

**TELKOM'S WRITTEN SUBMISSIONS ON EMPLOYMENT EQUITY AMENDMENT  
BILL**

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Portfolio Committee on Employment and Labour

## **A INTRODUCTION**

1. Telkom SA SOC Limited (“**Telkom**”) welcomes the opportunity to comment on the Employment Equity Amendment Bill published on 20 July 2020 in Government Gazette 43535 (the “Bill”).
2. Telkom supports the objectives of the Bill and appreciates the efforts by the Department of Employment and Labour to ensure that issues regarding the equitable representation of suitably qualified people from designated groups (blacks, women and persons with disabilities) at all occupational levels in the workforce are comprehensively addressed.
3. Our contribution is structured as follows:
  - A Introduction
  - B Executive Summary
  - C Specific comments
  - D Conclusion

## **B EXECUTIVE SUMMARY**

1. The Bill is published in a challenging macro-economic environment and may result in unintended consequences on businesses. The proposed amendment is published while South Africa is in the throes of a global pandemic. The COVID-19 pandemic has severely and negatively impacted the lives and livelihoods of employers and employees, with millions of employees having been retrenched. This has already put strain on employers, with many employers struggling to keep companies afloat and save jobs during this difficult period.
2. Telkom has employment equity targets which take into account the specific industry and context within which the company operates and seeks to eventually attain equitable representation of suitably qualified people from designated groups. We emphasise the need to extensively consult with all industry stakeholders before publication of the proposed numerical targets in order to ensure that such targets are practically implementable and aligned to other transformation related policies, legislation, regulations and programmes such as the generic and B-BBEE ICT sector codes.

## C SPECIFIC COMMENTS

### Numerical target setting within different levels in the workplace.

3. Telkom notes that in terms of the Bill, the Minister of Employment and Labour (the “Minister”) is empowered to set numerical targets for representation of black people, women and disabled employees within the different levels of employment in the workplace. However, in terms of the Bill, the Minister is only required to consult with the Employment Equity Commission on the proposed sectors and targets that the Minister seeks to designate before publishing such proposals by means of a notice for comment.
4. Telkom would like to emphasise that it is imperative that the Minister undertakes an extensive public consultation process involving the ICT sector which comprises of all electronic communications operators and industry players affected by the proposed numerical target setting before the notice setting out the numerical targets is published. The Minister should take into account all submissions, comments by industry players and other relevant considerations before publication of the notice in order to ensure that such targets are rational, informed and capable of implementation.
5. In this regard, we note that the Employment Equity Bill of 2018 formally provided for consultation with the relevant sectors in section 15(2) regarding ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce before publication of the notice in the Gazette set numerical targets for any sector,<sup>1</sup> recognising the importance of consultation with the sectors impacted. Clause 15 has been amended in the current Bill to require consultation by the Minister only with the National Minimum Wage Commission before publication of the notice setting our numerical targets.<sup>2</sup>
6. Further, in order to meet higher numerical targets as proposed, companies will have to appoint new employees. In the current tough economic climate, taking into account factors such as the effects of COVID-19 as well as automation on the industry which has made many jobs

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<sup>1</sup> Section 15A(2) of the Employment equity Amendment Bill of 2018 provided 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 sector or part of a sector identified in terms of subsection (1). (emphasis added)

<sup>2</sup> See s15A(3) of the Employment Equity Amendment Bill of 2020: “The Minister may, after consulting the National Minimum Wage 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).”

obsolete, it is difficult to make appointments that may be necessitated to meet new numerical targets, as many employers are trying to protect existing jobs.

7. Telkom is also concerned that the proposed amendments requiring a designated employer to meet the targets set by the Minister and assessment on the basis of these criteria, particularly before it may do work for Government, amounts to quotas which may be unenforceable.
8. Telkom would like to assure the Minister that it is committed to transformation and supports B-BBEE legislation and objectives. Telkom has used our best endeavours to ensure representation of black people, women and people with disabilities at all levels within the business. We have offered learnerships targeted towards unemployed disabled learners; various other internship and learnership programs targeting African females and African males as well as Female Leadership Development Programs and remain steadfast in supporting transformation in the company. Telkom cautions that the unilateral imposition of targets by the Minister which may not be practically implementable by electronic communications operators and other industry stakeholders may have the unintended effects of threatening existing jobs in a difficult economic climate.
9. We therefore propose that a study be undertaken in order to determine which targets would be practical and plausible for the electronic communications sector prior to publication of the notice setting out numerical targets. This study must take into account all relevant factors, including the challenging and unprecedented macro-economic environment. Alternatives that can be considered include suggesting targets based on the limited hiring opportunities rather than headcount targets, as well as accelerated training of persons in affected groupings aligned to the scarce and critical digital and coding skills that are increasingly in demand.

#### **Non-compliance with numerical targets**

10. Telkom notes that a designated employer can provide a reasonable justification for failure to comply. Telkom suggests that there be clear guidelines as to what amounts to compliance with the numerical sectoral targets. It is further unclear what amounts to a reasonable justification for non-compliance. Accordingly, Telkom suggests that the Bill provides an employer with an opportunity to apply for a formal exemption from its provisions.

## **Consultation process between the designated employer and its employees**

11. With regard to the proposed amendment that a designated employer must consult only with a representative trade union with regards to matters referred to in section 17<sup>3</sup> of the Employment Equity Act and not with employees as well, Telkom cautions that the trade unions do not represent all Telkom employees, and this amendment is thus problematic.

### **D Conclusion**

12. Telkom supports the objectives of the Bill. However, a study to determine which targets would be practical and plausible for the electronic communications (and other) sector(s) as well as extensive prior consultation with the ICT sector and electronic communications operators before publication of the notice setting of numerical targets, is imperative. Such a study and extensive consultation will contribute towards targets which take into account relevant macro-economic and industry-specific factors and is imperative to ensure both the sustainability of the industry and the possibility that such targets are practically implementable.

We trust the submissions are of assistance. Should there be oral hearings, Telkom would like an opportunity to make representations.

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<sup>3</sup> Section 17 of the Employment Equity Act 55 of 1998 states as follows: "Matters for consultation: A designated employer must consult the parties referred to in section 16 concerning- the conduct of the analysis referred to in section 19; the preparation and implementation of the employment equity plan referred to in section 20; and a report referred to in section 21."