol (Compensattion Solutions Propreitary)**	While I appreciate the intention behind these regulations, aimed at ensuring a fair and equitable work environment across all sectors, I believe certain aspects need reconsideration, particularly the excessive power vested in the Department and the ambiguity surrounding the adequacy of compliance measures, specifically in the event an employer has not reached the targets as noted.

		However, it is imperative to note that allowing the Department to have unbridled authority to determine whether these targets have been adequately met is disconcerting. The proposed numerical sector targets are a material transformation from the previous system of self-created targets. The impact/effect of these numerical sector targets is that the evaluation of the "reasonable grounds" and how these will be evaluated (accepted / not accepted) and the standards of documentation becomes incredibly important and will be pervasively and fundamentally different post their implementation. As such, in a similar vein, failure by the Department to have guidance on the basis of measurement, amounts to ambiguity and unrestrained powers granted to the Department. What is considered "reasonable" grounds and what level of effort is required in terms of "justifiable"? On this basis, it appears that these regulations are incomplete and that further regulations and guidance should be provided in respect of the current Regulation 16. Should the Department not include these items within the regulations, which will ensure regularised equality, will the Department be issuing interpretation notes/practice notes in a similar way to the South African Revenue Service ("SARS") for further guidance? And if not, why not? The failure to do this would result in the Department being regarded as judge, jury and executioner to standards that are only internally developed and managed, and are dependent on its officials, and not in terms of the fair practice of the law!
14.	**NETCASH**	Draft Regulations 2023 A.1. We understand that the Economically Active Population (EAP) was used in the Draft Regulations and recommend that the large % of South African citizens that would like to work but who struggle to find employment be factored in, as well as a multitude of other significant factors that cannot be ignored, as noted below. A.2. The geographic granularity of the Draft Regulations may be interpreted as potential discrimination against certain South African citizens, since all citizens, irrespective of gender, race, or location, have freedom of choice and movement to study, live, and work in any Province and Sector of their choosing.

		A.5. In addition, in respect of each Sector and each of the top four Occupational Levels the W Population Group is proposed at 4.5% Male and 3.5% Female, with a Total of 8%, without any variation. Clarity around how this was determined and why there is now allowance for flexibility provided would be greatly appreciated. A.6. We observed that the representative percentages do not add up to 100% in relation to the current 2022 Work Force Profile statistic per Sector. With reference to the current 2022 Workforce Profile statistics (example used Manufacturing Sector - Professionally Qualified occupational level) reflects: What is the reason that the current actual Coloured Professionally Qualified Manufacturing Sector employees must reduce from Total 10.9% to Total 6.3% and the current actual Indian Professionally Qualified Manufacturing Sector employees must decrease from Total 13.7% to Total 1.8%? We have no doubt that this must be a mistake) A.8. We note that no mention is made of Foreign Nationals and wish to enquire how the appointment of Foreign Nationals would impact the Sector specific Employment Equity targets / quotas. A.9. We observed that employment targets for males dominate various industries on the top four occupational levels, and may this approach be considered archaic in our democratic society. A.10. The Draft Regulations introduce more barriers to employment and doing business in South Africa, which could potentially deter foreign investment in South Africa as well as encourage local businesses to exit South Africa, resulting in a loss of technical skills, amongst others. **B. General**

		B.1. The Employment Equity Act (EEA) was introduced in 1998 to progress equality for disabled and black South African citizens post the apartheid era, and to achieve an all inclusive and democratic economy for all South African citizens. B.4. The question arise as to how the 5-year plan in its current form will be successfully implemented across all Sectors and Provinces, should the W population group attrition (retirement and resignation) at the top 4 occupational levels fail to reduce to 8% of the EAP as proposed in the Draft Regulations, since labour laws do not permit retrenchment of employees to achieve these quotas.

CONSOLIDATED PUBLIC COMMENTS ON EE REGULATIONS SECTOR TARGETS FOR FEBRUARY 2024

MASTER TEMPLATE FOR PUBLIC COMMENTS ON THE EMPLOYMENT EQUITY REGULATIONS ON SECTOR TARGETS (2024)

In terms of Section 15A of the Employment Equity Amendment Act, 2023 the Minister may, after consulting the relevant sectors and with the advice of the Commission for Employment Equity (CEE), set numerical targets for any sector or part of a sector. A draft of any notice that the Minister proposes to issue must be published in a Gazette allowing interested parties at least 30 days to comment.

		PUBLIC COMMENT	
NO.	**Name of Organization / Individual**	**ECONOMIC SECTORS (EEA17)**	
1.	**AGRICULTURE, FORESTRY & FISHING**		
1.1	**South African Poultry Association (SAPA)**	8.1. SAPA sets out its submissions under the following headings – 8.1.1. Aspects on which SAPA requires clarity in the application of the Draft Sectoral Targets; and 8.1.2. Substantive Submissions on SAPA's members' ability to achieve the Draft Sectoral Targets. 8.2. Aspects on which clarification is sought 8.2.1. In relation to preparing EE Plans in terms of section 20(2) of the EEA, the designated employer is required to considered the following factors in terms of regulation 3.4 of the Draft EE Regulations – 8.2.1.1. The following statement is provided in the Draft EE Regulations in relation to the use of the national or provincial EAP: "3.4.8 The National EAP shall apply to designated employers conducting their business/operations nationally, and the respective Provincial EAP shall apply to designated employers conducting their business/operations in a particular province. Designated employers cannot use the national and provincial demographics (EAP) at the same time. Designated employers must choose only one demographics (i.e. either national or provincial, based on their geographical presence within provinces) and utilise the chosen demographics for the entire duration of the EE Plan that is in line with the relevant 5-year sectoral numerical targets.	

		8.2.1.2. The statement stipulates that the basis upon which an employer may either choose the national or provincial EAP is based on – 8.2.1.2.1. Whether the employer "conducts their business / operations" nationally or in a particular province; and 8.2.1.2.2. The employer's "geographical presence within provinces." 8.2.1.3. However, there is no guidance as to what is meant by "conducting their business / operations" or a "geographical presence". 8.2.1.4. In addition, regulation 3.4.9 of the Draft EE Regulations provides as follows – "3.4.9 A designated employer who chooses to use the Provincial EAP and operates in more than one Province, may choose the EAP of the Province with the majority of the employees." (own emphasis) 8.2.1.5. In this regard, SAPA requires clarification on – 8.2.1.5.1. What "conducting business / operations" and "geographical presence" means? 8.2.1.5.1.1. Is this where the employer's offices are based? 8.2.1.5.1.2. Is it where the employees render their services? 8.2.1.5.1.3. Is it the market which the employer services? 8.2.1.5.2. Whether regulation 3.4.9 of the Draft EE Regulations permits an employer who operates in more than one province to elect to use either – 8.2.1.5.2.1. the national EAP; 8.2.1.5.2.2. multiple provincial EAPs, ie in each province in which it operates it is able to choose to use the provincial EAP applicable to that province to set goals and targets for the workforce in each applicable province; or 8.2.1.5.2.3. the provincial EAP where the majority of its employees operate, which will apply across all provinces in which the employer operates. 8.2.1.7. Having regard to the above, it remains unclear regarding the extent to which an employer has a discretion to choose between the national or provincial EAP. 8.2.1.8. SAPA has further noted that the Draft EE Regulations, in providing an employer an election to choose between the national or provincial EAP, do not appear to be aligned with the manner in which employers will be assessed for compliance

		in terms of section 42(1) of the EEA. In terms of section 42(1) of the EEA, employers will be assessed in terms of the representation of people from designated groups in the workforce in relation to both the national and regional (ie provincial) EAP. 8.2.1.9. The following statement is provided in the Draft EE Regulations in relation to the duration of the EE Plan: "3.4.2 Designated employers must take their workplace profile, the relevant 5-year sectoral numerical targets and the applicable EAP into account when setting annual numerical targets in their workplace(s) as required by section 20(2) of the EEA 3.4.3 Designated employers will be measured against the annual targets set towards meeting the relevant 5-year sectoral targets." (own emphasis) 8.2.1.10. SAPA has also noted that section 20(2)(e) of the EEA provides that the duration of the Employment Equity may not be shorter than one (1) year or longer than five (5) years. 8.2.1.11. Having regard to clauses 3.4.2 and 3.4.3 of the Draft EE Regulations, read with section 20(2)(e) of the EEA, SAPA requires clarification regarding whether the EE Plan should, in fact, last for a duration of five (5) years (and not for a lesser period) in circumstances where employers would be measured against annual targets set towards meeting the Draft Sectoral Targets over a period of five (5) years, should they be implemented. 8.2.1.12. The following statements are provided in the Draft EE Regulations in relation to the setting of targets in years one (1) to four (4) of the EE Plan and the measuring of compliance in respect thereof: "3.4.3 Designated employers will be measured against the annual targets set towards meeting the relevant 5-year sectoral numerical targets. ... 3.4.5 Designated employers when determining their Annual EE targets set towards achieving the minimum 5-year sectoral numerical targets, must set numerical targets for all population groups in each of the four occupational levels where they are underrepresented in relation to their respective EAP." 8.2.1.13. The Draft EE Regulations confirm that the Draft Sectoral Targets are for a five-year period and the Draft Sectoral Targets are intended to be the final target. It is unclear how an employer's compliance with the Draft Sectoral Targets, if implemented, will be measured from year one (1) to year four (4) of the EE Plan, in circumstances where the section 20(2A) of the EE Amendment Act will provide that the numerical goals set by an employer in terms of section 20(2) must comply with any sectoral target provided in terms of section 15A that applies to that employer. 8.2.1.14. In addition, SAPA requires clarification as to how annual compliance will be measured in terms of section 53(6) of the EE Amendment Act read with section 53(2) of the EEA, which envisages that the employer must have complied with the sector targets envisaged in section 15A on an annual basis in order for the Minister to issue the certificate of compliance. 8.2.1.15. The following statement is made in the Draft EE Regulations in relation to determining within which economic sector an employer falls for purposes of the Draft Sectoral Targets:

		"3.4.10 A designated employer who operates in more than one sector should choose the economic sector with the majority of employees." 8.2.1.16. Whilst the Draft EE Regulations propose that an employer who operates in more than one sector should choose the economic sector with the majority of employees, SAPA requires clarification as to whether this permits the employer to make an election to choose any other sector based on different factors. For example, where an employer operates in more than one sector, does this mean that an employer can choose a sector based the employer's predominant business activity, revenue, etc. 8.2.2. **Disability Percentages** 8.2.2.1. SAPA requires confirmation that the 2% target for employees with disabilities applies to the total workforce (including the semi-skilled and unskilled occupational levels which are excluded from the Draft Sectoral Targets). 8.3. Against the background of the points of clarification, SAPA provides its substantive submissions on its members' ability to meet the Draft Sectoral Targets, if implemented in their current form, below. 8.4.1. SAPA envisages that there are a number of business-specific challenges that its members will face in achieving the Draft Sectoral Targets for the Agriculture Sector and Manufacturing Sector, if implemented. These challenges are listed under the relevant headings below. 8.4.2. **Multi-activity enterprise and niche business activities:** 8.4.2.1. SAPA has noted that the Draft EE Regulations state the following: "3.1 When setting the proposed 5-year sectoral numerical targets, the following factors were taken into account: 8.3.1.1 The extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce (in this case the Sector Workforce was utilised or was considered) in relation to the demographic profile of the national and regional/provincial economically active population (EAP) as required by Section 42(1)(a) of the Employment Equity Act no 55 of 1998 (EEA)." (own emphasis) 8.4.2.2. SAPA's members operate in niche sub-sectors in the poultry industry. This applies in respect of SAPA's members falling both under the Agriculture and Manufacturing Sectors. As a result, SAPA's view is that the Draft Sectoral Targets (which have utilised the overall sector workforce and not the sub-sector workforce) are likely to be unattainable having regard to the distinct challenges faced in the sectors and sub-sectors within which SAPA's members fall. The unique challenges faced in the poultry and/or food and bev sub-sectors will hinder SAPA's members' efforts to meet the Draft Sectoral Targets (which consider sector and not sub-sector workforce dynamics).

		8.4.2.3. As a starting point, some of SAPA's members' businesses conduct both agricultural and manufacturing activities within the poultry industry. Where SAPA's members are engaged in integrated operations, they will fall within both the Agriculture Sector and Manufacturing Sector. This means that the challenges faced in both the Agriculture Sector and Manufacturing Sector are applicable to certain of SAPA's members. 8.4.2.4. In addition, SAPA's members all operate in a very niche part of both or either of the Agriculture and Manufacturing Sectors, being, in relation to the former, poultry farming and the latter, food processing. This means that, both in respect of their agricultural and commercial (processing) activities, some of SAPA's members engage in very distinct sub-sectors of the respective sectors and do not experience the same or the overarching challenges of other employers in the applicable sectors or the sectors as a whole. 8.4.2.5. This means that the targets applicable to the Agriculture Sector and/or the Manufacturing Sector are impossible of application to SAPA's members' businesses. They are just too generic. 8.4.3. **Skills shortage:** 8.4.3.1. The skills shortages which have been identified by the AgriSETA and FoodBev SETA above demonstrate the skills problem which exists in the poultry sub-sector and Manufacturing Sector. 8.4.3.2. These shall affect SAPA's members' ability to meet the targets across all occupational levels as set out in the Draft Sectoral Targets. 8.4.4. **Availability of graduates and suitably qualified candidates:** 8.4.4.1. SAPA has identified a number of reasons why there are limited skills available in the market for its members – 8.4.4.1.1. Firstly, as mentioned above, there are limited tertiary institutions which provide poultry-specific training and/or training in specialist areas. In relation to specialist skills which are not, on the face of it, only industry specific, some SAPA members require, as examples – 8.4.4.1.1.1. Veterinarians: In this regard, in addition to there being only one (1) university which offers a course to specialise in veterinary science, there is a lack of available graduates to service the poultry industry. Veterinarians are far less likely to elect to specialise in or choose a career in poultry than domestic animals, such as cats and dogs; and 8.4.4.1.1.2. Veterinary Technologists: The Veterinary Technology course is only offered at Tshwane University of Technology in Pretoria, which means this is the only pool of graduates available to not only SAPA's members but any employers operating in a sector which requires a Veterinary Technologist. These roles are in high demand in sectors, such as the Professional, Scientific and Technical Activities Sector and suitably qualified candidates are often poached from SAPA's members to work in the more lucrative pharmaceutical industry; and

		8.4.4.1.2. Secondly, poultry farming is not the qualification or career of choice for young people. 8.4.4.2. The limited graduates and scarcity of skills has led to the practice of – 8.4.4.2.1. internally growing and training scarce resources; and 8.4.4.2.2. poaching employees within the poultry industry. Some competitors are able to offer suitably qualified employees within the poultry industry with more lucrative remuneration packages. 8.4.4.3. This shall impact SAPA's members' ability to meet the Draft Sectoral Targets in circumstances where they cannot be too choosy regarding the candidates which they choose, given the scarcity of the skills and the existing demographics of the workforce who are willing to be grown into higher and/or more specialised positions. 8.4.5. **Demographics of available candidates:** 8.4.5.1. There is a disproportionate number of females in the laboratory, slaughter house / abattoir and hatchery environments. These businesses do not attract a high number of male candidates and SAPA's members operating in these businesses will have difficulty achieving the female targets set out in the Draft Sectoral Targets, if implemented in their current forms. 8.4.5.2. In this regard, it is worth noting that both the overarching sectors are overwhelmingly dominated by males. 8.4.6. **Anti-competitive effects of targets:** 8.4.6.1. The requirement for some of SAPA's small to medium-sized members to have to comply with the targets whilst other similarly sized small to medium-sized players do not (not because they already comply with the targets but solely because of their number of employees), may (i) ultimately impede the ability of some of SAPA's small to medium sized members from participating effectively in the markets in which they currently participate and (ii) result in certain equally sized and efficient competitors having an unfair competitive advantage over others (i.e. by not having to incur the additional costs that come with having to comply with the targets as a result of the current shortage in employees having the requisite skills, etc.). 8.4.6.2. The effect of all of this is that some of SAPA's small to medium-sized members may end-up having to exit the markets in which they currently participate, which will likely result in a softening of competition which could ultimately lead to higher prices for consumers. 8.4.7. **Location:**

		8.4.7.1. Some of SAPA's members have poultry farming operations which are located in rural and/or non-urbanised areas and/or in areas which are not desirable to reside due to infrastructure related issues. 8.4.7.2. It is difficult for SAPA's members to attract suitably qualified persons to these areas, particularly where there is a lack of infrastructure and education for children. 8.4.8. **Non-Cooperation of SETAs:** 8.4.8.1. It is not the private sector's responsibility to ensure the adequate training and upskilling of persons, however the private sector does have a particular role to play, which SAPA's members, as employers, have fulfilled and continue to fulfil through its skills developments efforts. The AgriSETA generates its revenue from skills development levies. The AgriSETA Poultry Report confirms that in the 2021 financial year, there was a total of 1,564 poultry sub-sector entities on the AgriSETA database. However, only 31.1% of these entities contribute to the skills development levy ("SDL"). The AgriSETA Poultry Report notes that the low ratio of poultry entities contributing towards the SDL is placing a burden on existing resources. As a result, the impact will be that the AgriSETA will have less revenue to allocate discretionary grants, resulting in a reduced number of learners and institutions supported. It is evident that SDL contributions are not sufficient to solve the existing challenges in the poultry sub-sector. 8.4.8.2. Despite the private sector's efforts, the limited tertiary education which is provided by both public and private institutions of higher learning will negatively affect the progress of employers in the poultry industry towards the realisation of having more representative workforces. 8.4.9. **Adequacy and available time period for interventions:** 8.4.9.1. The previous FoodBev Sector Skills Plan 2021/2022 reported that the FoodBev SETA plans to have further engagements with the FoodBev Sector that will assist in dealing with the reasons that have been identified as the highest hinderances to addressing the HTFVS. The purpose of the latter is to identify targeted interventions that will assist the FoodBev Sector with the identified reasons for the HTFVS. 8.4.9.2. There is, however, no indication of when such engagements will happen with SAPA's members and how long such interventions will take to be implemented. It is further not certain whether such interventions will be adequate for purposes of ensuring that SAPA's members are in a position to comply with the Draft Sector Targets, if they are implemented. 8.4.9.3. In addition, in relation to the AgriSETA, there has been no tangible impact made to the shortage of skills in the poultry sub-sector. In fact, the AgriSETA cannot guarantee whether its proposed interventions will ensure that there are sufficient suitable candidates for employment in the Agriculture Sector, particularly within the occupational levels which have been incorporated into the Draft Sectoral Targets.

		8.4.9.4. As a result of the inadequacies in terms of the AgriSETA fulfilling its mandate, many employers in the Agriculture Sector, inclusive of SAPA's members in the poultry sector, derive little to no benefit from associating with the AgriSETA. SAPA notes that the AgriSETA has only supplied funding for the training of 15 (fifteen) people in the poultry sub-sector in the last three (3) years. The AgriSETA has further failed to reimburse SAPA for the training plan presented to them. 8.4.9.5. In SAPA's view, the current interventions require time to address the problems which currently exist. The Draft Sector Targets, in their current form, do not take into account that the current interventions are unlikely to assist employers to meet the targets required within the various occupational levels and within the required time limit. 8.4.9.6. This is important since the occupational levels to which the Draft Sector Targets will apply, if implemented, require education and training and relevant experience. And where those exist, the attraction and retention of talent in an environment which is subject to high levels of poaching becomes difficult. **Draft Sectoral Targets** 8.4.11. The Draft Sectoral Targets for the representation of designated groups in the four (4) occupational levels are reflected below: 8.4.19.1. A number of SAPA's members are unlikely to have sufficient roles in this occupational level which would enable them to comply with the Draft Sectoral Targets, if implemented. 8.4.19.2. Apart from not having sufficient roles in order to cater for all demographic groups in this occupational level, there is further a skills shortage which drastically affects SAPA's members' efforts to find suitable candidates within the poultry industry. In this regard, at Senior Management level, some of the positions which are hard to fill include, amongst others, – 8.4.19.2.1. Agricultural Managers; 8.4.19.2.2. Finance Managers; 8.4.19.2.3. Human Resources Managers; 8.4.19.2.4. Engineering Managers; and 8.4.19.2.5. Logistics Managers. 8.4.19.3. In addition, SAPA's members cannot terminate the employment of the existing employees within this occupational level without just cause and sourcing a replacement for these positions will be difficult given the circumstances required above.

		8.4.26. It is important to state that the Draft Sectoral Targets referred to in the Agriculture Sector and Manufacturing Sector for the designated groups in the four (4) occupational levels have not changed from the previous Draft Sectoral Targets which the Minister published in the Government Gazette on 12 May 2023. 8.4.27. SAPA's members are unlikely to be able to meet the targets for the Skilled occupational level for the reasons below – 8.4.27.1. The skills which are typically required in the poultry industry within this occupational level are: Broiler Farm Managers, Breeder Farm Managers, Hatchery Managers, Pack Station Managers and Services Managers, which are not readily available in the labour market and the measures which are currently in place in the tertiary education sector, through the AgriSETA and FoodBev SETA, do not indicate that the required skills will be available within five (5) years to assist employers to comply with the Draft Sectoral Targets, if implemented. 8.4.27.2. Again, the only practically feasible options which are available to SAPA's members is to increase the representativity of the people from designated groups within their workforce are 8.4.27.2.1. training and promotion of internal employees from the Semi-Skilled occupational level; and 8.4.27.2.2. poaching resources from competitors, which not only comes at a significant price (due to the scarcity of skills), but also does not ensure adequate representation across all the demographic groups.
1.2	**AGRI GROUP**	**CONSULTATION WITH THE AGRICULTURAL SECTOR** The Employment Equity Amendment Bill which was passed in Parliament in April 2023 allows the Minister of Employment and Labour to set sectoral targets for representation of designated groups, per job level, that each designated company in the sector must aim for. Notwithstanding the fact that consultations took place, we are of the view that new draft targets had been published without proper consultation with the role-players within the agricultural sector. The quality inputs from the industry were not taken into account nor even considered. AFGRI, as a business within the agricultural sector, would argue that proper consultation on the draft employment equity targets was not sufficient and the Company would therefore find the targets unrealistically and not achievable within the set time frame of five years. **SKILLS AND QUALIFICATIONS** In reviewing the numerical targets as set out the in the above-mentioned gazette notice, the following observations should be noted: a. The skills and qualifications linked to the draft targets seem to be inconsistent with employees within the agricultural sector; b. The availability of employees from designated groups with the necessary technical and specialised skill set, and relevant qualification as indicated by the draft targets are scarce if not unattainable.

AFGRI's NATIONAL FOOTPRINT IN RURAL LOCATIONS

It should be noted that companies within the agricultural sector tend to have areas of operations in remote parts of the country. AFGRI is no exception with sites, factories, and offices within various remote and suburban locations in South Africa.

It is therefore not always attractive for highly skilled and qualified individuals to work in these locations due to a number of reasons such as limited healthcare, poor infrastructure and housing shortages, insufficient schooling opportunities and social and political unrest due to non-service delivery in the rural municipalities. People with the necessary skills and qualifications as referred to in the draft targets, are reluctant to work in these areas.

CONSTITUTIOLITY OF TARGETS

We have noted with concern that certain parties have claimed that the sectorial numerical targets set by the Minister may constitute a rigid quota and therefore potentially render the application of the sectorial numerical targets unconstitutional. We have also noted that, Solidarity, a trade union, has lodged an application in the Labour Court challenging the relevant provisions of the EEA amendments relating to identifying and setting numerical targets, as well as the extent to which designated employers are required to implement these targets and align their employment equity plans with the targets.

LACK OF CLARITY

The Department did not publish an explanatory note on how the targets are to be read and various commentators, such as Sakeliga, have already pointed out that the numbers don't add up. According to Sakeliga, the targets are "incoherent and incomprehensible".

The draft regulations seek to determine race and gender quotas per industry per province. However, the regulations have been so incoherently and incomprehensibly constructed that it is impossible to formulate meaningful comments on the proposed targets. There are some "meaningless" targets. A target of 0% can neither 'target' nor be designed to protect or advance anyone in our view the targets, on occasion, determines a numerical target of 0%. In the agriculture, forestry, and fishing sector in Limpopo for instance, the numerical target for both coloured males and females is 0%.

In Gauteng, employment by people classified as coloured is limited to below 1% in some areas in the draft regulations. In the case of employees classified by the state as Indian, the targets are often as low as 0.1% across economic sectors. A company with 50 employees that has even a single Indian person on the payroll will be in breach of the 0.1% limit, as one out of 50 is equal to 2% of that company's total employees. Conversely, if that company fires its single Indian employee on the basis of race, it will also be in breach because it will then have 0% Indian

		employees." - - 4 - www.agh.co.za There are no defined sectoral targets for semi-skilled or unskilled employees with the amended regulations requiring companies to apply economically active population (EAP) figures to determine employment equity plan numerical goals for semi-skilled or unskilled employees. Of concern, however, is the fact that some sector targets are now higher than the EAP for middle and junior management in those sectors making it highly unlikely that those targets will be met. In some sectors the five-year sectoral targets require black participation to more than double. In an economy that is regressing rather than growing and where job opportunities are thin on the ground, businesses will find these targets very difficult to achieve. In the construction sector, for example, the sectoral target for professionally qualified Africans is 65,2% within the next five years, up from the current 46,9%. In a flourishing economy in which businesses are growing, companies are able recruit employees in underrepresented groups. However, companies in the construction sector are not growing and without growth they are not in a position to create jobs. In this instance, companies can only replace employees in under-represented groups lost through natural attrition and retirement. Similar to the BEE scorecard, the five-year sectoral target for employees living with a disability is 2%. This figure is not linked to the economically active population.
1.3	**AGBIZ Agricultural Business Chamber**	**CONCERNS ABOUT THE EE AMENDMENT ACT** The sector is concerned about grouping the agriculture-, fisheries-, and forestry sectors together, as well as lumping primary farming with value chain entities like agribusinesses. Consultations showed differing capabilities and needs among these sectors and subsectors. Forestry and Fisheries have different BBBEE sector codes, with forestry even having separate codes for growers and millers due to significant differences. This grouping together is illogical, as fishery communities differ greatly from forestry and agriculture in location and demographic profiles. Additionally, primary agriculture's production-focused employment structure differs significantly from service-oriented companies in the value chain. The draft regulations on proposed sectoral numerical targets come at a challenging time amid economic constraints, an energy crisis, rising inflation, and increased wages and input costs. Many businesses are focused on survival and retaining staff. Agbiz believes the Regulations should distinguish between agribusinesses and primary producers, as their operating models and employment levels vary. Primary producers, often family-owned, have flat organizational structures, making it difficult to change top management percentages. Adding job levels for employment equity might not be financially feasible and could be seen as fronting. Agbiz remains worried that the targets outlined in the recent draft regulations remain excessively high and impossible to achieve. This will divert the focus away from a drive to achieve transformation towards grounds of justification. Several factors contribute to this challenge, as previously noted in our submissions. We maintain that these targets, as currently set, do not effectively advance employment equity objectives; instead, they risk delaying transformation efforts as critical resources will be diverted to proving grounds of justification within the various sectors.

NUMERICAL TARGETS

Proviso when applying percentages to all job levels

As mentioned in our previous submissions, all businesses have a pyramid-shaped work profile as most of the employees will be found on the lower levels and the fewest at the top management level. This is particularly pronounced in agribusiness as the unskilled workforce outnumbers top management 263 to 1 on average. Based on the information we obtained from the sample group of 7 companies, the average total number of employees per job level is as follows:

Job level (as per EE reporting)	Average, total number of persons employed	Average number & percentage ACI	
Top management	3.29	0.57(17.3%)	
Senior management	10.86	0.71 (6.5%)	
Professionally Qualified	69.71	10.71 (15.5%)	
Technically Skilled	255.86	77.14 (30.2%)	
Semi-Skilled	385.71	263 (68.2%)	
Unskilled	865.57	824.71(95.3%)	

Job level	Current ACI %	Proposed targets by Government	24th CEE figures
Top management	17%	35%	14.3%
Senior management	6.5%	40%	25.4%
Professionally Qualified	15.4%	60%	48.2%
Technically Skilled	30.2%	78%	73.2%

Agribusinesses are typically 'bottom-heavy' with the numbers of employees in lower skilled jobs exponentially more than technically qualified or management level employees. The other trend that is clearly present is that ACI representation dominates the lower job levels (95.3% unskilled) but is lagging very far behind ACI representation at Top (17.3%) and Senior (6.5%) Management levels. The second table shows how unrealistic the targets are within the specified timeframe.

Large commercial farms cultivate thousands of hectares of crops; it is labour intensive and will inevitably help to create jobs on the lower skills levels (where possible) and fever positions on a managerial level are likely to be created as a result of the 4th Industrial revolution and the impact of digitization. There is also a question as to what DoEL used as baseline reference for the proposed targets?

BUSINESS MAY NOT BE ABLE TO ACHIEVE THE CURRENT TARGETS

In the agricultural sector, most head offices and branches of agribusinesses are situated in rural areas and the following conditions contribute to the challenge of attracting and retaining suitable candidates

poor infrastructure (i.e. interrupted water and electricity supply)

- limited or no healthcare services;
- poor conditions of roads;
- lack of suitable schooling facilities for children;
- limited employment opportunities for spouses and
- insufficient housing infrastructure;
- Agri Colleges do not produce suitable candidates.

Recent studies such as the PIRLS showed that 81% of South African fourth graders, in the fourth year of primary school, battle with reading comprehension. This is already evident in the quality of a large number of applicants from previously designated groups. The fact that agriculture is becoming more scientific with maths and science requirements for applications doesn't help either.

With the current economic conditions employers have alluded to the fact that they do not have a high turnover of staff in higher occupational levels and do not foresee a high turnover in the next five years. Skills in the sector are already lacking as most ACI candidates are still building their skills. This is due to the historic nature of the agricultural sector. Employers mentioned that specialists in their businesses, specifically wool & mohair, grain handling, procurement trading; technical field officers etc are very scarce – it is a struggle to recruit even from non-designated groups. It is a medium to long term endeavour to train a commercial agriculturalist and assets worth millions of Rands and cannot be placed at risk due to inexperienced managers.

Without meaningful intervention from the government to tackle these issues, businesses operating in rural areas will continue to encounter significant obstacles in attracting talent to their companies. These challenges, such as poor infrastructure, limited access to essential services, and a lack of suitable facilities, interrupts operations, increase

costs, and reduce efficiency. As a result, businesses struggle to attract and retain skilled workers, navigate supply chain logistics, and maintain competitiveness in the market. Ultimately, the absence of government action to address these challenges undermines the potential for economic growth. Employers should be setting targets when the issues mentioned above have been addressed and resolved by government.

THE CONSULTATION PROCESSES

"The new draft regulations relate to the coming into effect of section 15A of the Employment Equity Amendment Act, 2022 (EEAA) which empowers the Minister to identify sectors within the national economy and, after consultation with the relevant

sectors and advice of the Commission for Employment Equity, set numerical targets within those sectors" the department lacked to deliver on this point.

The Employment Equity Amendment Act is an important piece of legislation that requires both the government and the private sector to act in the best interest of the country. In order to ensure that the best possible outcome is achieved, it was vital that sufficient time was allocated for consultation on the proposed targets with the relevant sectors. Agbiz, made the following point in 2018 in its submission on the Amendment Bill: "A comprehensive and detailed consultation process should be set out in the regulations." Considering the complexity of analysing and compiling employment trends in certain industries, especially those without strong industry associations, an in-depth consultation process with each and every subsector is advisable.

GROUNDS OF JUSTIFICATION

Agbiz welcomes the grounds of justification that the Department has put forward. Transparency is, however, crucial. Agbiz would like to see clear criteria and methods for assessment, ensuring that employers understand the expectations and can provide the relevant evidence. Consistency must be maintained across assessments to avoid bias, ensuring similar cases are treated equally based on objective criteria. Impartiality is essential, with assessments free from influence or conflicts of interest, ensuring that decisions are solely based on merit.

COMPLIANCE

The Department's proposed procedure for handling cases where a designated employer fails to meet its targets should undergo consultation. This is crucial because it could significantly affect a designated employer if they do not receive a compliance certificate. It is recommended that if a designated employer falls short of targets in a given year, they should have a fair chance to explain their situation before any decision is made to withhold a compliance certificate. This process should fall under the jurisdiction of the Labour Court rather than the Inspectorate or the Department of Employment and Labour

		THE DEPARTMENT MAY WANT TO CONSIDER THE FOLLOWING: In consideration of compliance a weighting factor for the different occupational levels based on highest weight to the lowest for the occupational levels (top management to unskilled level) should be applied. A weighted average of all role-players (employers) within the sector per occupational level to determine the basis from which the EE target should be set, and it should be the level from which employers are assessed as a minimum, working towards EE five-year sector target. It is suggested that if an employer achieved the EE numerical sector target between 2023-2027 for a specific occupational level, compliance at the respective occupational level must be acknowledged for the full five-year period when issuing a compliance certificate. Additional considerations other than the EE targets, relating to actions taken by employers which relate to the BEE elements and the Skills Act should form part of the justifiable reasons for not achieving the EE target. Training spent on ACI talent fostering for the different occupational levels (record is WSP), because the Employer has contributed to the potential talent pool at the various occupational levels which could benefit other employers. There should be a separate target for family-owned businesses, which should make concessions for top and senior management. The development of new job entrants into the market by implementing NQF 18.2 learnership, apprenticeships and graduates' development programs per occupational levels. For this to happen the AgriSeta service delivery would also need to improve. A percentage target should be set as a guideline per occupational level based on recruitment opportunities per year and or for the five-year period. This is important because an employer can demonstrate that opportunities were used, despite not meeting the EE five-year numerical sector target due to lack of opportunity to change the ACI representation at the various occupational levels. The above additional consideration will incentivize employers to continuously contribute to the upliftment of skills levels within the different occupational levels within the sector, that will overall contribute to the country's improved employee skill levels. In terms of training and development, besides the mandatory grants and discretionary grants that the employer gets from the SETAs, government can partner with the agricultural sector in the upskilling of the workforce to enable swift vertical upward mobility across all occupational levels. There should be focused programmes for the development of the professional skills required on farms to provide potential employers a talent pool to draw from. **Conclusion** We trust that these inputs will assist in crafting final regulations that are fit-for-purpose. We would also welcome an engagement on our inputs should there be a possibility to do so. Kindly also find our previous submissions on proposed sectoral targets attached for background information.
1.4	**PLENNEGY GROUP**	B. Ad Section 3.1.4: The draft regulation state that many submissions during the consultation process' were taken into account in publishing the proposed Sector targets. Not only do we have no indication that our sector was consulted, but there is also no indication

		whatsoever that the submissions were taken into consideration. The Sector Numerical Targets are exactly the same as those published on 12th May 2023, save for some changes to one sector only, viz the Financial Sector. At no stage has the Department of Employment and Labour, nor Statistics South Africa done any analysis of the "Skills Availability" in any industry, let alone ours. No such analysis has ever been done, nor published. It is submitted that benchmarking any sector against the EAP, is not true statistical comparator. Anyone who earns a living in any way whatsoever, is considered "economically active", but on no account is there any indication that such a person has the concomitant skill to be utilised in the Agricultural Sector. It is too broad brush-stroke approach and results in a completely skewed picture, based on false equivalent. It is therefore submitted that not only was no proper consultation process followed, but the many submissions also made were not considered. It is proposed that a fresh process of consultation be embarked on, with an indication of having considered the proposals by our sectors and taken into account the very real skills shortage. C. Ad Section 3.4.5. and 3.4.4: this section states that designated employers must set "numerical targets for all population groups." Benchmarking ourselves against the EAP, necessitates this. This contradicts the sector targets, which does not differentiate between the designated groups. The latter approach does not take into account the variables in designated groups in the various areas in South Africa and renders the differentiation in the EAP meaningless. Furthermore,3.4.4 states that:" the wording of this is nonsensical. The aim of section 15(1) of the EEA, refers to equitable representation of all designated groups, which may mean that where in the past, there has been an over-representation of a specific designated groups, this would be corrected by setting a negative or static targets; no target would mean the perpetuation of an over-representation of this group in perpetuity. This would counter the aim of section 15 of the EEA and the wording of this section should be reconsidered. There are no guidelines to determine the appropriate sector where the employer may fall within two possible sectors. The requirement to choose either the demographics of national or provincial economically active population may present absolute barriers to advancement in employment for certain designated groups. D. Ad Section 4.1:" Effective Equality" is not defined. This creates uncertainty and the necessity for the courts to interpret its meaning. Legislation should be clear, and in this case, employers should know with utmost clarity what it is that they should achieve. Using a concept that has not been defined, nor explained in any way(nor used in any of the case law providing clarity on the concept of equality), provides no guidance to employers on how to apply the principle of the EEA and is thus open to interpretation. In climate where compliance is increasingly enforced, this is not appropriate. "Effective equality" is not a principle that is applied in Employment Equity jurisprudence and has not been used to explain or describe the right to equality afforded by the EEA. The way in which equality has been interpreted is to apply "substantive equality", a principle first espoused by the Brink v Kitshoff case, and expanded on in many subsequent court cases. This wording should thus be changed in line with the current understanding of equality, or the word "effective" deleted.

		E. Ad Section 4.2: What does a "nuanced way" mean? This is not defined, nor in a manner that makes it clear to employers what factors are used to measure compliance. Nuanced could mean different things to different people; and referring to both sections 4.3 and 4.4 is not any more instructive to purportedly explain "nuanced". a) Firstly, Section 4.3: Nothing about section 15(4) is "nuanced" in any way. The EEA is quite clear and has always been clear on firstly what constitutes a barrier (see Code of Good Practice on the integration of Employment Equity into Human Resource Policies and Practices), and secondly what an "absolute barrier" means. An absolute barrier has also been interpreted by the courts. It is not clear what is meant by applying this is a 'nuanced' way. Something either constitutes an absolute barrier or not. To establish whether an employment policy or practice constitutes an absolute barrier is an examination of the facts involved is such practice. b) Secondly, Section 4.4: The criteria listed are clear and not: nuanced". It is our submission that the reference to "nuanced" should be deleted, or more defined compliance steps outlined to explain how this will be applied.
1.5	**MASCOR**	B. Ad Section 3.1.4: The draft regulation state that many submissions during the consultation process' were taken into account in publishing the proposed Sector targets. Not only do we have no indication that our sector was consulted, but there is also no indication whatsoever that the submissions were taken into consideration. The Sector Numerical Targets are exactly the same as those published on 12th May 2023, save for some changes to one sector only, viz the Financial Sector. At no stage has the Department of Employment and Labour, nor Statistics South Africa done any analysis of the "Skills Availability" in any industry, let alone ours. No such analysis has ever been done, nor published. It is submitted that benchmarking any sector against the EAP, is not true statistical comparator. Anyone who earns a living in any way whatsoever, is considered "economically active", but on no account is there any indication that such a person has the concomitant skill to be utilised in the Agricultural Sector. It is too broad brush-stroke approach and results in a completely skewed picture, based on false equivalent. It is therefore submitted that not only was no proper consultation process followed, but the many submissions also made were not considered. It is proposed that a fresh process of consultation be embarked on, with an indication of having considered the proposals by our sectors and taken into account the very real skills shortage. C. Ad Section 3.4.5. and 3.4.4: this section states that designated employers must set "numerical targets for all population groups." Benchmarking ourselves against the EAP, necessitates this. This contradicts the sector targets, which does not differentiate between the designated groups. The latter approach does not take into account the variables in designated groups in the various areas in South Africa and renders the differentiation in the EAP meaningless.

		Furthermore,3.4.4 states that "employers should not set targets for those groups whose representation have already exceeded their EAP in a particular occupational level." the wording of this is nonsensical. The aim of section 15(1) of the EEA, refers to equitable representation of all designated groups, which may mean that where in the past, there has been an over-representation of a specific designated groups, this would be corrected by setting a negative or static targets; no target would mean the perpetuation of an over-representation of this group in perpetuity. This would counter the aim of section 15 of the EEA and the wording of this section should be reconsidered. D. Ad Section 4.1:" Effective Equality" is not defined. This creates uncertainty and the necessity for the courts to interpret its meaning. Legislation should be clear, and in this case, employers should know with utmost clarity what it is that they should achieve. Using a concept that has not been defined, nor explained in any way(nor used in any of the case law providing clarity on the concept of equality), provides no guidance to employers on how to apply the principle of the EEA and is thus open to interpretation. In climate where compliance is increasingly enforced, this is not appropriate. "Effective equality" is not a principle that is applied in Employment Equity jurisprudence and has not been used to explain or describe the right to equality afforded by the EEA. The way in which equality has been interpreted is to apply "substantive equality", a principle first espoused by the Brink v Kitshoff case, and expanded on in many subsequent court cases. This wording should thus be changed in line with the current understanding of equality, or the word "effective" deleted. E. Ad Section 4.2: What does a "nuanced way" mean? This is not defined, nor in a manner that makes it clear to employers what factors are used to measure compliance. Nuanced could mean different things to different people; and referring to both sections 4.3 and 4.4 is not any more instructive to purportedly explain "nuanced". c) Firstly, Section 4.3: Nothing about section 15(4) is "nuanced" in any way. The EEA is quite clear and has always been clear on firstly what constitutes a barrier (see Code of Good Practice on the integration of Employment Equity into Human Resource Policies and Practices), and secondly what an "absolute barrier" means. An absolute barrier has also been interpreted by the courts. It is not clear what is meant by applying this is a 'nuanced' way. Something either constitutes an absolute barrier or not. To establish whether an employment policy or practice constitutes an absolute barrier is an examination of the facts involved is such practice. d) Secondly, Section 4.4: The criteria listed are clear and not: nuanced". It is our submission that the reference to "nuanced" should be deleted, or more defined compliance steps outlined to explain how this will be applied.
2.		**MINING AND QUARRYING**
2.1	**Mining Council of South Africa**	ANNEXURE 43 **Comments on the draft regulations** a) The MCSA acknowledges that the amendments to the Employment Equity Amendment Act (EEA) are necessary as transformation in the workplace has been slow and hampered. MCSA maintains its support for the objectives of the Employment Equity Act as a means of accelerating the pace of transformation across the different sectors of the economy. Whilst acknowledging that the rate of transformation has not been as significant and quick as we would have liked it to be,

		the attempts made by our member companies to transform and achieve them have been deliberate, sincere, and based on the current reality that exists in the sector. b) The decision to remove small businesses (50 or less employees) from being required to submit EE reports is welcomed. This will most definitely reduce the regulatory burden on our small businesses and create a conducive environment for them to thrive, as a much-needed part of our economy. c) There is broad opinion that Clause 3.4.4 and Clause 3.4.6 in the draft regulation conflicts with specific sections within the EE Act. The MCSA recommends that these opinions about the conflicts be investigated and ratified with a comprehensive legal opinion. d) We would further recommend that clarity be provided on the practical application and implementation of Clause 3.4.4 and Clause 3.4.6. In the way that it is currently written it is open to a few interpretations. e) The provisions of points 3.4.6 states that where a designated employer has exceeded the Ministerial Targets, the employer may not regress and should set targets toward the EAP. This provision holds significant risks for designated employers where staff turnover, for example, may place the employer in contravention. f) Clause 3.4.5 speaks of designated employers setting numerical targets for all population groups. This clause seems contradictory to some previous clauses. Clarity needs to be provided regarding this. g) It is important that the draft regulations give due consideration to sub-sectors within the overall sector target. Each sector and sub-sector face particular realities that need to be considered as a point of departure in determining rational and justifiable targets. It thus becomes vital to consider various submissions made by stakeholders requesting that sub-sectors be focused on in setting targets, rather than the overall broad 18 sectors. h) It is critical that these draft regulations and the relevant reporting is supported by an effective reporting system. It is imperative that the proposed system for the proposed approach be comprehensively and widely communicated to all stakeholders. Whilst welcoming the recently published draft regulations on sector targets and appreciating the engagements that the Minerals Council has thus far had with the DEL, in lieu of comments above, we would appreciate an opportunity to further engage the DEL.

3.		**MANUFACTURING**	
3.1	**South African Tyres Manufactures Conference (SATMC)**	1. The SATMC has had numerous engagements with the Department of Employment and Labour since 2021 and has made submissions regarding the tyre manufacturing industry. SATMC maintains that the current classification of 'manufacturing' remains too broad and does not consider the uniqueness of the automotive component manufacturing sector, including the presence of locally owned and multinational firms, and the diverse range in size of companies throughout the three tiers of manufacturing. 2. SATMC submits that proposer engagements be planned with sectors to further clarity on the following items: a. Timelines for the commencement of the EE targets. b. The procedural process designated employers are required to carry out to be compliant with the regulations. c. The process designated employers and the DoEL will follow in instances of noncompliance. d. Defined criteria that will be considered 'justifiable' should an employer fail to meet the targets. Clarity on these items is fundamental for the successful implementation of the sectoral targets. Regulations 3.4.4 and 3.4.6 is in conflict with the provisions of the EE Act, read together with the 2014 EE Regulations and with the EE Amendment Act.	
3.2	**TEXTILE EMPLOYER ORGANISATION**	**ANNEXURE 66 A, B AND C** **The National Textile Bargaining Council (NTBC) represents the following Organisations;** South African Cotton Textile Processing Employers' Association (SACTPEA) National Manufactured Fibres Employers' Association (NMFEA) National Association of Worsted Textile Manufacturers (NAWTM) Narrow Fabric Manufacturers Association (NFMA) South African Wool and Mohair Processor's Employers' Organisation (SAWAMPEO) Wool and Mohair Brokers Employers 'Organisation of South Africa (WAMBEOSA) South African Home Textiles Manufacturers Employers' Organisation (HOMETEX) South African Blankets Manufacturers Employers' Organisation (SABMEO) National Textile Manufacturers' Association (NTMA) ANNEXURE A	

		ANNEXURE B **Legislative requirements for the setting of Sectoral Numerical Targets.** Section 15 provides for consultation with the relevant sectors. Our concern is that our member companies will fall into the broad category of the manufacturing sector. The scope of manufacturing is very broad. The employers falling under the Textile Industry are different to other manufacturing industries and we believe that there should be further consultations with the Textile Industry Employer Organisations to understand the challenges facing the Textile Industry. Section 15 allows for the minister to have the power to impose numerical targets with no room for employer discretion. As you are well aware, the Textile Industry has been decimated over recent decades. The Textile Industry is not an industry of choice and we are facing an aging skills base in

1.1 Family / Privately Owned Business Enterprises.

We have a number of member companies which fall into this category. We raise the following for consideration in respect of the Family / Privately Owned Business Enterprises:

1.1.1 Included as designated Employers, are families who have invested their money in a business which not only provides for the family, but also provides, a source of income to its Employees.

1.1.2 The family owned and managed enterprise is typically small to medium, but occasionally it can be substantial. They contribute in a meaningful way to the government coffers via Company taxation, dividends, capital gains and VAT. They also play a role in creating employment and collectively play an important role in social stability through the creation of employment opportunities.

1.1.3 These Employers are characterised by a flat employment structure with the head of the family either Grandfather or Father as the case may be at the helm of the business and in control of managing the enterprise having grown-up in the business and mentored by his father as the one to be trusted with looking after the family's future. They typically trade as Sole Proprietors, Close Corporations, Trusts or Private Companies and are managed by the family for the family.

1.1.4 The patriarch (CEO/MD) make business decisions based on the financial security of the current as well as future generations. They generally have a Family welfare bias and a direct impact on the family. Family welfare is directly linked to the ongoing success of the business. These businesses generally speaking rely heavily on family money for operating capital, there are no Shareholders to turn to. The buck stops with the family resources. The family run the risk of a failed decision and therefor jealously guard their capital by deciding how to invest and spend it.

1.1.5 Also typical of this type of business is the speed at which capital can be moved from one investment to another. It is considered the obligation of the patriarch to ensure that the business is run in such a way that future generations will benefit. If the environment in which the family money is

		invested is not stable or poses risks not commensurate with returns this capital is very easy moved to safer havens. When this happens not only does government lose revenue but so do people lose jobs and job opportunities. 2. **List of Economic Sectors (EEAI 7)** We note that the number of sectors have been increased and we believe this is a positive amendment. As detailed in point 1 above, we believe that manufacturing is very broad and have concerns that the specific challenges and circumstances in the Textile Sector are not adequately considered when setting the Numerical Targets. We do not believe that the specific circumstances in the Textile Industry are given sufficient attention when developing the proposed numeric targets. **1. Setting of 5-year Sectoral Numerical Targets** We do not intend to comment on every sub-clause but rather to highlight certain **Clauses 3.1.1 to 3.1.4** We note the factors taken into account when setting the proposed 5-Year Sectoral Numerical Targets. Once again we would welcome engagement on the specific challenges in our sector of industry. **Clauses 3.2 to 3.4** We welcome the elimination of the different race groups in Point 5 — the "5-Year Sectoral Numerical Target for all Sectors". We believe this is a positive change and that the 5-Year targets are based on designated males and designated females. We note that the applicable demographics of the EAP must be taken into consideration. While the principle is understood, it may result in different understandings. We believe there should be guidelines rather than actual

		measurements and that the overall objective should be to meet the 5-Year Sectoral Numerical Targets based on designated males and designated females as detailed in Point 5 — "5-Year Sectoral Numerical Target for all Sectors". **Clauses 3.4.9 and 3.4-10** We have concerns that this may be problematic, for example where a company has 2 operations, 1 in KZN and 1 in the Western Cape and if the 2 operations are of similar sizes. This requires further discussion. **5-year Sectoral Numerical Targets for all Sectors**

When considering the above mentioned and consultations with industry stakeholders, we proposed targets for the different occupational levels as follows:

Top Management	
Males	14.1%
Females	14.1%
Total	28.2%

Senior Management	
Males	17.2%
Females	19.8%
Total	37.0%

Professionally Qualified and Middle Management	
Males	26.6%
Females	25.1%
Total	51.7%

		<table><tr><td colspan="2">Skilled Technical</td></tr><tr><td>Males</td><td>36.7%</td></tr><tr><td>Females</td><td>36.7%</td></tr><tr><td>Total</td><td>73.4%</td></tr></table> While the Textile Industry has challenges and an uncertain future, we believe that the abovementioned targets will be a stretch. However, as an industry we believe that there is commitment for the Textile Industry to strive to achieve the abovementioned targets. Annexure C
3.3	**National Association of Automotive Component and Allied Manufacturers (NAACAM)**	NAACAM is recognised as the voice of the South African automotive component industry, representing close on 150 manufacturing brands who are suppliers to original equipment manufacturers (OEMs) for assembly in South Africa as well as to original equipment export markets and the domestic and global aftermarket. NAACAM devotes many resources towards positively impacting localisation, transformation and supplier development in line with the South African Automotive Masterplan 2035. 5. In NAACAM's commentary on the Draft Employment Equity Regulations (2023) dated 09 June 2023, the importance of the inclusion of sub-sector targets was raised. We maintain the concern that the current classification of 'manufacturing' remains too broad and does not consider the uniqueness of the automotive component manufacturing sector, including the presence of locally owned and multinational firms, and the diverse range in size of companies throughout the three tiers of manufacturing. 6. NAACAM also seeks further clarity on the following items: a. Timelines for the commencement of the EE targets. b. The procedural process designated employers are required to carry out to be compliant with the regulations. c. The process designated employers and the DoEL will follow in instances of noncompliance. d. Defined criteria that will be considered 'justifiable' should an employer fail to meet the targets. Clarity on these items is fundamental for the successful implementation of the sectoral targets. 7. NAACAM continues to remain open to engagement and trusts the DoEL accepts this as constructive feedback.

3.4	PLASSER SOUTH AFRICA	Criteria	Description
		Disability Target of 2%	Eighty One percent (81%) of the employees are employed on construction sites which does not allow for any disabilities. The remaining employees are in Stores and Workshops, which also does not allow employees with disabilities as we work with heavy equipment. This leaves only 9% of employees who are office based. The requirement to enforce a 2% workforce with a disability will become near impossible to meet.
		Professionally Qualified Targets of 50% Black Males and 25% Black Females	The rail maintenance industry has historically been male dominant due to harsh conditions like working in open areas where railway tracks need maintenance. There are no toilet facilities for many kilometres at a time between stations, etc. This makes the employment of females near impossible. Our clients TFR and PRASA do not have facilities available to accommodate these needs.
		Skilled Targets of 50% Black Males and 37.6% Black Females	The company employs artisans who operate and maintain the track maintenance machines on construction sites for shifts involving ten (10) days at a time. This work involves lifting of heavy equipment and parts to maintain same machines. Female artisans have not been able to operate in such harsh environments requiring extreme physical strength as per our past experience. This has limited our ability to employ black females in this category. The rail maintenance industry has historically been male dominant due to harsh conditions like working in open areas where railway tracks need maintenance. There are no

Directors: F F Dantjie R D Le Grange (Non Executive) V G Pinn (Ms)
P G C van Blerk S Saïe ((Ms) (Non-Executive)

Allied Integrated Management Systems

			toilet facilities for many kilometres at a time between stations, etc. This makes the employment of females near impossible. Our clients TFR and PRASA do not have facilities available to accommodate these needs.

3.5	**PRINTING SA**	ANNEXURE 48 Our sector requires highly skilled artisans but due to declining production volumes, the possibility to recruit inexperienced staff members to upskill is compromised There seems to be a dislocation between the enormous effort and time needed to upskill employees to prepare them for ownership and improve BEE scores on the Generic Codes and the proposed EE legislation. The timeframe to upscale an incumbent to top management or professional level cannot be achieved in 5 years. Regard should be had to the fact that those entrepreneurs that have built businesses, in a difficult industry, over years will have, we fear, little appetite to invest in growing their businesses and therefore employment opportunities. At worst we will see the closure of print business due to the impossible task of complying with layers of legislation, potential fines, and no access to state and state-owned business. **Irreconcilable conflict between the provisions of the EEA and draft sector code regulations.** There exists an irreconcilable conflict between the legal provisions of the Employment Equity Act which prohibits creating absolute barriers in workplaces versus the provisions in the regulations introducing a "no regress" rule. The "no regress" rule is stifling and categorically sanctions the creation of absolute barriers. The 'no regress' rule also creates a conflicting view to the 'justifiable reasons' provisions for not meeting an employment equity target or goal; in that, the 'no regress' rule implies an employer may not regress after meeting an employment equity target or goal, even if justifiable reasons exist and are substantiated. **Unreasonable reliance on EAP in pro rata application system of sector targets.** Unreasonable reliance is placed on the EAP as the sole indicator of proportioning the achievements of sector targets by race and gender. **Analysis of sector targets | EAP proportionality | Current levels of representation | Printing SA's proposed targets** ANNEXURE A TOP MANAGEMENT

		Sector target designated groups		Proportioned to EAP for designated groups				Representation in the MANUFACTURING industry as per the 2023 CEE report			SENIOR MANAGEMENT
		Male	25%	A	C	I		A	C	I	
				21.8%	2.4%	0.8%		6.2%	3.3%	10%	
		Printing Industry *Proposed Target (Black representation)*	**24%**	12%	5%	7%		12%	5%	7%	
		Female	15%	A	C	I	W	A	C	I	W
				12.2%	1.4%	0.3%	1.1%	4%	2%	4.1%	10.3%
		Printing Industry *Proposed Target (Black representation)*	**16%**	9%	4%	3%		9%	5%	3%	
		Proposed Target (WF representation)	1.1%				1.1%				
		Total	40%	34%	3.8%	1.1%	1.1%	10.2%	5.2%	14.1%	10.3%
		Total Printing Industry *Proposed Target*	**41%**	25%	8%	8%		25%	8%	8%	
		Male	50%	A	C	I	W	A	C	I	W
				46.3%	5.9%	0.8%	1.9	35.5%	8.4%	2.2%	13.5%
		Printing Industry *Proposed Target (Black representation)*	**60%**	35%	15%	10%		35%	15%	10%	
		Female	34%	A	C	I	W	A	C	I	W
				27.6%	3.1%	0.7%	2.6%	14.3%	4.8%	2.9%	7.6%
		Printing Industry *Proposed Target (Black representation)*	**28%**	19%	6%	3%		19%	6%	3%	
		Proposed Target (WF representation)	2.6%				2.6%				
		Total	84%	71.1%	7.9%	2.3%	2.6%	50.9%	14.2%	8.3%	7.6%
		Total Printing Industry *Proposed Target*	**88%**	54%	21%	13%	2.6%	54%	21%	13%	7.6%
		Total	**50%**	**42.5**	**4.7 %**	**1.5 %**	**1.3 %**	**33.3 %**	**3.5%**	**6.1%**	**10.1**
		Total Printing Industry *Proposed Target*	51%	30%	9%	12%	1.3%				
		Sector target designated groups		Proportioned to EAP for designated groups				Representation in the MANUFACTURING industry as per the 2023 CEE report			PROFESSIONALLY QUALIFIED
		Male	37%	A	C	I	1.1%	A	C	I	
				32.2	3.6	1.2		18.5	6.9%	9%	
		Total	40%	34%	3.8%	1.1%	1.1%	10.2%	5.2%	14.1%	10.3%
		Sector target designated groups		Proportioned to EAP for designated groups				Representation in the MANUFACTURING industry as per the 2023 CEE report			SKILLED TECHNICAL
		Male	50%	A	C	I	W	A	C	I	W
				46.3%	5.9%	0.8%	1.9	35.5%	8.4%	2.2%	13.5%
		Female	34%	A	C	I	W	A	C	I	W
				27.6%	3.1%	0.7%	2.6%	14.3%	4.8%	2.9%	7.6%
		Total	84%	71.1%	7.9%	2.3%	2.6%	50.9%	14.2%	8.3%	7.6%

4.		**CONSTRUCTION**
4.1	**MASTER BUILDERS**	Master Builders South Africa (MBSA) is the leading voice of the South African construction industry. The organization is regulated in terms of Section 107 of the Labour Relations Act and exists as a national federation of registered employer Associations representing contractors and employers operating in the building and construction industry. The primary role of

	South Africa (MBSA)	MBSA is to promote the viewpoints and interests of the industry, to promote the highest quality and standards through excellence in service to our members, and to engage government and legislative bodies on national policies that affect the industry, to create a sustainable building industry in South Africa. Our corporate members and their combined membership of contractors, subcontractors, materials suppliers, and manufacturers is approximately 3 500. MBSA COMMENTS ON THE BILL We have consulted with all our member Associations regarding the gazetted Bill - 50058. And they are in support of the proposed sectoral numerical targets. 4. CONCLUSION The position of MBSA on the proposed sectoral numerical targets is we are in full support of the published gazetted Bill.
4.2	**JONES AND WAGENER**	We remain committed to the course, and this is evident in our transformation plan which we monitor on a management level on a monthly basis. One of our top business risks is recruiting and retention of critical skills in the civil engineering industry. The Built Environment industry (specifically the Consulting Engineering industry) encounters significant challenges in recruiting sufficient numbers of candidates to meet current work demands and to ultimately fill management positions. There are also limitations regarding professional registration which is a pre-requisite for promotion – it takes an engineer approximately 4 years after obtaining their qualifications to become registered as professionals. The 4 years is for exceptional candidates and the average norm is over 6 years. It is well known and generally accepted that there are hugely insufficient resources in terms of gender and race to meet the Employment Equity Targets (EET's) and that it is inviting failure to contemplate that resources can be educated and acquire critical work experience to qualify for professional engineering registration, in the short timeframe of an equity plan, in sufficient numbers to meet the EET's as proposed in the Regulations. We therefore appeal for the consideration of setting more realistically informed targets, having regard for the percentages of practitioners that are available in the pipeline to enter and progress to eventual managerial roles within the company. The concept of measuring the EAP percentage of all working people, where the majority are on the lowest tier of employment at semi and unskilled level, and then applying this racial makeup as a percentage to all levels of management is unattainable. We believe through collaboration with the Consulting Engineers South Africa, Engineering Council of South Africa, and South African Institute of Civil Engineering – clearer statistics can be obtained that detail the current status quo of the industry. We also appeal for consideration of a longer period to allow employers to progressively train and grow all designated groups to senior occupational level.
4.3	**LONEROCK**	ANNEXURE 40 Our EE plan is about to expire and we intended to draft the subsequent plan that should be tabled in our upcoming quarterly meeting in June 2024. Please advise us on which targets should we use when drafting the subsequent EE plan as the draft regulations have not yet been promulgated, and the EE Commission has not yet issued the EAP targets for the 2023/2024

4.4	**BIGEN AFRICA SERVICES (PROPRIETARY) LIMITED**	ANNEXURE 32A & B Bigen Africa specialises in infrastructure asset creation, operation, and maintenance in the real estate, human settlements, water service, transportation, electricity, health, and agriculture sectors. Accordingly, its understanding is that it is intended to be subject to the published employment equity targets for Professional, Scientific, and Technical Activities in Government Gazette 50058 of 1 February 2024. **Industry**: Based on its sector specialisations, Bigen Africa is principally managed by and employs built environment and related professionals who are governed by statutory councils coordinated by the South African Council for the Built Environment. Bigen Africa forms part of the South African (SA) construction industry and is measured for B-BBEE purposes under the Amended Construction Sector Code. There is a notable gap between the available supply of professionals from the designated groups and the published targets for Professional, Scientific, and Technical Activities in the top and senior management categories. Professionally qualified and skilled targets are far less of a problem. Root causes for the poor supply of registered and experienced Black and Female built-environment professionals can be traced back to pre-1994 education policy, but also to the continuing challenges in the supply of STEM subject learners from the designated groups during basic education. Unfortunately, labour supply statistics that can reliably advise sustainable SA employment equity targets have not been quantified by the SA built environment professions. This is an obvious gap in the current planning and should receive urgent attention. It is clear that the effluxion of time will eventually deal with supply side issues, but proper survey and strategy is needed to properly manage this matter. **Human capital plan performance and challenges**: Bigen Africa has developed a human capital plan that reflects its planned growth per country and sector, anticipated attrition based on history, its EE recruitment policy with affirmative action preferences, and its understanding of current constraints in the market supply of built environment professionals. Uncertainties exist in the absence of definitive supply side data from the industry. Based on its modelling, Bigen currently expects the top and senior management EE targets for Professional, Scientific, and Technical Activities published by the Minister in Government Gazette 50058 to be unattainable and that these will rather lead to unsustainable competition between industry members to avoid crippling sanction by securing, and retaining at a premium, senior resources from amongst the insufficient supply scarce supply of senior Black/Female built environment professionals.

		Sustainable transformation in the construction industry: It is submitted that the targets to be adopted for the SA built environment and construction industry should: □ Be specific to the industry. □ Be based on proper research and understanding of supply side dynamics in the industry. □ Seek to build rather than shrink the capacity and competitiveness of the industry. □ Be demonstrably attainable as a balance between demand and supply. □ Be supported by an industry strategy to address any measured supply side constraints. If these matters are dealt with, it is submitted that any sanction imposed by the Department on a non-compliant enterprise will be reasonable and rational and upheld by a court of law. If not, it is submitted that the targets will result in protracted litigation, a loss of industry capacity, and a fatally weakened SA construction industry.
4.5	**CESA (Consulting Engineers South Africa)**	ANNEXURE 29 Economically Active Population (EAP) percentage The entire concept of measuring the EAP percentage of all working people, where the majority are on the lowest tier of employment at semi and unskilled and then applying this racial makeup as a percentage to all levels of management is deeply flawed and unachievable. **Misalignment with Relevant Sector Codes and DOEL Report Categories** Section 3.1.3 in the Draft Regulations states that" .... various Sector Codes and Sector Charters published under the BBBEE Act were taken into account when formulating sectoral numerical targets, is incorrect as explained below. The Construction Sector Codes recognise the roles of Built Environment Professionals (BEP's) in all management positions in Construction Sector Codes include measurement criteria for both Contractors and Supplier separately from Built Environment Profession at all management levels. On the contrary the EE reporting to DOEL has differing targets for BEP's and Contractors, as BEP's report under Sector 13, whereas Contractors report under Section 4 for Construction. **Unrealistic Gender Targets** Severe challenges confront the Engineering Sector in relation to meeting the percentage of females in the Construction and Built Environment Professions. Thus, even with the best of intentions to improve the gender representation in the industry, the number of female engineering professionals presently and in the pipeline would not be able to be met in neither the short or medium term, unless the more systemic, societal issues beyond the control of any company are addressed, to improve the feedstock and retention of females in STEM careers such as Engineering and Construction. The situation is best summed up in an extract from a recent Engineering Council of South Africa report, wherein it is stated that:

		The database of registered person is by no means transformed when focusing on gender. The number of females is growing but at a very slow pace. To retain more of a balance in regard to gender in particular, initiatives will have to start in secondary school and even before girls decide on their subject's selections in grade 10. Exposure to Science, Technology, Engineering and Design subjects and understanding of the wider scope of career possibilities that these afford need to be emphasised. The attractiveness of careers in Engineering must become tangible through young female roles models who have already made a positive intact impact within a sector of Engineering. **Timeline of Proposed Targets**: As stated previously the percentage proposed targets have not taken into consideration the Sectoral Economic Active Population (EAP) in the industry which makes it difficult for employers to meet the required targets in a short period of 5 years. It is our view that the current proposed targets should be aimed at a longer period to allow employers to progressively train and grow all designated groups to senior occupational level (Top Management & Senior Management). **Removal of the distinction between Provincial and National targets** The removal of the distinction between Provincial and National targets is welcomed as it enables a designated group balance based on local demographics nationally. However, it must be noted that this would be beneficial to companies with a national footprint but not necessarily to those with a provincial presence only, based on our skewed national demographic distribution and settlement patterns. Removal of the distinction between designated racial groups (African, Coloured and Indian) This change is welcomed as it allows organisations latitude to ensure representation of black people (African, Coloured, Indian) without the concerns of targeting a specific group. **In conclusion we would add the following comments, namely that:** Further consultation between the Department of Employment and Labour and industry organisations such as CESA is necessary to align the targets with Sectoral Skills availability together with other factors which industry specific economic issues, market positioning and ownership.

5.	**FINANCIAL AND INSURANCE ACTIVITIES**		
5.1	**South African Insurance Association (SAIA)**	Acknowledgement: SAIA welcomes the released of the revised Draft on the Proposed Employment Equity Sectorial Targets – it is recognised that the new Regulations have considered previous comments as submitted and further anticipate updates as this is an encouraging step in the efforts to achieve true transformation, which is seen as a priority for our country. However, SAIA members have still concerned with regards to the ambiguity that may still remain in relation to interpretation of some of the provision and the implementation of the new Regulations once they come into effect, which could result in unintended consequences. Below is the consolidated submission of the comments, which are largely general, received from SAIA members for the Department's consideration: 1. Financial Sector Challenges	

The industry acknowledges that the Department of Employment and Labour (DEL) has provided a non-exhaustive list of potential Justifiable Reasons to be provided in the event that the reporting entity fails to meet its annual target. However, the non-life insurance industry is still concerned that the scope may still not be open to recognise the industry/ financial sector nuances when it comes to skills attraction and retention:

(i) Finance and Insurance Sector, the Sector faces unique and nuanced challenges regarding the availability of scarce skills resources, which becomes more prevalent at more senior levels. It is crucial that a strong pipeline of black graduates with the required scarce skills be built and developed to achieve the proposed targets especially at Senior levels. Therefore, the use of the Nationally Economically Active Population (EAP) to measure EEA performance may not mirror the Financial Sector's representation and more specifically their professional talent pipeline.

(ii) Although there has been a positive progress in skill capacitation, the availability of candidates with the relevant academic and associated experience that are required in the financial services sector (often as a regulatory requirement – i.e. Actuaries and Chartered Accountants) are still not sufficient to meet the demands of the sector from the designated groups. It is also important to note that these skills are highly transferrable and often in demand beyond the financial services sector which further increases the complexity (cost and demand).

Therefore, it is imperative that such considerations are incorporated in the DEL's compliance process – include the application of industry/sector nuances when evaluating the EE Reports submitted by entities and in consideration of suitable justifiable reasons.

Interpretation of the target timelines/Transitional period

The industry appreciates the prescription of the 5-year review timeline for the set targets – however, this should not be read to imply that measured entities are expected to have reached the set target (hardcoding), as this may not be practical, considering the limitations that may exist – economic climate and the industry/sector nuances as outlined above. Therefore, it is requested that the DEL provides clarification in terms of the interpretation of the timeframes and expectations from the measured entity when compiling and submitting annual reports – For the purposes of this topic, SAIA's view is that the 5 year targets should be used as a guide for measured entities, however, individual entity targets must consider stretched, but realistic entity targets (progressive towards meeting the prescribed targets, in order to facilitate meaningful progress measurement and assessment – i.e. a consideration that it may take longer than 5 years for some entities/industries/sector to reach the prescribed targets.

Designated groups

		Designated employers choosing to use the EAP with the majority of the employees. Clarity is required in terms of what is meant by majority of the employees. 20(30)(3) – capacity to acquire the qualification. Aggregated targets The industry appreciates the move from the detailed race and gender compliance approach to the aggregated designated race and gender approach. However, it is not clear on how the EAP assessment will apply in meeting the aggregated targets and for the categories to have already reached their base targets and needing to now work towards achieving the EAPs. Therefore, SAIA members requested that the DEL consider providing on how the EAP assessment is to be applied vs. the aggregated target per level. DEL Inspector Alignment Based on previous encounters, some entities have had an adverse interactions with the EE inspectors, with some of the issues revolving around lack of alignment with regards to the application of assessing if the entity is compliant with the EEA. This concerns remains active, especially with the introduction of the sectorial targets. Therefore, it is requested that the DEL consider and implementation process that includes training of the inspectors on the new changes and more so, how to interpret if the entity is compliant or not?

5.2	**THE BANKING ASSOCIATION SOUTH AFRICA'S (BASA)**	**Proposed sector numerical targets** BASA contends that the proposed sector numerical targets have not deviated from the compromise figures that were deemed agreeable by the parties involved in the 29 May 2023 engagement. BASA welcomes this gesture of good faith from the DoEL. The gazette refers to designated groups, when previously the targets were for 'blacks' being Africans, Coloureds, and Indians (ACI). BASA's understanding of designated groups is that it includes white women and white people living with disability. BASA's seeks clarity and proposes that the regulations be specific that the targets are set for 'blacks.' paragraph 3.4.6 states: "Where a designated employer has exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial / gender group but should set targets towards EAP." Further clarity is sought in this regard. A regression may be experienced where an employer promotes black people to higher positions. How does this point relate to paragraph 3.4.4? We therefore request that the Minister reconsider this regulation given that the no regression regulation may have unintended consequences of serving as a barrier to the improvement of representation of under-represented groups where the targets, as proposed by the Minister, have not been met. For example, African females may be over-represented at junior management level above their compliance target and EAP which would require that, to improve the representation of other groups e.g., African males in compliance with the sectoral target, their representation be regressed below their EAP level which may be deemed to be non-compliance. The same scenario is likely to pan out with regards to the representation of Coloured and Indian population groups in the event that their representation is above their compliance target and EAP.

		The Appeals Process in the event of non-compliance. BASA would like to better understand the appeals process in the event of non-compliance before the penalties are imposed. If the DoEL deem your undocumented reasons unjustifiable; do they declare non-compliance immediately or are given a window to self-correct and comply? If not clarified, will lead to huge challenges down the line.
5.3	**Association for Savings and Investments South Africa ("ASISA")**	**RE: ASISA'S COMMENTS ON THE DRAFT EMPLOYMENT EQUITY REGULATIONS, 2024 SECTION ONE** 1.The Association for Savings and Investments South Africa ("ASISA") 1.1 ASISA and our members are fully committed to the transformation goals outlined in the Employment Equity Act and support the principles underpinning the 2024 draft Regulations. Our constructive feedback aims to constructively ensure that the legislation promotes equitable representation across sectors through lawful, practical, and reasonable measures. ASISA is dedicated to engaging in collaborative efforts with the Department of Employment and Labour and other stakeholders to refine and advance these Regulations, thereby effectively contributing to the broader objectives of equity and representation. 1.2 Appreciation 2 ASISA appreciates the Department of Employment and Labour's responsiveness to stakeholder feedback, which has resulted in several positive refinements in the 2024 draft Regulations. We acknowledge the efforts in addressing our members' concerns raised in previous submissions. The clarity provided on the usage of national versus provincial targets and consolidation of African, Coloured, and Indian (ACI) targets under one designated group category, differentiated only by gender, represent commendable steps toward transparent and equitable employment practices. The latest draft regulations, we respectfully submit, can be further improved. We believe that the draft regulations reflect procedural flaws and lack clarity on some critical aspects. In this regard, our suggestions and proposals in this submission are intended to assist. For ease of reference, the remainder of this submission is structured as follows: Section Two • Is a consolidation of the legal and substantive matters raised by our members as well as questions of clarity. Annexure One • Direct Questions of Clarity Annexure Two • The detailed individual submissions by members are included as an annexure and should be read as part of the substantive submission by ASISA." 3

SECTION TWO- SUMMARY OF OUR MEMBERS' SUBSTANTIVE COMMENTS AND PROPOSALS.

2.1. The draft Regulations fail to comply with section 15A(2) of the Act – (consultation) 2.1.1. Section 15A of the amended Act, reproduced below for ease of reference, contemplates two separate and sequential consultation processes that are to precede the finalisation and imposition of numerical targets for any national economic sector: a sector wide consultation and advice of the Commission (section 15A(2)) which will inform the draft notice that is then published for public comment (section 15A(4)). "Section 15A – Determination of sectorial 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).

(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, subsectors, 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." (Our emphasis) 2.1.2.

The draft Regulations containing the draft notice, as a species of administrative action, are required to be lawful, reasonable, and procedurally fair (section 33 of the Constitution of South Africa, 1996 ("the Constitution").

2.1.3. The Promotion of Administrative Justice Act, 2000 ("PAJA"), the constitutionally mandated legislation which gives greater context to the right to just administrative action, provides that "administrative action which materially and adversely affects the rights or legitimate expectation of any person must be procedurally fair".

2.1.4. Section 3(2)(b) of PAJA goes on to state that "in order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection

(1) – (i) adequate notice of the nature and purpose of the proposed administrative action;

(ii) a reasonable opportunity to make representations;

(iii) a clear statement of the administrative action;

(iv) adequate notice of any right of review or internal appeal, where applicable; and (v) adequate notice of the right to request reasons in terms of section 5" (our emphasis).

2.1.5. For the reasons that follow, we submit that a prior lawful sector consultation process did not take place as is required by section 15A(2):

2.1.6. First, there was factually no sector consultation process pursuant to the assenting to of the Amendment Act. The Minister was only empowered from 12 April 2023 to undertake 4 the processes envisaged in section 15A.1 No such sector wide consultation took place between 12 April and the 1 February 2024, when the 2nd draft Regulations were published. The powers granted to the Minister of Employment and Labour to issue a notice under section 15A(4) can only be exercised once a proper sector consultation process has been undertaken in terms of section 15A(2). It appears that the Minister of Employment and Labour seeks to place reliance on a sector consultation process (and presumably the advice from the Commission of Employment Equity) that predates the assenting to of the Act.

The placing of reliance on a consultation process conducted in 2019/2020 in order to satisfy the requirements of sections 15A(2) and (4), we submit, is procedurally unfair and unlawful.

2.1.7. Second, the current comment process does not satisfy the requirements of procedural fairness as contained in PAJA. The public is being asked to comment on proposed targets which have not been preceded by a lawful sector consultation process.

This is a wholly undesirable situation which was recognised by the court in Altron TMT Holdings Proprietary Limited and Another v the Minister of Trade and Industry and Others2 to be unlawful. In that case, there was a material difference between the decision proposed to be made in the notice published for comment, and the decision that was ultimately made.

The Minister of Employment and Labour admitted that the original notice contained an error but had not withdrawn the notice or republished a corrected one. Instead, he allowed the comment process to continue on the basis of the erroneous notice and subsequently made a materially different decision. Here the Court held that "public notice of the intended decision should be given prior to it's taking in such a way that interested parties are allowed a proper opportunity to comment prior to the decision being made" (our emphasis). The Court went on to state that "the nature and purpose of the proposed decision must be described with sufficient particularity in the notice so that the rights to make representations will be real rather than illusory" (our emphasis). In the current scenario, the industry has not been presented with a clear statement of the proposed administrative action and is being denied a proper opportunity to comment meaningfully on the proposed decision. The industry's right to make representations is thus being rendered illusory.

2.1.8. It should be noted that the above was brought to the attention of the Department in a letter dated 26 May 2023 as well as in our submission of comments on 11 June 2023. In those two submissions, ASISA requested that, due to the errors in the prior process and the proposal of new targets in the letter of 23 May (differing from those contained in the draft Regulations), the notice be withdrawn, and a proper consultation process initiated (which complies with sections 15A(2) and (4)). Regrettably, the Department has not acted on this suggestion. ASISA hopes that the Minister of Employment and Labour will heed the request.

2.1.9. Proposal: We recommend a focused review of particular elements of the draft Regulations and specific targets. This review should be conducted through an inclusive and legally compliant consultation process that encompasses all sub-sectors within the financial industry, regardless of their size. This approach does not suggest a revaluation of the entire regulatory framework or all proposed targets, but rather a targeted examination to ensure the Regulations

		meet the sector's unique needs. 1 Section 14 of the Interpretation Act, 1957 makes it clear that "where a law confers a power- (a) to make any appointment; or (b) to make, grant or issue any instrument, order, warrant, scheme, letters patent, rules, Regulations or by-laws; or (c) to give notices; or (d) to prescribe forms; or (e) to do any other act or thing for the purpose of the law, that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof." 2 2020) ZAGPJHC 162 5 We are of the view that a thorough and inclusive consultation process will likely resolve many of the concerns currently faced by our members. It will not only allow an open dialogue and a deeper understanding among all stakeholders but will ensure that the Regulations are both practical and equitable, addressing the needs and uniqueness of the financial sector comprehensively. We trust that the Department will consider this proposal favourably and look forward to a constructive dialogue moving forward. 2.2.Non-compliance and the Authority of Labour Inspectors: 2.2.1. The process for determining non-compliance and the criteria for what constitutes non-compliance under the draft Regulations remain unclear. Although the draft Regulations acknowledge justifiable reasonable grounds, these are largely subjective and the practical application and the impact of some of them is not easily determinable. The justifiable reasonable grounds without guidance on their usage and what would satisfy the burden of proof cannot be said to cure any unreasonableness within the targets. 2.2.2. We remain concerned that the draft Regulations lack transparent guidelines on how labour inspectors will exercise their authority when making compliance determinations, nor do they make any reference to a potential mechanism that will take care of this concern. The wide discretion given to labour inspectors is a significant concern for our members, as it may be excessively broad. 2.2.3. Recommendations to the Labour Court will depend on the subjective judgments of labour inspectors, and a standardized approach would ensure transparency. Section 37 (1) of the Act states, "a labour inspector may serve a compliance order on a designated employer in the prescribed manner if that employer has failed." While this clause can be interpreted to refer only to forms, we advocate for a more transparent approach providing clearer guidelines on how the inspectors make decisions or, at the very least, what minimum considerations they should take into account. 2.2.4. The implications of the labour inspectors' findings are significant, as they can only be challenged in the Labour Court after potentially severe reputational damage has been inflicted on designated employers. Negative findings also affect employers' Environmental, Social, and Governance (ESG) scores, impacting their attractiveness to both local and foreign investors and thus affecting the broader economy. **2.2.5. Proposal:** We suggest that the Regulations specify minimum guidelines for inspector conduct and exercise of discretion and clarify the type of evidence required to meet the burden of proof for claims of non-compliance based on justifiable reasonable grounds. Furthermore, we recommend that these guidelines incorporate objective criteria that labour inspectors will use to assess and interpret these grounds, eliminating subjectivity and unfettered discretion. Thereby, ensuring certainty and transparency throughout the process. Additionally, we propose the establishment of an intermediary mechanism or an appeal process before matters are escalated to the Labour Court. Setting clear, publicly accessible guidelines for labour inspectors' conduct and the inspection process would ensure fairness and

		transparency. 2.3. The need for sub-sector targets. 2.3.1. Through multiple engagements, we have highlighted the peculiarities of the subsectors in the financial sector, their unique business models, and the fact that a one-size-fits-all approach over all sub-sectors is problematic. The skills, size, characteristics, and needs across the occupational levels, and the make-up of the sub-sectors are completely different. 6 2.3.2. We also understand that the financial sector is not the only sector with sub-sectors; however, this does not negate the uniqueness of the sub-sectors and the level of economic concentration in which the individual sub-sectors operate. For different sub-sectors, the racial and gender distribution of Suitably Qualified persons differ substantially from the national or provincial Economically Active Population ("EAP") statistics, and this needs to be reflected in targets. It is our submission that not allowing for sub-sector targets is a failure to consider the different circumstances being faced by various designated employers and is not aligned with the principles under S 15A(3) of the Act. 2.3.3. Proposal : Through consultation, we seek a meeting with the Honourable Minister and the respective financial sector regulators to elaborate on these peculiarities and to advance the reasons for sub-sector targets. We thus respectfully urge the Honourable Minister to exercise his powers as outlined in Section 15A (3), which states that the Minister may set different numerical targets for "different subsectors...or on the basis of any other relevant factor". 2.4.Clarity regarding the Methodology and Rationale of the Targets 2.4.1. The method and rationale behind the determination of targets have not been clearly disclosed and remains most unclear to us, as key stakeholders. According to Section 20(2)(c) of the Employment Equity Act of 2008,as amended (EE Act), it is imperative for designated employers to ensure "the equitable representation of suitably qualified people from designated groups within each occupational level in the workforce". Therefore, the initiation of target setting within each occupational level must begin with a comprehensive assessment of the availability of specific skills in the workforce. 2.4.2. Section 4.5 of the draft Regulations acknowledges "insufficient target individuals from the designated groups with the relevant qualification, skills, and experience" as a valid reason for non-compliance. However, we argue that for the targets to be considered reasonable, they must align with the available pool of resources. The inclusion of a justifiable reason for non-compliance does not mitigate the impracticality of an unrealistic target.

		2.4.3. Data from within the financial sector clearly indicates a shortage of suitably qualified individuals in some categories e.g. under junior and professionally qualified categories. Given the complexity of many functions within this sector, relevant and suitable skills are essential for its sustainability. Furthermore, demographic data from the Department of Basic Education reveals significant disparities between those graduating from secondary education and those represented in the EAP. Census 2022 findings show that only 37.6% of adults have a Matric certificate, indicating a critical oversight in recognizing the actual availability of suitably qualified individuals in the financial sector. 2.4.4. Proposal (1): Considering these observations, we respectfully request that the Department undertake a revised and more rigorous Socio-Economic Impact Assessment System (SEIAS) review to accurately determine the availability of suitably qualified individuals within our industry, as well as to assess the pipeline of individuals from the secondary education (matriculants) and tertiary system who are eligible for employment at various occupational levels within our sector. 2.4.5. Proposal (2): We also recommend an extension of the implementation timeframe from 5 years to 10 years given the constraints in building the pipeline for specific skills within the junior and middle management level within the sector. 2.5. Feasibility and Practicality of some of the Targets 7 2.5.1. While the most recent targets for top management and senior management levels appear more achievable and align closer with current figures, it is important to note that the average age in these occupational levels is currently 52 years. Consequently, there will be limited mobility within these levels, making the targets substantially more challenging to meet than initially anticipated. 2.5.2. Moreover, ASISA members believe that due to a bottleneck in the pipeline of suitably qualified employees, the targets established for professional/middle management and skilled technical/junior management levels will be unattainable within the prescribed timeframe. Additionally, the feasibility of achieving these targets varies significantly across different sub-sectors, further underscoring the necessity for setting specific targets for each sub-sector. This variation provides yet another compelling reason for our request to have distinct targets tailored to the unique conditions of each sub-sector 2.5.3. Proposal : In order to achieve its mandate of job creation, one of the focus areas of the Department of Employment and Labour is the development of suitably qualified employees. This is also the main limitation for designated employers in achieving the proposed employment equity targets on the technical and professional management levels. At ASISA we believe we can build a solution that develops a pipeline of suitably qualified employees for the industry to address employment equity and in so doing assist the Department in its mandate as well. 2.5.4. In financial services suitably qualified not only refers to an academic qualification, but also to relevant experience. ASISA therefore recommends the inclusion of an additional reasonable ground for designated employers who can prove that they spend 1% of Net Profits After Tax on the creation of Graduate programmes for technical and professional management and that such programme led to an absorption of at least 70% of the graduates into full-time employment within the sector. This spent must be in addition to any other spend claimed under skills development.

		2.5.5. The benefit for designated employers are that it provides them with a reasonable ground that is verifiable and in addition it develops future employees with scarce skills. The benefit for the Department is that this reasonable ground will result in immediate spend by designated employers and would not be dependent upon the Labour Courts imposing fines on designated employers before any funds are achieved. It also proves the Department's capability to ensure job creation within the industry. 2.6.**Contextual Factors for Consideration**: Economic, Social, and Technological Considerations, Impact of COVID-19: 2.6.1. As ASISA members, we firmly believe that any policy, Act, or Regulation should account for all economic and social factors. While acknowledging that the Department of Monitoring and Evaluation conducted a social and economic impact assessment (SEIAS) in 2019 on the potential impact of the Employment Equity Act amendments and potential Regulations, we argue that the assessment was insufficient and did not adequately address the feasibility of targets or the availability of suitably qualified employees. 2.6.2. Additionally, current national issues such as the effects of COVID-19, load shedding, rising unemployment, social unrest, and falling industry growth forecasts, along with retrenchments and the transition of matriculants into higher education, have not been adequately incorporated into the target setting process. These elements are crucial as they directly impact the availability and development of the necessary skills within the savings and investment industry under the financial services sector. 2.6.3. The economic landscape in which businesses operate has been significantly altered over the past five years due to the pandemic, corruption, and geopolitical tensions. With an economic growth rate lower than the population growth rate, it is impossible to create the growth required to actively address all the challenges faced by the 8 country. In addition, the rise of business automation and the impacts of the fourth industrial revolution, particularly artificial intelligence, on the financial services sector, heighten the risk that positions vacated by departing or retiring employees may remain unfilled. **2.7.Clarity regarding Target Setting and Compliance Assessment between Year** 1-5. 2.7.1. Assessment of Initial and Aggregated Compliance Targets Assessment of compliance in years 1-4 vs Aggregated targets: The assessment of compliance in the initial four years versus the aggregated targets raises significant questions. There is a need for explicit guidance on the application of the EAP assessment compared to the aggregated target for each level. It remains unclear if employers will be evaluated against these targets only in year 5 or also during the interim years 1-4, as the Draft Regulations and the Department's prior communications do not provide clarity on this matter. 2.7.2. Challenges of Balancing Representation Increases The directive that there should be no regression within any group while simultaneously increasing representation in another present's significant challenges. This is particularly complex in larger organizations were increasing one group's representation might inadvertently lead to a decrease in another's, unless the overall headcount is increased. This directive underscores the operational challenges involved in achieving balanced representation without adversely affecting the workforce's existing composition. 2.7.3. Setting and Measuring Targets Above EAP Levels Section 3.4.4 read with section 3.4.3 and 3.4.6 of the draft Regulations. The draft Regulations require that employers should not set targets for those groups whose representation has already exceeded the EAP in a particular occupational level. Section 3.4.3 of the draft Regulation notes that designated employers will be measured against the annual targets set towards meeting the relevant 5-year sectoral numerical targets. Section 3.4.6 of the draft Regulations further requires that, where a designated employer has exceeded the set numerical target for a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial/gender group but should set targets towards the EAP. Clarity is required on

		whether designated employers will be measured against the sectoral targets or the EAP in instances where they have exceeded the EAP and what the consequences would be for not meeting the targets above the sectorial ones (This is assuming that a designated employer has done so well and met the sectorial targets ahead of the 5- year mark.) 2.7.4. Reconsideration of the 'No Regression' Regulation We request that the Minister reconsider this Regulation given that the no regression Regulation may have unintended consequences of serving as a barrier to the improvement of representation of under-represented groups where the targets, as proposed by the Minister, have not been met. For example, African females may be over-represented at junior management level above their compliance target and EAP which would require that, to improve the representation of other groups e.g., African males in compliance with the sectoral target, their representation be regressed below their EAP level which may be deemed to be non-compliance. The same scenario is likely to pan out with regards to the representation of Coloured and Indian population 9 groups in the event that their representation is above their compliance target and the EAP. **2.8.Economically Active Population based targets** 2.8.1. The construct of National Economically Active Population (NEAP) or Regional Economically Active Population (REAP) encompasses the informal sector and thus a very wide range and percentage representation within the SA total number of citizens. It also includes the economically active unemployed and naturalised citizens of South Africa. The premise to use such data in any sector, but particularly the financial services sector, which requires in almost all cases highly skilled and competent individuals, is questionable. Using the NEAP or REAP as a benchmark for a highly skilled and select industry poses significant challenges in representing the overall workforce/economically active population in South Africa. According to Statistics SA and Census 2022 only 37.6% of people in South Africa over the age of 20 have Matric or higher. It is important that targets reflect the realities of the sector and the skill sets required to meet these targets effectively. **2.9.Designated Groups** 2.9.1. The newly proposed targets, which are broadly defined for designated groups, introduce a level of complexity and this situation presents a contradiction between the aim of combining designated groups and the requirement to set specific targets for individual population groups when overall targets are not met. 2.9.2. Since the targets have been set according to designated groups by gender with no racial distinction; clarity is required in terms of 'white female' employees as they are, by law, a designated group. In light of this fact, is it correct to assume that white females are part of the published targets? If that is the case, is this design not further diluting AIC representation and thereby negatively influencing the employment equity intention for Black females? 2.9.3. We also need clarity on the requirement for designated employers to still submit their own targets for the respective race groups and to what extent a failure to meet those targets will lead to a finding of non-compliance, especially in cases where the published ACI target is met. **2.10. Clarifying Reasonable Grounds for Non-Disclosure by People with Disabilities** 2.10.1. We acknowledge the requirement to set targets for people with disabilities to increase diversity. While employers have made significant efforts, a persistent challenge remains as employees cannot be forced to formally disclose their disability status. Although every effort is made to create an accommodating workplace, it is conceivable that workplaces may have a higher representation of employees with disabilities than is formally reported. More work is underway to raise awareness. 2.10.2. In the event that a company does not meet the targets for people with disabilities due to non-disclosure through the EEA1 forms, we seek clarification on what sort of evidence would be allowable to demonstrate compliance.

2.11. Financial Stability and the Interplay of the targets with the Penalty regime

2.11.1. There also appears to be a lack of consideration of the interplay between the proposed targets, non-compliance and Schedule 1 to the EE Act which sets out the maximum permissible fines. It is submitted that these fines should have been amended as they are not appropriate and will lead to a systemic risk for businesses, may cause severe reputational harm and might reduce the ability of regulated financial institutions to meet and maintain financial soundness requirements. 10

2.11.2. As these fines cannot be rectified within the draft Regulations, the severity thereof has a direct impact on determining what qualifies as reasonable targets. The more excessive the fine, the higher the requirement of reasonableness within the targets. Section 28 of the Financial Sector Regulation (FSR) Act, 2017 requires that "An organ of state, other than a financial sector regulator, must—in performing its functions, have regard to the implications of its activities on financial stability."

2.11.3. We respectfully submit that, if the EE Act, as amended, and the targets are implemented in their current form, they will most likely conflict with this provision and could potentially threaten financial stability due to various reasons detailed above. Section 78(1) further stipulates that "An organ of state that has a regulatory or supervisory function in relation to financial institutions must, to the extent practicable, consult the financial sector regulators and the Reserve Bank in relation to the performance of that function."

2.11.4. Another important consideration is that even if a designated employer that is a regulated entity is not fined for failing to meet the targets, if found to be non-compliant with the EE Act, such an entity will still be guilty of a major corporate governance failure. This governance failure will impact the company's fit and proper status and make it subject to actions from the financial sector regulators. In addition, this failure constitutes an Environmental Social and Governance (ESG) failure and must be reported within the company's financial statements, potentially resulting in an inability to raise capital and a failure of trust from clients, ultimately leading to the revocation of a license to operate.

2.11.5. Proposal: Financial Stability and Penalty Regime Revision: A critical re-evaluation of the current fine regime, with a focus on mitigating economic repercussions and supporting financial stability. Given the department's authority in triggering the amendments to the EE Act, and to address the economic implications of fines and penalties, we request the department to initiate a review of these components in the Act.

2.12. Clarity Regarding Timelines and Transition arrangements:

2.12.1. ASISA members are expressing concerns about the uncertainty surrounding the effective dates of new employment equity plans and as well as the potential flexibility in negotiating timelines with staff and labour unions once the Regulations are signed off. We are concerned about the impact of amendments on current employment equity plans, potential consequences of non-compliance where amended plans (if required) cannot be submitted on time, and what the compliance status would be if sectoral targets were met before the set timeframe but later reduces. It is important to note that at top management the resignation, for example, of one African female and the replacement with one African male could result in huge swings in the targets achieved.

11 3. Conclusion In conclusion,

ASISA members reaffirm their commitment to fostering transformation and equity. However, we respectfully urge the Honourable Minister to develop Regulations that are clearer, fairer, more practical, and inclusive.

We also request that sector-specific consultations be conducted more effectively, giving due attention to the unique challenges of each sector and sub-sector. NB*SECTION THREE BELOW PROVIDES A TABULATION OF EACH MEMBER'S

		COMMENTS AND IS PART OF THE FULL ASISA SUBMISSION. Sincerely, Name Adrian Burke Lister Saungweme Signature Designation CEO, ASISA Senior Policy Advisor, ASISA Date 30/04/2024 30/04/2024 12
5.4	LOMBARD	ANNEXURE 39 Lombard Insurance Company Limited (Lombard) is a public company operating in the commercial insurance sector. Lombard offers construction, logistics, energy, fuel and mining guarantees, as well as providing commercial insurance products. This letter sets out Lombard's comments in response to the Draft Regulations, which comments are summarised as follows: 1. THE FINANCIAL AND INSURANCE SECTOR SHOULD NOT BE MERGED 2.1 The Minister has the power in section 15A(3) of the Amendment Act to identify sub-sectors, and the amended definition of "sector" in the Amendment Act includes "an industry or service, or part of any industry or service." Notwithstanding this power, the Minister has failed to identify sub-sectors in any of the 18 industries listed. 2.2 The proposed 18 sectors previously identified in the Draft Employment Equity Regulations, 2023 for Public Comment, published on 12 May 2023 (2023 Draft Regulations) remain unchanged. This indicates that there has been a failure by the Department of Employment and Labour (DoEL) to apply its mind to the various sub-sectors that operate within the "Financial and Insurance" industry. 2.3 For the reasons that will be explained, it is irrational to merge these two distinct sectors together, as different workforce profiles and demographics are applicable, as well as suitably qualified candidates. Lombard proposes that the Insurance industry should be consulted as a stand-alone sector, separate from the financial services industry. 2.4 In terms of the Standard Industrial Classification Codes (SIC Codes), the Financial and Insurance activities sector is sub-divided as follows: 2.4.1.1 division 64: financial service activities, except insurance and pension funding; 2.4.1.2 division 65: insurance, reinsurance and pension funding, except compulsory social security; and 2.4.1.3 division 66: activities ancillary to financial service and insurance activities. 2.5 At the very least, divisions 64 and 65 should be considered separately, and each ancillary service should fall under the relevant sector. 2.6 According the SIC Codes, division 64 (which primarily deals with financial services) is described as including "the activities of obtaining and redistributing funds other than for the

purpose of insurance or pension funding or compulsory social security" and is further divided into the following sub-sectors:

2.6.1 code 641: monetary intermediation, including:
2.6.1.1 code 6411: central banking;
2.6.1.2 code 6419: other monetary intermediation;
2.6.2 code 642: activities of holding companies;
2.6.3 code 643: trusts, funds and similar financial entities;

2.6.4 code 649: other financial service activities, except insurance and pension funding activities, including:

2.6.4.1 code 6491: financial leasing;
2.6.4.2 code 6492: other credit granting; and
2.6.4.3 code 6499: other financial service activities, except insurance and pension funding activities n.e.c.

2.7 In comparison, division 65, which applies to the business of Lombard and other commercial insurers is described as including "the underwriting annuities and insurance policies and investing premiums to build up a portfolio of financial assets to be used against future claims. Provision of direct insurance and reinsurance are included and is further divided into the following codes:

2.7.1 code 651: insurance, including:
2.7.1.1 code 6511: life insurance;
2.7.1.2 code 6512: non-life insurance (including health, travel, transport and other non-life insurance);
2.7.2 code 652: reinsurance; and
2.7.3 code 653: pension funding.

2.8 In respect of both sectors, there are separate activities that are auxiliary to the financial and insurance industries in division 66. In this regard, division 66 is further sub-divided as follows:
2.8.1 code 661: activities auxiliary to financial service activities, except insurance and pension funding:
2.8.1.1 code 6611: administration of financial markets;
2.8.1.2 code 6612: security and commodity contracts brokerage;
2.8.1.3 code 6619: other activities auxiliary to financial service activities;
2.8.2 code 662: activities auxiliary to insurance and pension funding:
2.8.2.1 code 6621: risk and damage evaluation;
2.8.2.2 code 6622: activities of insurance agents and brokers;
2.8.2.3 other activities auxiliary to insurance and pension funding; and
2.8.3 code 663: fund management activities.

2.9 The above delineations illustrate that "insurance activities" is a far narrower description of

industry than the broader and more overarching sector of "financial activities". The SIC Codes speak to a far wider range of activities that fall within the financial activities sector. These include banking activities, the financial activities associated with various types of entities, different forms of credit granting, financial market administration and the handling and trading of commodities and securities. "Financial activities" casts a wide net, covering various finance and transfer related activities. These activities are distinct, identifiable and clearly separate from "insurance activities".

2.10 Similarly, form EE 17 contained in the Draft Employment Equity Regulations, 2018 (the 2018 Draft Regulations) recognised sub-sectors. Those sub-sectors identified in the 2018 Draft Regulations included:

2.10.1 Financial service activities, except insurance and pension funding;
2.10.2 Insurance, reinsurance and pension funding, except compulsory social security; and
2.10.3 Activities auxiliary to financial service and insurance activities.

2.11 Notwithstanding the recognition of these sub-sectors in the 2018 Draft Regulations, such delineation between sectors has not been carried through to the 2024 Draft Regulations.
2.12 Given the diversity of the various sub-sectors within SIC Codes 64 to 66, the proposal of one sectoral target for the industry at large simply because it falls within a broad category of 'financial and insurance activities' is irrational and is susceptible to review.
2.13 The power of the Minister to identify sub-sectors takes into account that there are variances in current workforce profiles, demographics, skills availability, qualifications, challenges faced by each industry, and the extent to which some designated groups are under-represented in various sub-sectors.
2.14 The identification of sub-sectors prior to proposing targets for the broader sectors is imperative. As a result of a failure to properly consider the identification of the sectors and sub-sectors following the passing of the Amendment Act, Lombard and other insurers within the sector have effectively been denied an opportunity to make any meaningful representations on the Draft Sectoral Targets or on the sector which it is proposed to fall.
2.15 Only once a sector has been identified and consulted on, would it be ripe for the Minister to publish draft sectoral targets for that specific sector for public comment. This is explained more fully below.

4. THE DRAFT SECTORAL TARGETS ARE IRRATIONAL, WHEN CONSIDERED AGAINST THE WORKFORCE PROFILES FOR THE SECTOR

Overall, there appears to be a move to reduce female representation within top management, senior management and professionally qualified
occupational levels in the sector, notwithstanding the fact that females are a designated group recognised in terms of the EEA. By way of example, and in relation to the following:

4.1 The comparison of the EEC Report statistics for the sector and the Draft Sectoral Targets is set out below:

Occupational level	Sex	2023 EEC Report: 2022 Workplace Profile of designated groups in the Financial and Insurance Sector	2024 Proposed 5 Year Sectoral Targets (for designated groups)	Comments
Top Management	Male	21,3%	26%	The Draft Sectoral Target is 4,7% higher than the percentage of the workforce profile in top management for the sector
Top Management	Female	28,7%	20%	The Draft Sectoral Targets for top management seeks to reduce females in top management by 8.7%
Senior Management	Male	25,4%	24%	The Draft Sectoral Target seeks to reduce male representation by 1.4% from designated groups.
Senior Management	Female	41,6%	24%	The Draft Sectoral

						Target seeks to reduce female representation by 17.6% when compared against the workforce profile in Senior Management for the sector.	
		Professionally Qualified & Middle Management	Male	31,6%	30%	The Draft Sectoral Target seeks to reduce representation of males from designated groups by 1.6% when compared against the workforce profile for professionally qualified and middle management.	
		Professionally Qualified & Middle Management	Female	50,7%	34%	The Draft Sectoral Target seeks to reduce female representation by 16.7% when compared against the workforce profile for professional qualified and middle	

				management for the sector.	
Skilled Technical	Male	28,8%	47.4%	The Draft Sectoral Target is 18,6% higher than the percentage of males from designated groups according to the workforce profile for the sector for the occupational level Skilled Technical.	6. THERE ARE INTERNAL INCONSISTENCIES IN THE 2024 DRAFT REGULATIONS 6.1 There are inconsistencies in the reading and application of draft regulation 3.4.2 when read with 3.4.4 and 3.4.6. Draft regulation 3.4.2 states: "Designated employers must take their workforce profile, the relevant 5-year sectoral numerical targets and the applicable EAP into account when setting annual numerical targets in their workplace(s) as required by Section 20(2) of the EEA." 6.2 However, draft regulation 3.4.4 states that: "Employers should not set targets for those groups whose representation have already exceeded their EAP in a particular occupational level." 6.3 Draft Regulation 3.4.6 provides that: "Where a designated employer
Skilled Technical	Female	63,9%	40%	The Draft Sectoral Target seeks to reduce female representation by 23.9% when compared against the workforce profile for skilled technical in the sector.	

has exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial / gender group but should set targets towards the EAP."

6.4 Practically, it is difficult to understand how a designated employer can exceed the set numerical target of a particular racial group when the current draft sectoral targets do not set targets for different racial groups, but instead present a globular target for designated groups in general.

6.5 It is not clear how the goal of equitable representation will be met if targets are not set for groups in respect of which the relevant EAP / sectoral targets have been exceeded. On the

		wording of draft regulation 3.4.4 (no internal targets necessary if the targets have been exceeded) and draft regulation 3.4.6 (no "regression" permitted), these regulations may result in the over-representation of a particular race or gender group. 6.6 By way of example, if Indian males are over-represented with reference to the EAP, such overrepresentation must be maintained, and it would not be necessary to set targets for this particular race / gender group. This does not align with the objective in section 15(1) of the EEA to achieve "equitable representation". It may also create absolute barriers to the appointment and/or promotion of under-represented groups.
5.5	Johannesburg Stock Exchange (JSE)	ANNEXURE 36 **3. THE JSE'S SPECIFIC CONCERNS REGARDING THE REVISED REGULATIONS** 3.1 In our previous comments we advocated, *inter alia*, for relief for smaller and more constrained players in the financial sector. We appreciate that our comments may have been considered when the numerical targets for the Financial and Insurance Activities Sector were revised. However, we are of the view that the significant revision downwards of certain targets may have the unintended consequence of retarding transformation of the Financial and Insurance Activities Sector. 3.2 The JSE believes that the implementation of lowered targets would be counterproductive to advancing transformation and fostering inclusivity within our sector. We, therefore, are supportive of more balanced targets, that are progressive and both challenging and achievable, ensuring that they serve as catalysts for meaningful change. Therefore, it is imperative that the proposed Financial and Insurance Activities Sector numerical targets be reconsidered and realigned with the spirit of the national transformation agenda. 3.3 Of particular concern to the JSE are the numerical targets that are set at or below the workforce profile statistics for the sector per the 23rd CEE Annual Report. These numerical targets translate into a step back from the gains made from a transformation perspective and do not provide for the challenge or stretch required to meet the objectives of the Employment Equity Act, as amended. The table set out below indicates the specific numerical targets of concern.

Description	Gender	23rd CEE Annual Report	Draft Regulation	
		Workforce profile	12 May 2023	1 Feb 2024
Senior management	Total	48.1%	57%	48%
Middle management	Total	65.3%	72%	64%
	Female	34.5%	34%	34%
Skilled Technical	Female	53.1%	46.2%	42%

Conclusion
The JSE therefore respectfully encourages the Minister to review the revised regulation and find them more balanced approach that has less negative/ unintended consequences.

5.6	Financial Intermediaries Association (FIA)	ANNEXURE 33 The Financial Intermediaries Association (the FIA) is a trade association that represents over 1600 businesses operating in the intermediated market of financial services (life, non-life, employee benefits, financial planning, health, and discretionary investment management). Our members are all financial services providers (FSPs) who collectively employ more than 45 000 people countrywide. **CONCERNS REGARDING THE DRAFT REGULATIONS** The FIA welcomes the clarity provided in respect of the use of national and provincial targets, and the aggregation of the African, Coloured, and Indian targets into one, however we remain concerned regarding the requirement to consider the Economically Active Population (EAP). While the implementation of a workplace employment equity plan requires various criteria to be considered such as the pool of suitably qualified persons and qualifications etc. the EAP does not specifically take these factors into account and can therefore be a challenging measure against which designated employers must comply Furthermore, in relation to the employment equity plan, we would appeal that specific clarity be provided in respect of the requirement of a 'reasonable period' as referenced in section 4.4(d) of the Regulations. It takes many years to vest a fully qualified and experienced intermediary. In addition to the legislative requirements imposed on intermediaries by the Financial Advisory and Intermediary Services Act, 37 of 2022, for some of our members, their intermediary business model requires them to hire tertiary level commerce students who also need to acquire an insurance diploma qualification. To build a future pipeline of appropriately qualified employees, some members have hired and retained on an annual basis, Bachelor of Commerce (BCom) and Bachelor of Laws (LLB) graduates who require at least 5 to 7 years time-based-experience to be recognised at the skilled junior occupational level. As such, an extended time frame within which to meet the required targets, is proposed. Our employment modelling shows that with the scarcity of the specialised skill set of intermediaries and the way they are remunerated (commission based on sales), the likelihood of achieving the targets within a 5-year time frame may be a challenge based on prior experience. Furthermore, turnover of individuals in the designated groups in the intermediary sector is also high, due to the nature of remuneration, which results in new entrants leaving the sector to pursue more stable and profitable avenues of remuneration. **PENALTIES** Whilst penalties can necessitate changes in operational procedures, sub-sector targets should be considered for intermediaries who are regarded as entrepreneurs in the sector. The onerous nature of the penalties is of particular concern as this may impact on businesses, affecting their operations, financial stability, and reputation. The Department of Employment and Labour ("DoEL") has advised that each designated employer must conduct an analysis of their position and put an annual plan in place to achieve the targets within a 5-year period. Reporting will take place against the employer's

		plan on an annual basis, and where an employer has not met their plan, they need to provide reasonable and justifiable grounds for not meeting their target, which will then be assessed by (labour) inspectors who will consider whether they deem the grounds to be reasonable and justifiable. While we welcome the list of grounds provided, we submit that this remains limited and does not allow for any other grounds which may arise. Regulation 4.5 of the Draft Regulations proposes a list of reasonable grounds ((a)-(g)) that may be invoked by the designated employer "in the compliance analysis of affirmative action in any workplace" to justify non-compliance with sectoral targets set. We note, first, that reasonable grounds for non-compliance are distinct from a compliance analysis under the Act. We submit that a designated employer would only be required to, or in a position to, justify any non-compliance with sectoral targets once a compliance analysis has been completed and a determination of non-compliance has been made. A compliance analysis must consider all the factors listed in Sections 15 and 42(1) of the Act, as amended (including any factors that may subsequently be prescribed in terms of Section 42(1)(e)). These include, among others, compliance with sectoral targets, progress made in eliminating employment barriers adversely affecting people from designated groups, reasonable steps taken to train qualified persons from designated groups, and reasonable steps taken to implement the employment equity plan. Failure to satisfy any one of these factors does not render a designated employer non-compliant. We accordingly propose that the reference to "compliance analysis" be distinguished from the advancement of "reasonable grounds" in the 2024 Draft Regulations, to avoid the confusion that may eventuate as a result of the seeming conflation of these concepts. The list of reasonable grounds that the 2024 Draft Regulations indicate may be advanced as justification for non-compliance with sectoral targets included in an employment equity plan is, necessarily, non-exhaustive. This is in accordance with the broad wording of the Act, which refers at Section 42(4) to "any reasonable ground". We submit that, for purposes of clarity and the avoidance of any doubt on this score, a final factor "(h)" should be included in Draft Regulation 4.5, to include "any other relevant factor". These factors could include, by way of example, efforts by the designated employer to implement alternative employment equity measures or to further the achievement of employment equity. It is proposed, further, that mitigating factors considered in instances of non-compliance be included in a separate sub-regulation, to inform a determination of consequences where a target has not been met. We submit that mitigating factors for non-compliance with sectoral targets should include, at least, demonstration by a designated employer that it has taken steps that will result in the achievement of sectoral targets by itself and others in future. Additionally, clear guidance is required on what would be deemed suitable evidence to adequately substantiate the reasonable and justifiable grounds, to ensure that there are no issues of debate on these requirements in the future.

CONSULTATION PROCESS IN ACCORDANCE WITH THE ACT

As stated in detail in our letter of 9 June 2023, the FIA made multiple attempts to engage with the DoEL prior to the publication of the first draft of the Regulations in 2023. Despite these attempts to engage, meetings were held with the Banking Association of South Africa (BASA), the Association for Savings and Investment South Africa (ASISA) and the South African Insurance Association (SAIA) only, with regards to the proposed Employment Equity targets, excluding the FIA, and ultimately targets (subject to specific requirements) for the financial services sector were decided. By virtue of the fact that the FIA membership employs in excess of 45 000 staff across the country within the financial services sector, FIA engagement with the DoEL prior to the publication of the first draft Regulations was critical to ensure a clear understanding of and alignment with the Proposed Sectoral Numerical Targets to be achieved by intermediaries in the sector.

It is important to note that the consultations required in accordance with the Act could not commence until the Amendment Act was assented to. That only happened on 12 April 2023. In accordance with Section 15A(2) of the Act, the consultation is required to happen before the publication of the targets and should therefore have happened between 12 April 2023 and 12 May 2023. As no consultations happened during this time, we respectfully submit that the targets do not meet the requirements of the Act.
Following the first publication of the Draft Regulations on 12 May 2023, we were provided the opportunity on 29 May 2023 to discuss the Draft Regulations, and the proposed revisions presented before and during that meeting.

We remain concerned that while the current comment process appears to be in accordance with Section 15A(4) of the Act, we again highlight that the FIA was not included in the initial consultation process, nor was the sector as a whole, which is in contravention of Section 15A(2), which requires sector wide consultation in order to inform the draft notice.

Furthermore, sections 28 and 78 of the Financial Sector Regulation Act, No 9 of 2017, places an obligation on all Organs of State to consider the Financial Stability of its actions on financial institutions and to consult the financial sector regulators and the Reserve Bank in relation to the performance of their functions. We believe the impact of the fines on financial institutions falls squarely within the ambit of section 28 and the DoEL therefore failed to meet its requirements under section 78.

SUMMARY RECOMMENDATIONS / PROPOSALS TO ADDRESS THE CONCERNS

The FIA is committed to transformation of the sector, and our sub-sector specifically, but want to ensure that this is managed considering the nuances of our sub-sector, the regulatory and remuneration challenges which are specific to intermediaries and the current South African economic environment. We therefore request consideration in respect of the proposals below:

•A request for a 10-year implementation timeframe.
•That consideration needs to be given to suitably qualified individuals within the EAP, and not the EAP as a whole.
•The need for sub-sector targets for intermediaries.
•Re-assessment of the fines given a changing compliance environment. If this is not possible, the impact of the fines will impact a finding on the reasonableness of the targets.
•Clarification around what would constitute reasonable and justifiable grounds for non-compliance.

		•Guidance on how (labour) inspectors will exercise their powers and the onus of proof that they shall require/expect from designated employers. •The addition of 'any other relevant factor ' as a reasonable ground to the Regulations. •In addition we request the addition of an additional reasonable ground being granted to designated employers who place an emphasis towards increased spend on the development of employees within The skilled and professional occupational levels to further the creation of jobs in the sector. This would also result in improved management of the challenges being experienced in sourcing suitably skilled individuals within the intermediary sector. Intermediaries are the gateway to innovation and entrepreneurship in this sector, and vital to the development of the South African economy and the drive for protection of consumers. We again humbly request the DoEL to consider further engagement with the FIA to negotiate sub-sector targets.

6.	**TRANSPORTATION AND STORAGE**	
6.1	**South African Express Parcel Association (SAEPA)**	1.The Solidarity/ILO reference (Case No: HO2-23) is made more explicit in any future gazette after the public commentary period. 2. that the EAP targets are not male gender based because if the reference to male gender is not replaced by "person" the result will be that the female EAP target will have a perpetual ceiling when the EAP for females is reached. This will limit female advancement and transformation. 3. With reference to the EEA1 Declaration, we propose that the DoEL applies its mind to provide guidelines for the increasing submissions of people who identify differently to what they are biologically. 4. List of sectors - industry would have proposed that the trucking and express parcel logistics as separate subsectors had been engaged in the period when the DoEL had met other sectors for a greater understanding on other subsectors so as to consider the subsector nuances. 5. Industry appreciates any reduction of complexity and so the change from the 2023 level specific target is welcome as the subsector sees this in line with the spirit of the EAP benchmark, however industry regards the removal of the specification of race subgroups within the gender categories as a deviation from the spirit of the constitution and the EAP benchmark. In summary the DoEL needs to be more specific and clearer to avoid misinterpretation or different interpretations. To be clear with regards to 3.1.1: while at face value it may seem an unclear expression, on reflection after going through sec 5 (the table) one is inclined to deduce that this is in response to the CCMA settlement of 2023 on last year's last gazette on EEAA (Solidarity/ILO settlement). It does appear that the DoEL is moving away from being prescriptive while introducing sectoral minimums (acceptable milestone) as per 3.2 below. We contend that the DoEL needs to avoid minimalistic expression that leads to different interpretation or missed messages. We require that the DoEL be specific by having the racial subgroups within the gender designated groups.

		6. The inclusion of the following as a factor for setting targets causes concern: 'The latest 2022 workforce EE profile of each economic sector in terms of Race, Gender & Disability is reported by employers as submitted by designated employers in 2022 to DoEL. Our concern is that it implies that all would need to rely on 2022 reports as a baseline yet many employers report in January 2023 and the industry wonders if all reports informed this. This gazette published 15 days after the DoEL reporting cutoff date raises concern that some reports may not have been submitted/considered at the time. What percentage of employers informed this per sector and what is the percentage of representation of the sector workforce? This item requires clarification. It would be useful if a supporting statement on an assumption one draws on the EEC report would contain the respective 'workforce profile of each economic sector'. 7. This is great recognition that we currently have a parallel universe (of EE and BBBEE) that needs to come together as one national plan in the transformation agenda. Transformation Practitioners may thread the pieces together but often they are not the decision makers who find the EE and BBBEE too different while they are supposed to further one agenda, a national objective and a vision for South Africa. 8. 'Unique sector dynamics (e.g., availability of skills, economic and market forces, ownership etc) raised by sector stakeholders in written submissions in consultation...' Industry is happy with this consideration and appreciates it, however, as with our response to item 3.1.2 of this gazette, we believe the question to be asked is: what percentage of employers were consulted? Broad and substantive consultation can only inform a practical aligned effort. 9. The reference of the Compliance Certificate (EEA15) to the CCMA awards, is still a concern as the case load can put certain employers at a disadvantage as progress on cases would depend on a lot of factors. Aligns with item e) of CCMA settlement Compliance Certificate.
6.2	**FLY SAFAIR**	**While this submission seeks to provide information that may aid the effective implementation of the EEA's transformation objectives, we note that the 30-day time period is inadequate for industry to provide cogent and useful submissions and comments.**

		The proposed targets have ignored or failed to take into account the following: Pool of suitably qualified professionals within designated groups; Time constraints in training personnel; Economic and financial factors faced by the industry; FlySafair Experience and Labour turnover. Since the effective date of the EEAA (the enabling legislation for the determination of sectoral numerical targets) is yet to be proclaimed, we submit that anything done in terms of these amendments prior to such effective date, including the publication of the draft regulations, is technically premature and *ultra vires*. We note that proposed sectoral targets set a perceived quota of 48% black in professionally qualified employees (being the category where pilots would fall). As such, the proposed transformation of an increase of approximately 34% (even if over a period of 5 years) is practically unattainable.
6.3	**SABOA**	ANNEXURE 53 We believe that the sector skill plan, skill shortages and scarce skills were not considered with the introduction of Sector Targets. The bus industry prepares annual submissions to their relevant Sector Education and Training Authority, such as the Transport Sector Education and Training Authority (TETA) which should be taken into account to give insight to the challenges within the sector on designated levels. Unfortunately, formal education does not encourage or attract the development of individuals to the bus industry hence the pool of suitably qualified individuals in the prescribed Occupational Levels is unrealistic. The rate of turnover and natural attrition in certain occupational levels within companies is not high. The targets set on occupational levels have not considered the churn in the transport industry in prescribed occupational levels. The statistics are readily available but it would appear that this was not considered. The Sectoral Numerical Targets are set for the next five years, and will naturally be succeeded by further targets. And where these targets (given a period of five years) are most likely not achieved, the succession thereof might present a challenge.

		Please clarify whether national or provincial demographics will be the targets It seems that the EAP is still in effect although provincial EAP targets can be applied. Please clarify that the EAP still applies to Top Management, where it is not practically possible to achieve due to limited positions available. In terms of Par 3.4.6, one cannot regress if a specific EAP is exceeded. Please clarify what is meant by this. Please also advise if there is an expectation to increase a certain group, but not decrease another (except white), which means that one can only progress if a white person leaves or if a job is created. We believe that the percentage for disabled people is quite high for the bus sector considering the inherent characteristics of the sector in terms of technical and maintenance practicalities in bus operations, driving a bus etc. based on the assumption that EAP does not apply.
6.4	**ROAD FREIGHT ASSOCIATION**	ANNEXURE 52 3.1.1: Industry appreciates any reduction of complexity and so the change from the 2023 level specific target is welcome as the subsector sees this in line with the spirit of the EAP benchmark, however industry regards the removal of the specification of race subgroups within the gender categories as a deviation from the spirit of the constitution and the EAP benchmark.

		While we acknowledge that 3.1.1 as in other items within this gazette – the DoEL states "in relation to the national and regional/provincial demographics" (EAP) we see this as "small print" that has a high chance of being missed by stakeholders whose business is not to legislate but to deliver services and supply product to market. In summary: the DoEL needs to be more specific and clearer to avoid misinterpretation or different interpretations. To be clear with regards to 3.1.1: while at face value it may seem an unclear expression, on reflection after going through sec 5 (the table) one is inclined to deduce that this is in response to the CCMA settlement of 2023 on last year's last gazette on EEAA (Solidarity / ILO settlement). 3.1.2: The inclusion of the following as a factor for setting targets causes concern: "The latest 2022 workforce EE profile of each economic sector in terms of Race, Gender & Disability is reported by employers as submitted by designated employers in 2022 to DoEL". Our concern is that it implies that all would need to rely on 2022 reports as a baseline yet many employers report in January 2023 and the industry wonders if all reports informed this. 3.4.1: This item can be interpreted to mean that Schedule 4 of current EEA Report is not a factor in the future in definition of designated employer. We would wish that this was more explicit and not left to interpretation. 3.4.4: The DoEL needs to be clear here. Different interpretations of this could defeat the intent. Industry believes in the continued use of the industry specific EAP as a reasonable benchmark for the national aspiration for equitable representation of suitably qualified South Africans in the interest of productive companies and industry and a competitive economy; and so we view item 3.4.4 as consistent with the objectives of transformation.	
7.	**INFORMATION AND COMMUNICATION**		

7.1	**Altron Health tech**	For Top, Professionally skilled and Technically skilled employees it is factually not possible at all to meet the sectoral targets, and for Senior level, highly improbable.	

Please also consider:

1. There is a **limited pool of skilled individuals** with the required qualifications and experience in South Africa to meet the targets that have been set for the Information and Communications sector at the Senior and Professional occupational levels.
    a. There is also insufficient time to train and develop more junior employees as most Senior and Professional positions require more than 5 years of practical experience.
    b. Further, the undue pressure placed on businesses to meet these sectoral targets, will make the market for suitably skilled Black, and especially African candidates impossibly competitive, unaffordable, and unsustainable. Suitably skilled Black, and especially African candidates are already scarce and pressure to meet unrealistic deadlines will exacerbate this problem, not solving the purpose of the legislation, which is to ensure equitable representation.
    c. Business cannot be expected to train and produce the suitable skills and abilities, within 5 years and Business is reliant on what the South African education system produces, which has been over decades been unable to meet the business needs for suitably Black and African skilled candidates – even more so in the STEM (Science, technology, engineering, and mathematics) disciplines, essential for the Information and Communication sector.

2. Our business, in the Information and Communications sector, operates in a **highly competitive** (in the recruitment market, but also in the industry to deliver to customers) and niche market. Achieving the proposed sectoral targets across all occupational levels, especially the more senior levels, whilst ensuring the necessary skills and qualifications are in place to meet customer demands and maintaining balanced pay scales will not be achievable.
    a. Delays in recruitment, essential to even attempt to meet these targets, will negatively influence the business sustainability. Delays will further impact on existing employees and their mental health, due to being overworked and stress, as in indirect influence of the governments' targets.
    b. Any attempt to achieve the proposed targets will result in training costs that are not within budget or within reason to maintain a profitable business.
    c. Any threat to the business, will impact the economy, but further it will impact our customers, which include government, making the whole effort unsustainable in an already stressed economy.

		3. Sub-sector targets are lacking: our company operates within a specialized sub-sector and is subject to the general targets set by the Minister for the Information and Communications sector. This poses challenges for our operations, as we require specialized skill sets that may have limited availability within the talent pool or extended training duration aligned with the set timeframes for achieving these targets. In other words, please consider where the sector can find: • 82 new (after 100% of current Senior management are already promoted) African, Top management candidates to be appointed into Top management level. • 759 new (after 100% of current Junior management are already promoted) African female, Middle management, or professionally skilled candidates. • 73 945 new (after 100% of current semi-skilled employees are already promoted) African, Junior management, or technically skilled candidates. o – this cannot be done in 5 years. **t is therefore quantifiably shown that the targets must be at least halved for the next 5 years. Should the education sector then produce the require skill at high school and graduate level, to develop further the purpose targets can then be implemented in the following ten years.**
7.2	**GLUCODE**	As Glucode, we are expressing our concerns regarding the new draft regulations released on February 1, 2024, which pertain to the sectoral numerical targets outlined in section 15A of the Employment Equity Act, 1998 (EEA). While we understand and support the objectives behind these changes, including the simplification of targets by eliminating separate national and provincial targets for each occupational level, we find certain aspects of these regulations challenging, particularly for small and medium-sized enterprises (SMEs) like ours. The primary concern lies in the scarcity of skills within the South African market. The regulations now require a single target per sector for each occupational level. This approach does not take into consideration the unique challenges faced by companies operating in sectors with a significant shortage of skilled professionals. In our experience, the talent shortage, especially at managerial and senior levels, severely limits our ability to meet these new requirements. The majority of the skilled workforce has the option to emigrate, leaving a vacuum that is increasingly difficult to fill. For a SME like Glucode, the lack of flexibility in choosing talent due to these skill shortages poses a substantial threat to our operational efficiency and growth potential. The stringent application of these targets without accommodating the realities of skill availability could inadvertently hamper our efforts to contribute meaningfully to the economy and employment equity. We respectfully request that the Department consider revisions to the February 2024 Regulations that would provide additional flexibility or alternative mechanisms for companies struggling with skill shortages. It would be beneficial to have a more nuanced approach that considers the specific challenges faced by different sectors and sizes of businesses, particularly SMEs, in meeting these targets. We are fully committed to the principles of employment

		equity and understand the importance of these targets in achieving a more inclusive and diverse workforce. However, we believe that a more adaptable framework that recognises the challenges of skill scarcity will enable companies like ours to more effectively contribute to these goals. Thank you for considering our feedback. We look forward to the possibility of engaging further on this matter to find feasible solutions that support both the objectives of the Employment Equity Act and sustainability of businesses across all sectors.
7.3	**ALTRON SECURITY, NEXUS AND TMT)**	Altron is fully committed to transformation and have made huge improvements in both employment and skills development in recent years. However, please consider: For a company in the Information and Communication sector employing very specialised, skilled staff, the sectoral targets set for most occupational levels are not achievable within 5 years and will be detrimental to our business and ultimately the economy. For Top, Professionally-skilled and Technically-skilled employees, it is factually not possible to meet the sectoral targets at all. And, for the Senior level it is highly improbable. A factual exercise has been taken to undertaken to determine how the current proposed sectoral targets can be achieved: • Using the sector data from the CEE report 2022/2023 (S3.1.2)1, to inform the number of available skills per occupational level – Annexure A. • Despite S4.32 placing no absolute barrier on employment practices, let's assume for the purpose of this exercise, that there will be no movement for Coloured, Indian and White employees for the next five years, i.e. no promotions. • Since this exercise is not company specific, but rather for the sector, any labour turnover i.e. exits from a company in the sector will most likely to move to another company within the sector. Therefore, the numbers across the sector would remain the same. • Further, to also give effect to S4.73, stating there may be no termination of any kind in order to affect affirmative action. We can assume that the numbers for Coloured, Indian and White employees will remain unchanged, as a decrease in these numbers implies that the individuals were terminated and then failed to join any other organisation in the sector. This would be unconstitutional and would also imply their unemployment. • These calculations do not include current unemployed individuals from this sector, as it is reasonably assumed that there are not many unemployed individuals at Top and Senior management levels. • The calculation also does not consider actuals versus targets for Coloured, Indian and White employees, as Coloured employees within the sector are mostly aligned with the 2 targets. However, Indian and White employees are mostly overrepresented at Top and Senior Levels.

		• For Top management African females, the industry will need 1349 African females in Top management to meet the target of 19.2%. Even if we promote 100% of current Senior Management (1002) (which is not practical, or possible4,) the industry will still need 48 African female employees to promote into Top management which is simply not possible as they do not currently exist. • For Top management African males, meeting the target of 24.3% (1679), we will need to promote 100% of the current African male Senior management, plus still need 34 individuals who also do not exist currently. • For senior management, meeting the target of 21.8%, would require 4402 African females in Senior management. This means 86% of the current Middle management/professionally skilled level will need to be promoted, which is highly improbable. • The same for African males. 88% of the current Middle management/professionally skilled level will have to be promoted to meet the target of 30.4% for Senior management, which is highly improbable. • To meet the target of 26.1%, African females in Middle management/Professionally skilled, even if 100% of the current Junior management/ Technically skilled employees in the industry are promoted, the industry still lacks 759 African females that do not exist to meet the target. • For African males, in Middle management/Professionally skilled, 97% need to be promoted to meet target. • At Junior management/Technically skilled level, the industry will need 57143 African female employees to meet the target of 26.1%. There are only 32811, leaving a shortfall of 24332 African females that do not exist. • At Junior management/Technically skilled level, for African males, 73210 is needed in the level to meet the target of 41.7%. There are only 23597, thus creating a shortfall of 49613 African males that do not exist. In a scenario where the industry's current Coloured, Indian, and White employees stay unchanged (not realistic, but for the purposes of considering a best-case scenario) and each and every current African employee is promoted into the next level within 5 years, (again unlikely, but assuming for the purposes of this scenario) the industry will have to create 72 324 new African employees i.e. 14464 per year,1205 per month, every month for 60 months for them to be promoted into the Technically-skilled level and higher. **The proposal (see annexure C for detailed calculations):** A more realistic scenario is where 40% of all Africans currently in the sector are promoted within the next 5 years and to avoid any absolute barriers, 5% of the other demographics are promoted; and the industry creates 26 000 new African entrants (20% increase of the current industry Africans), then sectoral targets, although tough, should be achievable. See detailed calculation in Annexure C.

		Please also consider: 1. That there is a limited pool of skilled individuals with the required qualifications and experience in South Africa to meet the targets that have been set for the Information and Communications sector at the Senior and Professional occupational levels. a. There is also insufficient time to train and develop more junior employees, as most Senior and Professional positions require more than 5 years of practical experience. b. Further, the undue pressure placed on businesses to meet these sectoral targets will make the market for suitably skilled Black and especially African candidates, impossibly competitive, unaffordable, and unsustainable. Suitably skilled Black (especially African) candidates are already scarce and pressure to meet unrealistic deadlines will exacerbate this problem. This will not solve the purpose of the legislation, which is to ensure equitable representation. c. Business cannot be expected to train and produce the suitable skills and abilities within 5 years and Business is reliant on what the South African education system produces. This has, over decades, been unable to meet the business needs for suitably skilled Black and African candidates, even more so in the STEM (Science, technology, engineering, and mathematics) disciplines which are essential to the Information and Communication sector. 2. Our business, in the Information and Communications sector, operates in a highly competitive (in the recruitment market, but also in the industry to deliver to customers) and niche market. Achieving the proposed sectoral targets across all occupational levels, especially the more senior levels, whilst ensuring the necessary skills and qualifications are in place to meet customer demands and maintaining balanced pay scales will not be achievable. a. Delays in recruitment, essential to even attempt to meet these targets, will negatively influence the business sustainability. Delays will further impact on existing employees and their mental health, due to being overworked as an indirect influence of the governments' targets. b. Any attempt to achieve the proposed targets will result in training costs that are not within budget or within reason to maintain a profitable business. c. Any threat to the business will impact the economy. Further it will impact our customers, which include government, making the whole effort unsustainable in an

		already stressed economy. 3. Sub-sector targets are lacking: our company operates within a specialized sub-sector and is subject to the general targets set by the Minister for the Information and Communications sector. This poses challenges for our operations as we require specialized skill sets that may have limited availability within the talent pool or extended training duration aligned with the set timeframes for achieving these targets. In other words, please consider where the sector can find: • 82 new African, Top management candidates to be appointed into Top management level, after 100% of current Senior management are already promoted. • 759 new African female, Middle management, or professionally skilled candidates, after 100% of current Junior management are already promoted. • 73 945 new African, Junior management, or technically skilled candidates, after 100% of current semi-skilled employees are already promoted.
7.4	**MEDIA 24**	ANNEXURE 44 Re Paragraph 3: 5-year Sectoral Numerical Targets for All Sectors. 1. The content of paragraph 3 of the Regulation suggests a lack of clarity and certainty in respect monitoring of and compliance to the sectoral targets in paragraph 5 of the Regulation (various tables pages 8-12) and the objective of achieving "equitable representation' stated in the Employment Equity Act ("EEA") The Regulation suggested that a designated employer may comply with minimum requirements of the regulation but not necessarily with the requirements of section 15, 20 and 42 of the EEA in so far it relates to "equitable representation" as an objective of the EEA. If this is correct, compliance with these two different norms should be addressed in an explanatory note as it may cause confusion and misunderstanding as illustrated below. a. Paragraph 3.4.3 suggest that employers will be measured against annual targets set towards meeting the relevant 5-year sectoral numerical targets. This seems to suggest that employers will not be measured against their targets set in respect of achieving "equitable" representation. If this notion is correct, and the employer complies with the minimum 5 year Sectoral Numerical Targets, what are they being measured against for the remainder of the 5 years? This issue must be clarified as it is confusing. See further below. b. Paragraph 3.4.6 seems to address the scenario on 1a above, however, states that where employers exceeded that set numerical targets, they need to set targets towards the EAP.

		I. This requirement is legally flawed, as setting targets only based on the EAP, as the wording suggests, amounts to a breach of the EEA and the Regulation and is probably unconstitutional. It should rather read that employers should set targets towards reaching "equitable representation" which as per the EEA, amounts to taking several relevant factors into account, one of which should be the EAP. 2. Do employers still have to set targets for the various sub-categories of the designated groups (AM, AF,CM.CF, IM, IF) in their employment equity plans? Paragraph 3.2, 3.4.2 and 3.4.5 seem to suggest that this is the case. Confirmation is requested. a. If this is confirmed, should such targets in the first instance address the 5-year numerical sectoral targets but at the same time be set towards achieving equitable representation as an overall objective? Confirmation is required as this is not clear. 3. Does the annual reporting in EEA2 in respect of targets change in any manner for example, will compliance with the minimum sectoral targets be assessed, or would employer targets be assessed as per the overall targets set in its EE plan and in respect of the various designated groups with the view of achieving equitable representation? Clarity is required. a. Furthermore, if the sectoral targets are achieved within the 5-year period, does the employer still have to set targets for the remainder of the 5 years with the view of achieving equitable representation? Clarity is required. 4. The use of "all population groups" in paragraph 3.4.5 and 3.4.7 should be replaced by "designated groups" to be consistent and prevent confusion and to ensure alignment with the EEA. 5. Paragraph 3.4.8 No definition is provided for "conducting their business/operations nationally" and no definition is provided for "conducting their business/operation provincially." These distinctions and the choice of a specific EAP are fundamental to the assessment of compliance with the Regulation and the EEA The content creates a contradiction of discrepancy if the forced choice between national or provincial EAP is to be used in not only setting sectoral targets but also in setting targets to achieve "equitable representation." This forced choice, as it relates to the implementation of the EEA, by implication changes the definition of "equitable representation" in the EEA, the empowering legislation, which would be unenforceable as the use of both EAP's in setting targets are generally viewed as reasonable and rational criteria which may be used to achieve equitable representation. Forcing an employer to choose between the two EAP's were both EAP's are rational and reasonable factors in achieving "equitable representation" and which will impact on an employer achieving "equitable representation" as per the EEA, seems to be irrational, arbitrary, unjustifiable, and likely to be unconstitutional. This approach must be reconsidered. Furthermore, the above forced choice, with no rational basis, is not accompanied with any definition of what may constitutes "business/operations nationally or in a particular province". This will result in arbitrary interpretation and numerous preventable legal challenges. The little guidance given in the wording of paragraph 3.3.8, regarding the choice, namely that the choice must be based on "their geographical presence" within provinces is not helpful, as on the one hand, geographical presences may refer to several scenarios which may not be rationally linked to achieving equitable representation in all levels of employment. Mere

presence in a province does not imply a business has its operations in a specific province and having most employees in a specific province does not amount to having its business in the same province as opposed to nationality.

In any event, if the "presence" guidelines is used, it may undermine the legislative objectives of "equitable representation" and therefore the objective of the EEA as this guideline may not be rationally linked to achieving equitable representation. The wording as it is, will results in high volumes of preventable litigation if not properly clarified and defined and will cause further delays to the implementation of Employment Equity.

6. As we highlighted above, there are several areas in the Regulation where the content and wording are unclear and/or ambiguous resulting in uncertainty. We suggest that these are corrected, and the final Regulation be accompanied with detailed explanatory notes in order to guide implementation and prevent or minimise legal challenges.

7.5 **ALTRON FINTECH**

ANNEXURE 38

Altron is fully committed to transformation and has made significant progress to both employment equity and skills development in recent years. That said, please consider that for a company in the Information and Communication Technology (ICT) sector employing very specialist skilled staff, the sectoral targets set for most occupational levels are not achievable within 5 years and this will consequently be detrimental to the ICT sector and ultimately the economy.
For the Top Management, Professionally Qualified and Skilled Technical occupational levels the facts show that it is not possible to meet the sectoral targets, and for Senior Management occupational level, highly improbable.

The proposal:

Target '29	19,2%	2,3%	0,5%		3,5%	24,3%	2,7%	1,0%		4,5			
TOP	**Female**					**Male**							
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total
Top (CEE report 2022/2023, ICT)	299	125	216		586	379	160	394		2250	35	132	**4576**
Current %	6,5%	2,7%	4,7%		12,8%	8,3%	3,5%	8,6%		49,2%	0,8%	2,9%	**100,0%**

DOEL Proposed Sector Targets	Top Man Females			22%		Top Man Males			28%				50%
Reasonable Target for Industry	11%	2%	4%	17%		16%	6%	7%	29%		1%	2%	100 %
Top (CEE report 2023/2024, ICT)	7.1%	3.0%	4.9%	15%		7.8%	3.6%	8.7%	20.1 %				
Target '29	21,8%	2,6%	0,6% (25%)		3,5%	30,4%	3,4% (35%)	1,2%		4,5%			
Senior	Female					Male							
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total
Senior (CEE report 2022/2023, ICT)	1002	425	567		2246	1266	559	1095		4230	144	479	12013
Current %	8,3%	3,5%	4,7%		18,7%	10,5%	4,7%	9,1%		35,2%	1,2%	10,5%	100,0%
DOEL Proposed Sector Targets	Sen Man Females			25,0%		Sen Man Males			38,0%				
Reasonable Target for Industry	15%	3%	3%	21%		23%	8%	7%	38%		1%	3%	100 %
Senior (CEE report 2023/2024, ICT)	8.9%	3.7%	4.8%	17.4%		10.9%	4.8%	9.0%	24.7%				
Target '29	26,1%	3,1%	0,7% (29.9 %)		3,5%	34,7%	3,9%	1,4% (40%)		4,5%			

Middle / Prof. Skilled	Female					Male							
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total
Prof (CEE report 2022/2023, ICT)	5142	1783	1895		6333	7027	2639	3436		12495	458	1830	**43038**
Current %	11,9%	4,1%	4,4%		14,7%	16,3%	6,1%	8,0%		29,0%	1,1%	4,3%	**100,0%**
DOEL Proposed Sector Targets	**Prof Qualified Females**			30,0%		**Prof Qualified Males**			40,0%				
Reasonable Target for Industry	21%	3%	3%	27%		28%	7%	5%	40%		1%	3%	100 %
Prof (CEE report 2023/2024, ICT)	12.4%	4.3%	4.3%	21%		17.0%	6.2%	8.2%	31.4 %				
Target '29	**32,2%**	**3,9%**	**0,9% (37%)**		**3,5%**	**41,7%**	**4,7%**	**1,6% (48%)**		**4,5%**			
Junior / Tech. Skilled	**Female**					**Male**							
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total
Skilled (CEE report 2022/2023, ICT)	19143	5173	3099		9021	23210	7153	4883		14459	591	1826	**88558**

Current %	21,6%		,5%		10,2%	28,2%	8,1%	5,5%			0,7%	2,1%	100,0%
DOEL Proposed Sector Targets	Skilled Tec Femal es			37,0%		Skille d Tec Males			40,0%				
Reasonable Target for Industry	31%	5%	3%	39%		29%	6%	4%	39%		1%	2%	100 %
Skilled (CEE report 2023/2024, ICT)	21.2%	6.1%	3.7%	31%		26.6%	8.3%	5.7%	40.6%				

7.6 NETSTAR

ANNEXURE 45

Netstar is fully committed to Transformation and have made huge improvements in both employment and skills development in recent years, but please consider:
For a company in the Information and Communication sector employing very specialist skilled staff, the sectoral target set for most occupational levels are not achievable, within 5 years and will be detrimental to the business and ultimately the economy.

For Top, Professionally skilled and Technically skilled employees it is factually not possible at all to meet the sectoral targets, and for Senior level, highly improbable.

The Proposal:

Target '29	19,2%	2,3%	0,5%		3,5%	24,3%	2,7%	1,0%		4,5			
TOP	Femal e					Male							
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total
Top (CEE report 2022/2023, ICT)	299	125	216		586	379	160	394		2250	35	132	4576
Current %	6,5%	2,7%	4,7%		12,8%	8,3%	3,5%	8,6%		49,2%	0,8%	2,9%	100,0%

DOEL Proposed Sector Targets	Top Man Females			22%		Top Man Males			28%				50%
Reasonable Target for Industry	11%	2%	4%	17%		16%	6%	7%	29%		1%	2%	100 %
Top (CEE report 2023/2024, ICT)	7.1%	3.0%	4.9%	15%		7.8%	3.6%	8.7%	20.1 %				
Target '29	21,8%	2,6%	0,6% (25%)		3,5%	30,4%	3,4% (35%)	1,2%		4,5%			
Senior	Female					Male							
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total
Senior (CEE report 2022/2023, ICT)	1002	425	567		2246	1266	559	1095		4230	144	479	12013
Current %	8,3%	3,5%	4,7%		18,7%	10,5%	4,7%	9,1%		35,2%	1,2%	10,5%	100,0%
DOEL Proposed Sector Targets	Sen Man Females			25,0%		Sen Man Males			35,0%				
Reasonable Target for Industry	15%	3%	3%	21%		23%	8%	7%	38%		1%	3%	100 %
Senior (CEE report 2023/2024, ICT)	8.9%	3.7%	4.8%	17.4%		10.9%	4.8%	9.0%	24.7%				
Target '29	26,1%	3,1%	0,7% (29.9 %)		3,5%	34,7%	3,9%	1,4% (40%)		4,5%			

Middle / Prof. Skilled	**Female**					**Male**								
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total	
Prof (CEE report 2022/2023, ICT)	5142	1783	1895		6333	7027	2639	3436		12495	458	1830	**43038**	
Current %	11,9%	4,1%	4,4%		14,7%	16,3%	6,1%	8,0%		29,0%	1,1%	4,3%	**100,0%**	
DOEL Proposed Sector Targets	**Prof Qualified Females**			35,0%		**Prof Qualified Males**			40,0%					
Reasonable Target for Industry	**21%**	**3%**	**3%**	27%		**28%**	**7%**	**5%**	40%		**1%**	**3%**	100 %	
Prof (CEE report 2023/2024, ICT)	12.4%	4.3%	4.3%	21%		17.0%	6.2%	8.2%	31.4 %					
Target '29	**32,2%**	**3,9%**	**0,9%** (37%)		**3,5%**	**41,7%**	**4,7%**	**1,6%** (48%)		**4,5%**				
Junior / Tech. Skilled	**Female**					**Male**								
	A	C	I	Total	W	A	C	I	Total	W	FNF	FNM	Total	
Skilled (CEE report 2022/2023, ICT)	19143	5173	3099		9021	23210	7153	4883		14459	591	1826	**88558**	

		Current %	21,6%	5,8%	3,5%		10,2%	26,2%	8,1%	5,5%		16,3%	0,7%	2,1%	**100, 0%**
		DOEL Proposed Sector Targets	**Skilled Tec Femal es**			**37,0%**		**Skille d Tec Males**			**48,0%**				
		Reasonable Target for industry	**31%**	**5%**	**3%**	39%		**29%**	**6%**	**4%**	39%		**1%**	**2%**	100 %
		Skilled (CEE report 2023/2024, ICT)	21.2%	6.1%	3.7%	31%		26.6%	8.3%	5.7%	40.6%				
8.	**WATER SUPPLY, SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES**														
9.	**ELECTRICITY, GAS STEAM AND AIR CONDITIONING SUPPLY**														
10.	**HUMAN HEALTH AND SOCIAL WORK ACTIVITIES**														

10.1	**BADISA**	1. Badisa is a f[illegible]ased social welfare organisation tha[illegible]ovides professional social services to people in need. The organisation started as the social services arm of the Dutch Reformed Church (Western Cape) and the Uniting Reformed Church in Southern Africa (Cape) and has grown to provide these services in partnership with stakeholders such as the local and provincial government, the corporate sector, and other non-profit organisations. The organisation provides social services to ALL in need, irrespective of their age, gender, race, or religion. Badisa is a registered non-profit organisation (NPO 011-891) and a public benefit organisation (PBO 930 006 348) and is committed to social development through community-based programmes in the Western and Northern Cape. Social work programmes 36; Rehabilitation centers for substance dependence 2; Pregnancy and adoption 1; Home for older persons 45 Service centers and assisted living for older persons 23; Centres for persons with disabilities 6; Child and youth care centers 5; Day-care centers 1 ; Aftercare centers 6. The total number of Beneficiaries reached by the services in 2022 = 401 316 with a Black Beneficiary base of 77,7%

		Relevant considerations in relation to the proposed employment equity targets with regard to four skill levels (top management; senior management; professional; skilled) • Top Management: At the top of a NGO is the Governing Board (Board of Directors) including the executive manager. Badisa's board members work as volunteers in an unpaid capacity. Finding dedicated, talented, skilled, and willing people to volunteer is a challenge that every governing board face. • Senior Management: Badisa has a flat structure and numbers at this level are relatively low, with low staff turnover at this level. This will likely make achieving the fairly aggressive employment equity targets proposed by the DOL at this level challenging within the proposed 5-year reference period. • Professional and skilled: The major problem with the current proposed regulations is the gender targets for Welfare (& Health) Sector. Social workers Childcare workers and Nursing. It is a female-dominant occupational group Even the current student profile at the learning institutions is overwhelming female. The current targets for this level are not viable or realistic. 4. PROPOSAL Against the backdrop of the above, we strongly recommend the urgent convening of an expert group representing the Welfare Sector. This group must include representatives of NGOs, as well as DSD and DoEL. Amongst other things, this group must calculate the cost of implementing the

proposed targets a[illegible]an how this will be phased in to mitigate challenges in meeting any proposed targets.

Negotiate and consult separately with the Social Welfare NGO sector on target specifics for this sub-sector to be included in the regulations.

SECTORS	SUB-SECTORS (DIVISIONS)
HUMAN HEALTH AND SOCIAL WORK ACTIVITIES	Human health activities
	Residential care activities
Social Welfare Sector	~~Social work activities without accommodation~~
	Human health activities

10.2	**ABRAHAM KRIEL BAMBANANI NPCA**	We as welfare sector cannot appoint the numbers of males required in the sector targets, unilaterally prescribed by the DoEL, as there is simply not sufficient interest by males in the roles social workers, child and youth care workers, early childhood development teachers, nurses, and the like. A previous response by the DoEL, i.e. that the industry should negotiate with universities to produce more males in these roles, is not helpful at all, as universities also do not have control over the potential interest amongst and enrollments of potential students to training in the above roles. We submit that the indiscriminate appointment of male child and youth care workers would not be in the best interest of the traumatized children placed in our care. We have had experiences of several male appointees in these roles that leads to inappropriate relationships between male child and youth care workers and traumatized girls. We would furthermore like to point out that individuals, male or female, who enter the profession of child and youth care workers, early childhood development, social work, etc. with ulterior motives, do not function well or in the best interest of the beneficiaries they serve. These roles require people with a mindset primarily aligned with the needs of the beneficiaries they will be serving. We acknowledge that there are indeed limited numbers of male child and youth care workers available. These individuals are appointed selectively and appropriately, as far as possible in the best interest of the children in care of child and youth care centres. However, our contention is that the indiscriminate appointment of males, as implied and indeed required by the unrealistic targets set by the DoEL, will lead to abuse and secondary traumatization of children already traumatized. Needless to say, this will be in contravention of the Children's Act of 2005. The Welfare sector is hereby appealing and proposing that the Department of Employment and Labour negotiates and consult with the sector on target specifics for the social welfare sector, to be included in the regulations as well as accommodate our environment which is predominantly female social workers, child and youth care workers and community development services. We are appealing to the Department to consider these submissions and take them on board in the interest of an orderly and implementable application of our country's EE policies. We look forward to further interactions with the DoEL on this matter.
10.3	**Freedom of Religion SA(FORSA)**	ABOUT FOR SA AND ITS INTEREST IN THE REGULATIONS: 3. Freedom of Religion SA NPC (2014/099286/08) ("FOR SA") is a legal advocacy organisation mandated to protect and promote the right to religious freedom and related rights of all South Africans, regardless of their specific religious or ideological beliefs. FOR SA is, therefore, neutral Page 2 of 5 and non-partisan in terms of any

		interpretation of doctrine, faith or belief to the extent that it complies with the rule of law. 4. FOR SA currently has an endorsement base of religious leaders representing millions of people in South Africa. Its constituency spans various faith groups, denominations and churches. 5. FOR SA has also appeared in various court cases that may have an (adverse) impact on religious freedom and related rights, either as an amicus curiae or as a principal party. 6. FOR SA's interest in the Regulations is limited only to the Regulations' failure to – 6.1. Define the sectoral components – specifically the failure to define who will be seen as performing social services; and 6.2. Expressly exclude religious organisations from its ambit. 7. These failures may unintentionally yet detrimentally affect religious organisations. This will limit various constitutional rights1 as well as infringe on the doctrine of entanglement. **SUBMISSIONS:** 8. The Regulations fail to either – 8.1. Specify who falls within the Human Health and Social Work Activities sector ("the social work sector"), 8.2. Expressly exclude religious organisations from the Regulations' ambit. 9. FOR SA's concern is that, as a result of the failure to define the social work sector and/or alternatively, expressly exclude religious organisations from its ambit, religious organisations may be unintentionally yet detrimentally impacted by the Regulations. This will inadvertently yet unjustifiably limit the following constitutional rights: 9.1. Section 15 – the right to freedom of conscience, religion, thought, belief and opinion ("religious freedom"), 9.2. Section 18 – the right to freedom of association, and 9.3. Section 31 10. The above rights, read together, result in the well-recognised autonomy of religious organisations to determine their own doctrine and beliefs, and to regulate their own internal affairs, free from interference by the State ("the doctrine of entanglement"). 11. The Constitution, therefore, guarantees religious institutions a certain degree of institutional autonomy, which is vital to a conscience-honouring society. The doctrine of entanglement means that religious institutions have the right to decide "internal matters" (matters of doctrine and governance of the organisation), internally. See, for example, Supreme Court of Appeal's following statement in the case of De Lange v The Presiding Bishop of the Methodist Church of Southern Africa: "It is so that our Constitution protects an individual's rights to practise his or her religion as well as the rights of members of a particular religion to practise that religion in association with others and in conformity with the dictates, precepts, ethical standards and moral discipline which that faith exacts. Protecting the autonomy of religious associations is considered a central aspect of protecting religious rights. Indeed such protection has been described as 'vital to a conscience-honouring social order'. As the Constitutional Court held in Minister of Home Affairs v Fourie (Doctors for Life International & others, amici curiae); Lesbian and Gay Equality Project v Minister of Home Affairs [2005] ZACC 19; 2006 (1) SA 524 (CC) para 94: ' In the open and democratic society contemplated by the Constitution there must be mutually respectful co-existence

		between the secular and the sacred. The function of the Court is to recognise the sphere which each inhabits, not to force the one into the sphere of the other.'" (Own emphasis.) 12. A defining characteristic of a religious organisation is that they restrict membership to those who adhere to their beliefs. Religious organisations typically employ staff from amongst their members and in accordance with the prescripts of their particular religious beliefs and doctrines. 13. The Regulations, as a result of failing to either define the social work sector in such a way that it would not include religious organisations and/or (alternatively) to expressly exclude religious organisations from being impacted by the Regulations, will give broad and intrusive powers to the State to prescribe to religious organisations who they should employ. 14. Should religious organisations fall within the social work sector, this will force them to hire staff who are not members of the organisation and who do not necessarily adhere to their religious doctrines or beliefs to fill vacancies. This will affect their organisational autonomy and meddle with their doctrine. This is a significant restriction of sections 15 and 31 of the Constitution. It is also a breach of the well-accepted doctrine of entanglement. 15. From a religious freedom point of view, if the Regulations are passed in their current form, the State will have an open door to tell religious organisations how and whom to employ and therefore, how to run their internal affairs, and thus what and how to believe. This amounts to State regulation of religion, which will result in the violation of various rights and freedoms guaranteed by the Constitution, and also undercutting the well-established doctrine of entanglement in our law. 16. In addition, religious organisations, for the most part in this country, are run on a shoestring budget, meaning that most cannot pay market-related and/or competitive salaries to lure employees. The result is that not many people apply to work for (e.g.) churches. Those who do typically accept that they will not be able to be paid market-related salaries. Thus, when looking for potential candidates to fill a vacancy, the pool of candidates from which a religious organisation can choose an employee is often not representative of either the national or provincial economically active population. 17. As a result, failure to exclude religious organisations from the ambit of the Regulations, will have a detrimental impact on the operations (including the social good done by religious organisations, such as feeding schemes, social services, etc.) of the many religious organisations run on a shoestring budget (as they will likely be unable to meet additional legal and financial burdens). **RECOMMENDATIONS:** 18. For this reason, FOR SA recommends that the Regulations specifically exclude religious organisations from their ambit. 19. Alternatively, FOR SA recommends that the social work sector be defined to specifically state who falls within its ambit – and make it clear that it does not include religious organisations
10.4	**HASA (Human**	ANNEXURE 34

	Health and Social Work Activities)	The Hospital Association of South Africa (HASA) is an association comprising of the following members, • The Day Hospital Association of South Africa (DHASA) • Joint Medical Holdings • Lenmed • Life Healthcare • Mediclinic • Netcare • Independent hospitals and hospital groups, including but not limited to, Arwyp Medical Centre, Cormed, The Capital Hospital Group and was established to represent the private hospital sector in appropriate forums and to serve the interests of its members who are drawn from this sector. **Our Submission** After deliberating with our members, we strongly recommend that the following points be expanded and/or included into the regulatory guidelines, prior to them being finalised and promulgated: ▪ Amending the points regarding the adoption of national and provincial EAP, to read that a Designated Employer may use the national and provincial demographics (EAP) depending on the nature of their geographical footprint, instead of the way in which it is currently written in the Government Gazette, which states the adoption of only one demographic (EAP) to be applied by the Designated Employer irrespective of the geographic nature of their business. ▪Explanatory notes regarding the practical implications of the penalties awarded to Designated Employers who are deemed non-compliant with proposed sector numerical targets after the site inspections. These are to include more transparency around the guidelines adopted by inspectors during the site visits and with intent to promote greater consistency and trust with the inspection process. ▪Explanatory notes or guide on the Appeal committees and boards available for contact to promote good governance regarding plenary outcomes emanating from the site inspections. ▪Explanatory notes regarding the criteria for issuing the annual employment equity compliance certificates. ▪Explanatory notes regarding organisational changes i.e. transfer of business, mergers and acquisitions, including allowances for the amendments of the Designated Employers EE plans as the current draft refers to a five-year plan with no variation in timeline or guideline on the submission of a revised plan. Additionally, we propose that the following points are taken into consideration by way of practical implementation for Designated Employers:

		▪ A resolution to be reached between the B-BBEE commission, the Commission for Employment Equity (CEE) and the Department of Employment and Labour (DOEL) regarding an aligned definition of "Designated Groups" prior to the implementation of the sectoral numerical targets. The divergence from adopting the same definition by these two pieces of legislation creates confusion, and anxiety amongst our members who are fully committed to deepening social transformation within our sector. ▪The HASA position paper, with contributions from the Private Hospital groups, Pharmaceutical sub-sector, NPO, Health & ICT sub-sector as well as the Wellness and Professional Healthcare Service Provider sub-sector, is to be considered. This document where Designated Employers within our sector and various sub-sectors have exceeded the set numerical targets of a particular racial/gender group at an occupational level as a result of industry circumstances, such as the uncontrollable dire shortage of specialised skills, should be considered. ▪Our members remain fully committed to set targets towards ultimately reaching their respective EAP demographics, however we appeal that the inspectorate division considers the information, external challenges and suggestions cited in our position paper dated 31 March 2021. For reference refer to "Position paper in response to the Department of Employment and Labour's proposed Employment Equity targets for the Human Health & Social Work Activities Sector", dated 31 March 2021. ▪Whilst we understand that justifiable reasons will be evaluated on a case-by-case basis, the realities which exist within our sub-sector and contained in the "Position paper" informs our huge lack of ability to reach specific race and gender targets as identified on particular levels. We would like to reiterate that this will inform our application of the sector target. ▪As discussed in the meeting, we would not want our members to be reported for fraudulent misrepresentation, based on a misunderstanding or incorrect assumptions which may result in the investigation recommending the withdrawal of the certificate of compliance as published by the Minister. We urge that further clarity on the investigation and appeals process are incorporated to assist with practical application.
11.	**ARTS, ENTERTAINMENT AND RECREATION**	
12.	**REAL ESTATE ACTIVITIES**	
12.1	**SAFCOM Properties**	In my capacity as principal property practitioner and managing member of Safcom Properties, an estate agency registered with the Property Practitioner's Regulatory Authority (PPRA) I would like to express a few areas of concern regarding the regulations as they currently exist under the Broad-based Black Economic Empowerment Equity Act (BBBEEA) and further imposed conditions under the Property Sector Charter Council (PSCC) as they relate to the Employment Equity Act. Prior to introducing my comments, I would like to express my appreciation and desire for an inclusive and diverse industry that encourages participation and employment. For the purposes of my appeals, I will only comment on those that relate specifically to the real estate industry as the EEA proposals relate according to the guidelines of the PPRA

		Adoption of proposed Incentive versus existing Cost Burdensome approach I believe the implementation of the policy, while well intentioned, is short-sighted in that by imposing additional restrictions on businesses and individuals is having the effect of increasing burdensome costs to stakeholders i.e. estate agencies and more recently managing agents, attorney employees and the larger body of those that are set to fall within the ambits of the PPRA which shall give further importance to the implanting of a well incentivized and structure policy in future to further include; developers who market and sell their own developed property, auctioneers, bond and bridging finance originators, HOAs who perform property practitioner activities, property facilitators and intermediaries, Business brokers, including sales of franchises and business undertakings, Time share and fractional ownership practitioners, property advertising platforms and property practitioners who specialise in collecting and distributing trust monies in terms of Regulation 2.4.1. ie payment processing agents. I believe there is a better means of utilizing the costs of obtaining the proposed compliance. As it stands the requirement for BBEEA compliance has, in practice, meant imposing an additional expense in the region of R30,000 annually to stakeholders with an annual turnover above R2.5M. Within an industry where it is historically common for agents to share commission on a 50/50 basis with their employer the annual BBEEA certificate amounts to 2.4%. The sharing ratio of revenue relative to employee earnings is substantially higher than one would associate with business payroll, which on average is around 15% - 30%. With this in mind it would seem that the Company's Act which defines exemption of micro enterprises for BBBEE purposes as being low. However, the PSCC seems to imposes more onerous conditions on stakeholders in the sector. Ownership versus Taking Ownership (Private vs Public) The PSCC and the PPRA contradict the EEA in their requirement for a 51% black owned business or a compliant BBBEE certificate for a turnover of over R2.5M. Micro enterprises are unable to generate the BBEEE credits without the depth of employment and resources required for the employment equity scorecard. It is worth noting that 65% of real estate companies fall within the turnover range of R2.5M to R3M and vital for the successful implementation of policies that do not erode the livelihoods of the majority of the stakeholders and individuals by disrupting these stakeholders without a well thought through policy which also addresses their needs above all else.
12.2	**NPCC**	ANNEXURE 46 **Purpose:** The proposed numerical targets outlined in the Draft Employment Equity Regulations seek to ensure the equitable representation of historically disadvantaged groups (based on race, gender, and disability) at all levels of the workforce. While we acknowledge the importance of addressing historical inequalities and promoting diversity and inclusion, we wish to express concerns regarding the practicality and implementation of these targets. **Key Points:**

		1. Practical Implications: The proposed sectoral numerical targets, particularly in top management, senior management, professionally qualified, skilled, and semiskilled/unskilled levels, present challenges for property practitioners. Issues such as unattainable goals, and lack of clarity on demographics need to be addressed to ensure practicality and compliance. 2. Regulatory Evolution: We commend the government's efforts in refining the regulations from the May 2023 version to the February 2024 edition. The inclusion of detailed explanations on target determination and guidance for designated employers is a significant step. However, we urge further consideration of the sector-specific dynamics and practical challenges encountered by property professionals. **Challenges Faced by Property Practitioners:** Our members encounter various challenges in meeting the proposed targets and complying with the Employment Equity Act (EEA). The unique structure of the property industry itself, which often lacks the traditional hierarchy seen in other sectors, is a significant challenge. Unlike industries with distinct middle and top management tiers, the property sector typically operates with a more informal organisational structure, where decision-making and leadership responsibilities are distributed differently. This unconventional structure is a challenge to align with the proposed objectives, particularly in terms of defining and identifying middle and top management positions within the sector. Retention and Advancement: Retaining and advancing designated group members is challenging in the property industry due to high turnover rates among agents. The government must tailor policies to address the specific needs of the sector and develop strategies that encourage retention and advancement while fostering a stable and inclusive work environment. This approach is essential for promoting long-term diversity and equity in the industry.
12.3	**Real Estate Business Owners of South Africa (REBOSA) -**	Real Estate Business Owners of South Africa ("REBOSA"), is an independent, non-profit company (NPC), that represents the best interests of business owners and principals of small, medium and large estate agencies operating in the residential real estate sector. **NATIONAL OR PROVINCIAL DEMOGRAPHICS** There is uncertainty regarding which EAP – national or provincial – designated employers must use and this needs to be clarified. The National EAP will apply to designated employers that conduct their business or operations nationally, while the Provincial EAP shall apply where the business or operations are conducted in a particular province. A designated employer cannot, however, use the National or Provincial EAP at the same time, i.e. pick which EAP they wish to apply, but must choose only one demographic to apply and must use that demographic for the entire duration of their EE Plan. Where a designated employer operates in more than one Province, the employer may choose the EAP of the Province with the majority of employees. **DESIGNATED GROUPS** A key challenge is that the new draft regulations do not include separate numerical targets for African, Coloured, Indian and White employees. Instead, they include one percentage target for "designated groups" (defined as black people, women and people with disabilities), further differentiated by male and female. A percentage target is also set for employees with disabilities – which is not broken down across the 4 top occupational levels or genders. The Regulations stipulate race and gender targets in various economic sectors per industry and on a national and provincial level. No guidelines are given as to how these economic sectors are to be interpreted, which will no doubt lead to anomalies. Should the numerical targets be accepted in their current form, designated employers

		will be left with signi... practical issues when determining the number of employees of each demographic to include in the Employment Equity Plan. **UNACHIEVABLE TARGETS FOR TOP MANAGEMENT SECTION** The top management section is also the area where the most transformation will have to take place in terms of the proposed targets. Furthermore, it is submitted that the set targets are unattainable. As an example, the lowest target in the top management section aims for 1.4% representation of Indian individuals, which can be further divided into 0.7% for males and 0.7% for females. Achieving this target would necessitate having 143 (rounded up) top management employees, a number that is impractical for most designated employers. According to data from Stats SA that can be found at: (https://www.statssa.gov.za/publications/P0211/P02111stQuarter2023.pdf), employment numbers per occupation are further skewed towards skilled, semi-skilled, and unskilled positions and away from top management, senior management, and professionally qualified positions. We further submit that the targets should be on a sliding scale, as a designated employer with 50 employees will not be able to achieve the same level of compliance with the act as one with 50 000 employees.
13.	**PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES**	
13.1	**South African Institute of Chartered Accountants (SAICA)**	SAICA's proposed section 15A sectoral numerical targets (SAICA proposed targets) as well as the proposed sectoral numerical targets per Regulation no R.4295 (DOEL proposed targets), are included in the table below; SAICA recommends that the DOEL consider creating a specific sub-sector code within the Professional Scientific and Technical Activities economic sector (Sector 13) to recognise the unique challenges the audit profession faces and have numerical targets that reflect the profession's demographics.

		It is recommended that the effective date as well as the start of the 5-year period be clarified. It is recommended that clarity should be provided on when employers would be viewed as non-compliant (would this be in year 1 or at the end of year 5) and at what stage would the Minister be applying to the Labour Court for fines or when the employer would not be able to obtain a certificate of compliance.
13.2	**South African Real Estate Investment Trust (SAREIT)**	Significant Discrepancies and Challenges: We have identified significant discrepancies between the actual composition of our top management and the proposed targets that raise concerns about their attainability: Top Management Male: • The current REIT benchmark at 14.50%, with a proposed target of 25.0%. This requires an annual increase of 2.1% over five years. Top Management Female: • The current REIT benchmark at 9.90%, with a proposed target of 20.0%. This requires an annual increase of 2.02% over five years. Achieving these targets would necessitate nearly doubling the representation in some categories within a five-year period, implying a near-complete turnover of staff at higher levels. This scenario poses significant risks to the stability and continuity of our operations. The exceptionally low turnover rates within the REIT sector, especially at senior and top management levels, create a static environment where new opportunities for upward mobility and entry are scarce. The continuity of leadership is beneficial for maintaining institutional knowledge and operational stability. Contraction of the Industry: The real estate sector, particularly within REITs, has experienced a notable contraction in recent years. The number of active REIT members has significantly decreased, reflecting a broader industry downturn. This economic contraction, combined with a challenging economic climate marked by factors such as high interest rates and political instability, severely limits our ability to expand our workforce. Consequently, this limits our efforts to introduce and integrate more diverse talent into our organisations as opportunities for new hires are diminished.

		Scarcity of Experienced Candidates: There is a significant gap between the availability of suitably experienced candidates from designated groups and the requirements for leadership roles within our sector. While we invest heavily in training and development initiatives, particularly at the tertiary education level, the time required for these individuals to acquire the necessary experience and qualifications extends beyond the timelines set for meeting these diversity targets. The slow development pipeline, coupled with limited job openings, poses a substantial barrier to achieving the intended representation in our leadership ranks. Proposed Way Forward: Given these challenges, we advocate for a more tailored approach to setting these targets. We recommend initiating a collaborative dialogue with industry stakeholders to develop targets that are aligned more realistically with the operational realities and demographic characteristics of the REIT sector. This approach should include staggered, realistic targets that consider the unique conditions and constraints of our industry, ensuring a pathway to diversity that is both achievable and sustainable.
14.	**WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES**	
14.1	**RETAIL ASSOCIATION**	**THE CRITERIA TAKEN INTO ACCOUNT IN DETERMINING THE NUMERICAL TARGETS** Significantly – there have been catastrophic events since 2020 (after the "consultation" process started and shortly after the Retail Association withdrew from the "consultation" process) which have directly impacted the retail sector. These include: 1. COVID19 which resulted in lockdowns, regulations restricting trade / sale of certain items and an increase in operating costs (hand sanitizers in every store, signage, change of work to accommodate social distancing requirements, purchasing of masks for employees etc). 2. The devastating July 2021 riots in Kwazulu-Natal and Gauteng which resulted in almost 1800 retail stores being damaged and almost 100 shopping malls set alight (from which the retail sector is still recovering from). 3. The April 2022 floods (not even a year after the riots the previous year) in KwaZulu -Natal where hundreds of retail stores were damaged again. 4. The inability of Government to provide a source of sustainable energy supply which has resulted in the retail sector spending an exorbitant amount of money on generators, solar and alterative sources of supply of energy to ensure the continuity of their businesses. 5. The poor economic state of the country and the effect that has had on retailers and more importantly, the increase in suitably skilled South Africans leaving the country and immigrating to greener pastures. The model of operating is changing at a fast pace given the platforms available using digital technology. Most large employers in the formal retail sector increasingly rely on talent that can provide "tech" skills. It is well known that South Africa's basic education and higher education institutions do not produce the skills required by the labour market and as such, a skills shortage in general is experienced (regardless of race, gender, disability) and where the skills are produced, reports suggest that these skilled individuals are leaving South Africa. To put it simply, even without having to meet numerical targets for designated groups only, the skills shortage, particularly in the highest three occupational categories is a real problem. It is also important, at this juncture, to make mention of the Draft 2018 Employment Equity Regulations ("Draft 2018 Regulations"). The Draft 2018 Regulations were published for public comment in the Government Gazette on 21 September 2018. Since that publication,

		there has been no indication whatsoever from the Minister / Department as to whether the Draft 2018 Draft Regulations will, since the public comment process closed in 2018, be amended or whether the Department intends to publish them for promulgation in the same draft form (with no amendments) as in 2018. If that is the case, the Retail Association brings Regulation 7A (1) (a) Of the Draft 2018 Regulations to the attention of the Minister. Regulation 7A (1) (a) states as follows: For the purpose of determining a numerical target in terms of section 7A, any relevant criteria may be taken into account including– • the qualification, skills, experience [and the capacity to acquire, within a reasonable timeframe, the ability to do the job]; • the rate of turn-over and natural attrition within a sector; and • recruitment and promotional trends within a sector. The Retail Association is firmly of the view that without taking into account information / data that provides insight into how many suitably qualified people (% of designated people within the EAP who can do the jobs) there are from designated groups to do the jobs within the occupational categories where there are statutory numerical targets, that such targets would be irrational and in fact, serve no purpose, particularly in an economy that has and continues to be battered. The Department also appears to have little regard to the significant impact a 2% target has on large employers (like retailers – some employing more than 20 000 employees). The Retail Association is of the view and submits that if the Department insists on a 2% disability target of a total workforce, that it must transparently share with stakeholders, how it determined the 2%.

		4. LAWS SHOULD BE CLEAR AND UNAMBIGIOUS There are also differing views on compliance and whether compliance will only be measured against the overall percentage prescribed by the Minister or not. Another change in the 2024 Draft Regulations is the inclusion of paragraph 3.4.9 which states that "A designated employer who chooses to use the Provincial EAP and operates in more than one Province, may choose the EAP of the Province with the majority of the employees." It is not clear to the Retail Association what is meant by "the majority of the employees" and what would be defined as the majority of the employees and whether it would include where "most" employees are employed but not necessarily meeting a traditional "majority"? Paragraph 3.4.6 of the 2024 Draft Regulations states that when an employer has "exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial / gender group but should set targets towards the EAP." The Retail Association is of the view that this paragraph should be deleted from the 2024 Draft Regulations. It imposes an unreasonable prohibition on regression in the 5-year period when there could very well be justifiable reasons for regression.
14.2	**Consumer Goods Council of South Africa**	ANNEXURE 30 After careful consideration of the DoE & L proposed targets, the CGCSA and its affected members has resolved to propose the following numeric targets that will set the pace of transformation and will create strong alignment between government and business, in pursuing the transformation agenda in the workplace, to which our members are committed to achieve:

Occupational Levels	Proposed Target (DEL)	Wholesale and Retail final proposal	Area of Agreement & Disagreement
Top Management	40%	32%	Disagreement

Senior Management	56%	56%	Agreement
Professionally Quali	75%	75%	Agreement
Skilled Tech	88%	88%	Agreement
Persons with Disability	2%	1,5%	Disagreement

Top Management and Senior Management: Rates of turnover and natural attrition within the wholesale and retail sector

It is the view of the sector that the rate of staff turnover, natural attrition, recruitment and promotional trends, skills and qualifications required to do the job are important factors that must be taken into account. These factors will largely determine the rate at which employers will be able to meet the targets prescribed by the Minister.

It is our experience that the rate of turnover and natural attrition at the top management occupational level is low, as a considerable amount of time and resources are invested to ensure that individuals who occupy these positions have up to 30 years of wholesale and retail experience. This means that a career path and developmental plans must be invested up at the entry level occupation for the designated groups and African, Coloured and Indian (ACI) employees respectively. This should have a significant bearing on the targets that are proposed for the Top Management occupational level, as this would require time and resource investments for a period of more than 5 years.

This is indicative of the shortage of suitably qualified individuals required in this occupational level. Furthermore, the structured retention strategies need to be developed and entrenched in the organisation to ensure that the targeted individuals do not leave the organisation whenever other opportunities arise.

People with Disabilities

It has been confirmed that currently there are no official STATS SA statistics available in so for as the Employee Assistance Programmes (EAP) for disabled persons in South Africa. While the wholesale and retail sector is committed to employing people living with disabilities, it is concerned that the disability target proposed by the DoE&L is not informed by evidence of what is realistically possible for the sector.

The challenge of people living with disabilities requires a different approach which necessitates basic education (early learning). It is a known fact that in most instances, there are no special schools available for people living with disabilities, some of whom may be excluded from the mainstream school system due to the nature of their disabilities, limiting their employment opportunities. The education of children with disabilities should be prioritised by the government as this would increase their chances of being eventually employed by employers who already have policies in place to recruit and employ people living with disabilities.

In response to these challenges, the sector has partnered with the Wholesale and Retail SETA ("W&R Seta") to identify occupations in the sector that will best suit people with disabilities. These occupations will be industry specific and would be best suited for people with disabilities. Furthermore, W&R Seta will contribute to stipends and funding for training and other development interventions.

		It is important to also note that the targets proposed do not add up to 100% and that creates a huge concern on what will happen on the remainder of the percentage which is not mentioned in the Proposed Regulations. Clarity is needed in this regard. **WHOLESALE AND RETAIL FINAL PROPOSAL** After careful consideration of the DoE&L proposed targets, the CGCSA and its affected members has resolved to propose the following numeric targets that will set the pace of transformation and will create strong alignment between government and business, in pursuing the transformation agenda in the workplace, to which our members are committed to achieve: The above proposal is tabled within the context and consideration that the industry was severely impacted by Covid19 lockdowns and the unrests & riots of July 2021, both events leading to closures of businesses and retrenchments. Electricity supply shortages and heightened load shedding schedules are also constraining industry growth and are leading to closures of some businesses and in some cases, retrenchments. According to the Minister of Finance's 2024 budget speech, the country is expected to see a slowdown in economic and employment during 2024. It is within this context that we urge Minister to consider the sector's proposals. The CGCSA members were unable to reach agreement on the gender percentage split and agreed that the split should be left to the discretion of the designated employer. The sector will continue to manage the gender representation and ensure a balanced equitable and transformational approach. Having regard to the above, the sector will continue to implement practical progressive strategies that will effectively speak to the operational and economic needs in ensuring that there is equitable representation of people from designated groups at all occupational levels. **Conclusion** We urge the DoE&L to undertake a thorough consultative process with all economic sectors where agreement has not been reached to ensure that the targets take into account the sectorial and economic challenges currently facing the country.

15.	**ACCOMMODATION AND FOOD SERVICE ACTIVITIES**		
15.1	**SUN INTERNATIONAL LIMITED**	**THE USE OF EITHER NATIONAL OR REGIONAL (PROVINCIAL) EAP DEMOGRAPHICS** Section 42(1)(a) of the Employment Equity Act 55 of 1998 ("EEA") specifically states that in determining whether a designated employer is effectively implementing employment equity, the extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce in relation to the demographic profile of the national and regional economically active population ("EAP") must be taken into account. Section 42(3) specifically indicates that "without limiting section 1(a)" the regulations issued by the Minister may specify circumstances under which an employer's compliance may be determined with reference to the national or regional EAP. It is unclear from the Republished Draft Regulations when a designated employer will be regarded as "conducting their business / operations nationally." One interpretation is that only a designated employer operating in all nine provinces must apply the national EAP, and only a designated employer operating in a single province must necessarily apply the EAP of that particular province, alternatively if a designated employer is operating in two provinces it must apply the EAP of the province where the majority of its employees are located. Another interpretation is that a designated employer has an election to apply either the national EAP or the EAP of the province where most of its employees are based, irrespective of the number of provinces it operates in. In addition, Section 42 of the EEA does not provide sufficient justification to choose either the national or regional EAP. Despite an earlier amendment to section 43(1) where the word "must" was amended to "may," it is submitted that the framework of the EEA continues to provide a discretion for a designated employer to consider both the national and regional EAP in adopting and implementing its employment equity plan. In this regard, the Republished Draft Regulations are inconsistent with this approach to the extent that it prescribes that a designated employer may only consider either the national or the regional EAP in setting its annual numerical goals.	

TRANSITIONAL ARRANGEMENTS

The Republished Draft Regulations plainly fails in the same way as the Draft Regulations to the extent that it does not regulate the transition from the prevailing legal and regulatory framework to the post Amendment Act and Republished Draft Regulations framework. Guidance is required on whether, absent any transitional arrangements, a designated employer's employment equity plan ("EEP") prepared before the Draft Regulations, would remain lawful until its expiry, or would it be replaced by a new or an adjusted EEP that must be developed immediately post amendment, and how long would an employer have to comply. The Minister is expected to provide for transitional arrangements which are reasonable and affords a designated employer sufficient time to adjust its EEP, if required, and its implementation.

EAP, SECTOR TARGETS, SECTOR CODES

In terms of the Republished Draft Regulations there is an attempt to suggest a connection between the 5-year sectoral numerical targets and the sector codes. The Republished Draft Regulations state that when setting the proposed sector numerical targets, the following factors were taken into account by the Minister: 1. The various sector codes and the sector charters published under the BBBEE Act;
2. The national and regional EAP of each sector; and
3. The unique sector dynamics (e.g. skills availability, economic and market forces, ownership etc.).
It is uncertain and vague how these above factors were considered when setting the sector numerical targets. The way in which the sector codes and sector charters published under BBBEE legislation were applied as well as the unique sector dynamics and challenges were taken into account is not clearly delineated and there is no indication, prima facie, of the manner in which these factors informed the sectoral numerical targets. Simply stating what the Minister allegedly considered as part of the process of determining the sectoral numerical
targets is inadequate in demonstrating a rational and scientific basis for the sectoral numerical targets. It is submitted that there is no rational connection between the EAP and the 5-year sectoral numerical targets. The republished regulations state that when setting annual targets the EAP, the workforce as well as the sectoral numerical targets will need to be taken into account by designated employers. What this fails to consider is that the EAP is potentially a
moving figure and could affect the 5-year sectoral numerical targets which will impact the overall commercial business plan to achieve the 5-year sectoral numerical targets.

ANNUAL NUMERICAL GOALS, SECTOR INFORMATION, SECTOR NUMERICAL TARGETS & QUOTAS

The Republished Draft Regulations make provision for a designated employer to set annual numerical goals with a view to ultimately achieving the 5-year sectoral numerical targets. However, there continues to be a lacuna in respect of a rational connection between the annual numerical goals which is informed by the designated employers workforce profile, various factors contained in the EEA (inherent requirements of the job, suitably qualified persons, skill and experience, turn-over and growth, etc.) and the relevant EAP. There is no
indication of the way in which the EAP and the expertise and commercial realities of a particular sector are connected and reflected in the sectoral numerical targets of a particular sector. Furthermore, the Republished Draft Regulations prescribe that a designated employer must make provision for all population groups in its annual numerical goals. There is no

		indication whether a designated employer will be required to comply with specific targets for each population group (i,e., African, Coloured, Indian and White) or whether broad compliance with overall designated group representation that aligns with the sectoral numerical targets is sufficient. It is apparent from section 15 of the EEA that numerical targets may not amount to quotas. However, the unrealistically high targets proposed in the Republished Draft Regulations, as was the case in the Draft Regulations, would have the same impact as quotas and would require arbitrary employment policies, procedures and practices to implement. The case law also requires that any numerical targets must not be applied haphazardly. In this case, the lack in the Republished Draft Regulations setting out the rational connection between the various components and factors as well as the way in which relevant data was applied as a basis for the proposed targets, amounts to such haphazard application. In addition, but subject to section 42 of the EEA (which now includes consideration of the sectoral numerical targets) nothing in section 15 of the EEA requires that employers establish an absolute barrier to prospective employment or advancement of people who are not from designated groups. Where targets are particularly difficult to achieve and where they appear to set absolute minimums, it is difficult to reconcile that it does not amount to quotas and an absolute barrier. Based on the above, the indication that "affirmative action must be applied in a nuanced way" in the Republished Draft Regulations has little, if any, practical implication. **DURATION OF EMPLOYMENT EQUITY PLAN** Section 20(e) of the EEA states that a designated employer's EEA may not be shorter than one year or longer than five years. In light of the 5-year sectoral numerical targets, it is unclear whether it would be practical for a designated employer's EEA to be shorter than 5 years and practically dilutes a designated employer's legitimate entitlement to set the duration of its EEA in terms of the EEA. It is also similarly unclear on how an EEA plan of less than 5 years will be assessed in relation to the 5-year sectoral numerical targets. Furthermore, while the targets are for 5 years, the EEP requires self-set annual numerical targets which the Inspectorate could hold us to, thus potentially rendering us non-compliant and the converse is also unclear. If we accede our targets for year 1, will we be expected to adjust our targets for subsequent years? The Republished Draft Regulations are not clear on this aspect and the Director-General's reviews are random. **JUSTIFICATIONS FOR NON-COMPLIANCE** There is no guidance furnished on the manner and form in which a designated employer is expected to demonstrate the presence of justifiable grounds that made compliance with the sectoral numerical targets impossible. There is also no indication of whether this demonstration or submission must be made at the instance of when the designated employer realistically becomes aware that compliance with the sectoral numerical targets will not be possible or only after the conclusion of the 5-year period when compliance with the sectoral numerical targets is expected. Furthermore, there is no clarity on whether the list of justifiable grounds is exhaustive or if there may be other factors, including but not limited to, sectoral impediments or specific challenges or vulnerabilities connected to an individual employer that can be considered as justifiable grounds for non-compliance with the sectoral numerical targets. Moreover, it is unclear whether the presence or the relevance of a single justifiable ground

		as listed in paragraph 4.3 of the Republished Draft Regulations is sufficient to condone and justify non-compliance with the sectoral numerical targets.	
16.	**PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY**		
16.1	**Security Association of South Africa (SASA) The South African National Security Employer's Association (SANSEA)** **Private Security Industry (PSI)**	The PSI, in any event, objects to the following aspects of the 1 February 2024 Draft EE Regulations for the reasons set out below: **The changing of Sector Targets from Black to Designated Groups inconsistent with Regulation 3.1.3** When the DEL commenced the consultation process with Designated Employers from different Sectors and Sub-Sectors it selected to consult with, it proposed the Black, Black Male and Black Female % Targets of the Generic Management Control scorecard for each of the top four Occupational Levels. Although the % Black, Black Male and Black Female Targets were in most cases reduced in response to representations made by the different Sectors and Sub-Sectors, the selection of the Black Targets of Management Control scorecard was never a contentious issue and was accepted as fair by the different Employer Organisations with whom the DEL consulted. Therefore, it came as a total surprise when the subject matter of Sector Targets was changed from 'Black' to 'Designated Groups', which is inconsistent with Regulation 3.1. read with Regulation 3.1.3. which states that 'When setting the proposed 5-year sectoral numerical targets, the Sector Codes and the Sector Charters published under the B-BBEE Act were taken into account'. As there are no 'Designated Group' Targets in the B-BBEE Act, Sector Codes and the Sector Charters, but only 'Black' Targets. Designated Group are not Black Groups. **The insistence that Designated Employers with a National Footprint can use only one EAP in setting its EE Goals despite this conflicting with a judgement of the Constitutional Court** Both the 12 May 2023 and 1 February 2024 Draft EE Regulations states that the National EAP shall apply to designated employers conducting their businesses/operations nationally, and that Provincial EAPs shall apply to designated employers that conduct their operations in a particular Province, and that designated employer cannot use both National and Provincial EAPs. The 1 February 2024 Draft EE Regulations now affords a Designated Employer with a National Footprint a choice between the National EAP and the EAP of the Province in which it employs most of its employees. However, it still restricts such Designated Employers to using only the selected Province's EAP. This is in conflict with Section 20(2)(c) of the Act read together with 42(a) and 19(2) of the Act as found by the Constitutional Court in the matter between Solidarity and Others v Department of Correctional	

		Services and Others (CCT 78/15) [2016] ZACC 18. It was held by the Court that where a Designated Employers has a national footprint, it should use the applicable National and Regional/Provincial EAP in setting Goals for employees that are employed in its operations in a particular Province/Region (see Paragraphs 65 to 82 of the judgment). This means in practice that any designated employer that has businesses/operations in different provinces need to set Goals for all its businesses/operations in each such province by applying the National and each applicable Province's EAP. That designated employer's EE Goals for each Occupational Level is then arrived at by aggregating each Province's EE Goals for each Occupational Level. The National EAP cannot be used by such an employer, as that will result in discrepancies between the provincial operations' aggregated goals, and any NEAP aligned EE goals that may be set for the employer in the different Occupational Levels, and an inability to achieve the organisations' overall Goals. It is proposed that the Honourable Minister amends these directives, accordingly, failing which they are likely to be challenged in Court based on the DEL not having applied its mind to the matter in view of the above provisions of the Act and the rationale behind the Court's decision. **Regulations 3.4.4 and 3.4.6 conflict with the provisions of the EE Act as amended in 2014, read together with the 2014 EE Regulations or with the 2022 EE Amendment Act by the enactment of.** It is submitted that the placing of restrictions on the setting of EE Goals in Regulations 3.4.4 and 3.4.6 conflict with the Act and should be scrapped. **The provision in Regulation 3.4.4 that 'Targets' should NOT be set for certain groups in conflict with the Act as amended. Regulation 3.4.4. reads as follows 'Employers should not set targets (our emphasis) for those groups whose representation have already exceeded their EAP in a particular occupational level.'** This is in direct conflict with the provisions of Section 20(2)(c) of the EE Act as amended, read together with Clause 7.4 of the 2017 Codes of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan ('the EE Plan Code') and the EEA13 of the 2014 EE Regulations, which requires EE Numerical Goals to be set for each race and gender Group. This conflict can possibly be resolved by the insertion of the 'higher' between 'no' and 'targets. However, this could bring it into conflict with Section 20(2) of the Act as to be amended by the 2022 EE Amendment Act, as illustrated below regard to Regulation 3.4.6. **The provision in Regulation 3.4.6 potentially in conflict with Section 20(2) of the Act as to be amended by the 2022 EE Amendment Act** **Regulation 3.4.6. reads as follows:**

		'Where a designated employer has exceeded the set numerical target of a particular racial/gender group at an occupational level, such an employer may not regress in that particular racial/gender group but should set targets towards the EAP. Section 6 of the 2022 EE Amendment Act determines that 'the numerical goals set by an employer in terms of subsection (2) must comply with any sectoral target in terms of section 15A that applies to that employer.' Regulation 3.4.6 will therefore come into conflict with Section 6 of the 2022 EE Amendment Act in situations where the representivity of an individual race or gender group in an Occupational Level at the time of setting EE Goals is higher than its % Target after factoring in its applicable EAP %, but lower than its % EAP. As an example, let us say that a Designated Employer's African Male representivity is 38% in the Professionally Qualified Occupational Level and its Sector's African Male Target 32.2%, and African Male's EAP 43.4%. Regulation 3.4.6. is now clearly in conflict with the Sector's Target for African Males of 32.2%, as it requires the Designated Employers in question to set a higher % African Male Target, and not lower. It further seems to us that the authors of the Regulations have lost sight of the fact that there are both Male and Female dominated industries falling within a Sector in which the % African Male or Female will be well above their EAP %s and in which industries it is desirable to reduce their % representivity. %. In such cases their % representivity will need to regress in order for a Designated Employer to comply with its Sector Target. Regulation 3.4.6 also presupposed that an individual race and gender group's Sector Target will always be less than their EAP %s. Assuming that the 2021 EAP was used in determining the targets for African, Coloured and Indian Males and Indians, the resultant African Male Targets for at least 5 different Sectors are above the EAP for African Males **The lack of guidance from the Honourable Minister with regard to how Designated Employers should factor their applicable 5-year sectoral numerical targets and EAP when setting their EE Goals in terms of Section 20 (2) as amended.** Section 6(2) the 2022 EE Amendment Act requires Designated Employers to comply with their Sector's Sector Targets in the setting of their EE Numerical Goals. The 12 May 2023 Draft EE Regulations contained not only % Black, Black Male and Black Female Targets, but also % targets for African, Coloured and Indian Males and Females based on the EAP. These were obviously arrived at by the Honourable Minister using specific formula in their calculation. As it is anticipated that the % Black, Black Male and Black Female Goals that Designated Employers will be using to set their EE Goals, pursuant to Section 20(2) of the EE Act, will not always be identical to their Sector's 5-Year targets, our members will need guidance in order to calculate their % African, Coloured and Indian Male and Female Goals using their applicable EAP. It is accordingly proposed that the applicable formulae also be set out in the Regulations. **The lack of guidance from the Honourable Minister with regard to how Designated Employers can obtain compliance certificates once sector targets become law.**

		It is proposed that the rules and process, as well as forms required to be completed, for the application for a Compliance Certificate be included in the finalised regulations. It is submitted in this regard that the 2018 Draft EE Regulations containing such information has no force or effect.
16.2	**The Western Cape Governme nt ("WCG")**	Section 15A(2) of the Act, in terms of which these Regulations will be issued once in operation states that: "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)."It is submitted that, due to the use of "**may**", not "must", there is no obligation on the Minister to issue the Draft Regulations. It is further submitted that, for the reasons that are set out below, it is not in the interest of the country for the numerical sector targets to be set as proposed therein, and that the Minister should exercise his discretion not to do so. The Draft Regulations on Proposed Sectoral Numerical Targets should accordingly be withdrawn, and the Amendment Act repealed insofar as it was enacted unlawfully pursuant to the incorrect process. Whilst the WCG acknowledges the need for redress, it disagrees in principle with the approach adopted in the EEA and the 2024 Draft Regulations. It is recommended that the national government consider alternative interventions, which address the causes of underrepresentation, starting with widespread access to quality education, skills development training and apprenticeships, to enhance employability amongst vulnerable groups. As recommended in the previous comments submitted, it is recommended that education-based outcomes be utilised to address the skills shortages that have historically made it difficult for employers to meet numerical sector targets.

		It is proposed that an approach that addresses unemployment be prioritized over numerical targets in a shrinking economy. General Comments on the 2024 Draft Regulations As mentioned in the WCG's previous submission on the 2023 Draft Regulations, the following information would make the public consultation process more meaningful: a) a more detailed methodology informing five- year sector targets, b) the quality of the data (i.e. accuracy and completeness) used to model sector targets; and c) an impact assessment of the five-year sector targets on socio- economic performance (e.g. GDP growth, capital formation, foreign direct investment, productivity, employment, unemployment and competitiveness) and SME development and growth at the national and provincial levels. Need for Socio- Economic Impact Assessment We are unable to trace a socio-economic impact assessment in respect of the 2024 Draft Regulations. The Guidelines for the Socio-Economic Impact Assessment (SEIA) System adopted by the Department of Planning, Monitoring, and Evaluation in 2015 require the SEIA system to be applied throughout the policy-making process. Most notably, the SEIA system mandates that a final impact assessment, which provides a detailed evaluation of the likely effects of the proposed regulation regarding its implementation, compliance costs and anticipated outcome is distributed for public comment and consultation with stakeholders. A SEIA report was not attached to the Draft Regulations or made publicly available. If a SEIA has been prepared, same must be made publicly available as a matter of priority. If a SEIA has not been prepared and the 2024 Draft Regulations are proceeded with in the absence thereof, this will render the Regulations, once issued, vulnerable to legal challenge on procedural grounds. It is critical that a SEIA is performed to ascertain the costs and benefits of the set numerical targets, their broader impact on employers, and the potential unintended consequences of introducing them in their current form. Numerical targets and the labour market

		It is proposed that a comprehensive labour market assessment be conducted to determine the availability of the requisite skills for each targeted sector. This may be considered as part of the Commission for Employment Equity (CEE) annual reporting. The CEE comprehensively reports on the country's labour market as it impacts employment equity, but does not currently profile the country's availability of skills in relation to the proposed numerical targets. Methodology to set targets is vague Stakeholders require the equation used to derive the five-year sector targets, or at least the weighted importance of factors listed in paragraphs 3.1.1, 3.1.2, 3.1.3 and 3.1.4, to accurately access the target setting methodology and to determine whether it overly relies on the EAP4. Designated employers' decision to apply the national or provincial EAP is ambiguous and may not be responsive to business change The 2024 Draft Regulations should clarify the definition of "nationally" in paragraph 3.4.8, specifying whether it refers to businesses operating in all nine provinces of the country or provide criteria for designated employers to determine "nationally" (e.g. considering geography, turnover and employee numbers). The 2024 Draft Regulations should enable greater flexibility and reduce confusion by removing the provision that designated employers may choose the EAP of the Province with the majority of employees. Instead, designated employers who select Provincial demographics should consider the EAPs of all provinces in which they operate and provide balanced targets in their EE Plans for each occupational level based on the location of the majority of employees at that occupational level. The 2024 Draft Regulations should allow designated employers to change the EAP selected in year one in response to external shocks or changed business circumstances that affect operations in years 2, 3, 4, and 5. There is a possible contradiction in the method a designated employer uses to set annual EE targets to reach the overall five- year EE targets.

		Paragraph 3.4.4 of the 2024 Draft Regulation states that "employers should not set targets for those groups whose representation have already exceeded their EAP in a particular occupational level." However, paragraph 3.4.4 seems to contradict paragraph 3.4.6., which states that "where a designated employer has exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial/gender group but should set targets towards the EAP." Paragraphs 3.4.4 and 3.4.6 should be revised to address the contradiction. **Ambiguity in grounds for justification** The 2024 Draft Regulations must clearly define "targets" in paragraphs 4.5 and 4.6 because the current phrasing infers targets set by the employer itself and targets set by a third party ("any other party") (presumably including sector targets). The definition of a designated employer should be reviewed to cover those who employ 100 or more people. Another approach is to amend paragraph 3.4.1 to provide that designated employers are employers who employ 50 or more employees with at least 20 percent of these employees in skilled and highly skilled occupations as defined in the 2024 Draft Regulations. The 2024 Draft Regulations should define occupational bands (i.e. top management, senior management, professional qualified and middle management, and skilled technical). Based on a socio- economic impact assessment, especially the effect on promoting entrepreneurship and developing small-medium businesses, a case might be made for the phased implementation of the 2024 Regulations across sectors. There is a concern that the principle-based approach, especially setting targets and assessing compliance, might expose designated employers to greater business risk and increased bureaucracy (i.e. cost of doing business) clearly define the grounds set out in paragraph 4.5 (a)- (g) and release a practice note to assist with transparent and standardised implementation and assessment. It should be clarified whether the standard of reasonableness or justifiability will be applied under paragraph 4.5, and it is recommended that "reasonable" grounds should be considered, not justifiability.

		It is recommended that the possibility of putting in place a mechanism for an independent person to review a designated employee's compliance with chapters II and III / expeditious resolution of disputes before the Director-General applies to the Labour Court. **No transition strategy from existing EE plans to sectoral targets** The 2024 Draft Regulations should include transitional provisions and guidelines for Designated employers to plan for 2024 and 2025 as they move from setting their own targets to following the Section 15A approach. **Rationality and the need for avoidance of inflexible quotas** To improve the text, it is recommended that a legislative drafter review the text using generally accepted Commonwealth legislative drafting practices as well as enlist the support of a language practitioner familiar with these practices. The WCG is extremely concerned about the impact that the imposition of sectoral numerical targets ("sector targets") will have on investment and business confidence. This is particularly in terms of the additional burdens they will place on businesses and employers from an ease of doing business perspective, adding to the already excessive amount of red tape employers have to contend with. The imposition of such

		measures will serve to deter large companies from our region and discourage growing companies from employing more staff. The country can ill-afford these consequences in the current economic climate. From a technical perspective, it is again placed on record that the procedure followed in enacting the Amendment Bill was incorrect insofar as the Amendment Bill was tagged incorrectly as a section 75 Bill. The Amendment Bill and Draft Regulations are hence at serious risk of being found to be unconstitutional. The 2024 Draft Regulations should accordingly be withdrawn, and the Amendment Act repealed. It is recommended that consideration be given to the more positive and comprehensive approach outlined above, which addresses the root causes of the underrepresentation of vulnerable groups in the skilled labour market.	
17.	**EDUCATION**		
17.1	**SPARK SCHOOL**	We commend the intention of the legislature to promote transformation and equity in the workplace. By virtue of the fact that we are a network of private schools, as representatives of the education sector we are writing to express our thoughts on the draft regulations on proposed sectoral numerical targets as it pertains to our industry. **Gender balance**	

		In terms of gender balance, we believe there is a need for nuanced consideration within our specific sector and request that the unique dynamics present in our field are taken into consideration. Historically, the education industry has seen a higher proportion of female representation across various roles, including teaching, administration and support staff. For a variety of reasons, the education industry exhibits a majority of females in occupations in the education sector and the draft gender targets may inadvertently overlook the existing gender distribution within our workforce. There is a higher female composition in the sector across occupational levels. We believe that the current approach to gender composition targets requires reconsideration. We humbly request that policymakers take into account the existing gender landscape within the education industry that reflects the current demographics and would like it to be noted that it is unlikely that this would change within the next five years and/or beyond. **Disabilities** We are in agreement with the expanded definition for disabilities, recognising the diverse range of conditions and impairments that individuals may face. This broader definition is a crucial step towards fostering a more inclusive and accommodating work environment for our employees. 1 However, we have identified a significant obstacle in achieving the specified 2% target for disabled employees, particularly regarding the reliance on self-classification by employees. While we fully respect and uphold employees' rights to disclose or not disclose their disability status, we have observed a reluctance among many individuals to self-identify, even in cases where disabilities are physical and potentially visible. We believe that the current approach to disability employment targets may inadvertently hinder progress due to challenges associated with self-identification. We encourage policymakers to explore alternative strategies that take into account the complex and nuanced nature of disability disclosure.
17.2	**ADTECH GROUP**	Our thorough analysis has led us to express concerns about the proposed legislative revisions, particularly their impact on the selection process for potential candidates within the education sector. The education sector's unique operational complexities, including a limited candidate pool, a largely stagnant pool of annual new graduates, and a significant gender imbalance, particularly in the underrepresentation of male educators, require tailored solutions. These challenges significantly hinder our efforts to promote equity in recruitment practices. For illustrative purposes, the draft regulations proposed gender distribution targets set at 35% for males in the Professionally Qualified category and 42% for males in the Skilled Staff category. These targets starkly contrast with the current demographics within the teaching profession, where 70% are female and 30% male, as registered by the South African Council for Educators (SACE). The mandatory employment of SACE-registered teachers renders these targets unattainable. Moreover, an examination of tertiary education institutions reveals a notable proportion of graduates, exceeding 45%, are international students and, therefore, not included in the domestic talent pool as per the sectoral targets. Research indicates a racial disparity in attaining PhDs, a statutory requirement for teaching at specific levels within the National Qualifications Framework (NQF). The pipeline for

		technically and professionally qualified personnel also disproportionately favours international students, indicating a systemic failure to cultivate the requisite skills within the South African demographic. Our concerns extend to the potential adverse effects of the proposed amendments on recruitment practices and the broader workforce dynamics. Mandating stringent compliance with fixed quotas may inadvertently compound existing challenges rather than alleviate them, potentially detracting from the quality and efficacy of educational institutions by prioritising demographic and gender criteria over merit and qualifications. While we support the principles of employment equity and the cultivation of inclusive work environments, we believe the proposed amendments and the draft regulations necessitate further refinement to enhance their clarity and applicability. Maintaining an equilibrium between the objectives of transformation and the operational latitude essential for organisations to thrive in a competitive and evolving marketplace is imperative.
17.3	**Stellenbosch**	The CSJ is concerned about what may look like progress is in actual fact a social justice backsliding. We fortify our view by making the following submissions: A key concern is confining the determination of the size of an employer to size, deviation from the previas dual lens that intertwined size, which was under 50 for small, with company turnover, which was under R5m. In this 5th and 5th industrial revolution age, employee sizes of big companies, including unicorns, have become smaller with technology such as robots and Artificial Intelligence (AI) replacing humans while relevant companies dominate market influence through financial size. To say such economic giants should be removed from designated employers, is neither reasonable no socially just. The latter means a really small company such as that of African woman Mikateko M, that makes clothes and has a staff of 70 and a turnover that is almost 6 million will bear the burden of complying with the Affirmative Action target requirements and reporting, which a unicorn making as much as R6 billion will bear no similar burden as the new regulations deem it small. The reasonableness of the proposed regulations and resonance with the spirit of the Employment Equity Act and s 9 of the Constitutionis further called to question over the proposal to award aCertificates of Compliance to businesses who employ less than 50 people,even if there zero representation of the designated groups, which continue to suffer exclusion from certain work spaces as a result of the attitudes that were cultivated and entrenched through past discriminatory laws and reinforcing educational and cultural norms. Is this not regression? We submit that such businesses should get an exemption certificate instead of a Certificate of Compliance. This is mindful of the fact that the whole idea of requiring representativeness measures is premised on the understanding that underrepresentation of social groups that were historically excluded is a symptom of their continued exclusion no longer on the basis of law but on the basis of the accumulated economic and social power of historically privileged social groups and accumulated disadvantages among the excluded groups. It appears that the DoEL intends to accord Certificates of Compliance for de jure compliance in the clear absence of de facto compliance with the Employment Equity, which potentially places the country in violation of its obligations under the

		International Convention on the Elimination of All Forms of Racial Discrimination(ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD),8 while being clearly at odds with the spirit of substantive equality that underpins the South African Constitution and its equality laws, including the Employment Equity Act. Furthermore, we align with BMF's contention, as presented by Mr Ndlovu, that targets must be negotiated in good faith with a clear direction and that the problem appear not to lie in lack of candidates from the designated groups but rather in company bottle necks regarding rising to top management.9 The problems in this regard seem to include a revolving door syndrome and stagnation of designated groups at entry level and middle management, while white men continue to dominate top management in the private sector. This apparently points to organizational barriers that may include residual discriminatory cultures as opposed to lack of suitably qualified candidates. We further note concerns expressed by Mr Craig Laurence who also presented at the CSJ Roundable and suggest the DoEL takes cognisance of such concerns and provide the necessary clarity in final regulations regarding: (1) Whether the 5th-year target can be determined by an employer like with other years, or the sector target is mandatory, should be clarified); and (2) The determination of targets in a manner that is not fair to social groups such as Coloureds that are underrepresented in the EAP in some provinces while predominating in others such as the Western Cape. The fear expressed was that the current formula has an unfair impact	
18.	**ADMINISTRATIVE AND SUPPORT ACTIVITIES**		

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<td>18.1</td>
<td>EE CONSULT</td>
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<tr><th>EE ACT DRAFT REGULATIONS SECTION</th><th>OBJECTION / COMMENT</th></tr>
<tr><td>Section 3.1.2

2022 EE Workforce Profiles was used to draft the proposed Sector Targets</td><td>• The Proposed Sector Targets are based on outdated 2022 Workforce Profiles/Data
• Workforce Profiles change on a monthly basis and thus cannot be used as an accurate basis for setting the proposed Sector Targets</td></tr>
<tr><td>Section 3.2 & 3.4.3

The proposed 5-year sectoral numerical targets are minimum targets and key milestones, employers will be measured against the said</td><td>• Workforce Profiles change on a monthly basis and thus forcing employers to set annual numerical targets and drafting EE Plans for 5-years would be impossible and impracticable
• An annual EEA12 Analysis must be drafted by employers to effectively measure progress and update Recruitment Priorities, Numerical Targets, EE Barriers, AA Measures AND THE EE PLAN
• By forcing employers to draft a 5-year EE Plan, AA Measures would be impossible to apply in a sensible, accurate and "nuanced way" and would result in a paper (tic box) exercise with "justifiable/reasonable grounds for not complying"</td></tr>
<tr><td>Section 3.4.9

Employers operating in more than 1 Province may choose the EAP of the Province with the majority of employees</td><td>• This confirms that employers may do so, and is NOT a requirement, thus employers can break down their workforce per Province an use the EAP of the applicable Provinces
• It was indicated during the 2023 Western Cape EE Roadshow that the new online EE System/Portal will only allow an employer to choose 1 Province or National EAP, this is in direct contradiction with the above point and Section 3.4.9</td></tr>
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<td>18.2</td>
<td>National Employers' Association of South Africa (NEASA)</td>
<td>We continue to act on the instructions of the National Employers' Association of South Africa (NEASA).

2. It has come to our attention that the Minister has on 1 February 2024 again published 'revised draft regulations' concerning the 'setting of numerical targets' (hereinafter referred to as "the 2024 draft regulations"). According to the published document, the Minister ostensibly invokes his powers under section 15A of the Employment Equity Amendment Act 4 of 2022 (the "2022 Amendment Act").

3. Pursuant to section 16 of the 2022 Amendment Act, the amendments to the Employment Equity Act, which specifically includes section 15A, shall only enter into force on a date determined by the President through proclamation in the Government Gazette.

4. To date, no such proclamation has been issued; thus, section 15A remains inoperative. Consequently, neither the Minister nor the Department may rely upon or can be deemed to have adhered to its provisions.</td>
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		5. NEASA considers any consultations and procedures undertaken by the Minister and Department in purported compliance with section 15A prior to it becoming operational as mandated by the 2022 Amendment Act, to be steps taken ultra vires the empowering legislation and void. 6. It is our client's stance that the consultation process delineated in Section 15A shall commence exclusively upon the relevant section's enforcement. Our client rejects any assertion that section 15A's formalities can be satisfied before its implementation, given their prescriptive nature and dependence on the operative status of said sections. 7. Furthermore, our client contends that any public participation and consultation measures pursued by the Minister and Department prior to the pertinent section's enforcement shall not constitute proper compliance. Any publication of sectoral targets under section 15A in lieu of the current consultative processes followed by the Minister, shall be reviewed on the basis of such processes being defective and procedurally irregular. 8. The current consultative process conducted by the Minister and the Department is misleading concerning the binding nature of the process and the significance of the consultative process in relation to the ultimate determination of sectoral targets by the Minister. If the process has not yet been authorised due to section 15A being inoperative at this juncture, the public ought to have been informed by the Minister that their involvement in this consultation round is, at best, pre-consultative in nature. 9. It is unclear why the Minister is engaging in such consultative proceedings, which are both unnecessary and costly, given that proper consultation will be required prior to the publication of any future sectoral targets once section 15A becomes operative. This constitutes not only a considerable waste of public funds but also a misuse and abuse of public trust and time. 10. NEASA hereby requests that the Minister and the Department immediately cease unnecessary public consultations and that they inform the public of the current consultation process' defect. Additionally, we seek an undertaking from the Minister that he and his Department will comply with section 15A upon it becoming operational, ensuring proper consultation processes are adhered to. 11. Please be advised that should the Minister fail or refuse to comply with his procedural and consultative obligations under existing law, our client reserves the right to seek a review of such proceedings and pursue further alternative relief as necessary to protect the public interest, which might also include urgent applications for interdictory relief.

		12. Pursuant to the Promotion of Access to Information Act, a request for access to information is enclosed herewith. Our client requires access to specific information from the Minister and Department to contemplate its stance concerning the consultation process published on 1 February 2024. 13. We require that the Information Officer furnish a response, in conformity with the Promotion of Access to Information Act, within the ensuing 30 days.
18.3	**Retail Motor Industry Organisation (RMI)**	We have considered the Draft Regulations, and we welcome the principles set out in Regulation 4. We have, however, also noted several reviewable irregularities in the manner and procedure in which the Draft Regulations have been published by the Minister. This letter sets out our comments in response to the Draft Regulations as follows: The pre-conditions to the publication of proposed sectoral targets as contemplated in section 15A(1)(2) and (4) of the EE Amendment Act have not been complied with by the Minister; The proposed sectors are overly broad, and the proposed sectoral targets do not make provision for the unique circumstances of sub-sectors which may result in irrational targets; There appear to be internal conflicts between Regulations 3.4.2 and 3.4.4 and 3.4.6; There are no guidelines to determine the applicable sector where the employer may fall within two possible sectors; and The requirement to choose either the demographics of national or provincial economically active population (EAP) may present absolute barriers to advancement in employment for people from certain designated groups. We note that the correct section of the EE Amendment Act is in fact section 4. Section 4 of the EE Amendment Act inserts section 15A after section 15 of the EEA. For ease of reference, we also follow the reference in the Draft Regulations, namely section 15A of the EE Amendment Act. For the reasons set out in this letter, we urge the Minister to: (a) publish the proposed national economic sectors and sub-sectors and invite public comment on these; (b) consult with the sectors and subsectors on proposed numerical targets; (c) publish the revised proposed numerical targets for sectors and sub-sectors for public comment; and (d) publish amended Regulations by making provision for refined sectors and sub-sectors and numerical targets that take into account their unique circumstances. 2. **THE PRE-CONDITIONS FOR THE PUBLICATION OF PROPOSED SECTORAL TARGETS AS CONTEMPLATED IN SECTION 15A(1)(2) AND (4) OF THE EE AMENDMENT ACT HAVE NOT BEEN MET**

		It is our view that the pre-conditions for the publication of proposed sectoral targets for public comment have not been met, in that: The Minister has failed to first identify national economic sectors and sub-sectors in the Government Gazette for public comment as contemplated in section 15A(1) and (4) of the EE Amendment Act. The draft Employment Equity Regulations, 2018 GN 993 of 2018 (the 2018 Regulations), which make provision for the 18 economic sectors in EEA17, were published well before the Employment Equity Amendment Bill was signed into law by the President on 6 April 2023. As such it was ultra vires the Minister's powers, and thus cannot constitute compliance with section 15A(1) and (4) of the EE Amendment Act. In the circumstances, EEA17 is not in force and the reference to EEA17 in Regulation 2 of the Draft Regulations is of no force and effect. The 2018 Regulations are in any event still in draft form. Once the national economic sectors and sub-sectors are identified, the Minister is then required to consult with the sectors and sub-sectors concerned in terms of section 15A(2) of the EE Amendment Act on any proposed sectoral targets. No such consultation has taken place with RMI since the EE Amendment Act was signed into law on 6 April 2023. Publication of proposed targets for public comment is not the same as a consultation process contemplated by section 15A. There is good reason for consultation, because there are various nuances applicable to all sectors, sub-sectors, occupational levels and regions. Each sector and sub-sectors ought to be provided with an opportunity to be heard and to make representations before any targets are proposed and published for comment. Only once the consultation process is concluded, should the Minister issue the draft sectoral targets for public comment in the Government Gazette. It is therefore submitted that the procedural jurisdictional facts, wherein section 15A envisages a multistage process, have not been met by the Minister. For completeness' sake, the correct sequence of procedural requirements contemplated by section 15A is as follows: The Minister must identify the proposed economic sectors and sub-sectors, publish the proposed sectors and sub-sectors in the Government Gazette, and, in terms of section 15A(4), invite public comment for a period of at least 30 days. The Minister must seriously consider all public comments, amend the economic sectors and subsectors if warranted, finalise the economic sectors and sub-sectors, and publish same. Once the sectors and sub-sectors have been identified and published, the Minister must consult with the sectors and sub-sectors on the proposed sectoral targets. After consultation with the sectors and sub-sectors concerned and on the advice of the Commission for Employment Equity, the Minister must publish the proposed sectoral targets for public comment for at least 30 days. In this regard, the Minister may very well need to set different numerical targets for different occupational levels, sub-sectors or regions within a sector, as envisaged by section 15A(3). The Minister must seriously consider all public comments, amend the sectoral targets where applicable, and finalise and publish the sectoral targets.

3. THE SECTORS AS SET OUT IN THE DRAFT REGULATIONS ARE OVERLY BROAD AND THE PROPOSED SECTORAL TARGETS DO NOT MAKE PROVISION FOR THE UNIQUE CIRCUMSTANCES OF THE SUB-SECTORS

As is apparent from the description of the nature of the employers in the automotive aftermarket as set out above, they are vastly different from employers in other forms of retail activities. In many instances, they also include diverse sized manufacturing operations and activities. As was explained in the RMI's proposal on Employment Equity and Subsector Targets dated 19 April 2021 (the Proposal), efforts at meaningful transformation ought to be alive to, and cognisant of, specific industry and business dynamics. This is because sector targets can only be regarded as equitable if they are fair, achievable and realistic in regard to all members.

For ease of reference, we attach a copy of the abovementioned Proposal hereto. Notwithstanding this reality, the automotive aftermarket is grouped together with these other forms of retail functions in the economy when it comes to the setting of proposed employment equity targets. Indeed, we consider it imperative that only motor industry-related businesses are grouped together.

Furthermore, the various sub-sectors in the automotive aftermarket sector differ significantly amongst themselves with reference to the skills that are required and the availability of such skills in the market. It is accordingly not appropriate to prescribe one set of numerical targets across the entire automotive aftermarket industry, let alone wholesale and retail trade. For example, we noted the following diversities within the motor vehicle dealership sector in our previous submissions in 2021: large groups vs smaller independent dealers; public vs privately owned dealers; metropolitan vs rural dealers; and the current split of male vs female employees. Targets that apply across all retail functions in the economy and across all sub-sectors in a particular sector, are irrational and at risk of being challenged. What may be considered as reasonable and achievable in one sub-sector, may produce arbitrary outcomes and absolute barriers when applied to other sub-sectors. Such an approach stands in direct opposition to ensuring that sector targets are realistic and achievable. As stated already, RMI made these points as early as April 2021 when it was invited to engage with the Department of Employment and Labour (the Department) on the draft sectoral targets.

Notwithstanding an implied undertaking by the Department to introduce different targets for each of the relevant sub-sectors, it appears that our representations in this regard were ignored. Section 15A(3) permits the setting of different numerical targets for (a) different occupational levels; (b) sub-sectors; (c) regions within a sector; or (d) on the basis of any other relevant factor. RMI provided proposed targets for the various sub-sectors set out above. RMI went through a rigorous and comprehensive process to account for, amongst other things, nuances in demographics, available skills as well as industry dynamics and complexities as reflected in the abovementioned Proposal. It proposed stressed targets, cognisant of the fact that serious strategies would be required to achieve such targets. In order to ensure rationality, it is important that sectoral targets ought to be set for the different subsectors. There already exists an easy means of identifying the sub-sectors and this is by using the Standard Industrial Classification Codes (SIC Codes). According to the SARS website, SIC Codes 45 - 47 describe "Wholesale and retail trade; repair of motor vehicles and motorcycles", with the separate SIC Codes having the following divisions: Code 45: Wholesale and retail trade and repair of motor vehicles and motorcycles; Code 46: Wholesale trade, except of motor vehicles and motorcycles; and Code 47: Retail trade, except of motor vehicles

		and motorcycles. Applying these SIC Codes would prevent the situation where clothing and food retailers are lumped together with motor vehicle and motorcycle retail operations. We reiterate with reference to the attached Proposal, that RMI has already proposed targets for the various sub-sectors. It appears to us that these representations were disregarded. This is particularly so when one takes into account that the targets for "professionally qualified & middle management" and "skilled technical" for Sector 14 have not changed from the numbers discussed in 2021, the proposed sectoral targets published in 2023, and the proposed targets now contained in the Draft Regulations. Such process lends us to be of the view that the Department has simply "gone through the motions" in proposing sectoral targets. In doing so, the Department denied RMI a fair and just process as contemplated by the EE Amendment Act, to its prejudice and to the prejudice of its members. In the circumstances, RMI's view is that the method of identification of the proposed sectors is irrational, the failure to set targets for the appropriate sub-sectors is also irrational, and that, consequently, the proposed targets are irrational. We are further of the view that there is a more fundamental objection to the sectors and the targets set out in the Draft Regulations, and this is that the prescribed procedures, in the required sequence, have not been adhered to by the Department, as detailed above. As regards our engagement with the Department prior to 6 April 2023 when the President signed the EE Amendment Act into law, we state as follows: We engaged with the Department on the issue of sectoral targets from about April 2021, covering the range of automotive activities, namely retail, service and manufacturing. We engaged in these sessions with the Department in good faith, as the empowering legislation was not signed into law at the time. Our engagements were always prefaced on the understanding that the Department would comply with its statutory obligation to consult with the identified sectors, including RMI, once the EE Amendment Act had come into effect. In the absence of the EE Amendment Act having come into effect at that time, no consultation in terms of section 15A had or could have taken place. **4. APPARENT INTERNAL INCONSISTENCIES BETWEEN REGULATIONS 3.4.2, 3.4.4 AND 3.4.6** Draft Regulation 3.4.2 states: "Designated employers must take their workforce profile, the relevant 5-year sectoral numerical targets and the applicable EAP into account when setting annual numerical targets in their workplace(s) as required by Section 20(2) of the EEA." This supports the principle in section 15(1) of the EEA that a designated employer must set numerical goals and targets for the different race and gender groups. This would be with a view to ensuring that suitably qualified people from designated groups are equitably represented in the occupational levels in the workforce of the designated employer. However: Draft Regulation 3.4.4 states: "Employers should not set targets for those groups whose representation have already exceeded their EAP in a particular occupational level"; and Draft Regulation 3.4.6 states: "Where a designated employer has exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial / gender group but should set targets towards the EAP." It is not clear how the goal of equitable representation will be met if targets are not set for groups in respect of which the relevant EAP / sectoral targets have been exceeded. On the wording of Draft Regulation 3.4.4 (no internal targets necessary if the targets have been exceeded) and Draft Regulation 3.4.6 (no "regression" permitted), the result may well be the over-representation of a particular race or gender group. By way of example, if Indian males are over-represented with reference to the EAP, such over-representation must be maintained, and it would not be necessary to set targets for this particular race / gender group. This does not align with the objective in section 15(1) of the EEA to achieve "equitable representation". It may also create absolute barriers to the appointment and/or promotion of under-represented groups. Practically, it is difficult to understand how a designated employer can exceed the set numerical target of

		a particular racial group when the current draft sectoral targets do not set targets for different racial groups, but instead present a globular target for designated groups in general. Draft Regulations 3.4.4 and 3.4.6 are accordingly not in accordance with section 15 of the EEA and should be deleted. 5. **THERE ARE NO GUIDELINES TO DETERMINE THE APPROPRIATE SECTOR WHERE THE EMPLOYER MAY FALL WIHTIN TWO POSSIBLE SECTORS** It is possible that some members of the RMI automobile aftermarket may, depending on its activities, fall into the sector broad sectors of "Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles" or "Manufacturing". The draft sectoral targets in respect of the Manufacturing sector differ from the draft sectoral targets of the Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles sector. Likewise, the car rental sub-sector should fall within Travel and Tourism, which is not catered for in the Draft Regulations; instead, this sub-sector is now forced into the broad category of wholesale and retail trade. Other than guiding employers to consider which sector the majority of its employees fall, such exercise ignores the possibility of a dispute regarding whether a designated employer falls into a sector at all. No guidance is provided by the Department on what factors will be relevant when determining in what sector a designated employer falls. 6. **THE REQUIREMENT TO CHOOSE EITHER THE DEMOGRAPHICS OF NATIONAL OR PROVINCIAL ECONOMICALLY ACTIVE POPULATION MAY PRESENT ABSOLUTE BARRIERS TO ADVANCEMENT IN EMPLOYMENT FOR CERTAIN DESIGNATED GROUPS.** Regulations 3.4.8 and 3.4.9 provide, in essence, as follows: Designated employers who conduct their business / operations nationally, must apply the national EAP. Those employers who conduct their operations in a particular province must apply the applicable provincial EAP. Where a designated employer operates in more than one province (but, assumingly, not nationally) it may choose to apply the EAP of the province with the majority of employees. Designated employers may not use the national and provincial EAP at the same time. Designated employers must utilize the chosen demographics for the entire duration of its employment equity plan that is in line with the relevant 5-year sectoral targets. This approach is not rational or fair. By way of example: Employer A may have operations in all nine provinces. Its head office may be in Cape Town, with responsibilities over employees across the country. The scope of the responsibilities of the employees in the various provinces may apply to the geographical area of that province; but there may also be employees in the provinces who report to Employer A's head office functions (for example, support functions such as human resources, finance, IT, etc). In respect of employees with a provincial scope of responsibility, it would make sense to apply the relevant provincial EAP. Arguably, in respect of employees with "head office" responsibilities (including those located in the provinces), it could make sense to apply the national EAP. At the same time, because of the location of Employer A's head office in Cape Town, one would again look at the scope of responsibility for the level of employee concerned. In those roles that are "Cape Town based" (for example, cleaning, secretarial support, etc), the Western Cape EAP numbers may be appropriate, whereas for those with national responsibility, the national EAP may need to apply. Such an approach would be in line with the requirement to set targets for "different occupational levels" as contemplated in section 15A(3). It would involve a greater level of detail and scrutiny and ultimately enable targets that are rational and achievable. By preventing an employer from applying the national and provincial EAP "at the same time", the Draft Regulations are at risk of being regarded as irrational. It may also present an absolute barrier to advancement of people from certain designated groups in certain provinces. South Africa's demographics

		are unique as there is a higher concentration of Coloured people in the Western Cape and a higher concentration of Indian people in KwaZulu-Natal in comparison to the national EAP or other provincial EAPs. If the demographics of national EAPs are applied in provinces such as the Western Cape or KwaZulu-Natal, then this would undermine the purpose of the EEA to promote the equitable representation of designated groups in all occupational levels. Moreover, this has been considered by the Constitutional Court2 wherein it was held as irrational for the Department of Correctional Services to ignore provincial EAPs when setting numerical goals and targets and was required to consider both the national EAP and provincial EAP. In the circumstances, RMI suggests that the Draft Regulations on the use of national and provincial EAP's be revisited to allow a designated employer to use both the national and provincial EAP, where appropriate
18.4	**TSEBO SOLUTIONS**	**THE USE OF EITHER NATIONAL OR REGIONAL (PROVINCIAL) EAP DEMOGRAPHICS** 5 Section 42(1)(a) of the Employment Equity Act 55 of 1998 ("**EEA**") specifically states that in determining whether a designated employer is effectively implementing employment equity, the extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce in relation to the demographic profile of the national **and** regional economically active population ("**EAP**") must be taken into account. Section 42(3) specifically indicates that "without limiting section 1(a)" the regulations issued by the Minister my specify circumstances under which an employer's compliance may be determined with reference to the national or regional EAP. 6 It is unclear from the Republished Draft Regulations when a designated employer will be regarded as "conducting their business / operations nationally." One interpretation is that only a designated employer

operating in all nine provinces must apply the national EAP, and only a designated employer operating in a single province must necessarily apply the EAP of that particular province, alternatively if a designated employer is operating in two provinces it must apply the EAP of the province where the majority of its employees are located. Another interpretation is that a designated employer has an election to apply either the national EAP or the EAP of the province where most of its employees are based, irrespective of the number of provinces it operates in.

7 In addition, Section 42 of the EEA does not provide sufficient justification to choose either the national or regional EAP. Despite an earlier amendment to section 43(1) where the word "must" was amended to "may," it is submitted that the framework of the EEA continues to provide a discretion for a designated employer to consider both the national and regional EAP in adopting and implementing its employment equity plan. In this regard, the Republished Draft Regulations are inconsistent with this approach to the extent that it prescribes that a designated employer may only consider either the national or the regional EAP in setting its annual numerical goals.

TRANSITIONAL ARRANGEMENTS

8 The Republished Draft Regulations plainly fails in the same way as the Draft Regulations to the extent that it does not regulate the transition from the prevailing legal and regulatory framework to the *post* Amendment Act and Republished Draft Regulations framework.

9 Guidance is required on whether, absent any transitional arrangements, a designated employer's employment equity plan ("**EEP**") prepared *before* the Draft Regulations, would remain lawful until its expiry, or would it be replaced by a new or an adjusted EEP that must be developed immediately *post* amendment, and how long would an employer have to comply.

10 The Minister is expected to provide for transitional arrangements which are reasonable and affords a designated employer sufficient time to adjust its EEP, if required, and its implementation.

EAP, SECTOR TARGETS, SECTOR CODES

11 In terms of the Republished Draft Regulations there is an attempt to suggest a connection between the 5-year sectoral numerical targets and the sector codes. The Republished Draft Regulations state that when setting the proposed sector numerical targets, the following factors were taken into account by the Minister:

11.1 The various sector codes and the sector charters published under the BBBEE Act;
11.2 The national and regional EAP of each sector; and
11.3 The unique sector dynamics (e.g. skills availability, economic and market forces, ownership etc.).

12 It is uncertain and vague how these above factors were considered when setting the sector numerical targets. The way in which the sector codes and sector charters published under BBBEE legislation were applied as well as the unique sector dynamics and challenges were taken into account is not clearly delineated and there is no indication, *prima facie*, of the manner in which these factors informed the sectoral numerical targets. Simply stating what the Minister allegedly considered as part of the process of determining the sectoral numerical targets is inadequate in demonstrating a rational and scientific basis for the sectoral numerical targets.

13 It is submitted that there is no rational connection between the EAP and the 5-year sectoral numerical targets. The republished regulations state that when setting annual targets the EAP, the workforce as well as the sectoral numerical targets will need to be taken into account by designated employers. What this fails to consider is that the EAP is potentially a moving figure and could affect the 5-year sectoral numerical targets which will impact the overall commercial business plan to achieve the 5-year sectoral numerical targets.

ANNUAL NUMERICAL GOALS, SECTOR INFORMATION, SECTOR NUMERICAL TARGETS & QUOTAS

14 The Republished Draft Regulations make provision for a designated employer to set annual numerical goals with a view to ultimately achieving the 5-year sectoral numerical targets. However, there continues to be a lacuna in respect of a rational connection between the annual numerical goals which is informed by the designated employers workforce profile, various factors contained in the EEA (inherent requirements of the job, suitably qualified persons, skill and experience, turn-over and growth, etc.) and the relevant EAP. There is no indication of the way in which the EAP and the expertise and commercial realities of a particular sector are connected and reflected in the sectoral numerical targets of a particular sector.

15 Furthermore, the Republished Draft Regulations prescribe that a designated employer must make provision for all population groups in its annual numerical goals. There is no indication whether a designated employer will be required to comply with specific targets for each population group (i.e., African, Coloured, Indian and

White) or whether broad compliance with overall designated group representation that aligns with the sectoral numerical targets is sufficient.

16 It is apparent from section 15 of the EEA that numerical targets may not amount to quotas. However, the unrealistically high targets proposed in the Republished Draft Regulations, as was the case in the Draft Regulations, would have the same impact as quotas and would require arbitrary employment policies, procedures and practices to implement.

17 The case law also requires that any numerical targets must not be applied haphazardly. In this case, the lack in the Republished Draft Regulations setting out the rational connection between the various components and factors as well as the way in which relevant data was applied as a basis for the proposed targets, amounts to such haphazard application.

18 In addition, but subject to section 42 of the EEA (which now includes consideration of the sectoral numerical targets) nothing in section 15 of the EEA requires that employers establish an absolute barrier to prospective employment or advancement of people who are not from designated groups. Where targets are particularly difficult to achieve and where they appear to set absolute minimums, it is difficult to reconcile that it does not amount to quotas and an absolute barrier.

19 Based on the above, the indication that "affirmative action must be applied in a nuanced way" in the Republished Draft Regulations has little, if any, practical implication.

DURATION OF EMPLOYMENT EQUITY PLAN

20 Section 20(c) of the EEA states that a designated employer's EEA may not be shorter than one year or longer than five years.

21 In light of the 5-year sectoral numerical targets, it is unclear whether it would be practical for a designated employer's EEA to be shorter than 5 years and practically dilutes a designated employer's legitimate entitlement to set the duration of its EEA in terms of the EEA. It is also similarly unclear on how an EEA plan of less than 5 years will be assessed in relation to the 5-year sectoral numerical targets.

JUSTIFICATIONS FOR NON-COMPLIANCE

22 The Republished Draft Regulations make provision for justifiable grounds for non-compliance which a designated employer may invoke to avoid any penalties.

23 There is no guidance furnished on the manner and form in which a designated employer is expected to demonstrate the presence of justifiable grounds that made compliance with the sectoral numerical targets impossible. There is also no indication of whether this demonstration or submission must be made at the instance of when the designated employer realistically becomes aware that compliance with the sectoral numerical targets will not be possible or only after the conclusion of the 5-year period when compliance with the sectoral numerical targets is expected.

24 Furthermore, there is no clarity on whether the list of justifiable grounds is exhaustive or if there may be other factors, including but not limited to, sectoral impediments or specific challenges or vulnerabilities connected to an individual employer that can be considered as justifiable grounds for non-compliance with the sectoral numerical targets.

25 Moreover, it is unclear whether the presence or the relevance of a single justifiable ground as listed in paragraph 4.5 of the Republished Draft Regulations is sufficient to condone and justify non-compliance with the sectoral numerical targets.

Our recommendations are intended to craft a balanced view which is informed by the reality of our markets, clients, economic and social environment. We appreciate that you will carefully consider these in your final deliberations.

18.5	**THE CONSOLIDATED EMPLOYERS ORGANISATION OF SOUTH AFRICA (CEOSA)**	**Background and Events Since June 2023** While it may not be prudent for the sake of this commentary to address the background to the origination of the draft proposed sector targets, it absolutely must be pointed out that the consultative process embarked on by the Department of Employment and Labour (DOEL) in seeking industry input was woefully inadequate in the eyes of CEO, during the first round of commentary as well as the current round of public comment. As already mentioned, CEO is a large employers organisation having members in every sector of the economy and in every sector for which the targets are proposed. Only once during this entire exercise, did CEO receive an invitation to discuss proposed sector targets, this was in the transportation sector and was on the 16th of August 2022. Despite various parties who attended said meeting, including CEO, expressing our dismay at the lack of inclusion of the input of parties in addressing the proposed sector targets, these pleas fell on deaf ears. Even though numerous questions were raised as to the lack of proper consultation with the industry, the Committee in that scenario remained steadfast on proceeding with business of the meeting. The impression this gave was that consultation was but a proverbial tick-sheet exercise. Upon consultation with many of our members as well as other role players that operate within the collective

bargaining sphere a. . at the various sector levels, it has become apparent that the consultative process was anything but consultative, either during 2023 or with regards to the latest round prior to public comment. Much of the feedback received from our members points to the fact that no consultation was had with relevant stakeholders and that the targets proposed are not reflective or representative in relation to the feedback that would have been received had all relevant stakeholders been consulted.

Naturally then, with regard to 2023 as well as now, it simply cannot be understood why CEO was never consulted with regards to setting of targets in any of the other sectors. As mentioned, CEO is party to five different Bargaining Councils, four of which are national, namely the MEIBC, NBCRFLI, BCCEI and NBCPSS as well as having members in every sector of the economy.

Therefore, the impact and input that CEO would have had in the discussions pertaining to setting sector targets cannot be understated and the fact that CEO was never invited or included in these discussions is very concerning and the only conclusion that one can draw is that the draft proposed sector targets were reached without a full picture or stakeholder input and that same was merely done as a tick-sheet exercise. CEO strongly believes that the whole consultative process should be revisited and done properly.

The Validity, Morality or Legality of the Proposed Targets

Upon engaging with the more technical aspects of the proposed targets, it must be brought into question as to whether the draft targets are in fact legal and whether or not the publishing thereof is in fact ultra vires. By that meaning, they are premature in that the EEA Act has not yet been enacted by the President as yet. From our understanding, the President of the Republic has yet to set a date for the Act to come into force, thereby making the publishing of proposed targets premature and significantly open to legal challenge.

Over and above this, the settlement agreement reached on this topic between Solidarity and the Government, which has now been made an order of Court, does not seem to find much expression in the new Gazette for comment.

CEO is deeply concerned regarding the above two points as these two points once again call into question the validity

		and or enforceability of the proposed targets. In addition to the above, when CEO delivered commentary on the National Minimum Wage a short while ago, much emphasis was placed on the fact that instead of the State ceaselessly interfering with business and its operations, the State should rather focus on much more pressing issues such as creating jobs and opportunities for all South Africans. This same sentiment rings true once more when it comes to the proposed sector targets. Why interfere in the private sector? The same sector that is being crippled by unrelenting load shedding, inflation and an unsavoury business environment yet is bringing in all the resources for the rest of the country. Legal Uncertainty of the Proposed Targets While the Act seems to address concerns in relation to not meeting the targets in terms of the non- exhaustive list of justifiable reasons that an employer can proffer, also contained in the Solidarity agreement, there still exists much apprehension on the part of employers as to how the labour inspectors, or DOEL for that matter, will interpret or apply the legislation in relation to any reasonable explanations provided by employers and the potential ramifications that may stem from same. This apprehension stems from the fact that many employers are concerned as to the capacity as well as technical ability of labour inspectors in relation to how they will apply the laws. This apprehension is shared by CEO. CEO handles numerous compliance related disputes on behalf of our members at the CCMA that emanate from compliance orders issued by inspectors all over the country. With respect to the inspectors, from CEO experience, the fact is that most of these compliance orders often lack merit and when they are defended at the CCMA for instance, majority of the time the inspector or DOEL does not even show for the case. This begs the question as to what kind of recourse will employers have in the event of a compliance order being

		issued where the justifiable grounds or explanation given has not been properly considered. The concern for employers is just how burdensome will receiving, and consequently defending, such compliance related matters be on employers when the compliance order is later rescinded. Another very contentious point is the fact that the new amendments exclude an employer who has received an adverse arbitration award at the CCMA in relation to either a S73A National Minimum Wage (NMW) dispute or discrimination dispute from doing business with the State. This, it is respectfully submitted, is a step way too far. CEO attends to a vast number of S73A NMW disputes on behalf of our members on a yearly basis. It is with regret that CEO notes that we have unfortunately seen some truly subpar arbitration awards in this regard as well as noting that the practice of dealing with S73A disputes at the CCMA across the provinces seriously lacks uniformity. Given the fact that the only recourse an employer would have, a review to the Labour Court, is an extremely costly and time-intensive exercise, it is highly likely that many employers, out of fear of a potential adverse award, are simply going to settle these types of disputes purely to avoid a situation where they are sitting with an adverse award and therefore cannot do business with the State. This is not the way the law and social justice is meant to work. We strongly fear that the above amendment will create a proverbial "open season" to employees to try their luck at the CCMA because employers would be too scared to oppose any such claims. **This untenable situation cannot be allowed to prevail.** Subsectors of big sectors – Manufacturing and Transport for Instance Much of the feedback that CEO has received from our members relates to the fact that in certain sectors, the scope of work and profile of business is quite varied. Therefore, to simply include all those manufacturing businesses under

		one umbrella for instance would be improper as the sector is made up various subsectors and businesses whose profile and business model differs quite significantly from those included under the general umbrella. This same sentiment rings true in other sectors as well and again creates a problem of implementing a general target in business whose business model or profile may be completely different to a similar entity falling under the same sector.

18.6	BEE CHAMBER	

PAGE NUMBER	SECTION / CLAUSE NUMBER	COMMENT	RECOMMENDATION / SOLUTION
6	5.4.8 and 5.4.9	a. It seems that Designated Employers must choose which demographic they will use (National or Regional EAP). Does that mean that, e.g. even if they have 98% of their staff in one province, they still have the option to apply National EAP? If not, what is the cut off? b. Does "majority" mean more than 50%, or the province in which more staff are employed than in any other province (e.g. KZN 10%, EC 15%, Limpopo 30%, WC 45%, use WC as "A majority is more than half of a group of population", i.e. >50%?).	Clarify.
6	5.4.10	Similar to the comments for 5.4.8 and 5.4.9 above.	Clarify.
8-12	-	The definition of "Designated Groups" in the Act includes White females and therefore the implication is that White females are included as part of "Designated females" in the Draft Sectoral Targets. Subsequent to the publication of the 2024 Draft Sectoral Targets, it has consistently been confirmed by the DoEL on numerous occasions that White females do in fact form part of the "Designated female" Targets, and by implication, they will also form part of the measurement of whether a particular Designated female Sectoral Target has been met or not. "Designated Groups" also include White males with Disabilities. The same comments which apply to White females, therefore also apply to White males with Disabilities.	Clarify whether White females form part of Designated females. If so, adapt the Sectoral Targets, otherwise they are irrelevant.
9	9 (Financial and Insurance Activities)	We have reviewed this Sector in detail, and we have picked up similar issues in Mining and Quarrying, and suspect such issues exist in each Sector. The following anomalies occur for the Financial and Insurance Activities Sectoral Targets (references to actual representation has been taken from the 23rd Commission for Employment Equity Report), also taking the definition of "Designated females" (see above) into consideration: i. Top Management: i. The actual representation of Designated females (including White females) is already 28,7%, while the Sectoral Target is only 20%. ii. Senior Management: i. The actual representation of Designated males is already 25,6%, while the Target is only 24%.	Review Targets for all Sectors to address any similar anomalies.

		iii. Middle Management: i. The Target for Designated males (50%) has already been achieved in the industry (an actual of 50,8%). ii. Even if White females are excluded, the Target for Designated females (34%) has already been achieved (an actual of 34,5% excluding White females and 50,7% including White females). iv. Junior Management: i. The target for African males in relation to the actual current representation, is exceptionally high, i.e. an improvement of 18,8% expected from 28,8% to 47,6%. ii. The current representation of Designated females (including White females) is significantly above the Draft Sectoral Target, by 23,1% (the Target is 40,8%, while the actual is 63,9%). Even when White females are excluded, the Black representation is still already significantly above the Draft Sectoral Target, by 12,3% (the Target is 40,8%, while the actual is 53,1%). It seems the "Target" is therefore to reduce the Designated female representation significantly over the 5-year period.	
-	-	Section 20(2)(e) of the EE Act has not been amended in terms of the duration of EE Plans, i.e. the duration can be anything between 1 and 5 years. It remains unclear how it will work practically to develop a Plan with a duration of less than 5 years (e.g. a 1 year Plan), while still showing how the employer will be working towards 5 year Sectoral Targets.	Provide clarity in the Final Regulations.
Page 4 of the 2022 Amendment Act, page 10 of the 2020 Employment Equity Amendment Bill and page 111 of the Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan	Various - see next column	Section 16 of the EEA has been amended to exclude membership by nominated employee representatives from the EE Consultative Forum should a recognised trade union be present. In Clause 5 of the Memorandum published with the 2020 Amendment Bill, it states that the intention of the removal is to clarify that "Where there is a representative trade union, the designated employer must only consult with that trade union." This implies that staff nominees may no longer be consulted once the amendments become effective. It seems to be unconstitutional and against the spirit of consultation, as well as the elimination of unfair discrimination as defined in the EEA, if some staff (and in some cases the majority of the staff) are not represented on the committee. It is also contrary to 6.1.2.5 of the Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan.	Clarify Committee membership in the final regulations.

18.7	**South African Institute of Race Relations NPC (IRR)**	ANNEXURE 35 3.2 Rules regarding the minister's five-year sectoral numerical targets The Regulations state that 'the proposed 5-year sectoral numerical targets' ('the minister's targets') are 'minimum targets and are key milestones towards achieving the equitable representation of the different designated groups within each occupational level...in relation to the demographics of their applicable EAP'.16 The minister's targets 'are not intended to add up to 100%'17 and 'employers should not set targets for those groups whose representation has already exceeded their EAP in a particular occupational level'. In addition, 'where a designated employer has exceeded the set numerical target of a particular racial/gender group at an occupational level, such an employer may not regress in that particular racial/gender group but should set targets towards the EAP'.19 This wording is obscure and difficult to understand. Does it mean, for example, that if a black female senior manager in the water supply, sewerage, waste management and remediation activities' sector resigns, that the employer must immediately replace her with another black female if the employer is not to 'regress'? What the Regulations say about national and provincial EAPs is confusing too. Under Para 3.4.8, 'the National EAP shall apply to designated employers conducting their business/operations nationally, and the respective Provincial EAP shall apply to designated employers conducting their business/operations in a particular province'.20 What then of a supermarket chain that has its headquarters in Gauteng, where all business operations are planned, financed, managed and largely implemented, but which also has its retail outlets (without which no sales could be made and the business would collapse) in the coastal provinces of KwaZulu-Natal, the Eastern Cape, and the Western Cape. The business could be seen as 'operating nationally' – which would suggest it must use the national EAP – but it also has an important presence, without which its business operations could not survive, in three different provinces, each with very different provincial EAPs. Para 3.4.8 goes on to stipulate that 'designated employers must choose only one demographic (ie either national or provincial, based on their geographical presence within provinces)'. However, this provides no solution to the conundrum outlined above. It also breaches the doctrine against vagueness of laws, as different officials are sure to interpret this part of the Regulations in different ways at different times. The Regulations then attempt to solve one part of this problem by saying that 'a designated employer who chooses to use the provincial EAP and operates in more than one province, may choose the EAP of the province with the majority of employees'.21 However, this could generate considerable injustice. It is also inconsistent with the wording of the EE Act, which obliges the Director General of Employment and Labour, in assessing a designated employer's compliance with the statute, to take account of 'the demographic profile of the national and regional economically active population' (emphasis supplied).22 Under the Regulations, by contrast – if the biggest retail outlets and the highest number of employees are in the Eastern Cape – this will bar any consideration of the very different provincial EAP figures in both the Western Cape and KwaZulu-Natal. This proposed rule is also clearly ultra vires the EE Act. A similar confusion is also likely to arise in other spheres. Under the Regulations, the minister's targets apply only to 'the four upper occupational levels': these being 'top management', 'senior management', professionally qualified and middle management', and 'skilled technical'. However, 'designated employers are still required to set numerical goals and annual EE targets for all population groups at

		Semi-skilled and Unsk... occupational levels in their EE Plans in terms of Sec... 20(2) of the EE Act taking into account their respective EAP'. Yet, under Section 20(2), their EE plans at the semi-skilled and unskilled levels must be based on both national and regional demographics, as the EE Act requires. The Regulation's attempt to enforce a single EAP for the four upper occupational levels is thus at odds with the EE Act and ultra vires its provisions. It is also likely to generate a conflict between the EAP which is to be applied to the upper four occupational levels and the EAPs which apply at the semi-skilled and unskilled levels. In addition, different officials are sure to interpret these conflicting requirements in different ways at different times, which contradicts the doctrine against vagueness of laws.
		GENERAL COMMENTS
1.	**CGE**	The Commission for Gender Equality's Submissions on Aspects of the Draft Regulations Considering the above, the CGE's submissions regarding the draft regulations are set out hereunder. The CGE welcomes the draft regulations on the sectoral targets but expresses its concerns below in regard to certain of the regulations. 3.1. Draft Regulation 3.4.7 provides that: 'Designated employers are still required to set numerical goals and Annual EE targets for all population groups at semi-skilled and unskilled occupational levels in their EE plans in terms of section 20(2) of the EEA taking into account their respective EAP. While these levels are not included in proposed sector numerical targets, it remains incumbent on the employer to set these targets.' Although this provision empowers the employer to set targets for semi-skilled and unskilled occupational levels, it may be difficult to monitor employers' achievement of their own targets in these sectors. It would also be difficult to determine whether the targets these employers have determined are reasonable without being able to reference clear and quantifiable goals in place to ensure compliance at these levels, as there are with other occupational levels. As a result, the lack of clear and quantifiable goals targets would undermine the importance of transformation at these levels and risks creating the impression that these occupation levels are too insignificant to monitor. The CGE therefore recommends that targets should be set at all occupational levels, including semi-skilled and unskilled, to ensure the compliance thereof. 3.2 Draft Regulation 4.6 provides that: 'The employer will incur no penalties or any form of disadvantage if in the compliance analysis of affirmative action in any workplace there are justifiable/ reasonable grounds for not complying with the targets'. The Draft Regulation is an exact replication of clause f) of a settlement agreement signed by the Minister of Labour and the trade union, Solidarity on 28 June 2023. That agreement emanated from a mediation process set in place by the International Labour Organisation (ILO) arising from a complaint laid by Solidarity with the ILO regarding the South African Government's application of affirmative action measures. Nevertheless, the CGE is concerned about the practical effect of this clause on the enforceability of transformation, and whether the ultimate goal will be achieved. This is especially so

		given that affirmative action seeks to create a fair and inclusive workplace, and employers should strive to meet targets at the same time as overcoming practical challenges, rather than simply use these challenges as an excuse. 3.3 Draft Regulation 5: 5-Year Sectoral Numerical Targets for All Sectors: Draft Regulation 5 contains a table setting out the sectoral numerical targets in the identified sectors. While these set targets will ultimately achieve racial transformation in the identified sectors, the CGE is concerned that this may not necessarily achieve gender transformation. This is because the proposed ratio in the sections benefit male employees more than the female employees. At each level in every sector, the ratio for designated males is higher than that of designated females, and the remaining portion of non-designated employees remains at the discretion of the employer. If it happens that the remaining non-designated portion are also all male, the total percentage of female employees remains low. Given that this situation cuts across all occupational levels in all sectors, the potential for female employees to be marginalised by the proposed ratios remains high. The CGE therefore recommends that the proposed sectoral targets for female designated groups be higher than that of the designated males, in order to achieve for effective gender transformation. 3.4 General comments The Draft Regulations relate to several different economic sectors but do not include the legal sector. In 2008, the CGE, in collaboration with Democratic Governance and Rights Unit (DGRU) and Sonke Gender Justice, adopted a discussion document entitled 'Discussion Document on Gender Transformation in the Judiciary and the Legal Sector'. The discussion document illustrated that only 27 per cent of advocates at the General Council of the Bar were women, and that women also constituted a small percentage of women councillors at South African law societies. Given the low representation of women within the legal sector, the Commission recommends that the legal sector should be included within the Draft Regulation.
2.	SAKELIGA	**PARTS 1 TO 4 OF THE DRAFT REGULATIONS** **List of Economic Sectors[4]** 20. The Draft Regulations publication does not give an indication of compliance with section 15A(2) of the Act – consultation with the relevant sectors. Who were consulted and what was the outcome? The public does not know. 22. While the extent of suitably qualified people is indicated as a factor, there is no indication as to how the Minister determined the extent of suitably qualified persons per sector. The latest 2022 EE workforce profiles does not provide this information. It seems that the extent of suitably qualified people per sector was not considered at all, rendering the Draft Regulations irrational, unlawful and un-Constitutional. 23. The latest 2022 EE workforce profile publication does contain some data about the current workforce racial profile per sector and the EAPs for male and female designated persons, but the publication does not serve as a valid basis for the setting of any "targets". Workforce racial profiles are based on reporting data from those "designated employers" that submitted reports in 2022, being only 27,532 reports covering around 7.2 million

		employees. This data is representative of only around 40% of the employees in the country in 2022. On a sector level, it is even worse because in some sectors as little as less than 200 reports were submitted covering a minimal part of the employees in such sectors. 24. The workforce racial profiles can therefore not serve as a valid basis for determining "targets" for the entire workforces for sectors. To the extent that it is used to determine "targets", this is irrational and unlawful. 28. In any event, the EAP composition cannot serve as a basis for sectoral "targets", especially not at occupational level, because the EAP includes millions of jobseekers and others that are i) willing to work in more than one sector if not any and ii) often are not suitably qualified to work at most occupational levels in most sectors. 33. In summation, so-called factors considered in the Draft Regulations are cryptic. They are mostly silent on the data sources surveyed and the methodology used to set the numerical "targets". No indication is provided as to the relative weighting attached to each factor, if any. The factors are reliant on irrelevant considerations such as the EAPs and omit relevant considerations such as the changing nature of circumstances within "sectors". 34. For these reasons, *inter alia,* the numerical "targets" were determined in an irrational and unlawful manner and should be withdrawn. **Factors that "designated employers" must take into account** 38. This begs the question: why should "designated employers" consider such factors, if the Minister is alleged to already have considered them when he determined minimum "targets" on behalf of such employers? 39. Either the Minister must consider the factors and set the "targets", or "designated employers" must consider the factors and set the "targets" themselves. But both can't be true simultaneously. What if "designated employers" assessment of the factors differs from the Minister's assessment; would "designated employers" be permitted to set "targets" much lower than the minimum proposed "targets" in such cases? The EEAA seemingly says no. 42. Employers – not the Minister – will be tasked with dealing with complaints and legal actions emanating from the implementation of the Minister's "targets". This is a key reason why Sakeliga objects to compulsory "targets" and the structure of sections 15A and 20 of the EEAA itself. The Draft Regulations should be withdrawn.

3.	**Business Unity South Africa (BUSA)**	**Lack of adequate consultation** The Act is a significant piece of legislation that requires both the Government and the private sector to act in the best interest of the country. In order to ensure the successful achievement of the transformation goal, it is crucial for the Department to engage in a lawful consultation process with the sectors involved. BUSA believes that the Department's "consultation" process with certain sectors (which began in 2018, prior to the amendment of the Employment Equity Act) does not relieve the Department of the responsibility to conduct a properly constituted consultation process now that the amendments have been passed and the Bill has been assented to by the President. BUSA has consistently emphasised that a comprehensive and detailed consultation process should be conducted before the finalisation of the regulations, taking into account the complexity of analysing and compiling employment trends in certain industries, particularly those without strong industry associations. BUSA is of the opinion that the proposed targets in the 2024 Draft Regulations have not resulted from a lawful consultation process. These targets may not align with the Solidarity Agreement, potentially leading to unnecessary litigation, and they do not appear to fully consider the specific circumstances faced by designated employers who are currently grappling with numerous economic headwinds and challenges. Although the terminology used to describe the targeted percentages has changed from "Black Representation" to "Designated Persons," which now includes individuals with disabilities, there has been no consideration of submissions highlighting the unique factors that sectors must address, such as economic, social, skills (both scarce and critical), technological, and legislative factors. The only substantive change in these draft regulations was made in relation to the Finance and Insurance Sector, where corrections were implemented. All the other sector targets have essentially remained unchanged. Unfortunately, this renders the targets unreasonable and unjustifiable. BUSA urges the Department to demonstrate that it has taken into account the specific submissions provided by sector stakeholders. It seems unlikely that the overall ministerial targets for the "designated group" can remain unchanged from the previous draft regulations if the submissions were indeed considered. Even if we consider that the "designated group" targets encompass white females and white individuals with disabilities, there is no clear rationale provided regarding the key factors considered in determining these targets. **Groups representation exceeding EAP in a particular Occupational Level** Point 3.4.4 states that "employers should not set targets for those groups whose representation have already exceeded their EAP in a particular occupational level". This is in direct conflict with the provisions of Section 20(2)(c) of the EE Act, read together with Clause 7.4 of the 2017 Codes of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan ('the EE Plan Code') and the EEA13 of the 2014 EE Regulations, which requires EE Numerical Goals to be set for each race and gender Group in each Occupational Level. The provisions of points 3.4.6 state that where a designated employer has exceeded the Ministerial Targets, the employer may not regress and should set targets toward the Economically Active Population (EAP). This provision further

		exacerbates the above concerns and also holds significant risks for designated employers where staff turnover, for example, may place the employer in contravention. Section 6 of the EE Amendment Act determines that "the numerical goals set by an employer in terms of subsection (2) must comply with any sectoral target in terms of section 15A that applies to that employer." Regulation 3.4.6 will therefore come into conflict with Section 6 of the EE Amendment Act in situations where the representation of an individual race or gender group in an Occupational Level at the time of setting Employment Equity (EE) Goals is higher than its percentage target after factoring in its applicable Economically Active Population percentage but is lower than its percentage Economically Active Population. It is proposed that the referral to a designated employer's obligation "not to regress" be removed, as any developments over the 5-year period may be addressed under justifiable reasons. **The insistence that Designated Employers with a National Footprint can use only one Economically Active Population in setting its EE Goals** Both the 12 May 2023 and 1 February 2024 Draft EE Regulations state that the National Economically Active Population shall apply to designated employers conducting their operations nationally, that Provincial Economically Active Populations shall apply to designated employers that conduct their operations in a particular province, and that a designated employer cannot use both National and Provincial Economically Active Population. We acknowledge the move outlined in the 1 February 2024 Gazette, which now further affords a designated Employer with a National Footprint, a choice between the National Economically Active Population and the Economically Active Population of the Province in which it employs most of its employees. However, it still restricts such designated employers to using only the selected Province's Economically Active Population. **Additional provisions contravening the Solidarity Agreement** The specific provisions in the draft regulations, such as that employers should not set targets for over-represented groups at particular occupational levels, and that once the Ministerial Targets have been achieved, there should be no regression but rather a move towards the EAP, are new and additional provisions. However, they may also conflict with the Solidarity settlement. There is an urgent need to align these provisions with the parameters of the Solidarity agreement. **Gap Analysis Requirement** Point 3.4.2 states that a designated employer, when setting targets, must conduct a gap analysis considering the "as-is" and the "to-be" situations, and then set targets taking the applicable EAP into account. This creates significant uncertainty for designated employers as they must either apply the EAP in direct proportion to the sub-race and gender groups, or, if unable to do so, use their discretion to set targets that may or may not be acceptable to the Department. This regulation does not allow for the inclusion of other variables, such as availability of critical and core skills, staff turnover, economic conditions, and similar factors, when setting targets. These variables can only be considered as an opportunity to justify non-achievement of targets once an alleged contravention has occurred.

		The regulations should be reworded to explicitly allow for the consideration of factors such as recruitment and promotion opportunities, core and critical skills, mergers, acquisitions, and other business-related factors. **Use of accurate wording** The term used in the Targets column refers to "Designated Groups" and only differentiates between males and females. It is important to ensure that the term aligns with the actual definition in the EE Act to eliminate uncertainty in understanding the composition of "Designated Groups". It is necessary to be clear regarding the wording used - "designated groups" - and to refer to the definition in the EE Act, which includes white women and people with disabilities. **The need to consider the specificity of sectors and sub-sectors.** The consideration of sub-sectors within the overall sectors has been ignored. It is irrational for the Department to assume that a "one-size-fits-all" target can apply across most sectors such as manufacturing, mining, agriculture, fishing, and the like. Each sector and sub-sector faces particular realities that need to be considered as a point of departure in determining rational and justifiable targets. For example, manufacturing extends from food manufacturing to automotive. These sub-sectors of manufacturing face very different conditions. It is vital to consider the various submissions made by stakeholders requesting that sub-sectors be focused on in setting targets, rather than the overall broad 18 sectors. Failure to do so will render targets unachievable. **Movement towards the EAP after the achievement of Ministerial Targets** The requirement in the regulations to move towards the EAP once the Ministerial Targets have been achieved during the 5-year period was not part of the previous regulations and has emerged as a new and significant requirement, which, in BUSA's view, places even greater pressure on the constitutionality and rationality of the provisions. The setting of any targets beyond reasonable, rational, logical, and fair Ministerial Targets should be the domain of the designated employer in consultation with its EE committee and not that of the Minister, particularly because it is impossible for the EAP in itself to have people who are suitably qualified/experienced for the jobs in which targets are being set. In other words, it is not as simple for the Department to say that in South Africa there are X amount of designated people in the EAP and therefore there are this number of people available and willing to work (with the required skills, qualifications, experience) in the occupational categories where there is underrepresentation. While the EAP is useful, to an extent, it does not and can never be used to translate that all those people in the EAP are in fact suitably qualified for the jobs that employers will fill once the numerical targets become law. Business proposes the removal of the provision in the regulations that requires the move to the EAP after having met the Ministerial Targets in that it cannot meet the test of rationality.

<table>
<tr>
<td>4.</td>
<td>Suideroord</td>
<td>We would like to request that the demographic composition of a community be taken into account when targets for the various racial groupings are established. Given the SA Statistics figure from 2011, the population grouping is as follows in our area – Bredasdorp, Cape Agulhas, Western Cape :

<table>
<tr><th>Group</th><th>Percentage</th></tr>
<tr><td>Black African</td><td>12,7%</td></tr>
<tr><td>Coloured</td><td>66,5%</td></tr>
<tr><td>Indian/Asian</td><td>0,4%</td></tr>
<tr><td>White</td><td>19,0%</td></tr>
<tr><td>Other</td><td>1,3 %</td></tr>
</table>

Unfortunately, 2022 census figures are not available.</td>
</tr>
<tr>
<td>5.</td>
<td>Employment Equity Compliance Management Services (EECMS)</td>
<td>
<table>
<tr><th>Public comment</th></tr>
<tr><td>It states that designated employers are those employing 50+ employees. However, employers with 1-49 employees (less than 50) which are an Organ of State or are bound by a collective agreement, are deemed designated employers.

What is the definition and / or examples of a "collective agreement"?</td></tr>
<tr><td>We are aware that designated employers are not allowed to circumvent the EE Act, but do foresee that companies may restructure or split or even retrench to employ below 50 employees.

These employers will then not need to comply with Chapter 3 of the EE Act, including the sectoral numerical targets.

Will the final Gazette address examples of circumventing the EE Act so that the designated employer is certain of what is allowed and what not?</td></tr>
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			How is the adjusted recognition to include the EAP target as part of proposed sectoral numerical targets calculated? Or will the final targets, including the adjusted sectoral numerical targets taking into consideration the EAP targets, be provided by the DEL? We therefore do not know whether designated employers will need to use their own interpretation, judgement and calculations. There could be a potential risk since designated employers performing their own calculations could result in businesses having different adjusted targets.	
			Would the term designated groups still include white females when determining the adjusted sectoral numerical targets?	
			We noted that there is nothing mentioned on sub-sectors. Will all sectoral numerical targets be determined on the specific sector excluding the sub-sector?	
			Designated employers may not regress as per the proposed amendment. What do we do when we achieved the adjusted sectoral numerical target for a specific race and gender in a specific occupational level, but that person resigns, and we then fall below the adjusted sectoral numerical target? Do we need to re-employ the specific race and gender in that specific occupational level that we initially achieved, as there may be another race and gender employee within the company that could be promoted into that same level? Will we be penalised? Also, the concern here is that we are demotivating other races and genders since they may not have the opportunity of possible promotions as we need to re-employ in the same race and gender and occupational level to achieve the target of which we regressed from. Added comment to the above: How will designated employers approach terminations (in terms of death, incapacity, dismissals, retirements and resignations) during and within their 5-year EE plan to achieve and maintain the adjusted sectoral numerical targets achieved, to not regress? Furthermore, these amended targets could be a detractor to the creation of new jobs due to the punitive risks and complexity associated with the adjusted sectoral numerical targets, despite our best efforts to manage EE in a fair and just fashion.	

				Would the targets need to be readjusted?	
				The proposed sectoral targets for the Sector "Public Administration & Defence; Compulsory Social Security" is the same for each occupational level (i.e. male 50.40% and female 40.80%, total of 91.20%). Is this correct?	
				Let us assume a designated employer operates in two Provinces and decide to apply National targets. Let us assume that, during the 5-year period of the EE Plan, the business that operates in one of the Provinces is shut down due to operational requirements. Does this mean that the designated employer must continue using the adjusted National Sectoral Numerical targets? Is this fair? Will there possibly be an exception to the rule for the business to use Provincial Sectoral Numerical Targets? Would the set targets need to be readjusted?	
				By reviewing the requirements set to obtain a compliance certificate – we are of the view that the factors taken into consideration for a compliance certificate to be issued may be unrealistic. • On one side entities are expected to make way for diverse candidates yet in the event that an existing employee needs to be removed (demoted / retrenched etc) from an existing position – this will result in the affected employee being able to report a case of unfair demotion / unfair dismissal to the CCMA, which will be noted against our company and resulting in our Company not meeting the requirements to obtain a compliance certificate. • Either way we will not be compliant – 1) not meeting the target or 2) having a dispute listed	

6.	Solidarity trade Union	ANNEXURE 17INTRODUCTION 1. In terms of the request for comments contained in Government Notice no. 50058 of 2024 (published in the Government Gazette of 1 February 2024), Solidarity hereby submits its written comments on the draft Regulations. 2. The trade union has more than 200 000 members in all occupation fields. Solidarity provides workplace assistance to its members at more than 20 offices countrywide. 3. Solidarity is committed to the Constitution, and actively seeks to safeguard the constitutional rights of its members and, more generally, the public. Solidarity, its members and the public at large have an interest in the appropriate and constitutionally compliant adoption of affirmative action measures, including regulations. Solidarity's representation of members adversely affected by the application of employment equity plans adopted under the EEA is a matter of public record. 4. As a recognised Union at numerous "designated" employers Solidarity engages with employers on a frequent basis regarding the implementation of affirmative action measures and compliance with the EEA. SOLIDARITY'S COMMENTS ON THE 2024 REGULATIONS Lawfulness of the Regulations 5. Whilst it is clear that the Government Notice states that the regulations are published in preparation of commencement of section 15A of the Employment Equity Amendment Act No 4 of 2022, item 4 of the regulations is clearly an attempt to comply with settlement agreement between Solidarity and the government, that was made a Court Order.1 1 This agreement came after Solidarity had lodged a complaint with the International Labour Organisation (ILO), against the government's rigid approach to race. A mediation process between Solidarity and the SA government under the supervision of the ILO ensued, which eventually led to the agreement reached. The Settlement Agreement was made an order of court under case number J 6661/23 4 6. We submit that the current regulations, excluding part 4 thereof which culminates from the settlement agreement and Court order and not from law, and the process which accompanies it and any consequences that result from it, is unlawful. The Regulations have been published in terms of the Amendment Act, the commencement date of which has not yet been determined. Put differently, the Regulations have been published prematurely and are therefore unlawful.2 7. It is trite in law that a Bill only becomes law after the President of the Republic of South Africa has assented and signed the Bill. 8. Furthermore, only after the President of the Republic of South Africa has assented and signed the Bill does the Act appear in the Government Gazette and comes into effect on a date determined by the President. 9. The act therefore only becomes binding if the President proclaims the effective date. 10. It is submitted that the proclamation notice is still pending and has not been issued by the President, therefore it is trite that the Employment Equity Amendment Act has yet to come into effect. 11.

		In light of the aforementioned, it is submitted that the Minister of Employment and Labour accordingly cannot issue regulations for Section 15A of the Employment Equity Amendment Act if the act has yet to come into effect. 12. It submitted that the regulations are unlawful, in the alternative, Solidarity makes the submissions hereunder. 2 Section 79 of the Constitution of the Republic of South Africa. 5 The Regulations are contradictory in nature. 13. The Regulations under Item 3, regulating the setting of the 5-year Sectoral Numerical Targets, are in stark contradiction with the regulations contained in Item 4 of the proposed Regulations which in turn regulates the implementation of Affirmative Action measures governed by the settlement agreement that was made a Court Order. 14. The contradictions lie in the fact that the regulations describe 'nuance' as a key aspect and prohibits absolute barriers, but also sets mandatory targets at the same time, which are the opposite of nuanced, flexible measures. The regulations are thus arbitrary or self-defeating, the settlement agreement was bolted on without any attempted to counterbalance the sectoral targets with agreed upon principles it requires to reach a nuanced application of affirmative action measures. 15. In accordance with Van Heerden3, the regulations cannot 'reasonably achieve' their purpose, to wit, equitable representation, because of practical considerations i.e. skills shortages, the faltering economy, and the like. In other words - that the targets are extremely unrealistic and will cause more harm than they will advance historically disadvantaged groups. 16. The contradictions are significant and the regulations under Item 3 cannot stand when measured against the settlement agreement. Sectoral Targets amount to a quota system 17. According to section 15(1) of the EEA, affirmative action measures are designed to ensure that "suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce of 3 Test to requires that affirmative action measures must: 1) target persons or categories of persons disadvantaged by past unfair discrimination 2) be designed to protect or advance those classes of persons; and 3) it must promote the achievement of (substantive) equality 6 a designated employer". Affirmative action measures implemented by a designated employer must include: 17.1. measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups (section 15(2)(a)). 17.2. measures designed to further diversity in the workplace based on equal dignity and respect of all people (section 15(2)(b)). 17.3. making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer (section 15(2)(c)). 17.4. measures to ensure the equitable representation of suitably qualified people from designated groups in all occupational levels in the workforce (section 15(2)(d)(i)); and 17.5. measures to retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development (15(2)(d)(ii)). 18.

Section 15(3) provides specifically that these last two measures (contemplated in section 15(2)(d)) "include preferential treatment and numerical goals but exclude quotas".
19.
The sectoral targets are required to be met; they are not simply programme objectives translated into numbers which provide a target to strive for and a vehicle for measuring progress. The sectoral targets have as their purpose to produce immediate end results for the benefitting groups, without addressing the causes of "under-representation". Failure to adhere to the "targets" results in non-compliance and a penalty, whether in the form of an actual fine or in the form of foreclosure from the opportunity of doing business with the state.
20.
The sectoral targets set by the Labour Minister moves even further away from a concern with "need" and relevant socio-economic factors. The sectoral target system does not
7
allow for appropriate consideration in the employment sphere of varying degrees of
disadvantage, and the possible intersectionality of multiple forms of discrimination.
21.
From a plain reading of 3.4.6 which states: 'Where a designated employer has exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial/gender group but should set targets towards the EAP. It is abundantly clear that the regulations ultimately impose sectoral targets which obliges a workforce profile that must reflect the EAP as an end product.
22.
The sectoral targets are essentially an unjustifiable quota system out of proportion to what the Constitution allows, that it will cause substantial and undue harm to non-designated groups4 and which would not be constitutionally compliant.
23.
Rigidity in affirmative action measures in employment frustrates the life chances of non-beneficiaries, 'causing race or gender-based contests' that are not in line with an 'nuanced and inclusive notion of substantive equality'5.
Violation of the Consultation clause
24.
Legislative requirements relating to preparing an EE plan and targets include the obligation to consult with all relevant parties reflected in section 16 of the Employment Equity Act, regarding preparation of an EE plan which include numerical goals.
25.
A designated employer must take reasonable steps to consult and attempt to reach agreement with a representative trade union representing members at the workplace and 4 Harksen v Lane NO 1997 (11) BCLR 1489; 1998 (1) SA 300 (CC)
5 Kohn & Cachalia (note 12 above); AM Louw, 'Extrapolating "Equality" from the Letter of the Law: Some Thoughts on the Limits of Affirmative Action under the Employment Equity Act 55 of 1998' (2006) 18(3) South African Mercantile Law Journal 336 (who make this argument in the context of the EEA); J Pretorius 'The Limitations of Definitional Reasoning Regarding "Quotas" and "Absolute Barriers" in Affirmative Action Jurisprudence as Illustrated by Solidarity v Department of Correctional Services' (2017) 28 Stellenbosch Law Review 269.
8
its employees or representatives nominated by them, or, if no representative trade union
represents members at the workplace, with its employees or representatives nominated by them (section 16(1)) on inter alia (i) the conduct of the analysis referred to in section 19 (see section 17(a)); and (ii) the preparation and implementation of the employment equity plan referred to in section 20 (see section 17(b)).
26.
In terms of section 13 of the Act a designated employer is required to consult with parties identified by section 16 of the Act which states the following:

		(1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17- (a) with a representative trade union representing members at the workplace and its employees or representatives nominated by them;or (b) if no representative trade union represents members at the workplace, with its employees or representatives nominated by them. (2) The employees or their nominated representatives with whom an employer consults in terms of subsections (1)(a) and (b), taken as a whole, must reflect the interests of – (a) employees across all levels of the employer's workforce. (b) employees from designated groups; and (c) employees who are not from designated groups. (3) This section does not affect the obligation of any designated employer in terms of section 86 of the Labour Relations Act to consult and reach consensus with a workplace forum on any of the matters referred to in section 17 of this Act. 27. Section 17 of the Act stipulates that an employer should consult on the following issues: 17(1) the conduct of an analysis as referred to in terms of section 19. 17(2) the preparation and implementation of an Employment Equity Plan referred to in section 20; and 17(3) a report referred to in section 21. 9 28. The section 19 analysis refers to a quantitative and qualitative analysis. The quantitative analysis process is concerned with obtaining specific numerical information in order to determine the current workforce profile, the under- and/or overrepresentation of certain groups at each occupational level and the formulation of the numerical goals the employer can be expected to achieve within the next one to five years. In terms of the Codes of Good Practice on Employment Equity Plans guidelines are given for setting numerical targets. 29. In accordance with Regulation 9 of the Employment Equity Regulations, 2014, an employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the EEA when preparing an employment equity plan. The Code of Good Practice was published on 12 May 2017 by way of Government Notice 424 in Government Gazette 40840 30. The consultation clause in the EEA should be interpreted in accordance with inter alia, Article 5 of the International Labour Organisation Convention (111) concerning Discrimination in Respect of Employment and Occupation, in respective of special measures, including but not limited to numerical targets, and which states: "2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, 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" 31. The importance of consultation is emphasized in R113 - Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113): "5. Such consultation and co-operation should aim, in particular— (a) at joint consideration by employers' and workers' organisations of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions; and (b) at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner, in respect of such matters as-- (i) the preparation and implementation of laws and regulations affecting their interests.

		(ii) the establishment and functioning of national bodies, such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare; and (iii) the elaboration and implementation of plans of economic and social development." 10 32. The Sectoral Targets set by the Minister negates the prescriptive consultation process regulated by section 13,16, 17 and 20 of the EEA, it diminishes the purpose consultation serves in a process where parties are obligated to attempt to reach consensus. 33. The intention of the regulations is to enforce top-down quotas, rather than to implement employment equity targets devised by employers after consultation with their workforce. The Sectoral Targets are Contrary to the C111 – Discrimination (Employment and Occupation) Convention, 1955 (No.111) and the settlement agreement reached between Solidarity and the Republic of South Africa. 34. The Employment Equity Act6 sets out in section 3 that it has to be interpreted in compliance with the Constitution7 as well as in compliance with the international law obligation of the Republic, in particular those contained in the International Labour Organisation Convention (111) concerning Discrimination in Respect of Employment and Occupation.8 35. Section 39, section 232 and section 233 of the Constitution of the Republic of South Africa also states similarly that the Republic of South Africa is bound by international law.9 36. The International Labour Organisation (hereinafter referred to as the "ILO") sets out ILO Conventions that are legally binding international treaties with the purpose to set out basic principles and rights at work. There is however, eleven (11) core and/or fundamental ILO Conventions which the ILO see as non-negotiable and should be seen as the baseline of principles and rights at work internationally. These fundamental conventions must be 6 Employment Equity Act ,55 of 1998. 7 Section 3(a) of the Employment Equity Act,55 of 1998. 8 Section 3(d) of the Employment Equity Act,55 of 1998. 9 Constitution of the Republic of South Africa. 11 implemented by the member states of the ILO in one way or the other, even if the member states choose not to ratify it.10 37. It is trite that South Africa has ratified most if not all core ILO Conventions but more specifically has ratified Convention C111 and is furthermore incorporated in the Employment Equity Act. 38. Article 1 of the Convention states that the term discrimination includes - "(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." 39. The following are quotes from an ILO Report released during 2003:11 "197. The expression "affirmative action" refers to: a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality" (emphasis added).

"199. A common feature of affirmative action measures is their temporary nature. This presupposes a regular and objective evaluation of affirmative action programmes at ascertaining their effectiveness, redefining regularly their scope and content and determining when to bring them to an end. In some countries, however, they may be discontinued, or their effectiveness reduced as a result of cuts in social spending, economic downturns or economic restructuring. 40.
The International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as "ICERD") also states in article 1 paragraph 1 and 4, read with General Recommendation 32 of 2009 which provides that:
"Special measures may not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."
41.
It is trite that the special measures that are referred to in ICERD and in Convention C111 refers to measures such as affirmative action.
42.
It is evident that the ILO underlines that affirmative action should be temporary in nature.
43.
Solidarity has made representations in terms of article 24 of the ILO indicating that the Republic of South Africa is in non-adherence with its international law obligation more specifically Convention C111.
44.
Thereupon, Solidarity and the Republic of South Africa entered into a mediation process in the ILO and facilitated by the Commission for Conciliation, Mediation and Arbitration (hereinafter referred to as the "CCMA").
45.
Solidarity and the Republic of South Africa settled the dispute on numerous grounds; however, we wish to highlight the following salient clause in the settlement agreement under case number: H02-23:
a)
Affirmative action is a coherent packet of measures, of a temporary nature in line with the Constitution, aimed specifically at correcting the position of members of a target group as defined in the Employment Equity Act in the workplace, in order to obtain effective equality:
46.
Subsequently the above-mentioned settlement agreement was made an order of court under case number J 6661/23.
13
47.
The draft regulations on proposed sectoral numerical targets (hereinafter referred to as the "draft regulations") was published by the Minister of Employment and Labour on 1 February 2024.
48.
In Item 3 of the draft regulations the Minister sets out "5-Year" numerical targets.
49.
Furthermore, in item 3,2 of the draft regulation it states:
"3.2 The proposed 5-year sectoral numerical targets are minimum targets and are key milestones towards achieving the equitable representation of the different designated groups within each occupation level in that employer's workforce in relation to the demographics of their applicable EAP."
50.
It is evident by the reading of the clause that the measures put in place are not temporary in nature just by interpreting the words used, milestones and minimum targets. It is apparent that the "goals posts" will be continually shifted.
51.
Furthermore, Item 3,4,6 states the following:
"3.4.6. Where a designated employer has exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial/gender group but should set targets towards the EAP."

52.
It is also evident by reading the above-mentioned item, that the measures put into place are not temporary, however are deemed to be permanent. Even if the employer has exceeded the set numerical target of a particular racial / gender group that said employer is still bound to continue and then set targets towards the EAP of that racial/gender group.
53.
The draft regulations clearly and unambiguously implies that the set numerical targets / measures put into place are not of a temporary nature.
14
54.
It submitted that the draft regulations are in contravention with the Republic of South Africa's obligation to international law as well as the settlement agreement concluded between Solidarity and the Government.
Voluntary Associations (VA's) and non-profit organizations
55.
In terms of the draft Regulations and settlement agreement, reasonable grounds for not complying with the targets are premised on, inter alia, the business economic circumstances which relates to an employer's core business and operations.
56.
The employment sector comprises different spheres of employers, one of these categories of employers include Voluntary Associations and Non-Profit organizations that are established for a public benefit objective or an objective relating to one or more cultural or social activities, or communal or group interests, established under statutory law.
57.
The Constitution makes provision for these organizations, and they are created, formed and protected by the following constitutional rights:
57.1 Section 18 of the Constitution provides: Everyone has the right to freedom of association.
57.2 Sections 30 and 31 of the Constitution protect language and cultural rights and associational rights of cultural, religious, and linguistic communities.
57.3
Section 30 provides: Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.
57.4
Section 31 provides: (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of the community- (a) to enjoy their culture, practice their religion and use their language; (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society. (2) The rights in subsection (1)
15
may not be exercised in a manner inconsistent with any provision of the bill of
rights.
58
Voluntary Associations play an important role in strengthening democracy. It is healthier in a democracy for the boundaries between state and non-state entities to be respected. The freedom of association is a part of a bouquet of rights and freedoms, it can only be safeguarded and protected by balanced consideration of competing rights and interests.
59
Chapter 44 Freedom of Association Stuart Woolman writes:
Associational freedom protects cultural goods. Cultural practices and affiliations — like instain these practices and affiliations. If, therefore, we wish to safeguard these basic or primordial attachments from undue state interference, then we must be willing to place cultural atimate relationships — often form an integral part of our self-understanding. Cultural associations sussociations securely within

		the freedom's protective sphere. We might also wish to protect cultural associations for more instrumental reasons. For one thing, cultural associations often act as effective buffers between the individual and state power. For another, the greater the number of and more varied our cultural associations, the more enriched our national culture and our individual lives tend to be. For a third, cultural associations, like other associations, tend to fill the breach left by the decline of familial hierarchies and the concomitant increase in market-driven individualism. They mediate the anomie of modern society, often perform welfare functions the state is unable or unwilling to undertake, and generally function as the glue preventing social disintegration12 60 The South African Human Rights commission13 released a report wherein guidelines and principles were published that would accommodate associational rights afforded to VA's. 12 OS 12-03, ch44-p8 13 The South African Human Rights Commission (SAHRC) is an institution established in terms of Section 181 of the Republic of South Africa Constitution Act 108 of 1996. The SAHRC and the other institutions created under Chapter 9 of the Constitution are described as "state institutions supporting constitutional democracy"1. The South African Human Rights Commission is specifically required to: a. promote respect for human rights; b. promote the protection, development and attainment of human rights; c. monitor and assess the observances 16 The SAHRC stated it is guided by the comments made by Justice Brennan in Roberts v United States Jaycees: The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State. Moreover, the constitutional shelter afforded such relationships reflects the realization that individual draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty.14 61 If the constitutional rights that the association seeks to protect, promote and enhance relate to religion, culture and language then the reach of the State may be more circumscribed. 62 The cultural, religious and linguistic objectives of an organization divorce the employment profile of the said organization from the statistical profile of the economically active population. 63 The workforce profile of such organizations cannot be analogous to any Sectoral targets set by the Minister, the VA's and non-profit organizations should reflect their operational requirements when setting their targets. CONCLUSION 64 Solidarity contends that the Regulation is subject to challenge on the basis that it: of human rights in the Republic. Section 184(2) of the Constitution empowers the SAHRC to investigate and report on the observance of human rights in the country. Further, section 184(2)(c) and (d) affords the SAHRC authority to carry out research and to educate on human rights related matters. 14 The Exclusionary Policies of Voluntary Associations: Constitutional Considerations, p 17 64.1. It is unlawful as the Employment Equity Amendment Act is not yet in operation. 64.2. The regulations are in contravention of the settlement agreement that was made an order of court.

		64.3. The regulations are in contravention its obligations to international law in that the measures are not temporary of nature. 64.4. The sectoral targets amount to quota system. 64.5. The regulations are inconsistent with the Republic's duties under international law. 65. VA's and non-profit organizations should reflect their operational requirements when setting their targets.
7.	**Vuyo**	My name is Vuyo Boko, and I am currently a Candidate Attorney for a small firm that has 6 women. Section 15A of the Employment Equity amendment Act of No. 4 of 2002 I read the first draft of the first published regulation on draft sectoral numerical targets and the republished regulation on the (second) draft sectoral numerical targets and the factors that were taken into account thereof. • As a citizen, employee and young black women of South Africa, I am concerned of how the new amendment impacts smaller employers. The new sectoral amendment smaller employers are not required to comply with the obligation of designated employer relating to affirmative action, including development and implementation of employment equity plans. They will nevertheless be entitled to obtain a certificate of compliance under section 53 of the Employment Equity Act • The manner in which compliance certificate will be obtained is not clear and this might have a negative impact on employees, more specifically on promotion on different races. • Section 9(2) of the Constitution provides that "Equality includes the full and equal enjoyment of all rights and freedoms. 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." • Affirmative action measures aim to guarantee equal opportunities for qualified individuals and promote their representation across all levels of workforce. • Assuming that Employers of less than 50 workers will comply with the Act is a play on restorative justice and does not guarantee fair treatment in employment. • I am a black, young employee working for an employer with less than 50 employees. This amendment significantly affects the barriers preventing my advancement and representation. • If smaller employers do not have substantive obligation to relating to affirmative action, will there be goal for the employer to eliminate barriers in the workplace such as, racial discrimination, gender discrimination.

		• Furthermore, this restriction on submitting employment equity reports will mean that the smaller employers will have more flexibility to set their own EE targets, which may affect employees. • We live in a country with oppressed employees, particularly black employees with limited knowledge. Do we really believe that employers will consult their employees on the implementation of their equity plans. • I urge you to consider the severe oppression, demotivation, and stigmatization that I personally endure from an employer who should be exempt from adhering to affirmative action. Just imagine how many others are facing similar challenges like me. • All employers should be subjected to developing and submitting their employment equity reports . • Let us consider the grave impact this will have on employees with no trade union representation, working for private sectors and in need of Employment Equity to be submitted in order to elucidate the inequalities.
8.	Unemployed workers society of South Africa	Introduction: The Department of Employment and Labour's Draft Regulations for the Employment Equity Amendment Act have introduced sectoral numerical targets to accelerate transformation in the workforce. However, there are concerns regarding the fair representation of all demographic groups, particularly in regions such as the Western Cape, where coloured individuals face systemic marginalization. Analysis of Current Situation: In the Western Cape, there is a longstanding pattern of overlooking coloured individuals in both governmental and private sector employment. Despite being a significant demographic group in the region, coloured individuals often find themselves side-lined in favour of candidates from other provinces or countries, such as the Eastern Cape and Zimbabwe. Economic Exploitation: Employers in the Western Cape frequently resort to employing individuals from the Eastern Cape and Zimbabwe as a source of cheap labor, exploiting their vulnerable economic status. This practice not only perpetuates economic inequality but also undermines the rights and opportunities of the coloured workforce, leading to systemic marginalization. Discrimination in Hiring Practices:

Government agencies and private sector employers in the Western Cape exhibit discriminatory hiring practices by favoring candidates from specific regions or countries over local coloured individuals. This bias not only deprives qualified coloured candidates of employment opportunities but also perpetuates a cycle of exclusion and economic disadvantage.

Impact on Employment Equity Targets:
The proposed sectoral numerical targets fail to address the underlying issues of discrimination and marginalization faced by the coloured workforce in the Western Cape. By focusing solely on numerical quotas, these targets overlook the structural barriers that prevent fair representation and equal opportunities for all demographic groups.

Recommendations:
1. Address Systemic Discrimination: The Ministry of Labour must recognize and address the systemic discrimination faced by coloured individuals in the Western Cape by implementing measures to promote inclusive hiring practices and address economic exploitation.

2. Enforce Fair Recruitment Policies: Government agencies and employers in the Western Cape must be held accountable for their hiring practices to ensure fair representation of all demographic groups, including coloured individuals.

3. Promote Economic Empowerment: Initiatives aimed at empowering the coloured workforce through education, skills development, and access to economic opportunities should be prioritized to address the underlying causes of marginalization.

4. Strengthen Monitoring and Enforcement: The Ministry of Labour should strengthen monitoring and enforcement mechanisms to ensure compliance with employment equity regulations and hold accountable those who perpetuate discrimination and exclusion.

Conclusion:
In conclusion, while the proposed sectoral numerical targets aim to promote transformation in the workforce, they must be accompanied by targeted interventions to address systemic discrimination and economic exploitation faced by the coloured workforce in the Western Cape. Failure to do so will perpetuate inequality and undermine the objectives of employment equity legislation.

9.	AFRI FORUM	**AfriForum's stance** Approximately 313 race-based laws have been introduced since the creation of the Union of South Africa in 1910. More than 116 (i.e., 37%) of these were created after the ANC came to power in 1994. AfriForum opposes any race-based legislation, as well as the racial classification system that the South African government continues to perpetuate. On the other hand, AfriForum supports the principle of the development and empowerment of people in need – regardless of their skin colour. Policies and ideologies should not be judged based on their intentions, titles or aims, but rather on the outcomes that they achieve and produce. You judge a tree by its fruit. Black economic empowerment is an apt example of a policy that has a positive-sounding name, but that produces unjustifiable outcomes through immoral means. AfriForum does not oppose the empowerment of poor black people; rather, AfriForum opposes the discriminatory policy of black economic empowerment, which achieves everything but its stated goals. Instead, it is nothing more than a smoke screen for small elite empowerment through cadre deployment and cronyism. AfriForum stands on solid, principled ground: racial discrimination by the government – be it in employment or in sport – was wrong in the past and is therefore also wrong in the present. Condemnation of the racial discrimination by a government of the past rings hollow when those who condemn it are defending racial discrimination by a government of the present. Systemic racism is defined as a form of racism or racial discrimination that is embedded in the legislation of a society, with racially discriminatory hiring practices one of its main features. According to this definition, the race-based laws of the pre- as well as post-1994 governments are prime examples of systemic racism. Racial prejudice has infected almost every facet of society – from corporate hiring practices to primary school rugby teams. The leaked internal memo from Dis-Chem Pharmacies in 2022, which announced a moratorium on the hiring and promotion of white people, serves as a testament to how absurd and unjustifiable the racial discrimination has become that the government mandates. Government-driven, racially discriminatory hiring practices, which are sold as "affirmative action" or "redress", are a sham solution. What must be corrected is a dysfunctional education system that cause many children even in 2024 to attend schools with pit toilets. The real problem is a race-obsessed government that is still failing to address worsening unemployment, poor education, rampant corruption and an electricity supply crisis. The government's preoccupation with equality of outcomes rather than

		equality of opportunity has created and continues to create an increasingly race-obsessed environment. This exacerbates social tension in the country and contributes towards racial polarisation and animosity. AfriForum therefore calls for the abolition of racially discriminatory legislation. **The matter of a fixed deadline** A government that fails to address the crises of unemployment, unreliable electricity supply, poor economic growth and rampant crime, while it simultaneously uses the persistence of these worsening crises as justification for intensified and continued racially discriminatory policies, is creating a racialist country with no end in sight – a vicious cycle of systemic racism. Based on current trends, racially discriminatory legislation will be pushed by the government indefinitely if there is no fixed deadline. Racially discriminatory policies that are directed primarily at the white minority population of South Africa by the government have already become a multigenerational matter with no end in sight. This is an unjustifiable, immoral state of affairs that cannot be allowed to continue. AfriForum therefore calls for a fixed deadline to be established for the end of racially discriminatory legislation by the South African government in accordance with the "temporary nature" of affirmative action policies as stated by the Employment Equity Act 55 of 1998. **Oral submissions** If the Department of Employment and Labour calls for oral hearings on this matter, AfriForum kindly requests the opportunity to present its submission to the Department.
10.	**BMF**	It is important for the Black Management Forum to state clearly that it is in support of the published employment equity sectoral numerical targets as published in Gazette number 48589 of the 12th of May 2023, with one exception, being the "designated employer" element, which we hold that at a minimum, a designated employer should be a QSE as per the generic B-BBEE codes, rather than looking at the minimum number of employees at 50. The Black Management Forum is aligned to the published sector employment equity targets of 12th of May 2023, hence there was support and agreement with the Ministry on these targets to be regulated. 2 In reference to the call for public comments of 1st of February 2024 as gazette, various reasons have been provided in so far as the target revision by relaxing the "demographic" requirement for each designated group which is a very serious concern. 1. It is unclear as to what would have necessitated the relaxation of the population demographic requirement per designated groups, as historical context in addressing inequalities is highly relevant, 2. Items mentioned under section 3.1 of the Gazette whilst relevant, are neutral to the main objectives of the Employment Equity Act of 1998 as listed on the preamble to the legislation (this we would like to discuss at an appropriate forum/structure), 3. 3.2, 3.3 Whilst it is being stated that these are minimum targets – relaxing the demographic target per designated

		group goes against the intention of "equitable representation" as espoused, 4. 3.4.1 We have indicated our suggestion of an alternative measurement (QSE as per B-BBEE Code) on this letter above, which may assist with the data enhancement and interpretations, 5. Read with section 4 of the Gazette, the relaxation of the designated demographic percentages has potential to further perpetuate exclusion. 6. Implement regular reporting on diversity metrics to track progress toward equity goals. Furthermore, administrative leaders need to be held accountable for achieving these targets by incorporating them into performance evaluations and compensation structures. 7. The sector targets for top management need to be increased and be more ambitious. The current targets at the highest level need to reflect our current desire to see a transformed economy that will ensure that we have a self-reproducing critical mass of leaders. It is the above brief and key points we make our submission, and we are keen to work together with the department in driving transformation in the workplace.
11.	**Democratic Alliance**	At the outset, the DA does not support either the EEA or the EE Amendment Act. The DA has an adopted policy of non-racialism, a national founding value entrenched in section 1(b) the Constitution, and a progressive principle for which the DA has fought since its inception. The DA believes that this constitutional principle underpins the South African democratic project as a rejection of apartheid-era racial classification. We assert, and have always maintained, that race – as with all other grounds enumerated in section 9(3) of the Constitution – cannot and should never be used as a method to classify and thereby divide South Africans. Racial classifications should be rejected wherever they may be found, and statues such as the EEA and the EE Amendment Act do nothing more but to reinforce the artificial classification and grouping of individual members of our diverse society. We therefore reject both Acts and the regulations that accompany them. The Draft Regulations will do nothing more but serve to enrich a small group of politically connected individuals, as South Africans have already witnessed under the government's Broad-Based Black Economic Empowerment ("**BBBEE**") policies.1

		The use of blunt instruments, such as the proposed "sectoral targets" and BBBEE policies, intended to pursue the socio-economic betterment of our most vulnerable citizens, fail in the end to give relief to South Africans in the direst need. Racial category-driven systems of poverty relief have failed time and again, resulting only in the enrichment of the politically-connected and the ongoing circulation of those already entrenched in high-paying positions. The immediate result of the Draft Regulations will be open the field to further rent-seeking by those with the necessary connections to government and private enterprise to take advantage of an ill-advised and crudely implemented system. South Africans with the most to gain from, and the most in need of, policies aimed at lifting them out of poverty will be left behind.
12.	**MARGINAL MIND**	ANNEXURE 41 The Submission of Marginal Mind is based on the following: Social transformation Score card Response shortcomings Policy Gaps Problem Statement Vision Statement Score Card phases Score Card Goals
13.	**JUST SHARE**	ANNEXURE 37 Five-year sectoral targets and gender imbalances 1. The draft regulations set out factors that the Minister took into account when setting the proposed five-year targets, having consulted with the relevant sectors and receiving advice from the CEE. These factors include: the representation of designated groups in the sector's workforce compared to the national and regional EAP; the latest 2022 EE workforce profiles for each economic sector; B-BBEE Act Sector Codes and Sector Charters; and 'unique sector dynamics' such as skills availability, economic and market forces, and ownership within each sector. 1. We note that the proposed targets appear to significantly favour male representation, especially in top and senior management roles. The draft regulations do not make clear how these factors, particularly the unique dynamics of each sector, inform the targets that have been set. This lack of substantiation raises questions about the justification for these differential targets and whether they genuinely promote equitable gender representation across all levels of management. 2. We support the provision in the draft regulations (3.4.6) which prevents regression when a numerical target has been exceeded at an occupational level. In Just Share's work, we regularly see backsliding on issues of diversity, equality and transformation. There are also various instances in which companies set targets they have already achieved. In our view, this is disingenuous and demonstrates a clear unwillingness to do more to achieve EE. Conclusion Just Share endorses the implementation of sector-specific EE numerical targets. These targets are crucial for achieving equitable representation of suitably qualified individuals from designated groups across different occupational levels. While the alignment of EE Plans to the sector targets will enable the CEE to assess and monitor the progress of transformation in different sectors of the labour market, EE reports (EEA2 forms) should be more readily available, not only to ensure transparency and

		facilitate meaningful public engagement, but also to enable various stakeholders, including shareholders, to hold designated employers accountable. For the same reasons, compliance with the EEA10 form should be mandatory. In our view, without clear justification for the differential targets across management levels concerning gender, such as historical imbalances in the sector or specified industry dynamics outlining how these inform targets for each sector, there is a danger that these sectoral targets could be interpreted as arbitrary or irrational. To strengthen these draft regulations and limit this risk, the Department should ensure that these targets do not undermine gender equity and more detail should be provided to explain the basis for the specific targets.
14.	**BUSINESS PARTNERS LIMITED –**	ANNEXURE 31 2.1 The regulations indicate that a designated employer may choose the EAP of the province in which the majority of employees perform their functions. 2.2 One could argue that it would not be ideal to choose the EAP of the province in which the majority of employees perform their functions due to the fact that it may not accurately reflect the demographics of the organisation as a whole. For example, should a company's headquarters be located in one province (and holds majority of employees), but they have operations in multiple provinces, using the EAP of only one province may not capture the diversity of the organisation as a whole. Provincial or National Economically Active Population (EAP) Transitional period 3.1 A query can be raised on whether there would be a transitional period offered to employers once the regulations are promulgated to allow them time to move from their current Employment Equity plans to the revised plans. This is not reflected in the February 2024 regulations.

ELECTRONIC SECTOR ENGAGEMENT RECORDINGS

COPY OF MINUTES OF THE COMMISSION

employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

	5th Commission for Employment Equity (CEE)	
	31st CEE Meeting – Minutes	
DATE	:	**27 February 2025**
TIME	:	**09h00 – 10h00**
VENUE	:	**Online**

PRESENT

CEE:
(Chairperson) N Deokiram
Commissioner J Kganyago
Commissioner Z Mgolodela
Commissioner BKM Nhlapo
Commissioner D Mmako

DEPARTMENT OF EMPLOYMENT AND LABOUR:

Ms N. Mamashela (Director: EED)
Mr N. Singh (EED)
Mr M. Lefika (EED)
Mr I. Makwarela (EED)
Ms C. Lehlokoa (EED)
Mr R. Dzhombere (EED)
Mr J. Mohale (EED)

APOLOGIES:

Commissioner G Twala
Commissioner S Jensma
Mr T. Mkalipi (Chief Director LR)
Commissioner T Chagonda

ABSENT:

None.

Ms Mamashela reported that all the action items on the ...

8. MATTERS FOR DISCUSSION

8.1 Update on the EE Amendments Act of 2022

8.1.1 Ms Mamashela indicated that item 8.5 on the agenda should be removed as she would cover it under this item. She reported that at the Commission's special meeting held on the 28th November 2025, the Commission provided their inputs on the two sets of EE Regulation i.e. for the Sector EE targets and the General

Administrative EE Regulations (i.e. one with all the different EE templates for reporting, EE analysis, EE plans and enforcement tools). She indicated that the legal drafting process of the General Administrative Regulations was finalized by 13 December 2024.

8.1.2 She reported that the Commission also agreed on 28 November 2024 that they would conduct another round of sector stakeholder consultations with the 18 economic sectors prior to advising the Minister to publish the two sets of EE Regulations, which are planned to take place from 11 February 2025 to 19 February 2025. She explained that the main objective for the consultations was to discuss the final sector EE targets that were informed by the latest EE data in EE Reports received during the 2024 reporting period, She also indicated that some employers' organisations requested bilateral meetings to discuss some of their concerns, which are currently ongoing.

8.1.3 Ms Mamashela indicated that the publication of the two sets of EE Regulations (i.e. the General EE Administrative Regulations and the Regulations on the 5-year sector EE targets) should ideally be done towards the end of March 2025 to allow enough time for designated employers to embark on the process to align their EE plans to the EE amendments and the published 5-year sector EE targets from April until 31 August 2025.

8.1.4 She therefore, requested the Commission to consider, approve and sign the Advisory to the Minister to publish the two sets of EE Regulations in the Government Gazettes. The Commission provided the Chairperson with the mandate to sign the Advisory to the Minister.

Resolution:	**Responsibility**
○ Chairperson to sign the Advisory Letter requesting the Minister to publish the two sets of EE Regulations in the Government Gazettes before end March 2025.	**Chairperson Secretariat**

10. CLOSURE OF THE MEETING

The Chairperson closed the meeting at approximately 10h00 and the next meeting will be held on the 19th March 2025.

MINUTES APPROVED AS A TRUE REFLECTION OF THE DISCUSSIONS.

MS NICOLE DEOKIRAM
CHAIRPERSON CEE

DATE: ...13/03/25.....

CEE ADVISORY TO THE MINISTER

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

COMMISSION FOR EMPLOYMENT EQUITY (CEE)
Private Bag X117, Pretoria, 0001, Tel: (012) 309 4040, Fax: (012) 309 4739

Enquiries: **Christina Lehlokoa**
Tel: **012-309 4016**

Honourable Minister, Ms N Meth (MP)
Department of Employment and Labour
Private Bag X 117
Pretoria
0001

Dear Honourable Minister,

ADVISORY ON THE FINALISATION OF THE TWO SETS OF THE EMPLOYMENT EQUITY REGULATIONS IN RELATION TO THE EMPLOYMENT EQUITY AMENDMENT ACT, NO. 4 OF 2022

We hope that you are keeping well.

As Honourable Minister is aware and according to section 30 of the Employment Equity Act 55 of 1998 (EEA), the legal mandate of the Commission for Employment Equity (CEE) is to advise the Minister of Employment and Labour (the Minister) on the codes of good practice, regulations, policy and any other matter concerning the EEA as per sections 30, 32 and 33 of the latter Act.

In addition, the CEE may make awards recognising achievements of employers, commission research and report to the Minister on any matter relating to the application of the EEA, including appropriate and well-researched norms and benchmarks for the setting of numerical goals in various sectors, and the CEE may perform any other prescribed function.

In light of the above legal mandate, I hereby on behalf of the CEE, take pleasure in informing the Minister that the CEE has finalised the two sets of the Employment Equity Regulations (EE Regulations) and it is now aligned with the provisions of the Employment Equity Amendment Act, No. 4 of 2022. In this regard, the first set of the EE Regulations deals with general administrative requirements such as reporting forms, the employment equity plan and the employment equity compliance certificate templates. The second set of the EE Regulations provides guidance on the sector numerical employment equity targets for the eighteen economic sectors, as identified in the regulation.

The CEE therefore requests the Minister to consider and approve the publication of the two sets of the EE Regulations in the Government Gazettes, in terms of Section 55(1)(*b*) of the EEA, to be effective from 1 April 2025 for implementation.

5th Commission for Employment Equity (CEE)
Chairperson: Ms Nicole Deokiram:
Commissioners: Ms Jensma Stieneke, Ms Dineo Mmako, Mr Gerald Twala, Mr Bhabhali Ka Maphikela Nhlapo, Ms Laura Kganyago, Ms Thembi Chagonda and Ms Zinzisa Pearl Mgolodela

We trust that the Minister will find the advice to be in order.

Yours faithfully,



Ms Nicole Deokiram
Chairperson: Commission for Employment Equity
3 March 2025