

19 February 2021

Ms. ML Dunjwa
Portfolio Committee on Employment and Labour
Attention: Mr. Zolani Sakasa
Per Email: equitybill@parliament.gov.za

Dear Prof A van der Walt,

**RE: AGRI SA SUBMISSIONS ON THE EMPLOYMENT EQUITY AMENDMENT BILL,
2020**

1. INTRODUCTION

Agri SA is a non-profit organisation committed to developing a stable and profitable agricultural environment in South Africa. We are a federation of agricultural organisations consisting of 9 provincial and 26 commodity organisations as well as 61 corporate organisations within the agricultural value chain. Through our affiliates, we represent a diverse grouping of individual farmers (emerging, smallholder and commercial) regardless of their gender, colour or creed. Agri SA is committed to the sustainable development of agriculture in South Africa.

Together with its affiliates, Agri SA is in support of meaningful transformation in all sectors to ensure equitable representation at all occupational levels in the workplace. The problem does not arise with the principle of transformation, but rather with the method of implementation. The Committee on the Elimination of Racial Discrimination (CERD)¹, which would monitor South Africa's compliance with the United Nations International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and says explicitly that ICERD endorses the adoption of special measures, like affirmative action, for purpose of guaranteeing the adequate development and protection of certain racial groups.

¹ The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.

However, ICERD states that such measures may not result in a situation where unequal and/or separate rights are maintained after the goals of the special measures are achieved. The CERD summarised the meaning of “special measures” as follows:

“Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented based on need, grounded in a **realistic appraisal of the current situation** of the individuals and communities concerned.”²

The Amendment Bill must include a contextual valuation of need when amendments such as sectoral targets are proposed. This is the only way that true, substantive equality will be achieved in workplaces.

2. SPECIFIC COMMENTS

2.1. Section 15A

Section 15A of the Employment Equity Amendment Bill (“the Amendment Bill”) proposes a significant change to accelerate the pace of transformation in South Africa. Nevertheless, mandatory sectoral targets will pose great challenges to the employer and lead to a situation where producers will find it difficult to comply. The Minister needs to consider the *de facto* situation and realities faced by producers in the agricultural sector.

The targets set by the Minister must have regard for each industry’s scarce skills challenges and must not leave farmers with targets that are impossible to attain. Sector Skills Plans have been moving towards addressing not only the challenges of transformation but the skills development of low skilled workers. Therefore, the Minister must take the plans into account when setting sectoral targets. If Section 15A implemented, it must not render sector skills plans tailored by industry employers to suit the sectors employment equity meaningless.

Meaningful consultation with all relevant stakeholders within the agricultural sector must be of utmost importance because allowing the Minister to impose such targets without significant consultation will result in a ‘one-size-fits-all’ approach. Furthermore, the agricultural sector consists of numerous sub-sectors and setting a single target for all of them would not be feasible since their profitability and labour requirements are vastly different. In the absence of consensus-based consultation with the relevant stakeholders in the industry, it will be difficult to understand how the Minister could arrive at any sort of informed or rational decision.

² CERD General Recommendations no. 32: The meaning and scope of special measures in the International Convention on the Elimination of all Forms of Racial Discrimination CERD/C/GC/32 (2009) paragraph 16.

Unfortunately, the amendments come at a difficult time with regards to the global pandemic and a constricting economy with employers have had to retrench and restructure their workforces. This poses the risk of having a negative impact on many employer's ability to meet said targets. Many employers face increased uncertainty and financial pressures which may last beyond the pandemic. Hence, the implementation of sectoral targets within 2020/2021 would not be feasible as will result in loss of production capacity, revenue and jobs.

In the Amendment Bill, the idea that sectoral targets may be set at ministerial level must be very carefully monitored to ensure that it does not amount to reverting to a system more akin to a 'quota'. An example of a quota system would be where numerical targets per job level are so rigidly applied that a person may not be appointed at all if his or her racial group is deemed to be sufficiently represented at that level.

2.2. Section 27(4)

The amended section 27(4) suggest 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. We support that a wage in accordance with the constitutional provision to uphold every person's human dignity should be paid.

Section 24(7) 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. The attempt to engineer income levels at occupational levels will have unintended consequences, adversely affecting employment opportunities and employment rates.

2.3. Section 37

The Amendment Bill must specify whom they intend to assign to serve the compliance orders on behalf of labour inspectors and outline the criteria that will be used to appoint these persons. Moreover, the Amendment Bill must outline under which circumstances the designated person acting on the behalf of the labour inspector will be employed.

In other words, what are the events that must take place that renders the labour inspector unable to perform this duty and appointing the designated person to act on his behalf. Section 37 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.

2.4. SECTION 53

Agri SA is of the view that this section will have unintended consequences as the Amendment Bill does not contain the criteria for reasonable grounds which may justify the circumstances an employer is unable to comply with set targets. We cannot afford to leave employers uncompliant with no avenue to remedy their non-compliance therefore, there must be a definition or criteria which constitutes a reasonable justification.

Uncertainty reigns when it comes to non-compliance. What will the sanctions be should a sub-sector not comply alternatively not be able to comply with the targets as set by the Minister. All sectors must be made aware of the consequence of non-compliance.

The section provides the employer with an opportunity to provide reasonable grounds for not complying with the sectoral targets, but the question is raised what would be considered as reasonable. It is imperative to stipulate what will be considered as “reasonable grounds” as not all persons will consider the same “reasonable grounds” as reasonable.

3. CONCLUSION

Amendment Bill must bring a maintainable solution to ensure that true transformation is established which will be entrenched in comprehensive engagement with each sub-sector to create a conducive environment for diversity and sector growth. If it is implemented correctly, great success will be obtained by the Agriculture sector.

4. VERBAL PRESENTATION TO THE PORTFOLIO COMMITTEE

Agri SA requests that it be allowed to provide the Portfolio Committee with a verbal presentation on its submissions contained herein as to elaborate on the submissions and engage with the Committee Members on these matters