



SUBMISSION ON THE Employment Equity Amendment Bill, 2020

Date: 19 Februarv 2021

Dear Mr. Zolani Sakasa

COMMENT ON THE EMPLOYMENT EQUITY AMENDMENT BILL, 2020

1. The Employment Equity Amendment Bill, 2020 (**'the Employment Equity Bill'** or **'the Bill'**) was published on 20 July 2020. Agri Western Cape (**'Agri WC'**) is grateful for this opportunity to comment on the Bill.

Introduction

2. Agri WC's expertise, dedication and commitment to the agricultural sector in the province extend over more than a century. Since the inception of the organisation, many changes have taken place within the agricultural environment; however, we have been able to stand together and address these challenges. Agri WC is an unbiased, a-political federal organisation to which primary and secondary agricultural organisations in the province affiliate. Currently, 4 District Agricultural Associations, 92 Agricultural Associations, eight Junior Agricultural Associations, 19 Agricultural Commodities and the Women Agricultural Association are affiliated with the organisation. Agri WC represents the vast majority of primary agricultural producers through Agricultural Associations, Special Associations or Commodity Organisations which are affiliated with the organisation.
3. Agri WC is dedicated to the preservation and promotion of a healthy local agriculture and food-supply chain, able to serve our society's immediate and long-term needs. Without a thriving agricultural sector, the constitutional vision of a South Africa in which the quality of life of all citizens is improved, and in

which the potential of each person is freed, cannot be achieved. Put more simply: without food that is affordable and available, South Africa cannot be free or equal.

4. This is particularly true of the Western Cape. It is one of the world's leading agricultural regions. Growing predominantly deciduous fruit, stone fruit, citrus, table grapes, wine, vegetables, wheat and livestock, our farmers grow quality produce for local tables and for export, and contribute massively to job creation and economic growth. The Agriculture and Food processing industry is one of the pillars of the Western Cape economy. It sustains 311 000 job opportunities, contributes 10% to the provincial GDP and is responsible for 42% of national agricultural exports.
5. Unfortunately, it is a sector that faces serious challenges. Much of the Western Cape is still in the grip of a crippling seven-year drought. Farmers with irreplaceable skills and experience have been placed under enormous financial pressure. Climate change means that these challenges will increase over time.
6. As a result, to continue to contribute to the South African economy, the sector needs policy certainty and ongoing investment. The Employment Equity Bill, in its current form, severely threatens both.
7. At the outset, we wish to emphasise our wholehearted support for successful transformation in the Western Cape and South Africa. It is both a moral and constitutional imperative. We wish to be a part of the solution to South Africa's challenges in this province.

Specific Comments

8. Section 15A of the Bill affords the Minister the authority to identify national economic sectors and sub-sectors for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce. The Minister is also afforded the authority to prescribe criteria that must be taken into account in identifying these sectors and sub-sectors.
9. Representation levels in the workforce currently correspond to the economically active population of the province. Alternatively, employers are allowed to use national statistics to determine required workforce representation.
10. The demographic representation of the Western Cape differs from that of other provinces, especially in certain rural towns throughout the province. Depending on the numerical targets, it could be impossible for producers in the farming sector and agri processing sector to ensure the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce. The Minister's authority to identify sectors, sub-sectors and transformational numerical targets related to these sectors are extremely broad. No guidelines with regards to consultation with role player in sectors or sub-sectors are provided.
11. Agri WC is concerned that numerical targets proposed in section 15A will be implemented without the necessary insight into the demographics of each region and sector, resulting in unfair treatment of certain demographic groups and infringement on human dignity. Agri WC therefore suggests that section 15A be deleted. Alternatively, Agri WC suggests that section 15A be amended in a

manner that requires consensus-based consultation with representatives within each sector.

12. The amended section 27(4) suggests that the National Minimum Wage Commission ('the Commission') must research and investigate norms and benchmarks for proportionate income differentials and advise the Minister on appropriate measures for reducing disproportional differentials.
13. Agri WC supports that a wage in accordance with the constitutional provision to uphold each and every person's human dignity should be paid. Section 24(7) however authorises the Commission to operate beyond this mandate. It authorises the Commission to determine the compensation ratio between occupational levels. Market forces of supply and demand dictate compensation at each occupational level. This system has been proven to be effective and should not be tampered with.
14. Agri WC suggests that section 27(4) should be deleted. Trying to engineer income levels at occupational levels will have unintended consequences, adversely affecting employment opportunities and employment rates.
15. Section 37 must specify who a labour inspector intends to assign to serve the compliance orders on behalf of the labour inspectors. The criteria that will be used to appoint these persons also need to be outlined. Moreover, the Bill must outline under which circumstances the designated person acting on the behalf of the labour inspector will be employed. Lastly, the Bill must prescribe what documentation the assigned person must provide to the employer to identify himself as someone authorised to act on behalf of a labour inspector.

16. Section 53 of the Bill is directly linked to section 15A of the Bill. Agri WC refers to our comments in para 8 – 11 above, which would render any further comment unnecessary.
17. Should Agri WCs comments on section 15A not be implemented, Agri WC is concerned that section 53 of the Bill will have unintended adverse consequences. Section 53 could have the consequence of employers being uncompliant in circumstances where compliance is made impossible. Law abiding employers cannot, and may not, be placed in a position of non-compliance with no reasonable recourse. Agri WC therefore recommends that section 53 be deleted.

Conclusion

18. Agri WC supports transformation. It must, however, be pursued in a way that is effective and not in a way that is unjust, unconstitutional or that undermines food security or harm the economy. South Africa is currently facing a record high unemployment percentage, without any foresight of economic growth to stimulate employment rates. The Bill, in its present form, has the potential to further negatively affect employment. We urge Cabinet and Parliament to remove these defects from the Bill.

Yours sincerely

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