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IN THE LABOUR COURT OF SOUTH AFRICA HELD AT JOHANNESBURG

CASE NO: **2025-171203**

In the matter between:

BUSINESS UNITY SOUTH AFRICA NPC Plaintiff / Applicant

and

THE MINISTER OF EMPLOYMENT AND LABOUR,COMMISSION FOR EMPLOYMENT EQUITY Defendant / Respondent

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Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 22/9/2025 at 8:36:32 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

ELECTRONICALLY SIGNED BY:

Registrar of The Labour Court, Johannesburg

22/9/2025-8:36:32 AM

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

Case no.

In the matter between:

BUSINESS UNITY SOUTH AFRICA NPC Applicant

and

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN
Private Bag X82, Braamfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

THE MINISTER OF EMPLOYMENT AND LABOUR First Respondent

COMMISSION FOR EMPLOYMENT EQUITY Second Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to make an application to be heard on a date and time to be allocated by the Registrar for an order in the following terms:

1. The identification of National Economic Sectors in regulation 1 of the Determination of Sectoral Numerical Targets on 15 April 2025 under General Notice 6124 in the Government Gazette 52514 is reviewed and set aside.

2. It is declared that the identification of National Economic Sectors in regulation 1 of the Determination of Sectoral Numerical Targets on 15 April 2025 under General Notice 6124 in the Government Gazette 52514 is ultra vires, irrational and inconsistent with section 15A(1) read with section 15A(4) of the EEA.

3. It is declared that the Sectoral Numerical Targets in the Determination of Sectoral Numerical

Targets published on 15 April 2025 under General Notice 6124 in the Government Gazette 52514 are irrational, arbitrary and inconsistent with section 15A(1) read with section 15A(4) of the EEA.

4. The Sectoral Numerical Targets in the Determination of Sectoral Numerical Targets published on 15 April 2025 under General Notice 6124 in the Government Gazette 52514 are reviewed and set aside.

5. It is declared that the publication of the Determination of Sectoral Numerical Targets on 15 April 2025 under General Notice 6124 in the Government Gazette 52514 is inconsistent with section 15A(1) read with 15A(4) of the EEA, to the extent that the first respondent failed to conduct the statutorily prescribed consultation process,

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6. The publication of the Determination of Sectoral Numerical Targets on 15 April 2025 under General Notice 6124 in the Government Gazette 52514 is reviewed, set aside and declared invalid.

7. The first respondent's decision to publish the Administrative Employment Equity Regulations in Government Gazette No. 6125 on 15 April 2025 is reviewed, set aside and declared invalid.

8. It is declared that section 53 of the EEA is ultra vires and inconsistent with section 217 of the Constitution of the Republic of South Africa, 1996 and is unconstitutional and invalid.

9. The respondents are to pay the costs of this application jointly and severally, the one paying the other to be absolved, including the costs of two counsel, in the event of opposition.

10. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the founding affidavit of **KHULEKANI MATHE** will be used in support of this application.

TAKE FURTHER NOTICE THAT the first respondent is called upon to show cause why the abovementioned relief should not be granted.

TAKE NOTICE FURTHER THAT the first and second respondents are called upon, within 10 (ten) days of the receipt of this application, to deliver to the Registrar of this Honourable Court the complete record of the decision to promulgate the Determination of Sectoral Numerical Targets and the Administrative Employment Equity Regulations (including all correspondence, reports, statistical information, advice, memoranda, minutes of meetings, documents, evidence, recommendations, evaluations, transcripts of recorded proceedings and other information before the respondents when the decisions were made), together with such reasons as are required by law or are desirable to provide, and to notify the applicant that this has been done.

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

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TAKE NOTICE FURTHER THAT should any of the respondents intend to oppose the granting of the order prayed for, they must, within 10 (ten) days of the receipt of a notice that the applicant stands by its Notice of Motion, or of the receipt of a Notice of Amendment as envisaged in Rule 37(22) of the Rules of this Court, deliver any affidavit in answer to the allegations made by the applicant.

TAKE FURTHER NOTICE THAT if no such intention to oppose is given, the application will be set down on an unopposed basis and proceed on a date to be determined by the Registrar of this Honourable Court.

TAKE NOTICE FURTHER THAT the applicant has appointed Edward Nathan Sonnenbergs Inc. as its attorneys of record in this matter, and has appointed the address set out below as the address at which it will accept service of all notices and documents in this matter.

DATED at **SANDTON** on this the **19TH** day of **SEPTEMBER 2025.**

Jacqui Driver

EDWARD NATHAN SONNENBERGS INC.

Attorneys for the applicant

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Sandown, Sandton

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TO: **THE REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA**

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Arbour Square, Cnr. Juta & Melle Streets

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BY COURT ONLINE

AND TO: **THE MINISTER OF EMPLOYMENT AND LABOUR**

Laboria House

215 Francis Baard Street

Pretoria

stateattorneypretoria@justice.gov.za

BY EMAIL

AND TO: **COMMISSION FOR EMPLOYMENT EQUITY**

Department of Labour

Room 103 Laboria House

215 Francis Baard

Pretoria

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BY EMAIL

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IN THE LABOUR COURT OF SOUTH AFRICA HELD AT JOHANNESBURG

CASE NO: **2025-171203**

In the matter between:

BUSINESS UNITY SOUTH AFRICA NPC Plaintiff / Applicant

and

THE MINISTER OF EMPLOYMENT AND LABOUR,COMMISSION FOR EMPLOYMENT EQUITY Defendant / Respondent

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Founding Affidavit

NOTE: **This document was filed electronically by the Registrar on 22/9/2025 at 9:20:38 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

Case no.

In the matter between:

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and

THE MINISTER OF EMPLOYMENT AND LABOUR First Respondent

COMMISSION FOR EMPLOYMENT EQUITY Second Respondent

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REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

FOUNDING AFFIDAVIT

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I, the undersigned,

KHULEKANI MATHE

do hereby make oath and state:

1 I am an adult male and the Chief Executive Officer of the applicant.

2 I am duly authorised to depose to this affidavit on behalf of the applicant.

3 The facts contained in this affidavit are within my own personal knowledge, unless otherwise stated or indicated by the context, and are to the best of my knowledge true and correct and where I make legal submissions, I do so on the advice of my legal representatives and, without waiver of privilege, I believe such advice to be true and correct.

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THE PARTIES

4 The applicant is Business Unity South Africa ("**BUSA**"), a non-profit company established in terms of the Companies Act 71 of 2008, with its principal place of business at 61 Katherine Street, Sandton.

4.1 BUSA is the apex business organisation representing private businesses in South Africa. Its membership comprises of a confederation of business organisations and employers' organisations, including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. BUSA represents a cross-section of business (large and small), on macro-economic and cross-cutting policies and issues which affect business in all sectors of the South African economy. A list of BUSA's members is attached as "**FA1**".

4.2 BUSA's function, as stated in its Memorandum of Incorporation, is to enable organised business to play a constructive role in economic growth, development and transformation, and to ensure an environment in which business thrives, expands and is competitive.

4.3 BUSA is the principal representative of organised business at the National Economic Development and Labour Council ("**NEDLAC**") and it is a recognised social partner of Government. In addition, BUSA represents, advocates and lobbies the views of its members in various national structures and bodies, both statutory and non-statutory.

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5 BUSA has standing in this matter in terms of sections 38(a), 38(b) and 38(d) of the Constitution of the Republic of South Africa ("**the Constitution**"), in that it acts:

5.1 in its own interest;

5.2 in the interest of its members who are affected by the impugned decisions and who participated in the process that forms the subject of this application; and

5.3 in the public interest, having regard to the unlawfulness and unconstitutionality of the respondents' conduct.

6 The first respondent is the Minister of Employment and Labour ("**the Minister**") who is a member of the national executive responsible for the administration and implementation of the Employment Equity Act 55 of 1998 ("**the EEA**"). The Minister is cited care of the State Attorney's Office, Pretoria.

7 The second respondent is the Commission for Employment Equity ("**the Commission**"), established in terms of section 28 of the EEA, with its principal place of business at Laboria House, 215 Francis Baard Street, Pretoria. The Commission is cited for any

interest that it may have in this matter and insofar as it was involved in the process that forms the subject of this matter. No relief is however sought against the Commission.

JURISDICTION

8 I submit that this Court has the necessary jurisdiction to adjudicate this matter, in terms of section 157 of the Labour Relations Act, 66 of 1995 , read with section 49 and section 50(1)(h) of the EEA, on *inter alia* the basis that the issues arising in this application concern:

8.1.1 the constitutionality and lawfulness of the provisions in the EEA;

8.1.2 the application, interpretation and effect of the provisions of the EEA;

8.1.3 the constitutionality and lawfulness of the conduct by the Minister including the manner in which such conduct threatens the right contained in the Bill of Rights; and

8.1.4 the aforementioned issues arising within the context of employment and labour relations.

NATURE OF THE APPLICATION

9 This is an application to review and set aside:

9.1 the Sectoral Numerical Targets that were published by the Minister, in the Government Gazette on 15 April 2025, purportedly acting in terms of section 15A of the EEA ("**2025 Sector Targets**");

9.2 the Administrative Employment Equity Regulations that were published by the Minister, in the Government Gazette on 15 April 2025 ("**2025 Administrative Regulations**"); and

9.3 section 53 of the EEA.

10 As I indicate in more detail below:

10.1 the 2025 Sector Targets were published in contravention of section 15A of the EEA and without conducting the statutorily prescribed consultative process (and not following the correct sequence of procedural steps that were statutorily required for public comment before publishing the final version of the 2025 Sector Targets);

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10.2 the 2025 Sector Targets are irrational and unreasonable; and

10.3 section 53 of the EEA is *ultra vires* and unconstitutional.

11 The promulgation of the 2025 Administrative Regulations and 2025 Sector Targets by the Minister in terms of the EEA is subject to constitutional imperatives outlined in sections 1, 9, 33, 195 and 237 of the Constitution and fleshed out in Promotion of Administrative Justice Act, 2000 ("**PAJA**"), which provides that administrative action must be lawful, reasonable and procedurally fair. In addition, the exercise of public power must be lawful. For the reasons set out more fully below, these imperatives were not observed and/or were violated.

12 This application is accordingly brought in terms of PAJA, alternatively the principle of legality.

LEGISLATIVE FRAMEWORK

13 The EEA was enacted to provide for employment equity and to provide for matters incidental thereto.[1]

14 Its purpose is to achieve equity in the workplace by:

14.1 promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and

14.2 implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure equitable representation in all occupational levels in the workforce.[2]

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15 The EEA must be interpreted in compliance with the Constitution, taking into account any relevant code of good practice issued in terms of the EEA or any other employment law.[3]

16 Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups.[4]

17 Affirmative action measures are measures 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 a designated employer.[5]

18 In terms of section 13(2) of the EEA, a designated employer is required to prepare an employment equity plan as required by section 20 and report to the Director-General on progress made in implementing its employment equity plan.

---

1 Preamble
2 Section 2
3 Section 13(1)
4 Section 13(1)
5 Section 15(1)

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19 Affirmative action measures implemented by a designated employer must include:

(a) measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affects people from designated groups;

(b) measures designed for further diversity in the workplace based on equal dignity and respect of all people;

(c) 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;

(*d*) subject to subsection (3), measures to:

(i) ensure the equitable representation of suitably qualified people from designated groups in all occupational levels in the workforce; and (Emphasis added)

(ii) 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.[6]

20 The affirmative action measures that may be implemented by a designated employer include preferential treatment and numerical goals, but exclude quotas.[7]

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6 Section 15(2)
7 Section 15(3)

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21 Section 15A of the EEA is a new section of the EEA which only came into force and effect on 1 January 2025. Section 15A of the EEA which is at the heart of this application deals with the determination of sectoral numerical targets and provides that:

> "*(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 a national economic sector identified in terms of subsection (1).*
>
> *(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor.*" (Emphasis added)

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22 Section 15A(4) of the EEA deals with the process to be followed in identifying economic sectors and issuing sectoral targets and provides that:

> "*(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.*" (Emphasis added)

23 Section 20 of the EEA deals with the preparation of Employment Equity Plans and provides that:

> "*(1) A designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce.*
>
> *(2) An employment equity plan prepared in terms of subsection (1) must state—*
>
> *(a) the objectives to be achieved for each year of the plan;*

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(b) the affirmative action measures to be implemented as required by section 15(2);

(c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals;

(d) the timetable for each year of the plan for the achievement of goals and objectives other than numerical goals;

(e) the duration of the plan, which may not be shorter than one year or longer than five years;

(f) the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity;

(g) the internal procedures to resolve any dispute about the interpretation or implementation of the plan;

(h) the persons in the workforce, including senior managers, responsible for monitoring and implementing the plan; and

(i) any other prescribed matter.

(2A) 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." (Emphasis added)

24 Section 53 of the EEA deals with State Contracts and requires every employer that makes an offer to conclude an agreement with any organ of state for the furnishing of supplies or services to that organ of state or for the hiring or letting of anything, to attach to that offer either:

(i) a certificate from the Minister confirming its compliance with the relevant Chapters of the EEA; or

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(ii) a declaration by the employer that it complies with the relevant Chapters of this Act, which, when verified by the Director-General, is conclusive evidence of compliance.[8]

25 In terms of section 53(4) of the EEA, a failure to comply with the relevant provisions of the EEA is sufficient ground for rejection of any offer to conclude an agreement with an organ of State or for cancellation of the agreement.[9]

26 In terms of section 53(6), the Minister may only issue a certificate in terms of section 53(2), if the Minister is satisfied *inter alia* that:

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(*a*) the employer has complied with a numerical target set in terms of section 15A that applies to that employer;

(*b*) in respect of any target with which the employer has not complied, the employer has raised a reasonable ground to justify its failure to comply, as contemplated by section 42(4); and

(*c*) the employer has submitted a report in terms of section 21.

BRIEF BACKGROUND FACTS

27 The Employment Equity Amendment Bill 2018 ("**EE Amendment Bill**") was published in the Government Gazette for public comment on 21 September 2018.[10]

28 Of relevance to this application, the EE Amendment Bill inserted section 15A and section 53(6) into the EEA.

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8 Section 53(1)(b)
9 Section 53(4)
10 GN. 41922, 21 September 2018

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29 In addition to the EE Amendment Bill, and still on 21 September 2018, the erstwhile Minister Oliphant published Draft Employment Equity Regulations ("**Draft 2018 EE Regulations**") for public comment.[11]

30 Of relevance to this application, Regulation 7A(2) of the Draft 2018 EE Regulations provided that "*for purposes of determining numerical targets in terms of section 7A, employers must refer to economic sections and sub-sectors contained in the EEA 17 for guidance*". Various EEA Schedules were then included as part of the Draft 2018 EE Regulations (Regulation 7A is not part of the 2025 Administrative Regulations).

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31 These included EEA17, which set out "*Economic sectors and sub-sectors in line with the standard industrial classification (SIC) codes*".

32 In order to avoid overburdening the court, I do not attach copies of the legal notices and Regulations to these papers. I however provide the gazette number for ease of reference. Copies of the legal notices and regulations will be placed before the court on the date of the hearing.

33 Shortly after the EE Amendment Bill and the Draft 2018 EE Regulations were published in September 2018 for public comment, the Department of Employment and Labour ("**Department**") started contacting sectors in the Labour Market for the purposes of engaging with them on what the numerical targets should be. BUSA members reached out to BUSA management to raise concerns that the Department was attempting to undertake a statutory consultation process on behalf of the Minister, despite the fact that the Minister was not, at that point in time, empowered to follow any of the procedural steps contained in the proposed section 15A of the EE Amendment Bill, consult or set

[11] GN. 41923, 21 September 2018

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targets (bearing in mind that the EE Amendment Bill had just been published for public comment and had not even begun the Parliamentary process).

34 Taking into account the call for public comments and the concerns raised by its members, BUSA, on 21 November 2018, submitted, to the Minister, its comments on the EE Amendment Bill and the Draft 2018 EE Regulations. BUSA's submission noted the following concerns and reservations:

34.1 The section under which the Department was purporting to consult with some sectors was yet to come into law. As such, the Department was acting *ultra vires* in purporting to consult under a provision that was yet to be passed into law.

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34.2 The EE Amendment Bill envisages a multi-step process to be followed before the Minister may set numerical targets for a sector. These steps include identifying a national economic sector by notice and issuing regulations prescribing the criteria to be taken into account in determining numerical targets.

34.3 Various sectors had been "consulting" with the Department in circumstances where such consultation was not provided for in terms of legislation.

34.4 The parties had been "consulting" with reference to data that may be out of date by the time the EE Amendment Bill is signed into law.

35 BUSA furthermore noted that regardless of whether or not the parties participated in the "consultation" process, the Minister would not be relieved of the duty to consult under section 15A(2) of the EE Amendment Bill after it had been passed into law.

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36 BUSA, its members and other stakeholders participated in the process, in the interests of transformation, with full reservation of their rights in that:

36.1 they did not regard the purported "consultation" process as being a consultation process in terms of section 15A (since the EE Amendment Bill had not yet been passed into law); and

36.2 once the EE Amendment Bill becomes law, BUSA expected a proper consultation process to ensue, as prescribed by law. A copy of BUSA's submissions is attached as "**FA2**".

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37 By way of example, the Agricultural Chamber of Business ("**AGBIZ**"), which falls within the agriculture, forestry and fishing sector, provided its inputs in response to the EE Amendment Bill and the Draft 2018 EE Regulations which were published by the Department for public comment. AGBIZ, acting in accordance with its mandate to represent the interests of agribusinesses throughout South Africa, *inter alia,* emphasised the need for a robust and transparent consultation framework prior to the determination of sectoral targets. AGBIZ argued that the provisions fell short of the procedural and substantive requirements for meaningful consultation and recommended a model akin to the Broad-Based Black Economic Empowerment ("**BBBEE**") Charter Councils, where sector-specific forums deliberate on targets based on evidence and research. AGBIZ further recommended that the method of consultation be set out in greater detail in the regulations and proposed that the Draft 2018 EE Regulations be amended to allow for recognition of additional sectors or sub-sectors not currently listed in EEA17, enabling employers in atypical or hybrid sectors to apply for formal recognition of additional sectors or sub-sectors.

38 In 2019, the Consumer Goods Council of South Africa ("**CGCSA**"), which falls within the consumer goods, retail, manufacturing and services sector and the Retail Association,

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which falls within the wholesale and retail sector, submitted that the Department, in its consultation processes which it had commenced as envisaged by the EE Amendment Bill, had proposed uniform numerical targets across all sectors, rather than tailoring them to the specific realities of each sector. This approach, they argued, contradicted the expectation that sector-specific targets would be set based on criteria outlined in Regulation 7A. Despite the legislative framework suggesting that the Minister would analyse each sector individually, CGCSA and the Retail Association noted that the proposed targets appeared to be largely derived from BBBEE codes, and in effect, a national target had been proposed as opposed to sectoral numerical targets.

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39 The CGCSA and the Retail Association further submitted that the high rates of turnover and natural attrition, particularly at top and senior management levels, significantly affect the sector's ability to meet the proposed targets. They noted that meeting the targets would require unrealistic growth in management levels. Additionally, they cautioned that the pool of qualified candidates from designated groups is constrained by educational disparities, with significantly lower rates of degree attainment among African and Coloured matriculants compared to white matriculants. As such, they contended that the proposed targets do not reflect the actual capacity of the sector to transform at the pace envisioned by the Department.

40 The Financial Intermediaries Association of South Africa ("**FIA**"), which falls within the financial and insurance activities sector, also submitted a detailed submission to the Department in 2020 in response to the Department's proposed targets for its sector. The FIA raised concerns that the proposed targets were unachievable due to economic constraints, limited market access, and persistent skills shortages. It highlighted the technical nature of the financial services sector, the time-intensive process of developing qualified professionals, and the high attrition of African advisers, many of whom are recruited by larger firms. The FIA also warned that the proposed targets, if codified,

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could undermine the broader BBBEE framework and negatively impact both small firms and consumers.

41 In further engagements throughout 2021, the FIA, noting a similar concern to CGCSA and the Retail Association, emphasised that the EE Amendment Bill empowers the Minister to differentiate between sub-sectors and regions, yet advisory firms were being subjected to targets negotiated with banks and insurers.

42 On 15 April 2021, the Construction Alliance South Africa ("**CASA**"), which represents 32 (thirty two) industry bodies, addressed the Parliamentary Portfolio Committee on the setting of employment equity sector targets. It highlighted extensive engagements with the Department between 2020 and 2021. Despite these efforts, significant areas of misalignment persisted among sector representatives, underscoring the need for further consultation and clarification.

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43 CASA identified several key challenges, namely:

43.1 Senior and top management positions in construction often require professional registration, which limits the pool of eligible candidates.

43.2 The output of school candidates, especially those qualifying for tertiary studies in engineering and construction, is insufficient.

43.3 The number of black and female graduates remains below what is needed to meet proposed targets.

43.4 While lower management levels show more equitable representation, senior levels lag due to historical and structural factors.

43.5 The sector continues to face challenges in increasing female participation, particularly in professional roles.

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43.6 The construction sector's diversity which includes professionals, suppliers, contractors, and geographic spread makes uniform target-setting difficult.

44 CASA pointed out contradictions and overlaps between the EEA, BBBEE Act 53 of 2003, Preferential Procurement Policy Framework Act 5 of 2000 ("**PPPFA**"). and the Constitution. It noted concerns that the EE Amendment Bill could override other legislation, potentially leading to constitutional challenges, especially regarding public procurement and compliance certificates.

45 CASA also expressed its concerns regarding implementation. It emphasised that there had been insufficient consultation with industry stakeholders regarding the updated regulations associated with the EE Amendment Bill. It noted that the construction sector, with its unique challenges and diversity, requires tailored engagement to ensure that regulations are practical and achievable. The absence of such consultation risks the implementation of regulations that may not reflect the realities of the sector, potentially leading to unintended negative consequences and resistance from affected parties.

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46 Additionally, labour inspectors have broad powers under section 42 of the EEA. CASA noted that abuse of such powers could lead to potential corruption and have as a consequence closure of businesses causing higher levels of unemployment.

47 CASA further warned that the pressure to meet sector targets could lead to "window dressing", i.e. the superficial appointment of individuals from designated groups to senior positions without adequate preparation, support, or experience. This practice undermines the intent of transformation, risks setting individuals up for failure, and may negatively affect organisational performance and professional reputations.

48 CASA concluded by stressing the need for broader, more inclusive consultation, including with entities not affiliated with CASA, and called for empirical research to

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inform realistic and achievable targets. It advocated for the involvement of tertiary institutions and registration councils in this process. CASA further emphasised the importance of alignment between the Department, the Department of Trade, Industry and Competition, and the Construction Sector Charter Council.

49 In 2021, the Retail Motor Industry Organisation ("**RMI**"), was invited by the Department to participate in the process of determining sectoral employment equity targets for the wholesale and retail trade and the repair of motor vehicles and motorcycles sector.

50 The RMI formed a task team with representatives from each association and conducted consultations across the motor industry. On 19 April 2021, the RMI submitted a comprehensive, 28-page submission to the Department. In this submission, the RMI set out in detail the structure of the automotive aftermarket, describing the 8 (eight) constituent associations and over 8,500 (eight thousand five hundred) member businesses under its umbrella and the diversity of business models, skills requirements, and workforce profiles across the sector. The RMI emphasised that the sector is not homogenous, with some sub-sectors being highly technical and others more retail or service-oriented, and that the majority of businesses are small and medium-sized enterprises rather than large corporates with only 7.7% qualifying as designated employers under the EEA. Each association proposed its own targets based on actual workforce data and business realities. For example, the Automotive Remanufacturers Association proposed top management targets of 25% black and 10% black female, while the Motor Industry Workshop Association proposed 33% black and 17% black female. The submission included detailed tables showing current workforce profiles by race, gender, and occupational level, and proposed "stretched" targets for each sub-sector.

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51 The RMI further identified specific barriers to transformation. The industry is not seen as a first-choice career by school leavers or tertiary graduates, particularly among

women, resulting in a significant shortage of female employees. It remains male-dominated, and finding suitably qualified, compliant, and committed individuals is a persistent challenge. Skills shortages and competition within the sector make it difficult to retain skilled employees, and dealerships often cannot match the salary expectations of potential candidates. The variable pay structures common in the motor dealership environment are less attractive than fixed pay structures, which discourages new entrants. Once employees are fully trained, they become highly marketable, making succession planning difficult and increasing retention costs. In rural areas, staff turnover is low due to limited opportunities and high relocation costs, but finding qualified staff remains difficult. There is a widening gap between the minimum entry skills required for technical trades and the skills presented by applicants, and although plans have been developed with the Department of Higher Education to bridge this gap, implementation has been slow and uptake by TVET institutions limited.

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52 On 12 November 2021, the RMI reaffirmed its April 2021 submission in a further written communication to the Department. In this submission, the RMI reiterated its position that the proposed employment equity targets presented by the Department were "stretched" and would require substantial strategic planning and effort from businesses within the motor industry to achieve. The RMI emphasised that while it supports economic transformation, the targets must be realistic and tailored to the operational realities of the sector.

53 The RMI again strongly advocated for the differentiation of SIC codes, arguing that the motor industry, classified under SIC 45, should not be grouped with other sectors falling under SIC codes 45 to 47, such as general retail and trade. It warned against a blanket or "one-size-fits-all" approach, highlighting the sector's diversity, complexity, and unique structural characteristics.

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54 The EE Amendment Bill was passed by Parliament on 17 May 2022 and then assented to by the President on 5 April 2023, as Amendment Act 4 of 2022 ("**Amendment Act**"). Despite being assented into law in April 2023, the Amendment Act only came into force and effect (operation) from 1 January 2025 as proclaimed by the President.

55 On 11 July 2022, the RMI participated in a follow-up engagement with the Department and the CGCSA, reiterating the need for sub-sector-specific targets and requesting time to consult with its constituencies. The Department presented counter-proposals for each of the 4 (four) upper occupational levels and for persons with disabilities, which the RMI and other sector representatives agreed to review and respond to.

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56 On 26 July 2022, the RMI submitted its position to the Department, warning that clustering of all retail and wholesale trade under one sector was irrational and risked legal challenge under section 217 of the Constitution. A major objection was directed to section 53 of the EEA which deals with compliance assessments and the issuance of certificates required to bid for state contracts. The RMI proposed that employers be assessed based on reasonable steps taken rather than rigid numerical targets, to avoid creating unconstitutional quotas. The RMI argued that the criteria required for the issuance of compliance certificates, especially the requirement to meet numerical targets, could unfairly exclude businesses from government contracts and violate constitutional procurement principles under section 217 of the Constitution. It warned that this could effectively lead to liquidation and job losses, especially for small and foreign-owned businesses.

57 The RMI also criticised the Department's methodology of using the highest targets submitted by industry associations as the basis for setting sectoral targets. It considered this approach unjust, as it disregarded the diversity and complexity of sub-sectors within the industry. The RMI urged the Department to differentiate targets by SIC code and to

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use the Sector Skills Plan, which identifies hard-to-fill vacancies and skills gaps that hinder transformation, as a guide for realistic target setting and to address skills gaps as a root cause of under-representation.

58 The Department made a presentation to sub-sector 6 on 15 October 2022. The Department's presentation was then titled "*engagement/ consultation - sub-sector 6 manufacture of basic metals, fabricated metal products, except machinery and equipment*". A copy of the presentation is attached as "**FA3**".

59 Also on 10 March 2023, the Department issued an invitation to the Steel and Engineering Industries Federation of Southern Africa ("**SEIFSA**"), which falls within the manufacturing sector, for a follow up meeting with sub-sector 7, being the sub-sector involved in the manufacture of electrical equipment, machinery, equipment, motor vehicles, trailers, semi-trailers, and transport equipment, including the installation of machinery and equipment. The invitation noted that "*our follow up meeting held with your sub-sector in the manufacturing sector dated 14 October 2022 has reference*". A copy of the letter of 10 March 2023 is attached as "**FA4**".

60 This invitation followed the representations that were made by SEIFSA in respect of sub-sectors 6 and 7 on 28 November 2022. A copy of the letter of 28 November 2022 is attached as "**FA5**".

2023 Draft Targets and Representations

61 Prior to the proclamation of the Amendment Act and on 12 May 2023, the erstwhile Minister, Minister Nxesi (despite not being empowered to do so in terms of law), published draft sectoral targets ("**2023 Draft Targets**") for public comment.[12] The 2023 Draft Targets notice ("**notice**") included a "*list of economic sectors*" comprising of

[12] GN. 48589, 12 May 2023

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18 sectors. The sub-sectors that had been included in the Draft 2018 EE Regulations were, however, removed.

62 The notice also said that "*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*". The notice then prescribed numerical targets for each of the 18 listed sectors.

63 These targets were issued without providing any information as to the methodology adopted or criteria considered in setting them, or providing any explanation as to how the identification of these sectors was decided upon.

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64 This was done notwithstanding the fact that when BUSA submitted its comments to the Draft 2018 EE Regulations which it stated that:

64.1 Section 15A(2) of the Amendment Bill requires the Minister to consult with the relevant sectors before setting numerical targets.

64.2 BUSA was of the view that the method and format of consultation with sectors should be prescribed in the Draft 2018 EE Regulations. Specifically, BUSA noted that it should be clearly stated with whom the engagements will be conducted. For example, it can be indicated that the consultations will be conducted with the various employers comprising a critical mass in each sector, either individually or through any employer's organisation that represents the employers in the sector.

64.3 Before any meaningful consultation can take place under section 15A of the EE Amendment Bill, the consulting parties at least need to know:

64.3.1 which sector is being consulted (as gazetted by the Minister in terms of section 15A(1)); and

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64.3.2 what the relevant criterion for determining a numerical target is.

65 These concerns were clearly ignored when publishing the 2023 Draft Targets for public comment, as there was still no information provided in relation to the methodology used or criteria considered in setting the 2023 Draft Targets and identifying the sectors.

66 Instead, the 2023 Draft Targets were retrogressive, in that, instead of providing an explanation and consulting on how the listed sectors were identified, the Minister now removed the sub-sectors that had been included in the Draft 2018 EE Regulations as per Form EEA17.

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67 BUSA made its representations on the 2023 Draft Targets on 12 June 2023. In its written submission, BUSA once again indicated that there was non-compliance with section 15A, as this provision required the Minister to publish proposed sectors and then engage in consultations. Consultation with proposed sectors should then be followed by the publishing of draft regulations for comment. BUSA also indicated that:

67.1 It is not clear which factors informed the Department's thinking on its proposed sectors.

67.2 There is an increased divergence between the Economically Active Population ("**EAP**") statistics and the makeup of suitably qualified persons in South Africa. Whereas the EEA contains numerous references to equitable representation of suitably qualified people from designated groups, the 2023 Draft Targets are built on EAP statistics alone without having regard to the availability of suitably qualified people.

67.3 The EEA and its Regulations cannot create a framework that contradicts that which is mandated in section 217 of the Constitution and the PPPFA.

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68 In conclusion, BUSA reiterated its commitment to the country's transformative agenda and inclusive growth and urged the Department to conduct consultations on these issues within the spirit of a joint consensus seeking approach. A copy of BUSA's submission is attached as "**FA6**".

69 In addition to BUSA's representations, BUSA's members also submitted their comments on the 2023 Draft Targets. By way of example, the Retail Association submitted its comments on 12 June 2023 and stated that:

69.1 The status of the Draft 2018 EE Regulations which were published in the Government Gazette for public comment are unknown to the labour market in general.

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69.2 There has been no indication whatsoever from the Department as to whether the version of the Draft 2018 EE Regulations has or will change since being published for public comment in 2018 (almost 5 (five) years ago – at the time the Retail Association made its submission).

69.3 Regulation 7A (the determination of numerical targets) and Regulation 16 (certificate in terms of section 53) of the Draft 2018 EE Regulations have a direct bearing on the 2023 Draft Targets.

69.4 Almost 5 (five) years have passed since the Retail Association's first engagement with the Department and for obvious reasons, this significant passing of time impacts the initial submissions made by the Retail Association.

69.5 The Retail Association is of the view that there is an obligation on the Department to start with a new or fresh consultation process with the retail sector.

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69.6 Given that, at the time the Retail Association made its submission in 2023, almost five years had passed (i.e. since 2018), there had been significant changes in South Africa's labour market and those changes or disruptions had a dire impact on an employer's workforce.

69.7 During the period when the Retail Association initially engaged with the Department, the Retail Association relied on aggregated data (which data it spent a significant amount of time obtaining and analysing from its members) that was now out of date.

69.8 The Minister is not relieved of the duty to consult under section 15A(2) of the Amendment Act once it is actually in force and effect. More importantly, the consultation must be based on the current (not outdated) economic, social and labour market trends, with specific regard to Regulation 7A, as it appears in the Draft 2018 EE Regulations.

69.9 If the intention was for Regulation 7A of the Draft 2018 EE Regulations to remain the same when promulgated, it should then be noted that such Regulation states that:

> "*for the purposes of determining a numerical target in terms of section 7A, any relevant criterion must be taken into account including:*
>
> *(a) the qualification, skills, experience and the capacity to acquire, within a reasonable time frame, the ability to do the job;*
>
> *(b) the rate of turn over and natural attrition within a sector;*
>
> *(c) recruitment and promotional trends within a sector.*" (Emphasis added)

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70 The Retail Association then raised a concern that it was not apparent from the 2023 Draft Targets, that the Department had taken into account any of the criteria listed in Regulation 7A of the Draft 2018 EE Regulations insofar as the retail sector is concerned.

71 The Minister was then urged to reconsider the format and manner in which the proposed targets were set out and if not, at the very least, to provide the public with an explanation and/or documentation setting out how the targets were arrived at and how they are to be applied in practice. Such explanation was sought on the basis that:

71.1 The 2023 Draft Targets proposed by the Minister did not, to any extent, take into account the skills shortages experienced in South Africa and it did not appear that the Minister took into account Regulation 7A of the Draft 2018 EE Regulations.

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71.2 Prescribing targets that are not based on up-to-date, relevant and accurate data, as well as an analysis of suitably qualified and skilled people within the EAP, cannot be said to be rational.

72 In conclusion, the Retail Association emphasised that the sectoral targets had been published with a lack of proper consultation, and requested that:

72.1 once the Amendment Act comes into force and effect (which at that point in time, was still to be on a date yet to be determined by the President), consultation should start afresh; and

72.2 only once there has been meaningful consultation based on accurate and up-to-date data applicable to the sector, should the Minister publish proposed targets for public comment. A copy of the Retail Association's submission is attached as "**FA7**".

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73 The National Clothing Retail Federation of South Africa ("**NCRF**"), which falls within the wholesale and retail trade sector, also submitted its representations, through its legal representatives, Bowman Gilfillan ("**Bowmans**") on 9 June 2023, and stated that:

73.1 The Draft Regulations record that the Minister has published the notice in terms of section 15A of the Amendment Act. The Minister cannot yet rely on section 15A as an empowering provision in the purported exercise of any power, as such section has not been brought into effect by proclamation.

73.2 In any event, the functions and powers contemplated in section 15A must be exercised in the prescribed sequence and as follows:

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73.2.1 the identification of the sectors with regard to the relevant SIC codes;

73.2.2 publication of the proposed sectors for public comment;

73.2.3 consultation with the sectors concerned on proposed demographic targets (per occupational level, sub-sectors or regions within a sector, on the basis of any other relevant factor);

73.2.4 taking advice from the Commission; and

73.2.5 publication of the proposed sectoral targets for public comment.

73.3 The publication of the 2023 Draft Targets on 12 May 2023 was made prematurely and out of sequence with the prescribed process.

74 The NCRF dealt further with the shortcomings in the manner in which the Minister identified the sectors and stated that:

74.1 The power of the Minister to identify sub-sectors takes into account that there are variances in current workforce profiles, demographics, skills availability,

qualifications, different challenges faced by each industry and the extent to which some designated groups are underrepresented in various sub-sectors.

74.2 A "one size fits" all approach was clearly not contemplated in the drafting of section 15A. This is also borne out by the fact that form EE17 contained in the Draft 2018 EE Regulations identified proposed sub-sectors. Yet the proposed targets contained in the 2023 Draft Targets failed to set targets for each of the sub-sectors.

74.3 The identification of sub-sectors prior to proposing targets for the broader sectors is imperative.

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74.4 Any data that may have been provided during the engagements that took place during the period 2019 to 2022 is now out of date.

74.5 It is not clear on what data the Minister's proposed sectoral targets are based.

75 The NCRF then requested the data which informed the Minister's decision when setting the Targets. A copy of Bowmans' letter of 9 June 2023 is attached as "**FA8**".

76 SEIFSA also submitted its representations on 9 June 2023 and stated that:

76.1 The Department published a comprehensive list of sectors and sub-sectors in the Draft 2018 EE Regulations based on the 7th edition of the Standard Industrial Classification of all Economic Activities published by Statistics SA.

76.2 Sub-sectors were identified and set out in 17 of the 18 sectors listed in the Draft 2018 EE Regulations, with SEIFSA affiliated membership predominantly falling in 2 (two) of the 7 (seven) sub-sectors of Manufacturing, namely:

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76.2.1 manufacture of basic metals, fabricated metal products, except machinery and equipment (sub-sector 6); and

76.2.2 manufacture of electrical equipment, machinery, equipment, motor vehicles, trailers, semi-trailers, transport equipment, installation of machinery and equipment (sub-sector 7).

76.3 The other sub-sectors of the manufacturing sector cater *inter alia* for food, textiles, pharmaceuticals, wood, printing and petroleum manufacturers - whose industries, as well as those of sub-sectors 6 and 7, are all very diverse, situated in different localities and with different skills requirements, availability and working environments.

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76.4 The reason why the Amendment Act provides for the setting of different numerical targets for different sub-sectors within a sector, is that it recognises that the above differences exist between sectors and sub-sectors within a sector, and thus justifying separate targets for sectors and their sub-sectors.

76.5 No explanation has been offered or rationale advanced for the Department doing away with targets for the sub-sectors that it had been consulting with or for abruptly and in midstream abandoning all engagements with the employer organisations representing designated employers in the different sub-sectors it had been engaging with at the time.

76.6 The Department has erred in halting the consultation processes it was busy following with different sub-sectors and as provided for in the Act and publishing only sector targets for the broad category of sectors.

76.7 SEIFSA then urged the Department to reconsider its course of action and to firstly conclude the engagements and processes that started with the different

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employer organisations in the different sectors and sub-sectors, and to include therein the same sub-sectors that were published in the Draft 2018 EE Regulations. A copy of the letter of 9 June 2023 is attached as "**FA9**".

77 On 8 June 2023, the RMI submitted public comments on the 2023 Draft Targets, arguing that they were published before the Amendment Act was in force, making them *ultra vires* and invalid. The RMI detailed the required sequence under section 15A of the EEA, namely that the Minister must identify sectors and publish them for comment, consider comments and finalise sectors, consult with sectors on targets, publish proposed targets for comment, and then finalise and publish targets. The RMI asserted that none of these steps had been properly followed. The RMI provided a detailed breakdown of SIC codes and sub-categories, arguing that the Department's aggregation of wholesale, retail, and motor trade was irrational. The RMI further noted that by merging wholesale, retail trade, repair of motor vehicles and motorcycles into one industry classification, the Minister failed to take into account that the industry is divided by the SIC codes as follows:

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77.1 Wholesale and retail trade and repair of motor vehicles and motorcycles;

77.2 Wholesale trade except of motor vehicles and motorcycles;

77.3 Retail trade except for motor vehicles and motorcycles; and

77.4 Manufacturing of parts and accessories of motor vehicles, i.e. the component industry.

78 The RMI highlighted that the difference between wholesale and retail sale is based on the type of customer. Customers in wholesale include retailers, industrial, commercial, institutional and professional users or to other wholesalers. These transactions are typically business-to-business and involve bulk purchasing. Customers in retail are mainly members of the general public purchasing goods for personal or household

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consumption. This distinction affects the nature of the business, the skills required, and the employment patterns within each sub-sector, and must be considered when setting sectoral targets.

79 The RMI further noted that the identification of sub-sectors prior to proposing targets for the broader sectors is imperative. Without this step, the employment equity targets risk being misaligned with the realities of the industries they are meant to regulate. As a result of a failure to properly consider the identification of the sectors and sub-sectors following the passing of the Amendment Act, the RMI indicated that it had effectively been denied an opportunity to make any meaningful representations on the proposed sectoral targets. This undermines the consultative process envisaged by the legislation and prejudices stakeholders who are directly affected.

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2024 Draft Targets and Representations

80 On 1 February 2024, Minister Nxesi published, in the Government Gazette, for public comment, revised "*Draft Regulations on Proposed Sectoral Numerical targets*" ("**2024 Draft Targets**").[13]

81 The 2024 Draft Targets stated *inter alia* that a notice issued in terms of section 15A empowers the Minister to set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor. It then proceeded to list 18 sectors as "*List of economic sectors*".

[13] GN 50058, 1 February 2024

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82 The notice then contended that when setting the proposed 5 (five)-year sectoral numerical targets the following factors were taken into account:

82.1 The latest 2022 employment equity workforce profiles of each economic sector in terms of race, gender and disability as reported by the designated employers in their 2022 EE reports submitted to the Department.

82.2 The unique sector dynamics (e.g. skills availability, economic and market forces, ownership etc) raised by sector stakeholders in their written submissions during the consultation process.

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83 It then proceeded to set numerical targets for all sectors.

84 BUSA submitted its comments on the 2024 Draft Targets on 3 April 2024. A copy of the submission is attached as "**FA10**".

85 In addition to BUSA's written submission, BUSA's members also submitted their comments on the 2024 Draft Targets. By way of example, the Retail Association submitted its comments on 2 May 2024 and stated that:

85.1 The Department commenced consultation (*albeit* prematurely so) with the Retail Association in October 2018 (at that point in time, almost six years ago).

85.2 The information submitted or shared by the Retail Association during the purported consultation process is for obvious reasons outdated (given that the information or data relied upon was largely from the year 2018).

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85.3 There have been catastrophic events since 2020 (since the "consultation" process started) which have directly impacted the retail sector. These include:

85.3.1 COVID-19 which resulted in lockdown, regulations restricting trade or sale of certain items and an increase in operating costs;

85.3.2 the devastating July 2021 riots in KwaZulu-Natal and Gauteng which resulted in almost 1800 (one thousand eight hundred) retail stores being damaged and almost 100 (one hundred) shopping malls set alight (from which the retail sector is still recovering from);

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85.3.3 the April 2022 floods (not even a year after the riots the previous [illegible] in KwaZulu-Natal where hundreds of retail stores were damaged again;

85.3.4 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 alternative sources of supply energy to ensure the continuity of their businesses;

85.3.5 the poor economic state of the country and the effect that it 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 technological skills;

85.3.6 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, skills shortage in general is experienced (regardless

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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;

85.3.7 since the Publication of the Draft 2018 EE Regulations for public comment, there has been no indication whatsoever from the Minister, as to whether the Draft 2018 EE Regulations will, since their [illegible] 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; and

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85.3.8 if the Draft 2018 EE Regulations are to be adopted without amendments, it then appears that the factors that are listed under Regulation 7A have been ignored by the Minister.

85.4 The Retail Association also dealt with the defects in the methodology which the Department purported to have used and stated that:

85.4.1 The issue is not as simple as the Department simply saying that in South Africa there are X amount of designated people in the EAP and therefore there are people available and willing to work or be appointed in the occupational categories where there is under representation.

85.4.2 Although an 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.

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85.4.3 Without taking into account information or 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, such targets would be irrational and in fact, serve no purpose, particularly in an economy that has been and continues to be battered.

85.4.4 During the period that the Retail Association engaged with the Department (2018 – 2020) the Retail Association relied on aggregated data (which data it spent a significant amount of time obtaining and analysing from its members). That data from 2018 is, for obvious reasons, now out of date.

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85.4.5 The Retail Association is of the view that consultation should be based on the current (not outdated) economic commercial and labour market trends with specific regards to Regulation 7A as it appears in the Draft 2018 EE Regulations. A copy of the letter of 2 May 2024 is attached as "**FA11**".

86 Also on 2 May 2024, South African Medical Technology Industry Association ("**SAMED**"), which falls within the human health and social work activities sector, submitted its comments and input on the 2024 Draft Targets.

87 At the outset, SAMED dealt with classification of the medical technology sector and stated that:

87.1 The broadness of the classification of the sector means that SAMED members will, in spite of its fundamental differences with others in the same class, be

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subjected to targets set for businesses with significantly different staff profiles (e.g. textiles in general, and textiles as wound care products are significantly different businesses in terms of staff and staffing requirements). The same applies to the plastics sector, and so forth.

87.2 The decision relating to the classification of sectors, and the setting of appropriate targets per sector, necessitates such consultation and consideration of setting targets that are not overly broad in the industries captured under a single set of targets.

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88 It also dealt with the process and timelines for issuing a section 53 certificate and stated that:

88.1 There is uncertainty as to the criteria and process through which the section 53 certificate would be issued. It is not clear in the 2024 Draft Targets as to whether employers would be measured against their own targets for years 1 to 4.

88.2 There is also no clear process and timelines for the "measurement" (in par 3.4.3) and "compliance analysis" (in par 4.4), and consideration of the justifications of non-compliance (in par 4.5).

88.3 Opportunities have to be created for disputes on the acceptability of justifications. These timelines and processes are vital to the fairness of the process. A system that is easy to navigate and expeditious is critical for those who require such certificates in order to participate in state tenders.

89 On this basis, SAMED urged the Department to include (in the Targets and Regulations), processes and timelines relating to the implementation of section 53, in order to create a predictable, consistent system of compliance monitoring and certification. A copy of the letter of 2 May 2024 is attached as "**FA12**".

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90 On 9 April 2024, the RMI submitted detailed comments on the 2024 Draft Targets. The RMI set out how the Minister had failed to identify sectors and sub-sectors for public comment and had not conducted meaningful consultation as required by law. The RMI provided evidence that the automotive aftermarket was grouped with unrelated retail sectors, resulting in irrational targets. The RMI pointed out contradictions within the 2024 Draft Targets, such as on setting targets for over-represented groups, and critiqued the rigid application of national or provincial EAP, showing how it created barriers for certain groups, such as Coloureds in the Western Cape and Indians in KwaZulu-Natal. The RMI urged the Minister to publish refined sectors and sub-sectors, consult meaningfully, and set realistic, achievable targets.

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Amendment Act comes into Operation and Issuing of 2025 Sector Targets

91 On 12 November 2024, the President signed a Proclamation and determined 1 January 2025 as the date of commencement of the Amendment Act and the date on which *inter alia* sections 15A, 42 and 53 shall come into operation.[14]

92 In December 2024, the Department issued invitations to various sectors inviting them to a "virtual consultation meeting" during February 2025, for between 60 (sixty) and 90 (ninety) minutes each. The invitation stated that the purpose of the meeting is to discuss the proposed sector numerical EE targets before publishing the final sector targets for implementation. A copy of a specimen of such invitation is attached as "**FA13**".

93 The invitation did not provide any other information. It also did not attach any new draft sector targets or state whether the 2024 Draft Targets would be discussed during the virtual meeting.

[14] GN 51685

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94 On 7 February 2025, in response to multiple concerns raised by its members, some of whom learned about the virtual consultations through media channels but did not receive invitations, BUSA submitted a letter to the Department requesting meaningful consultations and enhanced data transparency. BUSA articulated its concern that the 1 (one) hour sector target consultation is insufficient for fostering meaningful and substantive discussions.

95 It further proposed an extension of the consultation period to ensure that these sessions served as meaningful engagements and enhance the quality of the discussions, as an extension would allow for a more thorough and constructive dialogue and lead to a more effective implementation of the proposed changes, whilst addressing the complexities and diverse needs of the sectors involved.

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96 BUSA also requested the Department to provide, in advance, information packs containing sector and sub-sector data supporting the proposed targets. It also requested disclosure of relevant information summarising submissions made regarding key draft regulations and earlier proposals on sector targets, including those adopted in revised proposals and the reasons for rejecting others.

97 BUSA also highlighted that it had previously submitted comments and recommendations to the Department but no responses had been received. In this regard, it was stated that:

97.1 The absence of feedback impedes the employer's ability to address the critical issues raised and raises concerns regarding the extent to which these matters would be considered in the forthcoming consultation.

97.2 Such clarification would enhance understanding of transitional arrangements. BUSA's letter of 7 February 2025 is attached as "**FA14**".

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98 The Department responded to BUSA's letter on 14 February 2025 and merely stated that all the concerns that have been raised by BUSA regarding meaningful consultations on the sector targets have been noted.

99 The Department then agreed to meet with BUSA virtually on 19 February 2025 from 13:30 to 15:00. The Department however failed to provide BUSA with the information that was requested in its letter of 7 February 2025. A copy of the Department's letter of 14 February 2025 is attached as "**FA15**".

100 The Department then proceeded to set up virtual meetings with various sectors on 11, 12, 13, 14, 17, 18 and 19 February 2025. The meetings were scheduled for one hour, with the agenda broken down into 5 (five) minutes for opening and welcome, 30 (thrirty) minutes for the Department's presentation, 20 (twenty) minutes for discussions, 5 (five) minutes for way forward and 5 (five) minutes for closure. Copies of the agendas are attached as "**FA16**".

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101 The format and time allocation of these meetings indicate that these were nothing more than information sharing sessions. There was clearly no provision made for the stakeholders to engage the Department on its presentation and for the stakeholders to present their positions and concerns.

102 On 19 February 2025, AGBIZ forwarded a letter to the Department and advised that there is a stark contrast between smaller agricultural organisations, as well as between those in urban and rural areas.

102.1 Larger entities, particularly in urban locations often exhibit greater workforce diversity due to better employee mobility and broader recruitment opportunities.

102.2 In contrast, smaller organisations and those large and small in rural areas often lack robust leadership structures and face challenges in achieving diversity.

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These realities, rooted in both historical and ongoing sector specific challenges, make it exceptionally difficult for many agricultural businesses to meet these proposed regulatory targets.

103 It then highlighted the key challenges that are faced by the agricultural sector in relation to the proposed targets. Key amongst these challenges are:

103.1 Historical and Generational Ownership Structures: Many agricultural enterprises are family-owned, passed down through generations. These businesses naturally employ family members, which impacts demographic shifts within the workforce, making it harder to diversify the leadership.

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103.2 Labour Market Realities in Rural Areas: Skill shortages are particularly acute in rural areas, where a large number of agricultural operations are located. The lack of qualified candidates within proximity to farms and agribusinesses makes it extremely challenging to meet the target of increasing representation from underrepresented groups.

103.3 Economic and Environmental Pressures: The agricultural sector is highly volatile, affected by factors such as droughts, labour unrest, farm violence, and economic downturns. These challenges often force businesses to scale back operations rather than expand, making it unrealistic to set aggressive transformation targets during such turbulent times.

103.4 Low Staff Turnover: Unlike many other sectors, agriculture experiences low staff turnover. The seasonal nature of many roles, combined with long-term employment practices, means vacancies do not arise often enough to drive meaningful demographic shifts within the timelines set by the Department.

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103.5 Unfair and Inconsistent Application of Justifiable Reasons: While the Department has recognised "justifiable reasons" for deviations from prescribed targets, there is a lack of fair and consistent evaluation when employers present legitimate reasons for non-compliance. Many businesses are finding themselves ensnared in costly and time-consuming legal disputes simply to defend operational constraints that are beyond their control.

103.6 Lack of basic service delivery in most of the rural areas: Most of the agribusinesses conduct their business in rural areas where their employees and customers reside. The lack of basic service delivery in these areas has contributed to low interest among employees in working for such companies. Shortage of drinking water and poor electrical infrastructure mean the residents must drill a borehole, or buy water tanks with pressure pumps, must install solar panels as power backup and outsource collection of refuse, to name a few additional costly activities. These additional costs are too much for employees to absorb, which results in a lack of appetite for rural areas.

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104 AGBIZ then made proposals to address these challenges by suggesting that:

104.1 The Department must recognise business-specific realities and allow individual employers to set employment equity targets based on their specific workforce baselines, reasonable projected growth, and business sustainability. Such an approach is necessitated by the fact that a blanket approach fails to account for regional disparities, workforce dynamics, and the unique challenges faced by different agricultural entities.

104.2 The Department must upskill its officials to ensure that employment equity audits are conducted by properly trained officials with a deep understanding of the agricultural sector's realities. This will help avoid unnecessary legal disputes

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and ensure that businesses are not burdened with excessive legal costs simply to defend legitimate operational constraints.

104.3 The Department should establish a transparent and structured framework to assess "justifiable reasons" for non-compliance. This will allow for legitimate economic, environmental, and workforce constraints to be fairly considered, preventing arbitrary rejections of valid justifications.

104.4 the Department should engage directly with industry leaders, business owners, and sector experts to develop realistic, evidence-based employment equity strategies that balance transformation goals with the economic realities of the agricultural sector.

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105 AGBIZ also raised concern about the manner in which its sector was made up, and stated that:

105.1 the agricultural sector, which has been classified under the same numerical target category as forestry and fisheries, is inherently diverse. This classification, along with the grouping with two other broad and complex industries, further complicates the process ; and

105.2 there are fundamental differences between the three industries and the operating models of the various businesses within these industries, which should be considered when setting EE targets.

106 It also raised concerns about the manner in which the Department engaged with the stakeholders, in that single, 1 (one) hour-long meeting, which was primarily focused on information-sharing and which does not constitute genuine consultation.

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107 It then requested the Department to engage in a more substantive and sector-specific dialogue to ensure that the unique challenges and perspectives of agricultural stakeholders are adequately addressed. A copy of the letter of 19 February 2025 is attached as "**FA17**".

108 BUSA met with the Department on 19 February 2025 without being provided with the requested information in its letter of 7 February 2025. There was however no meaningful engagement with any of the issues that were raised by BUSA. Further details in relation to the content of this meeting are dealt with below.

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109 On 21 February 2025, the Retail Association forwarded a letter to the Department noting that at the meeting of 14 February 2025, the Department presented "new 2025 sector targets" which have significantly increased from the draft targets proposed in the February 2024 Government Gazette.

110 The Retail Association furthermore indicated that:

110.1 The manner in which the meeting of 14 February 2025 was conducted gave a strong impression that the new sector targets are final and the Department's mind has been made-up.

110.2 The meeting was not treated by the Department as a proper consultation meeting as there was no real opportunity to engage in the true spirit of consultation.

110.3 The Retail Association is willing to consult, provided that there is a meaningful exchange of information and reasonable opportunity for the Retail Association to engage its members and respond formally to the new sector targets.

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111 As there were no draft notices issued and in order to facilitate a meaningful consultation process, the Retail Association requested the Department to provide it with information as to:

111.1 what amendments will be made to the version of the Draft 2018 EE Regulations before they are published in the Government Gazette for promulgation; and

111.2 what amendments will be made to the text portions (sections 3 to 4) over the February 2024 Government Gazette.

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112 The Retail Association also emphasised that it was not good enough for the Department, at the 14 February 2025 meeting, to simply state that there are amendments that will be made to the text but not actually share with the attendees what those amendments will be. This is the information which the Department ought to have shared at the 14 February 2025 meeting if it was indeed treating such a meeting as a legitimate consultation.

113 The Department was then requested to provide information as to the factors that it took into account when it calculated the new 2025 sector targets and the methodology used.

114 It then concluded by stating that upon receipt of the requested information, the Retail Association will require 60 days to engage with its membership, given the extensive size of its membership and sector, to provide a formal response to the Department's 2025 Sector Targets. A copy of the letter of 21 February 2025 is attached as "**FA18**".

115 Also on 21 February 2025, Bowmans, on behalf of NCRF, forwarded a letter to the Department and recorded that:

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115.1 On or about Wednesday 12 February 2025 at approximately 22h14 Bowmans sent the Department's PowerPoint presentation titled "*Targets consultation wholesale and retail trade, repair of motor vehicles and motorcycles*" to NCRF.

115.2 This presentation was not sent directly to NCRF by the Department but was circulated by another industry body that had received the presentation earlier that evening at approximately 19h00.

115.3 Slide six of the PowerPoint presentation appeared to include new proposed targets for a merged sector described as the "*Wholesale and Retail Trade, Repair of Motor vehicles and Motorcycles Sector*".

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115.4 During the virtual meeting of 14 February 2025, it was communicated to the attendees that the numerical targets set out in the PowerPoint presentation are new proposed sector targets (i.e. 2025 Sector Targets).

115.5 In response to a request by stakeholders to be provided with a reasonable opportunity to consider these new proposed sector targets, Ms Ntsoaki Mamashela indicated that written input in response to the above new proposed sector targets should be submitted by latest, Friday, 21 February 2025. The stakeholders were thus given five days within which to respond to the new targets.

115.6 The 2025 Sector Targets are markedly different from the 2023 Draft Targets and 2024 Draft Targets. As such the Minister could not rely on any previous consultations that took place in respect of those draft sector targets. Those draft sector targets were published prior to the empowering provisions coming into effect. On the Department's own reasoning, it appears to rely on outdated statistical information pertaining to various sectors.

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115.7 NCRF thus had approximately 36 hours to consider the proposed 2025 Sector Targets ahead of the virtual meeting and did not have the benefit of receiving information that informed the new methodology for formulating the set targets.

115.8 Stakeholders were provided with no substantive information prior to the virtual meeting and could thus not meaningfully prepare or engage on any substantive submissions regarding the 2025 Sector Targets during the virtual meeting.

115.9 During the virtual meeting it was explained that the Department has relied on the 2024 workforce profile applicable to the sector, which is based on information submitted by designated employers for the 2024 reporting period. The Department apparently also took into account the increase in representativity of designated groups between the 2023 and 2024 reporting periods and used this increase as a measure to justify the percentage increases of the targets above the 2024 workforce profile.

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115.10 The 2024 workforce profile and a comparison between the 2023 and 2024 workforce profiles is a single year reflection on growth and may not fully capture industry trends, economic cycles, or historical progress in employment equity. The methodology behind these percentage increases is not clear. There appears to be a lack of a multi-year data analysis which raises questions about the rationality and feasibility of the 2025 Sector Targets. What is required is a scientific, actuarial and economic analysis of trends over a statistically relevant period of time (of at least 5 to 10 years) in order to determine the appropriate percentage by which the workforce profile numbers might increase in a realistic and achievable manner.

116 The Department was also urged to separate the wholesale and retail sector (that conducts wholesale and retail trade in all goods except motor vehicles and motorcycles) from

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sectors engaged in the trade and repair of motorcycles and motor vehicles and to consider the separate workforce profiles of each of these sectors when considering draft employment equity targets. This request was made on the basis that collating statistical information of these sectors is likely to present a distorted workforce profile that fails to accurately reflect key factors such as demographics, skill sets, gender dynamics, and the pool of suitably qualified individuals in each sector.

117 In conclusion, NCRF stated that there has been no prior publication identifying specific national economic sectors and inviting the public to comment on such identification of sectors. If the Department sought to rely on the 2025 Sector Targets as a final target, it was then obliged to first publish these targets in the Government Gazette, inviting public comment. A copy of the letter of 21 February 2025 is attached as "**FA19**".

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118 SEIFSA also forwarded a letter to the Department on 21 February 2025 referring to the meeting that was held on 19 February 2025.

119 At the outset, SEIFSA raised a concern that the virtual meeting had been attended by over 1000 (one thousand) employer representatives. With over 1000 (one thousand) employer representatives on a Teams platform not set up for the overwhelming attendance by employers and many reporting that the presentation itself (which incorporated revised targets) had not been received prior to the session, this did not make for a productive engagement.

120 There were also delegates who were not able to access the session due to the session being oversubscribed, whilst other delegates were removed from the session due to the vast number of attendees on the platform. SEIFSA furthermore proceeded to raise concerns that:

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120.1 The categorisation of manufacturing as an all-encompassing category of all forms of manufacturing is wrong, as manufacturing entails vastly different economic sub-sectors engaged in manufacturing activities across the economy. Auto assemblers, the automotive component manufacturers, textile and medical instrumentation manufacturing are vastly different in size, complexity of operations, demographics, and input costs, to name a few. Even within the metals and engineering industries, there is no uniformity.

120.2 From the outset of the consultations with the Department going as far back as February 2022, SEIFSA has always categorised the metals and engineering industries according to SIC codes of all economic activities in terms of sub-sector 6 and sub-sector 7. At the time, this was not rejected by the Department. Instead, and in engagements going back to 13 and 14 October 2022, the Department proposed final sector targets for both sub-sectors.

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120.3 Regrettably, in May 2023, the stance on the part of the Minister and all senior officials advising the Minister shifted and reference began to be made to manufacturing as a one size fits all category. This is fatally wrong and simply ignores the actual, real-world realities of different sectors and sub-sectors prevalent in the economy.

120.4 With the South African economy expected to grow at best by 1.8% over the next 3 (three) to 5 (five) years and growth in the metals and engineering industries, on average or overall, expected to be flat, and headcount expected to continue to trend downwards, we are facing an environment where new opportunities will remain constrained and will be mostly driven by promotions, retirements and vacancies. The letter of 21 February 2025 is attached as annexure "**FA20**".

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121 The RMI made a submission on 21 February 2025 in response to the sector-wide meeting held on 14 February 2025, detailing how the Department's consultation was rushed, lacked transparency, and did not allow for meaningful engagement. The RMI presented side-by-side tables showing the gap between actual workforce profiles and the 2025 Sector Targets, demonstrating that the targets were not only unachievable but also arbitrary. The RMI requested a 60 (sixty)-day extension to provide further representations, contingent on receiving the relevant data from the Department. The RMI reiterated the need to split Automotive Aftercare Automotive Aftermarket, Clothing Retail, and Food Retail into separate sub-sectors using SIC codes, and emphasised the importance of skills development, bursaries, and learnerships as transformation levers, rather than punitive quotas. The RMI warned that the current approach would create absolute barriers, risk legal challenge, and undermine job creation.

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122 On 24 February 2024, SAMED forwarded a letter to the Department and raised a concern in relation to the meetings that were held in the weeks of 10 to 21 February 2025.

123 In so doing, it firstly reiterated that it has previously raised its concerns in relation to the absence of targets being set for sub-sectors, and the unfair results that flow from a one-size fits all approach of setting targets in broad industrial sectors that differ significantly from those of SAMED's membership.

124 SAMED also complained that when attending the meetings during the weeks of 10 to 21 February 2025, its members noted with concern that the proposed new sector targets had increased and that in some instances the increase was quite significant. This in circumstances where:

124.1 The targets were released 1 (one) day before the consultations were held, thus making it impossible to assess such targets.

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124.2 Audiences were large and diverse, with very little time provided for meaningful engagement.

125 SAMED then requested a bilateral consultation with the Department to unpack the listed concerns. A copy of the letter of 24 February 2025 is attached as "**FA21**".

126 On 26 February 2025, AGBIZ forwarded an email to the Department and requested a bilateral meeting to discuss the new sector targets. A copy of the email of 26 February 2025 is attached as "**FA22**".

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127 On 14 March 2025, Association for Savings and Investment South Africa ("**ASISA**"), which falls within the financial and insurance activities sector, forwarded a letter to the Department, in response to the proposed sector targets that were shared during the financial sector meeting of 11 February 2025.

128 In its letter, ASISA noted the significant differences between the targets that were issued on 1 February 2024 and those that were shared on 11 February 2025 as follows:

Sector & Level		2024 (Draft/New) Targets	2025 (Final Gazette) Targets	Difference
Top Management	Male	26.0%	27.8%	+1.8%
	Female	20.0%	35.3%	+15.3%
	Total	46.0%	63.1%	+17.1%
Senior Management	Male	24.0%	31.7%	+7.7%
	Female	24.0%	45.3%	+21.3%
	Total	48.0%	77.0%	+29.0%
Professionally Qualified & Middle Management	Male	30.0%	40.7%	+10.7%
	Female	34.0%	46.1%	+12.1%
	Total	64.0%	86.8%	+22.8%
Skilled Technical	Male	47.4%	49.5%	+2.1%
	Female	40.8%	46.1%	+5.3%
	Total	88.2%	95.6%	+7.4%
Disability only	All	2.0%	3.0%	+1.0%

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129 It then noted that "*the Department's proposed targets for 2025 represent significant increases that do not align with the current realities of the demographic and the suitably qualified landscape in our sector*".

130 ASISA then proposed that the Department should revert to the targets that were published on 1 February 2024, whilst still noting its concern in relation to the targets for skilled junior occupational level, as they are too high relative to suitably qualified individuals.

131 It did so, on the basis that whilst the 2024 Draft Targets are not without fault, they provided a more feasible and justified road map towards achieving the objectives of employment equity.

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132 The Department was then provided with the research and analysis that supported ASISA's proposal to adopt the 2024 Draft Targets. Such research also demonstrated the vast differences between the makeup of the sectors' suitably qualified individuals and the national EAP. In summation, the research shows that:

132.1 The financial services sector, including insurance savings and investment industries is highly regulated and demands a workforce with specialised qualifications and skills.

132.2 While the Department proposes aligning employment equity targets strictly with the national EAP, this approach overlooks the practical realities of the sector. Specifically, the EAP demographic profile is significantly different from the demographics of the suitably qualified talent pool, especially in highly specialised and regulated occupations. The insistence on strict adherence to the national EAP targets, particularly at junior management and professional levels, risks overlooking critical sector specific qualification requirements.

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132.3 There are specific skills gaps in critical areas such as Actuarial Science, Compliance, Data Analytics, and Advisory Services.

132.4 In relation to the insurance industry, the insurance industry employs roughly 95% of employees who have at least a matric (NQF level 4) qualification and only a very small share (under 5%) lack a matric. About 1/3 (one third) of insurance employees hold tertiary qualifications: 16% of diplomas or certificates (NQF 5-6) and 17% hold a bachelor's degree or higher. Of those with higher degrees in insurance, about two thirds have a first degree (NQF 7) and one-quarter an honours degree (NQF 8).

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133 This high education level reflects the skills intensive nature of financial services. In comparison, in the broader finance industry (including banking and investment), around 18% of workers are in low skilled jobs and less than 25% are in highly skilled occupations, implying that the majority are in mid-skilled roles that typically require some tertiary education or specialised training. A copy of the letter of 14 March 2025 is attached as "**FA23**". This analysis indicates that while transformation and equity remain essential priorities, the feasibility and practicality of meeting these targets must reflect actual workforce demographics and skills availability. The targets set by the Minister failed to meet this important requirement.

134 On 20 March 2025, AGBIZ sent a follow-up email to the Department in relation to its request that it had made on 26 February 2025 for a Bilateral Meeting.

135 In response to the follow up and still on 20 March 2025, the Department responded and stated that they are overwhelmed with work commitments and "*having to round off the financial year end. Unfortunately, due to this hectic work schedule, [they] will not be in a position to meet with AGBIZ before end of March*". A copy of the e-mail trail of 20 March 2025 is attached as "**FA24**".

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136 The comments referred to above and which were made by the stakeholders in February 2025 also remained unaddressed, apart from the responses received from the Department in relation to the Retail Association's comments made in February 2025.

2025 Sector Targets and Administrative Regulations

137 On 15 April 2025 and without providing a response to the representations submitted by the stakeholders or scheduling the Bilateral with AGBIZ, the Minister issued the 2025 Sector Targets.[15] In addition to the 2025 Sector Targets, the Minister also issued the 2025 Administrative Regulations.[16]

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138 This came as a surprise to BUSA, as it had highlighted the shortcomings in the process that was adopted by the Department and also requested the relevant information to ensure meaningful engagement.

139 On 24 April 2025, BUSA forwarded a letter to the Minister and expressed concern regarding the publication of the 2025 Administrative Regulations and 2025 Sector Targets notwithstanding the concerns that were raised by the overwhelming majority of employers.

140 BUSA also indicated that the process adopted was marred by procedural irregularities and highlighted the fact that:

140.1 Employers received requests for participation on 24 December 2024 - a period when most businesses were closed for the festive season, severely limiting their ability to respond in time.

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[15] GN 52514, 15 April 2025
[16] GN 52515, 15 April 2025

140.2 The Department circulated critical presentation materials just before scheduled meetings, providing employers with insufficient time to prepare and engage substantively with the content during consultations.

140.3 The sector consultations scheduled for February 2025 often exceeded 800 (eight hundred) participants per meeting, lacking the depth and structure required for meaningful consultations. Discussions were predominantly led by consultants, with minimal opportunities for employers to raise substantive sector-specific concerns within a constrained 1(one)-hour timeframe.

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141 BUSA also indicated the shortcomings relating to the substance of the 2025 Sector Targets and indicated that:

141.1 A pressing concern relates to the upward revision of sectoral targets from those initially published and several sectors agreed upon in February 2024. The Department confirmed that these are sector-wide targets and rejected calls for sub-sector differentiation.

141.2 This one-size-fits-all approach fails to account for the diverse nature of sectors such as retail, manufacturing, agriculture, and maritime, each operating under distinct conditions and workforce profiles.

141.3 The Department has not transparently explained the methodology used to determine the revised targets. The absence of supporting empirical evidence or a sector-level impact analysis raises serious questions about the targets' appropriateness, fairness and feasibility.

141.4 The 2025 Sector Targets are disconnected from operational realities and may, in practice, undermine both compliance and sustainable transformation. Equally concerning is the Department's admission that the increase in targets for the

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employment of persons with disabilities is not supported by any statistical data or empirical studies (there is no EAP for disabled people). Rather, the revisions were made at the Department's discretion. This lack of an evidence-based rationale further undermines the credibility and defensibility of the policy proposals.

142 BUSA then requested a meeting with the Minister to discuss employers' concerns and ensure that the Amendment Act achieves its intended objectives without placing undue strain on the labour market. A copy of the letter of 24 April 2025 is attached as "**FA25**".

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143 On 19 May 2025, and almost a month after BUSA requested to meet with the Minister, the Minister's Office forwarded an email to BUSA and scheduled a virtual meeting with the Minister for 23 May 2025. The email also stated that "*the meeting link and presentations will be sent in due time*". A copy of the email of 19 May 2025 is attached as "**FA26**".

144 The purpose of the meeting was to bring to the Minister's attention BUSA's concerns about the process in setting the targets and a request that the Minister withdraw the two gazettes and start the process afresh. These concerns were contained in a presentation by BUSA. At the end of the meeting, the Minister indicated that she would need time to meet with her team to discuss BUSA's concerns and that she undertook to meet with BUSA again within 2 (two) weeks. A copy of the presentation is attached as "**FA27**".

145 Despite the Minister's undertaking to meet within 2 (two) weeks, a further meeting was only held on 20 June 2025 where the Department provided a presentation to BUSA. The presentation addressed each of BUSA's concerns and BUSA was informed that neither the 2025 Administrative Regulations nor the 2025 Sector Targets would be withdrawn. A copy of the Department's presentation is attached as "**FA28**".

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146 BUSA wrote a letter to the Minister on 20 June 2025 and recorded the inaccuracies it believes were contained in the Department's presentation. A copy of the letter is attached as "**FA29**".

NO MEANINGFUL CONSULTATION AND ENGAGEMENT

147 The meetings that were convened by the Department in February 2025 did not allow and/or provide for a meaningful reasonable engagement. Not least because such meetings were not preceded by disclosure of material and much needed information. Although the forms of facilitating an appropriate degree of participation in a law-making process is capable of infinite variation, what ultimately matters is that a reasonable opportunity is offered to members of the public and all interested parties be informed about the [illegible] and have an adequate opportunity to state their position in the outcome of the process (i.e the decision), and an ability to take advantage of the opportunity provided. If anything, such meetings appeared merely as tick box exercises or at best, as meetings where the Department presented its position, without allowing for that position to be debated upon and interrogated. In order to demonstrate this, I deal below with some of the meetings and how they were conducted.

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17 February 2025 Meeting

148 The Department, through Ms Mamashela, convened a meeting with the Health Sector on 17 February 2025. At the start of the meeting the Department advised that they had analysed the latest data that was submitted by the employers for 2024 employment equity reporting period. She then advised that the employers will see in the presentation that the Department is giving them the proposed targets based on the latest data that was submitted in 2024.

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149 The said targets were then set out in the presentation that was made by the Department during the meeting. The Department then contended that a copy of the presentation was emailed to the addresses of the CEOs and their assigned employment equity managers as listed in their EA2 Form. This however ignored the fact that where this presentation was provided, it had been emailed to the employers a mere few hours before the meeting of 17 February 2025. In many instances, the presentation had not been provided to employers prior to the meeting. For some, the presentation was not shared at all.

150 The Department then took the meeting through the targets that were set out in the presentation. It then explained that the process or method that they followed in setting such targets was that they used the national EAP is their benchmark. They then used the pyramid model or "Basotho hat" principle, whereby there is less movement at top management and less movement (i.e. less employees and it is harder to fill). As you go down to the other levels it is then broader and with more movement. The Department then decided to apply 6% over 5 (five) years the set target.

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151 In explaining the decision to apply 6%, the Department posed a rhetorical question and said "*so a question one would ask is why 6% ... why not 10% or why not lower, why not 2%*". In answering this question, the Department then said:

> "*this was our guiding, we said to ourselves that we've had the Employment Equity Act from 1998. And the movement has been very slow. That is the second thing is we've taken the EAP. So in order to balance that equation which averages out to in top management to about 1.2% per year we decided to move that direction. So in total at top management, we've got 65.3%, which is the current workforce. Then we've got females at 41.7% and males at 23.6%. So we've got 6% to distribute. So what we've decided to do is that we are seeing women are quite high already, but they are still below the EAP of 46.1. So we decided to add 2 to women, giving you if you look at the sector targets, our top management now is 43.7%. And then we decided to add 4 to males. And you can see that males from 23.6, it moved to 27.7%. Next we move to senior*

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management. At senior management, it was a bit more complicated because yeah what we've used we've used 7%. … so we are moving 6, 7, 9% until skilled. So what we've got at the moment is 84%. But what you would notice is that in the purple for senior management, you will see women sitting at 59.2%, which is well above the EAP when you look at it, which is 46.1%. Then you see males at 24.8%, which is well below the 49.8% EAP. So what we decided to do is we've decided that we will drop women to a maximum of the EAP, which is 46.1%. So we've got 24.8% which males are sitting with currently and if we added the 7% it would take them to 31.8%...."

152 The presentation continued in this manner, i.e. simply showing that the Department merely decided to increase the targets by adding percentages of 6, 7, 8 and 9 in the relevant categories and ranging from top management to skilled.

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153 The Department however failed to provide any rationale for these imposed increases. The lack of rationale in the imposition of these targets becomes more apparent when having regard to the further contentions by the Department wherein they stated that:

"*disability at the moment is showing 1.1%. And we are saying we propose 3%.... And what we are saying is yes, disability has been well underrepresented from the beginning so right from the beginning in 2020, they were sitting at 0.9%. And then what we are saying is that if you look at the National Development Plan, it is saying 7%. And then we all agree that we need to get a bit more aggressive with disability... so that we must try and reach that 3%. … we cannot ignore the fact that you need to take the nature of the sector into account...*" (Emphasis added)

154 It also became apparent that the Department was determined on simply "ticking the boxes" without ensuring that a meaningful engagement takes place. For instance, it was stated by the Department that:

"*We've started the process in 2018, … we've got the commencement date from the President. So having the commencement date from the President, let's put some framework in so we can start implementing it. So this consultation process that we are involved we are saying we want to finish all this by the end*

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of February. Therefore, we are saying we are engaging now if you take it forward to your constituencies and give us your first feedback by the 24th… we want to publish the regulations by the end of March." (Emphasis added)

155 All of this is indicative of a rushed process that was aimed at achieving a particular outcome come what may. This was also emphasised by the Department where they stated that "*we are looking and publishing this by March 2025. So it's general administrative regulations to give effect to gazetted copy of the sector targets as this is important. … we want to train or capacitate inspectors so they know what is required, how to go about to assist employers and also to ensure there is compliance. And we are hoping to do that together with making them au fait with the EES by the end of April 2025*".

156 After taking questions from a mere 9 (nine) participants, the Department was quick to state that "*we'll have to close this session at … 1:30 we have additional 30 minutes to make sure that we exhaust the hands that are up*". They would later also state that "*Can we take the last I think now we've gone beyond the 30 minutes, but let's take the last one*".

157 This in circumstances where the platform had over 900 (nine hundred) people in attendance. This again supports my averments above that these meetings were nothing more than information sharing, not a consultation process and a result of artificial urgency imposed by the Department.

158 More so having regard to the fact that in those meetings, the Department could not address the questions that were raised by the participants. Particularly in relation to how these targets would work in practice and how the employers were required to prepare their reports going forward. For instance, it was it was stated by Ms Mamashela when pressed for answers, that "*the forecast for today was on the actual percentages that are proposed. Additional information on amendments, we've been talking on this but you can access the copy of the EE Amendment Act from our website… if you check there are a lot*

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of changes there in the Act which we are not covering in slides because our focus was on the actual percentages that we are proposing. I beg your pardon, I ask that we not doing the Act. We are very focused in these consultations". (Emphasis added)

159 The Department then closed the meeting by stating that the attendees have until Monday, 24 February 2025 to send their input in writing.

160 This in circumstances where most of the attendees were seeing these new targets for the first time and had not been provided with the supporting data to explain the rationale and methodology behind these numbers. Those who had been provided with the presentation had only received it a few hours before the meeting, and also without the necessary supporting data. It is not possible to enable any meaningful consultation if members of the public and interested persons cannot participate and if stakeholders, members of the public, are given inadequate time to study the sectoral targets, consider the evidence and reasons to demonstrate the rationale and then to formulate representations to be made.

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19 February 2025 Meeting

161 On 19 February 2025 BUSA met with the Department online. It then raised concern in relation to the transparency of the data that was relied upon by the Department in setting the targets and also indicated that the affected stakeholders were not clear in relation to the substantive methodology behind the setting of such targets, beyond treating the important goal of transformation as a mathematical exercise concerned with percentages, rather than people.

162 This was particularly so in that the first time that the majority of attendees saw the presentation and the set targets was in the consultation meeting itself. As such they did not have time to go through the set targets and to apply their minds to those revised targets. There was also a concern relating to the time allocation of such meetings, as it

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did not allow for stakeholders to engage with the Department and the contents of the presentation. Usually, promptitude by public functionaries is meritorious but not when it comes at the cost of neglecting the task of meaningful and adequate participation in a law-making process.

163 BUSA also emphasised that, although the Department stated it mainly relied on the EAP, stakeholders need to understand the mathematical basis of the stipulated increases. For instance, if the level is now increased to 6% or 7% with a 1.7 increase year on year, it then becomes necessary for the stakeholders to understand how the Department came about in arriving at such calculation.

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164 Also of importance was the issue relating to the identification of sectors, as BUSA enquired as to why the issue of sub-sectors as raised in the submissions of February 2024 was not considered by the Department, especially in those sectors where they are really large and thus creating difficulty in complying with the targets set on a sector wide basis.

165 Instead of engaging on these issues and addressing the concerns raised by BUSA, the Department was simply defensive and insisted that they have had consultations for the last five years and the Department's principles and rationale have not changed. They however accepted that the actual targets themselves had changed from one year to another but insisted that the principles remained the same.

166 This however ignored BUSA's material concern that the Department had clearly relied on outdated data and if it was to increase the set targets it would then have to ensure that the relevant and current data is obtained and engaged upon by the parties.

167 In this meeting also, the Department again insisted that it was going ahead with its planned timetable no matter what. In this regard they for instance stated that "*we have just had a meeting before we come to this meeting, we've just had a meeting with*

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the banking association on the same issues. We've had a meeting with them. They sent an e-mail and said let's have a further meeting. We had a further meeting. It doesn't change our deadline". *(Emphasis added)*

168 Far from engaging with the material issues that were raised by BUSA, Mr Thembinkosi Mkalipi insisted that:

> "*the methodology and all these issues was explained five years ago, was explained 4 years ago, was explained 3 years ago... what is it that you are looking for what? Influence a decision that was made now ... If the sectors think that they can drag us along because they want to ... we are gonna resist that. The issues of the methodology, what is it that we look at, what made us in this sector to propose what we are proposing, what did look at it, it was explained in that meeting. Whether people accept it or not that is one issue but we explained what we look at. We can't do better than that.*" (*Emphasis added*)

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169 This is the general tenor in which the engagements with the Department were conducted. There was simply no transparency from the Department but a defensive, foregone conclusion that the new sector targets are going to be implemented regardless of the issues that are raised by the stakeholders.

170 BUSA emphasised its willingness to engage with the Department and offered to organise the necessary role players in the relevant sectors to meet with the Department. In response, the Department advised that it was willing to engage with other sectors if BUSA was willing to assist in identifying the relevant role players in the relevant sectors. In this regard, the Department stated that "*if BUSA wants to assist [the Department] ... the best assistance that [BUSA] can give is to speak with those sectors*".

171 BUSA's representative, then confirmed the understanding between the parties by stating that "*I am leaving the meeting with a clear idea that the Department is open to meeting with sectors that represent these 18 sectors quickly and they are happy to meet seven*

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days a week on Saturdays and Sundays to have meaningful discussions about these targets to move forward, because of the disaster that would be if we legislate without agreement on any sectors" (*sic*).

172 In response thereto, Mr Mkalipi stated that "*the sooner the better for us because and for us, if people say we are prepared to engage then we don't want a situation where when we supply dates we are told no we are not prepared on that date …*". The meeting then closed on the basis that BUSA would provide a list of those sectors and all organisations to the Department, whereafter the Department would engage with such sectors on the concerns raised. Following the meeting, BUSA sent separate emails to the Department, with its members copied, requesting bilateral meetings between the applicable member copied and the Department.

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173 While ASISA received a commitment for further engagement from the Department , this was only followed up after the publication of the 2025 Sector Targets.

23 May 2025

174 The purpose of this meeting was to bring to the Minister's attention both BUSA's concerns regarding the irregularities that occurred in formulating the 2025 Sector Targets (such as non-compliance with statutory consultation requirements and inadequate notice periods for stakeholder input) as well as the substantive issues (such as the identification of sectors, lack of empirical data and methodology in setting the 2025 Sector Targets, 2025 Administrative Regulations contradicting enabling legislation, excessive targets undermining the justifiable reasons for failing to meet the targets). BUSA prepared a presentation in this regard, which is attached as "**FA27**".

175 BUSA made the following recommendations during this meeting:

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175.1 the 2025 Administrative Regulations together with the 2025 Sector Targets should be formally withdrawn, allowing the Department to undertake comprehensive consultations and re-publish the revised sectoral targets in draft format for public comment for 30 days;

175.2 the Minister should re-evaluate the identification of sectors and establish targets for sub-sectors rather than consolidating all sub-sectors into a single category, which should also be made available for public comment; and

175.3 a scientific, actuarial and economic analysis of trends over a statistically relevant period of at least 5 (five) to 10 (ten) years should be conducted to determine the appropriate percentage by which the workforce profile numbers might realistically and achievably increase.

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At the end of the meeting, the Minister indicated that she would need time to meet with her team to discuss BUSA's concerns and that she undertook to meet again with BUSA within 2 (two) weeks to respond to the concerns.

20 June 2025 Meeting with the Minister

176 On 20 June 2025, BUSA met with the Minister and her Department for the Minister to respond to BUSA's concerns. At the outset, the Minister stated that they are having a challenge of many commitments and events that are lined up that need their presence also.

177 She then stated that they only have a limited time and did not want to be going around in circles.

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178 The Minister then stated that the Department prepared a presentation to respond to the issues that were raised by BUSA at the meeting of 23 May 2025. Ms Ntsoaki Mamashela then took the meeting through the power point presentation.

179 Far from addressing the concerns that were raise by BUSA, this meeting became more about the Department officials defending the process that they had followed and explaining their approach to the Minister. The officials, for instance, throughout the meeting made the following comments:

> *"In the next slide, which is slide 6, Minister … our initial engagements and during the engagements in 2022 when we met with stakeholders, we wanted to adopt the existing BBBE targets that are already accepted by the various stakeholders. The stakeholders refused that we adopt the same BBE targets that they had agreed to… and most of them Minister said that EE targets that are in the BBE codes were just aspirational targets…*
>
> *But then if you look at slide 6 we just want to illustrate in the various sectors where they have agreed to EE targets. These are EE targets at top, senior, professionally qualified, skilled, technical and persons with disabilities. And you will see Minister at the top management, they should have 50% and these targets actually exclude white females. But the targets in the sector EE targets that the Minister has published are inclusive of all designated groups and white females because they are part of the designated groups…*
>
> *We can then quickly move to slide 7. In slide 7 Minister, these are the three-year trend analysis that was conducted for the consumer goods council members. These are wholesale retailers that actually run the wholesale and retail sector. If you look from 2022 to 2024, Minister, looking only at employers that have 50 and more employees who are designated, their performance in top management is already above. If you zoom in on 2024, in top management, in terms of the designated, the members of consumer goods council are sitting at 91.2% and we are proposing 51.7%... And we are asking them to move to 95.2%. And if you look at progression rate, it's only 1.3% over a five year period … So annually we are asking them to move by 1.3% over a five year period. And we believe that this is achievable and then in [next] slide this is another illustration of the three-year trend analysis that we did for the Mineral Council*

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of South Africa and also here Minister you will see that starting from 2022, 2023, 2024 they've been progressing very well across the four upper occupational and we are asking them to move a little bit although at top and senior management they are already nearly at the sector targets. … and also here Minister we are saying, you request employers to move annually at 0.4% at middle management and 0.6% junior management levels over a five year. It's nothing, to be honest. We are being realistic and we believe that these targets are achievable.

And the area of disability is a concern, Minister, because over 27 years of employment equity, we've been hovering around 1% representation of persons with disabilities and we believe that we need to put our hands together … make sure that at least by 2030 everybody can reflect or all sectors should reflect a 3% representation for persons with disabilities even in the mining … if they do a proper workplace environment analysis." (*Emphasis added*)

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180 The officials then dealt with the identification of the sectors and stated that BUSA had raised the complaint that there has been no engagement to look at the sub-sectors. They simply dismissed this issue by stating that this issue had been dealt with at NEDLAC. This, however, is not correct. The sub-sectors (which section 15A allows for) were not engaged or agreed upon at NEDLAC and ignored the obligation imposed in section 15A for the Minister to consult on the identification of sectors, which BUSA submit the Minister failed to do.

181 The Department then proceeded to address the Minister by stating that the second issue is that section 15A(3) gives the Minister the discretion to set sectors and stated that the Minister may set different numerical targets for different occupational levels, sub-sectors or regions within the sector or on the basis of any other relevant factor. They then contended that the wording of the section does not say "*having considered the various or relevant factors that are coming out of the consultations, the Minister has discretion to set sector targets and not consider sub-sector targets if there are no compelling*

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reasons or relevant factors that distinguishes sub-sectors … especially taking into account the skills requirements…".

182 They then concluded by stating that there are no compelling factors that they should have a separate sub-sector target.

183 The Department was also dismissive of BUSA's complaint relating to the setting of targets without the necessary empirical data and without a reasonable methodology to establish the availability of suitably qualified individuals to reach the set targets. In this regard, the officials contended that "*the setting of sector targets in terms of s15A does not have a legal requirement for the Minister to determine the pool of suitably qualified individuals … therefore, Minister, there is no legal obligation on you*".

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184 This, I submit, is irrational and also demonstrates an error of law on the part of the Minister and her officials. The Minister's power to set sector targets presupposes that such power must be exercised lawfully and taking into account all relevant factors. A material relevant factor in this regard is the availability of suitably qualified individuals in the EAP within the relevant sector. This cannot simply be wished away. By way of example, the Department of Home Affairs published a Critical Skills List on 3 October 2023 in which it identified 142 (one hundred and forty two) different positions that are considered scarce and insufficient within South Africa in order to meet the needs of South African organisations. A copy of the Critical Skills List is attached as "**FA30**". If we consider the Retail Association which is a voluntary business association made up of a number of national retailers who sell clothing, food, homeware, sportswear and jewellery, there are several positions listed on the critical skills list that could be applicable to organisations in the retail sector. Examples of these are set out below:

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184.1 Supply and Distribution Manager: Plans, administers and reviews the supply, storage and distribution of equipment, materials and goods used and produced by an organisation, enterprise or business.

184.2 Manufacturing Operations Manager: Plans, organises, directs and controls the manufacturing activities of an organisation including physical and human resources. Measures performance, quality and implements continuous improvement strategies.

184.3 Customer Service Manager (Business Process Outsourcing sector): Plans, administers and reviews customer services and after-sales services and maintains sound customer relations.

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184.4 Quality Systems Manager: Plans, organises, directs, controls and coordinates the deployment of quality systems and certification processes within an organisation.

184.5 Corporate General Manager (medium enterprises or larger): Plans, organises, directs, controls and reviews the day-to-day operations and major functions of a commercial, industrial or other organisation (excluding government or local government) through departmental managers and subordinate executives.

184.6 Director (Enterprise/Organisation) (medium enterprises or larger): Determines, formulates, and reviews the general policy program and the overall direction of an organisation, within the framework established by a board of directors or a similar governing body.

185 These are only some of the positions that have been identified that might fall within the category of skills required in the retail sector. There are many other positions listed which may well fall within other sectors.

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186 After over an hour of the Department's presentation, the Minister stated that the meeting held is not a consultation, "*it was just a meeting to present our responses on what you raised*".

187 This obviously came as a surprise as BUSA had expected to engage with the Minister on the many issues that were raised by BUSA and its members, and which remained unaddressed.

188 BUSA nevertheless tried to engage the Minister on its presentation and the issues raised therein. It was for instance highlighted to the Minister that it comes as a surprise to hear the contention that "*There is no legal obligation on the Minister to consider skills in setting the targets*", as it is the Minister who sets the targets in consultation with the sectors. At the very least, the Minister should take into account skills profiles of the sectors and sub-sectors for which the targets are being set.

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189 BUSA also reiterated the challenges that are created by the broad identification of sectors, the simple example being the Manufacturing Sector which includes retailing and other stand alone sub-sectors.

190 These concerns were not addressed. Instead, the Minister stated that "*this is a meeting, not a consultation of the law*".

191 Notwithstanding the material concerns that were raised by BUSA, the meeting was then closed a mere 30 (thirty) minutes after the Department had finished its presentation. This again speaks to the fact that at all material times, the Department and the Minister adamant on convening information sharing meetings without any intention of engaging in a meaningful consultation. It cannot be reasonable to offer participation or information sharing at a time when it is ancillary to the moments when significant decisions are in fact being made. Participation is not a symbolic gesture. Interested persons, stakeholders,

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and the public are entitled to a reasonable opportunity to participate in a manner which may influence the law-making decisions. The obvious result is that those lucky enough to access the online information sharing "consultations" were deprived of the opportunity to influence the determination of the 2025 Sector Targets, and the identification of the sectors themselves. Also, the notice of the meetings, the information available to inform the public on the subject matters (i.e. the data, economic analysis, workforce analysis, etc.) was too limited to enable adequate and meaningful engagement and no doubt impacted the quality, and ultimately the reasonableness, of those "consultations".

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192 Official transcripts of these meetings are still being prepared and will be made available at the hearing of this matter.

GROUNDS OF REVIEW

Failure to comply with the mandatory provisions of the EEA

Identification of Sectors

193 The Minister is enjoined in terms of section 15A(1), read with section 15A(4) of the EEA to consult with stakeholders and interested parties before identifying sectors for which sectoral targets are to be prescribed.

194 Such consultation must, in terms of section 15A(4), be preceded by the issuing of a draft notice in the Government Gazette, which allows interested parties at least 30 days to comment on the proposed identification of sectors.

195 In this matter, the Minister failed to comply with this requirement, as she merely set out a list of sectors and sub-sectors in the Draft 2018 EE Regulations *before* section 15A came into operation and without calling for comments on that list of sectors. The

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stakeholders in those sectors were merely met with a decision that the sectors had already been identified.

196 Separate from the fact that when the sectors were listed in the Draft 2018 EE Regulations, the Minister did not have the authority to identify such sectors, the Minister failed to comply with section 15A(4) of the EEA when identifying the sectors, in that, a new list of sectors was published on 12 May 2023, when Minister Nxesi published 2023 Draft Targets.

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197 Notwithstanding the sectors' objections to the removal of the sub-sectors and the fact that the Minister did not have authority to identify the sectors, as section 15A was not in operation, the Minister persisted with the identified sectors. There was simply no consultation or engagement on the identified sectors. The sectors were simply met with a foregone conclusion that the sectors had already been identified.

198 Once section 15A of the EEA came into operation, the Minister persisted with the sectors that were unlawfully identified before the Minister had the necessary authority and which sectors had been set without the necessary consultation.

199 The absence of consultation on this issue is furthermore indicated by the Department's insistence that the identification of sectors was dealt with at NEDLAC and as such it was not to be revisited during the section 15A consultation process. Such contention is unsustainable both at the level of law and fact. At a factual level, and assuming it was competent to do so, there was simply no consultation or agreement at NEDLAC on how the sectors / sub-sectors are to be identified. More importantly, at the level of law, the consultation on the identification of sectors does not take place at NEDLAC. It is held with employers and after the publication of a draft notice.

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200 The identification of sectors by the Minister accordingly failed to comply with section 15A(1) and (4) of the EEA and is thus reviewable in terms of sections 6(2)(b), 6(2)(d) and 6(2)(f)(i) of PAJA. I am advised that these provisions empower this Honourable Court to review the Minister's decision for: failing to comply with the mandatory and/or material procedures set out in section 15A of the EEA; acting in a manner that was influenced by a material error of law; and acting in contravention of section 15A of the EEA, respectively.

Setting of Sector Targets

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201 The Minister is enjoined in terms of section 15A(2) of the EEA, read with section 15A(4) of the EEA to consult with the stakeholders and interested parties before setting numerical targets for sectors. (Emphasis added)

202 Such consultation must, in terms of section 15A(4), be preceded by the publication of the draft sector targets by way of notice in the Government Gazette, which allows interested parties at least 30 days to comment on the proposed numerical targets.

203 In this matter, the Minister failed to comply with this requirement. The Minister published the 2023 Draft Targets in circumstances where he was not empowered to do so. This is because in May 2023, section 15A of the EEA was not yet in force and effect. As a consequence, the Minister did not, in May 2023, have the authority to publish the 2023 Draft Targets for public comment and also did not have authority to consult thereon.

204 The same applies to the 2024 Draft Targets. They, too, were issued before section 15A came into operation. Anything that was done before the provision came into operation (1 January 2025) can thus not be relied upon as being in compliance with the prescribed constitutional process.

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205 Any engagement or publication of notices that took place prior to the coming into effect of the Amendment Act was premature and *ultra vires*. The 2023 Draft Targets and the 2024 Draft Targets are markedly different from the final version of 2025 Sector Targets, and in the absence of a review of the complete record, which will include submissions made by other interested parties and stakeholders who engaged with the Department, any engagements on the prior drafts have no rational connection to the 2025 Sector Targets.

206 The only relevant period for purposes of determining the Minister's compliance with the provisions of section 15A(2) and (4) of the EEA is after 1 January 2025 when the President issued the Proclamation Notice.

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207 From 1 January 2025, the Minister was required, in sequential order, to comply with section 15A of the EEA before publishing the final version of sector targets to be implemented by designated employers. Instead of complying with section 15A of the EEA, the Minister, in haste, initially scheduled 1 (one)-hour online meetings with the various sectors.

208 In this regard, the Department merely convened meetings with the sectors from 11 February to 19 February 2025.

209 During these meetings, the sectors were merely informed what the new sector targets would be without having being provided with a notice in the Government Gazette of the draft sectoral targets, as required by section 15A(4) of the EEA. The listing of targets in a presentation does not satisfy the requirements of section 15A(4) of the EEA.

210 This is particularly so as the Targets that were listed in the presentation differed significantly from the 2023 Draft Targets and 2024 Draft Targets, leaving aside the fact that such notices had been issued without any authority.

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211 The material difference between the 2023 Draft Targets and 2024 Draft Targets *vis-à-vis* those that were ultimately issued after the Proclamation of the Act, (*albeit* in a presentation and not a draft notice in the Government Gazette) are as set out in annexure "**FA31**". I pray that the contents of FA31 be incorporated herein as if specifically pleaded.

212 The Minister and the Department can thus not rely on 2023 Draft Targets and 2024 Draft Targets to justify or attempt to legitimise the 2025 Sector Targets. There was simply no draft notice published in the Gazette for the 2025 Sector Targets in order for interested parties to comment thereon.

213 The issuing of 2025 Sector Targets accordingly failed to comply with section 15A(2) and (4) of the EEA, and is thus reviewable in terms of sections 6(2)(b), 6(2)(d) and 6(2)(f)(i) of PAJA.

Procedural Unfairness

214 Separately from the Minister's failure to comply with the mandatory provisions of section 15A, the Minister also failed to engage in a meaningful consultation process.

215 I am advised that in terms of Section 6(2)(c) of PAJA, the procedure followed by the Minister must be fair. In this case, the Minister has not met the requirement of procedural fairness. The purpose of the multi-stage procedure as set out in section 15A of the EEA is to enable interested parties to make submissions that are relevant to the proposed action in order to ensure that the decision-maker makes an informed and rational decision. In the circumstances, the Minister has failed to take into account relevant information from stakeholders within the sectors and the decision is reviewable in terms of section 6(2)(e)(iii) of PAJA, in that the action was taken "because irrelevant considerations were taken into account or relevant considerations were not considered". All the meetings that

were convened by the Minister failed to provide the stakeholders with the necessary and material information necessary for purposes of consultation. The Department simply failed to provide the necessary data and methodology that informed how the sectors were identified and how the set targets were decided upon.

216 At all material times, BUSA and its members requested such information but were never provided with same and in circumstances where responses were provided by the Department, these responses were inadequate and/or vague.

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217 In addition, it appears, given the final version of the 2025 Administrative Regulations and the 2025 Sector Targets, all the concerns and questions that were raised by the sectors were simply ignored. The sectors were simply met with a forgone conclusion on the composition of the sectors and the targets to be set.

218 At best for the Department, the meetings held in February 2025 were conducted as a "tick-box" exercise to merely inform the stakeholders of the decisions that had already been made by the Department. It was apparent that the Department did not approach any of the meetings with an open mind and that it was simply not open to any persuasion. I reiterate my averments above dealing with the manner in which the meetings were conducted.

219 The identification of the sectors and setting of 2025 Sector Targets by the Minister are thus procedurally unfair and liable to be reviewed and set aside in terms of section 6(2)(d) of PAJA and the principle of legality.

Capriciousness and/or arbitrariness

220 The identification of the sectors by the Minister was arbitrary and irrational. This is particularly so when regard is had to the fact that the Minister first identified sub-sectors when she issued the Draft 2018 EE Regulations.

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221 The sub-sectors were, however, inexplicably removed when the 2024 Draft Targets were issued. This despite continued objections from the sectors, wherein it was indicated to the Department that the "one-size-fits-all" approach of merging broad sectors is inherently flawed and makes the setting of targets unworkable.

222 Without providing any explanation, the Department merely forged ahead with the 18 sectors, under the mistaken impression that there is no obligation on the Minister to identify sub-sectors.

223 The Minister's insistence on proceeding with the 18 sectors and without sub-sectors, notwithstanding the facts that were placed before the Minister, is arbitrary and irrational, and thus reviewable in terms of section 6(2)(e)(vi) of PAJA.

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224 The same applies to the setting of the 2025 Sector Targets. Such targets were set arbitrarily and without any rationale and/or methodology.

225 On the Department's own version, it adopted a rudimentary approach in respect of setting the targets. It considered the EAP, the gap between the EAP and the workforce profile and without regard to market trends, economic conditions, or the availability of suitably qualified individuals and decided that each occupational level should increase its representation of designated groups as follows over the 5 (five) period:

225.1 6% at Top Management;

225.2 7% at Senior Management; and

225.3 8% at Professionally Qualified and Middle Management,

for certain sectors. In cases where the targets resulted in an exceeding of the EAP, particularly in terms of gender representation, the Department decided to redirect increases to individuals of a different gender.

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226 Such approach was based on the Department's erroneous view that the Minister does not have to consider whether there were suitably qualified individuals to meet the set targets. This ignored section 15A(2) and 20 of the EEA, which speak to the requirement that there must be a link between affirmative action measures and availability of suitably qualified individuals.

227 The insistence by the Department that the 2025 Sector Targets must be achieved without explaining the rationale and empirical evidence behind such targets is plainly arbitrary and unreasonable.

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228 Such approach also failed to take relevant material factors into account. There is nothing reasonable in the approach of the Department: It did not consider relevant contemporaneous documents, data and critical social, economic and labour analysis, did not meaningfully consider the proposals that flowed directly from the public consultation process and did not allocate a reasonable period of time for adequate engagement to take place in accordance with the values of our participatory democracy.

229 The 2025 Sector Targets are accordingly reviewable in terms of section 6(2)(e)(iii) and section 6(2)(e)(vi) of PAJA, owing to the Minister's failure to properly regard relevant considerations and for acting arbitrarily, respectively.

Section 53 is *Ultra Vires* and Unconstitutional

230 Section 53(1) enjoins an employer, when making an offer to an organ of state for supply of goods and services to attach a certificate of compliance with the EEA and in particular the 2025 Sector Targets.

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231 In terms of section 53(4) of the EEA, failure to meet 2025 Sector Targets is sufficient ground for rejection of any offer to conclude an agreement with an organ of state or for cancellation of the agreement.[17]

232 Effectively, the Minister has appropriated upon herself, through section 53, the power to prescribe matters that relate to procurement of goods and services on behalf of the State and effectively sets minimum thresholds and preconditions for procurement process that is regulated in terms of section 217 of the Constitution.

233 The norm-setting constitutional provision on the procurement of goods and services by organs of state is section 217 of the Constitution.

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234 Section 217(3) of the Constitution provides that "*national legislation must prescribe a framework within which the policy referred to in [section 217(2)] must be implemented*".

235 The national legislation envisaged in section 217(3) of the Constitution is the PPPFA, whose purpose is "*[t]o give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution*". Although the PPPFA is currently the main national legislation envisaged in section 217(3), other national legislation concerning preferential procurement refer to it so as to create an integrated, internally coherent regime: each measure slots into the PPPFA architecture, and organs of state implement their internal policies under s 217(2) by reference to that scheme.

236 Section 2(1) of the PPPFA provides that "*[a]n organ of state must determine its preferential procurement policy*", which it must implement within the framework set out in this section.

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[17] Section 53(4)

237 Section 5(1) thereof then provides that *"[t]he Minister may make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of this Act"*.

238 Section 53 of the EEA makes no reference to the established constitutional and legislative scheme governing public procurement, yet the consequence of the provision is to create a disqualification criterion by barring entities without a certificate of compliance from bidding for public contracts, without any sensible reference to the authority of organs of state to establish fit for purpose internal preferential procurement policies.

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239 Issues relating to procurement by organs of state thus fall outside of the scope and authority of the EEA. More importantly, it is for organs of state themselves, and not the Minister, to determine their procurement policy within the constraints of the PPPFA and the associated regulations published in terms of the PPPFA.

240 The Public Procurement Act 28 of 2024 ("**Procurement Act**") was assented to on 18 July 2024 and published in the Government Gazette on 23 July 2024. Upon its commencement (which has yet to be announced by the President), the PPPFA will be repealed and preferential procurement will be governed through Chapter 4 of the Procurement Act.

241 Chapter 4 of the Procurement Act imposes on procuring institutions the obligation to create and implement their own "procurement policies" and mandates the Minister of Trade, Industry and Competition to establish and publish the requirements with which procurement policies need to comply. The Procurement Act, which falls in the legal framework designed to regulate procurement and preferential procurement, clearly sets out the functionaries and actions capable of being exercised by procuring institutions.

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242 On this basis, I submit that section 53 of the EEA is unlawful and unconstitutional and thus stands to be set aside in terms of the principle of legality and section 1 of the Constitution.

TIMING OF APPLICATION

243 As explained above, BUSA submits that the Minister was only empowered, from 1 January 2025, to initiate the consultation and publication process contemplated in section 15A of the Amendment Act. Accordingly, BUSA and its members expected that, following the consultation meetings held in February 2025, the Minister would publish the draft sector targets for public comment, as required by section 15A(4) of the Amendment Act.

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244 This did not occur. Instead, on 15 April 2025, the Minister published the 2025 Sector Targets in the Government Gazette, without affording any opportunity for public comment. On the same date, the Minister also published the 2025 Administrative Regulations giving rise to the 2025 Sector Targets. This was, for the reasons set out above, unexpected by BUSA and its members.

245 On 24 April 2025, BUSA addressed a letter to the Minister requesting an urgent meeting to discuss the publication of the 2025 Sector Targets and the 2025 Administrative Regulations. A copy of this letter is attached as annexure **"FA25"**. The Minister responded to BUSA's request only on 19 May 2025 and agreed to meet with BUSA on 23 May 2025.

246 At the meeting held on 23 May 2025, BUSA delivered a presentation, a copy of which is attached as annexure "**FA27**". The purpose of the meeting was to raise BUSA's concerns regarding the process followed in setting the sectoral targets and to request that the Minister withdraw the two Gazettes in which the 2025 Sector Targets and the 2025

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Administrative Regulations were published, and recommence the process in accordance with the provisions of the Amendment Act. At the conclusion of the meeting, the Minister indicated that she would require time to consult with her team and undertook to revert to BUSA within 2 (two) weeks.

247 Despite this undertaking, the Minister only met with BUSA again on 20 June 2025. The delay between the meetings of 23 May and 20 June 2025 was not attributable to BUSA. BUSA waited for nearly 1 (one) month for the Minister to schedule a follow-up meeting, despite her initial indication that such a meeting would take place within 2 (two) weeks.

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248 The Minister concluded the meeting by stating that she would not withdraw the 2025 Administrative Regulations. A copy of the Department's presentation of 20 June 2025 is attached as annexure "**FA28**".

249 Prior to 20 June 2025, BUSA held a reasonable expectation that the matter could, to some extent, be resolved amicably with the Minister. It was only at the meeting of 20 June 2025 that it became clear to BUSA that it had no alternative but to launch proceedings to set aside the 2025 Sector Targets and the 2025 Administrative Regulations. It was on this date that BUSA immediately engaged with its members to schedule a mandating meeting.

250 On 27 June 2025, BUSA met with its members to obtain a mandate to institute legal proceedings. The mandate was granted at that meeting, subject to the condition that BUSA's members would contribute financially toward the legal costs. Following this, BUSA required time to engage with various law firms in order to obtain fee estimates for bringing the application.

251 Following the receipt of fee estimates from various law firms, BUSA's members required time to revert to their respective Boards in order to obtain mandates to financially contribute to the litigation.

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252 BUSA gave its members until 7 July 2025 to confirm the amounts they would contribute toward legal fees. BUSA was not in a position to engage any firm of attorneys or counsel until it was satisfied that the legal costs would be covered. It was only from 8 July 2025 that BUSA was able to commence the legal process, and on that date, it formally engaged its attorneys of record.

253 Following a meeting with BUSA's attorneys on 9 July 2025, counsel was briefed and its attorneys, together with counsel, began drafting the founding affidavit. Given the significant number of BUSA members, as well as the number of years over which engagements in relation to the targets occurred, and as evidenced by the voluminous nature of this application, BUSA has launched this application within a reasonable time.

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254 BUSA therefore submits for the reasons stated above that it has not acted in a dilatory manner in preparing and delivering this application.

CONFIRMATORY AFFIDAVITS

255 BUSA does not deem it appropriate to further burden these court papers with confirmatory affidavits from the members who are referred to in this founding affidavit. It is, in any event, understood that the submissions made by BUSA's members are common cause, as will be evidenced in the record of proceedings that will be dispatched by the Minister. However, BUSA will provide the Court with confirmatory affidavits in the event that it becomes necessary to do so.

RELIEF SOUGHT

256 For reasons set out above, I submit that the 2025 Sector Targets, together with the 2025 Administrative Regulations are reviewable in terms of PAJA, alternatively the principle of legality.

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WHEREFORE I pray for an order in terms of the Notice of Motion.

DEPONENT

I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to and signed before me on this 19th of September 2025 in compliance with the regulations contained in Government Notice R.1258, dated 21 July 1972, as amended.

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COMMISSIONER OF OATHS

KANYISO KEZILE
Commissioner of Oaths
Practising Attorney RSA
90 Rivonia Road, Sandton, 2196

COURT ONLINE COVER PAGE

IN THE LABOUR COURT OF SOUTH AFRICA HELD AT JOHANNESBURG

CASE NO: **2025-171203**

In the matter between:

BUSINESS UNITY SOUTH AFRICA NPC Plaintiff / Applicant

and

THE MINISTER OF EMPLOYMENT AND LABOUR,COMMISSION FOR EMPLOYMENT EQUITY Defendant / Respondent

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Annexure 01

NOTE: **This document was filed electronically by the Registrar on 22/9/2025 at 9:30:08 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

ELECTRONICALLY SIGNED BY:

Registrar of The Labour Court, Johannesburg

Employment Equity Litigation

	Member organasation Name
	CHAMBERS
1	SBI (previously AHI)
2	American Chamber of Commerce in SA (AMCHAM)
	SUB-TOTAL
	CORPORATES
1	Business Leadership SA (BLSA)
2	Manufacturing Circle
	PROFESSIONALS
1	Consulting Engineers South Africa (CESA)
2	National African Federation for the Building Industry (NAFBI)
	Associate
1	Youth Employment Service (YES)
	UNISECTORALS
1	Africa Rail Industry Association
2	Agricultural Business Chamber (AGBIZ)
3	Aluminium Federation of South Africa (AFSA)
4	Apparel Manufacturers' of South Africa (AMSA)
	Apparel and Textile Association of South Africa (ATASA)
5	Association for Savings and Investment South Africa (ASISA)
6	Banking Association SA (BASA)
7	BEV SA
8	Business Process Enabling (BPESA)
9	Chemical and Allied Industries' Association (CAIA)
10	Confederation of Associations in the Private Employment Sector (CAPES)
11	Consumer Goods Council South Africa (CGCSA)
12	Energy Council of SA
13	Energy Intensive Users Group of Southern Africa (EIUG)
14	Financial Intermediaries Association (FIA)
15	FishSA
16	Health Funders Association (HFA)
17	Hospital Association SA (HASA)
18	Industrial Gas Users Association SA (IGUASA)
19	Innovative Pharmaceutical Association of SA (IPASA)
20	Institute of Retirement Funds Africa (IRFA)
21	Master Builders SA (MBSA)
22	Mineral Council South Africa
23	National Association of Automobile Manufacturers of South Africa (NAAMSA)
24	National Association of Automotive Component and Allied Manufactures (NAACAM)
25	National Clothing Retail Federation (NCRF)

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22/9/2025 9:30:08 AM

FA2

BUSINESS UNITY SOUTH AFRICA

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Mr Niresh Singh & Mr Innocent Makwarela
Department of Labour
Private Bag X117
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0001

By e-mail: Niresh.singh@labour.gov.za;
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21 November 2018

Dear Mr Singh and Mr Makwarela

SUBMISSION ON THE EMPLOYMENT EQUITY AMENDMENT BILL & REGULATIONS, 2018

This submission is made by Business Unity South Africa (BUSA) in response to the Minister of Labour's call for comments on the Employment Equity Amendment Bill, 2018[1] ("EEA Amendment Bill") and the Draft Employment Equity Regulations, 2018[2] ("Draft Regulations").

1. BACKGROUND TO BUSA

BUSA is a confederation of business organisations, including chambers of commerce and industry, professional associations, corporate associations, and unisectoral organisations.

BUSA represents a cross-section of business, large and small, on macro-economic and cross-cutting policies and issues which affect business in all three spheres of government. BUSA's function is to ensure business plays a constructive role in economic growth, development and transformation, and to ensure an environment in which business can thrive, expand and be competitive.

As the principal representative of business, BUSA conveys the views of its members in various national structures and bodies, both statutory and non-statutory. BUSA represents the business constituency at Nedlac and participated in the Task Team that was established by Nedlac to consider and engage on the contents of the EEA Amendment Bill and the Draft Regulations.

2. CONCERNS

BUSA must, from the outset, record its two concerns with regards to the EEA4 Form published in the Draft Regulations.

[1] Published in the Government Gazette on 21 September 2018, GN 41922.
[2] Published in the Government Gazette on 21 September 2018, GN41923.

REGISTRATION NUMBER: 2014/042417/08
PRESIDENT: Sipho M Pityana **VICE PRESIDENT:** Martin Kingston **CEO:** Tanya Cohen **NEDLAC CONVENOR:** Kaizer Moyane
DIRECTORS: Busi Mavuso, Cas Coovadia, Christopher Campbell, Deidre Penfold, Gwarega Mangozhe, Joe Mwase, Maria Ramos, Roger Baxter, Stavros Nicolaou, Vusi Khumalo

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2.1. EEA4 Form

The first concern is in reference to the EEA4 Form published in the Government Gazette on 21 September 2018. The EEA4 Form as it appears published in the Government Gazette is not the same EEA4 Form that was tabled at Nedlac (and subsequently signed off by social partners).

BUSA is of the view, taking into account:

- the significant changes made to the EEA4 Form since it was tabled at Nedlac;
- due process; and
- the spirit in which the EEA Amendment Bill and Regulations were deliberated on by social partners at Nedlac;

that the Department of Labour should have, before it published the Draft Regulations, tabled the new EEA4 Form at Nedlac for deliberation.

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A further issue that arises is in relation to the agreement reached, concerning the issue of pay differentials, by all social partners (including Government) at the Presidential Jobs Summit held in October 2018[3]. The agreement reached at the Jobs Summit acknowledges that there are significant disparities between the pay of executives and lowest paid workers but importantly, that there is currently no information available as to the extent of the disparity and how it manifests across sectors. In terms of the agreement reached at the Presidential Jobs Summit, research, amongst other things, will be undertaken (with the oversight of a Nedlac Task Team) to inform the modalities of an appropriate mechanism and a methodology as to the ratios to apply when reporting on Executive pay differentials.

In view of the above, BUSA submits that it is premature to amend the EEA4 Form as proposed in the Draft Regulations until such time as the processes and methodology outlined in the Presidential Jobs Summit Framework Agreement has been completed.

2.2. Sectoral Targets vs National Targets

The second area of concern is in reference to section 15A of the EEA Amendment Bill which proposes that the Minister of Labour be empowered to set numerical targets for sectors or parts of sectors.

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[3] Presidential Jobs Summit Framework Agreement 4 October 2018, page 67

During separate engagements, officials of the Department of Labour indicated that the Department intends setting national numerical targets (to be the same for all sectors) unless sectors justify numerical targets specific to their sector. This is, for the following reasons, of great concern to BUSA:

- When the EEA Amendment Bill was engaged on at Nedlac, the Department of Labour did not, at any point in time, suggest that a National target would be set. BUSA's understanding, during the Nedlac engagements was that the Department of Labour acknowledged that each sector has its own challenges and skills requirements and for this reason, sectoral targets would be established, after consultation, taking into account various factors relevant to a particular sector.

- The statements made by officials of the Department of Labour, differ to what was engaged upon at Nedlac as well as what is provided for in section 15A of the EEA Amendment Bill.

Both the above concerns are considered extremely serious by BUSA as they potentially undermine the good faith when social partners engage on Amendment Bills at Nedlac.

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3. BUSA'S SUBMISSIONS

BUSA stands by the agreements reached at Nedlac. For the purposes of this submission, BUSA deals only with those areas of the EEA Amendment Bill and Draft Regulations that it does not support or agree to.

BUSA has also attached to this submission, the template the Department of Labour has requested the public record its comments. In amplification of the submissions contained in the attached populated template, BUSA sets out below, its most significant concerns with the EEA Amendment Bill.

3.1. Section 15A & section 42 (1) (Aa)

For the purposes of this submission, BUSA deals with section 15A and section 42 (1) (Aa) of the EEA Amendment Bill together.

Section 15A of the EEA Amendment Bill empowers the Minister of Labour to set numerical targets for any sector or part of a sector.

Section 42 (1) of the EEA Amendment Bill lists the criteria against which a designated employer's compliance with the Employment Equity Act 55 of 1998 ("Employment Equity Act") is measured. The EEA

Amendment Bill proposes the insertion of section 42 (1) (Aa) which reads "*whether or not the employer has achieved any sectoral target set in terms of section 15A applicable to that employer*".

While BUSA acknowledges that the pace and depth of transformation in South Africa has been insufficient, BUSA does not, save for section 15A (1) and for the reasons that follow, support section 15A (2), (3), (4) and (5) of the EEA Amendment Bill:

As the Department of Labour knows, the Business position, during the Nedlac engagements was that Business was prepared to agree to the whole of section 15A of the EEA Amendment Bill provided that section 42 (1) (aA) (dealing with assessment of compliance) was amended to incorporate the words "*reasonable steps were taken by a designated employer*" to achieve the applicable sectoral target. The proposed amendment to section 42 (1) (Aa) by the Business constituency during the Nedlac engagements (which was supported by Labour) was not accepted by Government. This was consequently recorded as a "*material area of disagreement*" in the Nedlac Report.

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While BUSA acknowledges that Regulation 16 (4) of the Draft EE Regulations makes provision for a designated employer who applies for a certificate of compliance (for the purposes of being permitted to do work for the State) and who has not achieved the applicable targets, to record justifiable reasonable grounds for not doing so, BUSA is of the view that Regulation 16 (4) on its own is insufficient and that the Employment Equity Act itself should, in so far as assessment of compliance is concerned, expressly state that an employer must have taken reasonable steps to achieve the target, not that it must have achieved the target.

The amendment to section 42 (1) (Aa) as proposed by BUSA serves two purposes:

- to align the provision with the rest of the provisions in section 42 (which provide for reasonable steps taken by a designated employer in reference to other compliance criteria); and
- to mitigate against the numerical targets being construed as creating quotas as this is expressly prohibited by section 15 (3) of the Employment Equity Act.

3.2. Consultation with sectors

Section 15A (2) of the EEA Amendment Bill requires the Minister of Labour to consult with the relevant sectors before setting numerical targets. BUSA is of the view that the method and format of consultation with sectors should be prescribed in the Regulations. It must be clearly stated with whom the engagements will be conducted. For example, it can be indicated that the consultations will be conducted with the various employers comprising a critical mass in each sector either individually or through any employer's organisation that represents the employers in the sector.

This will ensure that the form and manner in which the consultations are held are transparently conducted within a clear framework of what the minimum consultation process will entail. The consultations are critical for the success of transformation. There should be joint consensus seeking engagements as the more agreements reached in each sector, the higher degree of buy-in and adherence to the targets set.

3.3. EEA4 Form

As mentioned early on in this submission, the EEA4 Form that was tabled during the Nedlac process and subsequently signed off by social partners is not the same EEA4 Form that was published in the Government Gazette on 21 September 2018. BUSA does not, at the time of submitting these comments, know what methodology has informed the new EEA4 Form and the information that designated employers will be required to furnish to the National Minimum Wage Commission. BUSA is of the view that review of the EEA4 Form must take place within the context of the agreement reached at the Presidential Jobs Summit in relation to the issue of pay disparities, and that the Nedlac Task Team should be re-established for this purpose.

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3.4. Complexity

Some employers are already, by virtue of the sector in which they operate, bound by Charters, which Charters, to an extent, prescribe targets. In addition, some designated employers operate in more than one sector. It is important that if the EEA Amendment Bill is passed into law and numerical targets are set for sectors that these do not create uncertainty and/or complexity for businesses. There must be alignment between the Employment Equity Act and other legislation (such as B-BBEE and Sector Codes) so as to ensure that there are no unintended consequences and so as to ensure that there are no issues with having to interpret several different pieces of legislation in so far as compliance is concerned.

4. CONCLUSION

In conclusion:

- BUSA acknowledges that the pace and depth of transformation in South Africa has been insufficient and that employment equity mechanisms can, if properly designed, contribute to achieving a more equitable workplace.

- BUSA reiterates, as reflected in the Nedlac Report, that it does not agree to section 15A (2)-(5)on the basis that Government was not prepared to amend section 42 (1) (Aa) of the EEA Amendment Bill to incorporate the words "*reasonable steps taken by a designated employer*". BUSA would support this amendment if the wording were to be incorporated as motivated by both Business and Labour in Nedlac.

- It is important that if the EEA Amendment Bill is passed and the Minister of Labour is empowered to establish numerical targets that those targets are realistic, taking into account, the specific challenges faced by individual sectors. If numerical targets are set, those targets must take into account that the opportunities for diversity come largely with attrition rather than job growth especially at top and senior levels of a business. The result of a greater degree of joint consensus in the setting of targets, the more likely the action will be a faster pace of transformation.

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- BUSA reiterates that it does not support the approach of National Numerical Targets – sector targets should be informed by a sector's particular circumstances and requirements.

- The Department of Labour needs to give careful consideration to the thin dividing line between targets and quotas and the risk of challenge to the latter.

- Business' ability to transform rapidly will be greatly enhanced with Government playing a significant role in creating the enabling conditions for growth. This requires Government to carefully consider the complexities associated with overlaying further targets in addition to what is already prescribed in existing Charters and the B-BBEE Codes.

BUSA proposes further engagement with the Department of Labour on the EEA Amendment Bill and Draft Regulations in Nedlac, particularly in light of the concerns outlined in paragraph 2 of this submission.

Yours sincerely

TANYA COHEN
CHIEF EXECUTIVE

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MANUFACTURING SECTOR

ENGAGEMENT/CONSULTATION –

Subsector 6: Manufacture of basic metals; fabricated metal products; except machinery and equipment

Thursday, 13 Oct 2022

employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

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22/9/2025-9:30:08 AM
ANNEXURE D

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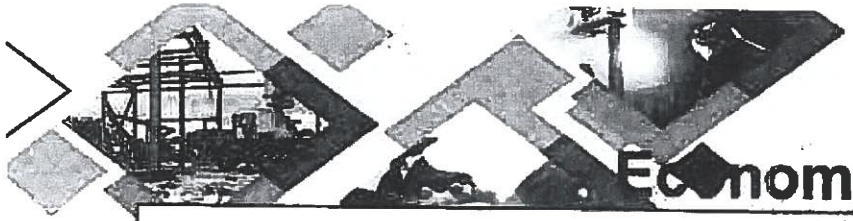

Economically Active Population (EAP)

(*Source: Statistics South Africa, (QLFS, Quarter3 2021)

EAP		AFRICAN	COLOURED	INDIAN	WHITE	TOTAL
NATIONAL	Male	43,6%	5,0%	1,8%	4,9%	55,3%
	Female	35,8%	4,1%	0,9%	3,9%	44,7%
	TOTAL	79,4%	9,1%	2,7%	8,8%	100,0%
Eastern Cape	Male	42,6%	6,3%	1,2%	2,6%	52,7%
	Female	39,2%	5,4%	0,2%	2,4%	47,2%
	TOTAL	81,8%	11,7%	1,4%	5,0%	100,0%
Free State	Male	48,6%	2,1%	0,4%	4,5%	55,6%
	Female	40,4%	1,2%	0,0%	2,9%	44,5%
	TOTAL	89,0%	3,3%	0,4%	7,4%	100,0%
Gauteng	Male	46,6%	1,4%	1,3%	6,1%	55,4%
	Female	37,5%	1,1%	0,7%	5,2%	44,5%
	TOTAL	84,1%	2,5%	2,0%	11,3%	100,0%
KwaZulu-Natal	Male	46,2%	0,6%	6,0%	1,5%	54,3%
	Female	40,5%	0,5%	3,6%	1,1%	45,7%
	TOTAL	86,7%	1,1%	9,6%	2,6%	100,0%
Limpopo	Male	52,8%	0,0%	1,5%	1,3%	55,6%
	Female	44,0%	0,1%	0,1%	0,4%	44,6%
	TOTAL	96,8%	0,1%	1,6%	1,7%	100,0%
Mpumalanga	Male	49,6%	0,3%	0,2%	4,4%	54,5%
	Female	42,8%	0,3%	0,0%	2,4%	45,5%
	TOTAL	92,4%	0,6%	0,2%	6,8%	100,0%
North West	Male	56,0%	0,0%	0,2%	3,9%	60,1%
	Female	35,9%	0,4%	0,0%	3,5%	39,8%
	TOTAL	91,9%	0,4%	0,2%	7,4%	100,0%
Northern Cape	Male	28,8%	23,8%	0,3%	2,9%	55,8%
	Female	22,3%	18,[illegible]	0,0%	3,7%	44,2%
	TOTAL	51,1%	42,[illegible]	0,3%	6,6%	100,0%
Western Cape	Male	20,5%	23,9%	1,1%	10,3%	55,8%
	Female	15,9%	19,3%	0,4%	8,6%	44,2%
	TOTAL	36,4%	43,2%	1,5%	18,9%	100,0%

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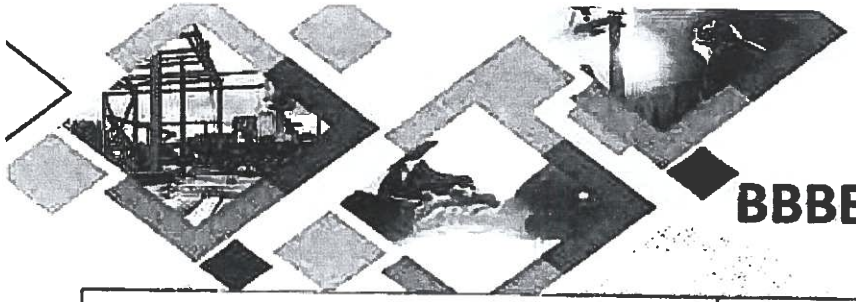

BBBEE – Management Control Scorecard

	Black	Black Female
Top Management	50%	25%
Senior Management	60%	30%
Professionally Qualified/ Middle Management	75%	38%
Skilled Technical/Junior Management	88%	44%
Employees with disabilities	2%	

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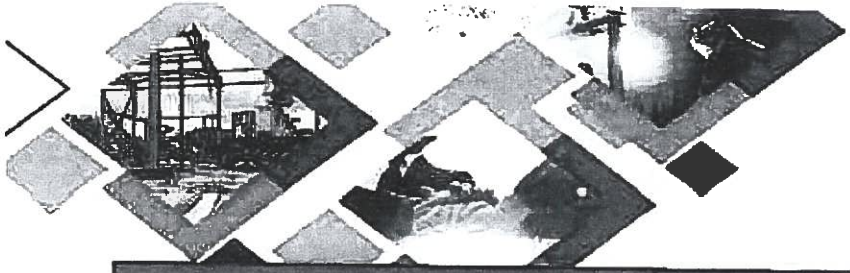

Top Management

TOP MANAGEMENT							
TOP MANAGEMENT	GENDER	A	C	I	W	TOTAL	BLACK
NATIONAL OR PROVINCIAL EAP	Male	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Female	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PROPORTION OF EAP WITHIN BLACK GROUP	Total	87,1%	10,0%	3,0%		100,0%	BLACK TARGET
FINAL PROPOSED TARGET BY DEPARTMENT	Total	34,8%	4,0%	1,2%		40,0%	40,0%
	Male	21,8%	2,5%	0,7%		25,0%	25,0%
	Female	13,1%	1,5%	0,4%		15,0%	15,0%
PROPOSED TARGETS BY SECTOR / SUB-SECTOR – Steel and Engineering Industries Federation of Southern Africa (SEIFSA)	Total	33,1%	3,8%	1,1%		38,0%	38,0%
	Male	22,2%	2,5%	0,8%		25,5%	25,5%
	Female	10,9%	1,2%	0,4%		12,5%	12,5%
INITIAL PROPOSED TARGET BY DEPARTMENT	Total	43,5%	5,0%	1,5%		50,0%	50,0%
	Male	21,8%	2,5%	0,7%		25,0%	25,0%
	Female	21,8%	2,5%	0,7%		25,0%	25,0%
WORKFORCE PROFILE 2021 - Subsector 6	Total	[illegible]	[illegible]	10,1%	72,1%	2,6%	25,2%
	Male	[illegible]	[illegible]	7,2%	63,1%	2,4%	17,5%
	Female	[illegible]	[illegible]	2,9%	9,0%	0,2%	7,8%
Manufacturing All -WORKFORCE PROFILE 2021	Total	9,5%	[illegible]	13,8%	66,7%	4,7%	28,6%
	Male	5,7%	[illegible]	10,1%	56,4%	4,2%	19,3%
	Female	3,8%	[illegible]	3,7%	10,3%	0,5%	9,3%

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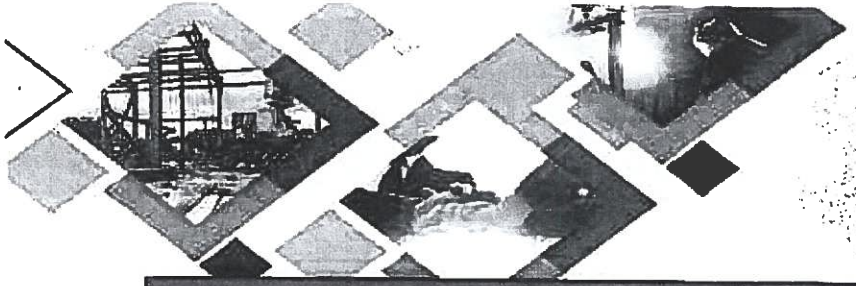

Senior Management

SENIOR MANAGEMENT							
SENIOR MANAGEMENT	GENDER	A	C	I	W	TOTAL	BLACK
NATIONAL OR PROVINCIAL EAP	Male	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Female	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PROPORTION OF EAP WITHIN BLACK GROUP	Total	87,1%	10,0%	3,0%		100,0%	BLACK TARGET
FINAL PROPOSED TARGET BY DEPARTMENT	Total	47,9%	5,5%	1,6%		55,0%	55,0%
	Male	30,5%	3,5%	1,0%		35,0%	35,0%
	Female	17,4%	2,0%	0,6%		20,0%	20,0%
PROPOSED TARGETS BY SECTOR / SUB-SECTOR - ~~South African Petroleum Industry Association (SAPIA)~~ SEIFSA	Total	40,9%	4,7%	1,4%		47,0%	47,0%
	Male	29,6%	3,4%	1,0%		34,0%	34,0%
	Female	11,3%	1,3%	0,4%		13,0%	13,0%
INITIAL PROPOSED TARGET BY DEPARTMENT	Total	52,2%	6,0%	1,8%		60,0%	60,0%
	Male	26,1%	3,0%	0,9%		30,0%	30,0%
	Female	26,1%	3,0%	0,9%		30,0%	30,0%
WORKFORCE PROFILE 2021 - Subsector 6	Total	[illegible]	[illegible]	10,5%	64,9%	3,0%	32,1%
	Male	[illegible]	[illegible]	7,8%	49,7%	2,6%	23,7%
	Female	[illegible]	[illegible]	2,7%	15,2%	0,4%	8,4%
Manufacturing All -WORKFORCE PROFILE 2021	Total	15,8%	8,6%	14,8%	57,4%	3,2%	39,2%
	Male	10,4%	[illegible]	10,1%	41,7%	2,6%	26,0%
	Female	5,4%	[illegible]	4,7%	15,7%	0,6%	13,2%

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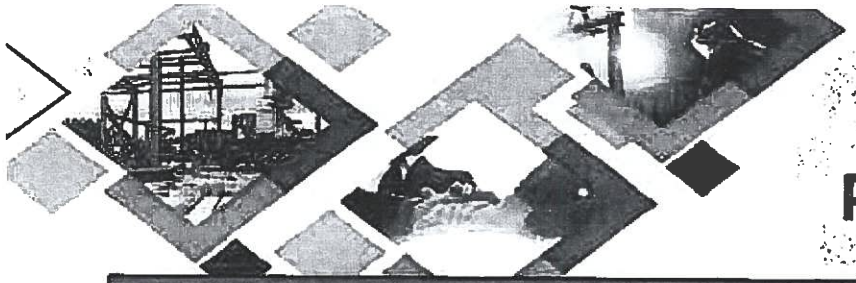

Professionally Qualified – Mid Man

PROFESSIONALLY QUALIFIED							
PROFESSIONALLY QUALIFIED	GENDER	A	C	I	W	TOTAL	BLACK
NATIONAL OR PROVINCIAL EAP	Male	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Female	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PROPORTION OF EAP WITHIN BLACK GROUP	Total	87,1%	10,0%	3,0%		100,0%	BLACK TARGET
FINAL PROPOSED TARGET BY DEPARTMENT	Total	60,9%	7,0%	2,1%		70,0%	70,0%
	Male	39,2%	4,5%	1,3%		45,0%	45,0%
	Female	21,8%	2,5%	0,7%		25,0%	25,0%
PROPOSED TARGETS BY SECTOR / SUB-SECTOR - South African Petroleum Industry Association (SAPIA) SAPIA	Total	56,6%	6,5%	1,9%		65,0%	65,0%
	Male	37,4%	4,3%	1,3%		43,0%	43,0%
	Female	19,2%	2,2%	0,7%		22,0%	22,0%
INITIAL PROPOSED TARGET BY DEPARTMENT	Total	65,3%	7,5%	2,2%		75,0%	75,0%
	Male	32,2%	3,7%	1,1%		37,0%	37,0%
	Female	33,1%	3,8%	1,1%		38,0%	38,0%
WORKFORCE PROFILE 2021 - Subsector 6	Total	[illegible]	8,8%	9,5%	55,0%	2,8%	42,2%
	Male	[illegible]	6,8%	7,0%	42,1%	2,4%	32,2%
	Female	[illegible]	[illegible]	2,5%	12,9%	0,3%	10,0%
Manufacturing All -WORKFORCE PROFILE 2021	Total	27,6%	10,8%	13,4%	45,6%	2,7%	51,8%
	Male	17,5%	6,0%	8,7%	31,6%	2,2%	33,1%
	Female	10,1%	[illegible]	4,7%	14,0%	0,5%	18,7%

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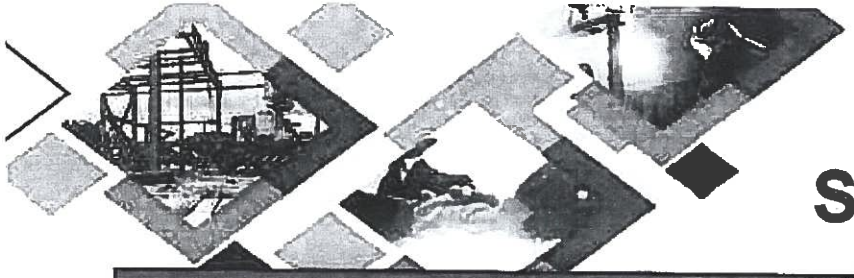

Skilled Technical – Junior Man

SKILLED		SKILLED					
SKILLED	GENDER	A	C	I	W	TOTAL	BLACK
NATIONAL OR PROVINCIAL EAP	Male	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	50,4%
	Female	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	40,8%
	Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	91,2%
PROPORTION OF EAP WITHIN BLACK GROUP	Total	87,1%	10,0%	3,0%		100,0%	BLACK TARGET
FINAL PROPOSED TARGET BY DEPARTMENT	Total	76,6%	8,8%	2,6%		88,0%	88,0%
	Male	43,9%	5,0%	1,5%		50,4%	50,4%
	Female	32,7%	3,8%	1,1%		37,6%	37,6%
PROPOSED TARGETS BY SECTOR / SUB-SECTOR - South African Petroleum Industry Association (SAPIA) ~~CBESA~~	Total	70,5%	8,1%	2,4%		81,0%	81,0%
	Male	54,0%	6,2%	1,8%		62,0%	62,0%
	Female	16,5%	1,9%	0,6%		19,0%	19,0%
INITIAL PROPOSED TARGET BY DEPARTMENT	Total	76,6%	8,8%	2,6%		88,0%	88,0%
	Male	38,3%	4,4%	1,3%		44,0%	44,0%
	Female	38,3%	4,4%	1,3%		44,0%	44,0%
WORKFORCE PROFILE 2021 - Subsector 6	Total	[illegible]	10,9%	6,0%	31,1%	2,7%	66,1%
	Male	[illegible]	8,6%	4,5%	23,2%	2,6%	54,9%
	Female	7,5%	[illegible]	1,6%	7,9%	0,1%	11,3%
Manufacturing All -WORKFORCE PROFILE 2021	Total	49,3%	14,7%	8,7%	24,8%	2,7%	72,7%
	Male	34,8%	[illegible]	5,8%	16,7%	2,1%	50,2%
	Female	14,5%	[illegible]	2,9%	8,1%	0,6%	22,5%

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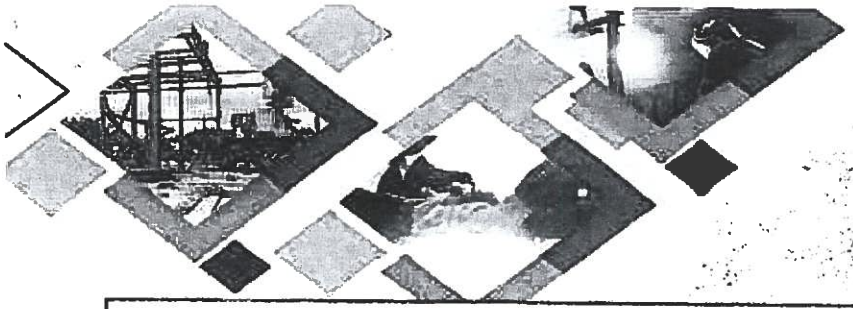

Persons with Disabilities

DISABILITY	
FINAL PROPOSED TARGET BY DEPARTMENT	2,0%
PROPOSED TARGETS BY SECTOR / SUB-SECTOR: PROPOSED TARGETS BY SECTOR / SUB-SECTOR - PROPOSED TARGETS BY SECTOR / SUB-SECTOR - ~~South African Petroleum Industry Association (SAPIA)~~ SAFRA	2,0%
INITIAL PROPOSED TARGET BY DEPARTMENT	2,0%
WORKFORCE PROFILE 2021 SUB-SECTOR- 6	1,6%
WORKFORCE PROFILE 2021 - ALL	1,5%

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Thank You...

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Employment and Labour
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KK
KM

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Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

Postal Address: Private Bag X117, PRETORIA, 0001 • Street Address: Laboria Building, Francis Baart Street, PRETORIA
Tel: 012 309 4040 Fax: (012) 309 4739

Enq: Masilo Lefika
Tel: 012 309 4214

Mr Lucio Trentini
The Chief Executive Officer
Steel and Engineering Industries Federation
of Southern Africa (SEIFSA)

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Manufacture of electrical equipment; machinery; - equipment; motor vehicles; trailers; semi-trailers; transport equipment; installation of machinery and equipment- Subsector 7

C/o Theresa Crowley

Tel: Tel: 011 298 9400 / **011 298 9419**
Email: theresa@seifsa.co.za

Dear Mr L Trentini

The Employment Equity Amendment Bill [B 14B-2020] passed by Parliament on 17 May 2022 and awaiting for the assenting to and signing into law by the President has reference.

Our follow-up meeting held with your subsector in the Manufacturing sector dated 14 October 2022 has reference.

The Department would like to secure a final follow-up meeting as follows:

Location: Microsoft Teams meeting
Date : Thursday, 16 March 2023 or Friday, 17 March 2023
Time : 09h00 – 11h00

Kindly confirm your availability by Tuesday, 14 March 2023 in order for the Department to send the link for the meeting.

Your cooperation will be highly appreciated.

Yours sincerely

10/03/2023

NTSOAKI MAMASHELA (MRS)
DIRECTOR: EMPLOYMENT EQUITY

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Tel: 012 309 4040 Fax: (012) 309 4739

Enq: Masilo Lefika
Tel: 012 309 4214

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Mr Lucio Trentini
The Chief Executive Officer

Steel and Engineering Industries Federation of
Southern Africa (SEIFSA)
Manufacture of basic metals; fabricated metal products;
except machinery and equipment-Subsector 6

C/o Theresa Crowley

Tel: Tel: 011 298 9400 / **011 298 9419**
Email: theresa@scifsa.co.za

Dear Mr L Trentini

The Employment Equity Amendment Bill [B 14B-2020] passed by Parliament on 17 May 2022 and awaiting for the assenting to and signing into law by the President has reference.

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KK
KM

Yours sincerely

10/03/2023

NTSOAKI MAMASHELA (MRS)
DIRECTOR: EMPLOYMENT EQUITY

K.K

KM

SEIFSA
Steel and Engineering Industries Federation of Southern Africa

28 November 2022

Ms. Ntsoaki Mamashela
Director Employment Equity
Department of Employment and Labour
Private Bag X117
Pretoria
0001

Email: ntsoaki.mamashela@labour.gov.za

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Dear Ms Mamashela

RESPONSE TO THE DEPARTMENT OF EMPLOYMENT AND LABOUR (DEL) FINAL PROPOSED SECTOR TARGETS FOR MANUFACTURING SUB-SECTOR 6 AND 7

1. INTRODUCTION

This letter is being addressed to you pursuant to the kind invitation extended to the Steel and Engineering Industries Federation of Southern Africa (SEIFSA) by the Department of Employment and Labour (the DOEL) to respond to the final sector targets proposed by the DOEL for Sub-Sectors 6 and 7 of the Manufacturing Sector at our last two meetings with the DOEL on 13 and 14 October 2022 respectively.

2. RATIONALE BEHIND SEIFSA'S RESPONSE TO THE DOEL FINAL PROPOSED TARGETS

Although we deal with the targets proposed in respect of each above Sub-Sector in respect of each Occupational Level separately below, we believe that it is critical to first deal with the criteria and variables taken into consideration and that informed the response mandated by the SEIFSA affiliated membership.

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KM

3. MAIN CRITERIA AND VARIABLES IMPACTING ON SEIFSA'S RESPONSE ACHIEVEMENT OF PROPOSED SECTOR TARGETS

The following criteria were taken into consideration, and informed the memberships response below:

3.1 The importance of the targets agreed to or proposed to be perceived to be achievable on aggregate by the applicable Sub-Sector

As previously stated, SEIFSA's membership fully supports the principle of sector targets being used as a mechanism to speed up the pace of employment equity transformation in the private sector.

SEIFSA has already held webinars for its membership and is planning to hold more, with the view of sensitizing the membership on how to change its approach to the manner in which employment equity and transformation is currently being managed, with a view to obtaining the necessary compliance certificates and more importantly, avoid being fined 2% of turnover for not achieving employment equity targets.

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The response thus far, has been positive, but we know that in the event of sector targets in any occupational level being too challenging to achieve, the positivity experienced from members thus far will dissipate and turn into negativity and resistance to employment equity and transformation. This will lead to employers focusing on how to manufacture reasonable justifiable ground for not appointing persons from designated groups in-line with their employment equity plans and goal, instead on doing the opposite.

3.2 The importance of the targets agreed to or proposed to *in fact* be achievable on aggregate by the applicable Sub-Sector

The above perception will of course depend on whether the proposed targets are ***in fact*** achievable on aggregate in the applicable occupational level, which is dependent on the following key criteria. These are:

- the % black, black male and black female representation in the level at the commencement of the period in which sector targets will need to be achieved ('the sector targets achievement period'). This will in turn depend on the date of the last available data;
- the length of the sector targets achievement period;
- the number of opportunities that are anticipated to arise during the sector targets achievement period;
- the achievability of the selected % black and/ or % black female targets in the applicable level[1]; and

[1] The achievability of the % Black Male target is not included as it is assumed that if the % Black target is achievable in a level, then the % Black Male target also achievable (as the % Black males far exceed the % Black Females in all levels in both Sectors),

K.K
KM

- recruitment and promotional trends within a sector over the past 2 years.

We will deal with each aspect below.

The % black, black male and black female representation in the level at the commencement of the sector targets achievement period

The % black, black male and black female representation at the commencement of the sector targets achievement period is determined with reference to the aggregate of the last EEA 2's submitted to the DOEL by employees in the respective sub-sectors, which was between 1 October 2021 and 15 January 2021.

As designated employers have different reporting periods, the end date of which reflects the date on which their respective wworkforce profiles were measured, which usually ranges from between 30 June and 31 December of the year being reported on (2021 in this case), it is impossible to determine an exact date.

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We will assume for present purposes that the average reporting end date was 30 September 2021 and that this date is therefore will be the commencement date of the sector targets achievement period.

There are two sets of data purportedly reflecting these aggregates in respect of each sub-sector available to both the DOEL and SEIFSA.

The first set has been extrapolated by the DOEL from all EEA 2 reports submitted by employers that selected sub-sector 6 and sub-sector7 respectively from the drop-down menu employers are required to select from when submitting their EEA 2's electronically in the 2021/ 2022 employment equity reporting season. Each sub-sector's % black, black male and black female representation in respect of each occupational level based on such data was included and set-out, for the first time, by the DOEL in the bottom row of each slide containing the DOEL final targets in respect of each sub-sector's applicable occupational level, as presented by the DOEL in our meetings on 13 and 14 October 2022.

As this data was not available to SEIFSA at the time, it started collecting, inter-alia, its members' 2021 EEA2 reports in order to determine the % black, black male and black female representation in the top four EEA 9 levels in sub-sector 6 and 7 of the manufacturing sector. This was done in order to help inform SEIFSA's first response of 13 June 2022 to the DOEL's proposed Sector Targets at the time, in respect of both sub-sectors. This is the second set of data. The results of this exercise are set out in paragraphs 8.1 and 8.2 of the SEIFSA letter dated 13 June 2022, which you have on record.

As SEIFSA's affiliated membership is diverse, spanning across different

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sectors and sub-sectors, SEIFSA went to a great deal of effort to ensure that members' EEA 2's that were furnished were allocated into the correct sub-sector when calculating sub-sector 6 and sub-sector's 7's respective aggregate wworkforce profiles in the top four EEA 9 levels.

The lengths that SEIFSA went to in order to ensure that each designated employer whose EEA 2 was included in the respective sub-sector's aggregate wworkforce profile indeed fell into that sub-Sector is fully set-out in paragraph 7.2 of SEIFSA's response to the DOEL proposed sector targets for manufacturing: sub-sector 6 and 7, dated 13 June 2022. As designated employers with less than 50 employees will be excluded from having to comply with sector targets once the 2020 Employment Equity Act Amendments become law, the data of such employers were excluded.

It transpired during the above process referred to in the preceding paragraph that approximately 50% of EEA 2's received and examined, an incorrect sub-sector had in fact been selected when submitting their EEA 2's electronically. This is in our view due designated employers not always knowing how to establish which sector they fall under.

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This unfortunately, puts into doubt the accuracy of the first set of data furnished by the DOEL referred to above, as firstly it would have been extrapolated from all EEA 2 submissions in which firstly, sub-sector 6 and sub-sector 7 were, on the basis of the only available evidence with regard thereto, incorrectly selected in approximately 50% of cases and secondly, it includes data of designated employers with less than 50 employees.

We set out both sets of data below when dealing with each sub-sector's response to the DOEL's proposed final target for the different occupational levels. We use the median of the two sets of figures when demonstrating that certain final targets proposed by the DOEL are unachievable or too challenging on aggregate and we propose alternative more achievable targets below.

The length of the sector targets achievement period

Although the vast majority of SEIFSA members in both sub-sectors are likely to only start taking steps to comply with sector targets once it becomes law, SEIFSA will, in order to facilitate acceptance by the DOEL of its proposed targets in cases where the DOEL's final targets are, based on the evidence and figures provided below, in SEIFSA's membership's view, unachievable, base its response to the DOEL's final targets on the assumption that the sector targets achievement period in fact being 7 years and not 5 years as assumed in SEIFSA's initial response dated 13 June 2022.

The number of opportunities that are anticipated to arise during the sector targets achievement period

The number of anticipated opportunities during the sector targets achievement period is determined by:

- vacancies at the start of the EE Plan (not applicable to Sector Targets);
- expected growth and/ or shrinkage during this time;
- expected respective black and white and foreign nationals;
- retirements; and/or
- attrition.

As these opportunities will happen in the future, they remain unknown and will have to be carefully guesstimated.

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The best way to guesstimate future opportunities is with reference to the past and in the case of growth, reference to the economic climate and forecasting by the SA Reserve Bank and other economic indicators.

Expected growth and/ or shrinkage

For reasons set out in paragraph 3.1 of SEIFSA's response to the DOEL's proposed sector targets for manufacturing: sub-sector 6 and 7, of 13 June 2022, we estimate a 0% economic growth rate for the metals and engineering sector over the next 3-to-5-year period.

The global economic environment has deteriorated considerably during 2022 with notable downside risks intensifying over the review period. A number of macroeconomic trends already point to the global economy being in technical recession.

The major themes that present downside risks to the economy are the inflationary pressures being experienced globally and the monetary policy stance that has to be adopted to contain the pressures.

Increasing interest rates, which are inversely related to economic activity and investment will dampen economic growth prospects. Fiscally vulnerable emerging markets, South Africa included, are expected to mostly bear the brunt of this global development.

The stringent lockdown measures that are being adopted in China, the world's second largest economy and a major trading partner for many countries around the world presents demand and supply risks around the world given China's dominance as the production house for the global economy.

Recession risks in the European economy, mostly related to energy

shortages also present risks to the economic outlook, and South Africa in particular given the extent of trade between the two areas.

Finally, South Africa's electricity crisis presents one of the country's most severe binding constraints. The system adequacy outlook recently published by Eskom highlighted that the electricity grid is going to remain constrained for at least the next three to five years. This presents material downside risks not only for the country's economic prospects, but also for the metals and engineering sector, to which electricity is a fundamental input to production processes.

Expected retirements and attrition (terminations)

The basis for calculating the expected retirements and attrition and the resultant blacks, whites and foreign national respective collective terminations over 5 years in each occupational level, in respect of sub-sector 6 and sub-sector 7 respectively are set out in paragraphs 9.3 to 9.4 of SEIFSA's response dated 13 June 2022.

The number of terminations and resultant opportunities arising from both above collective groups' terminations over a seven-year period are set out below, when demonstrating that certain final targets proposed by the DOEL are unachievable on aggregate and we therefore are proposing alternative achievable targets.

The achievability of the selected % black and/ or % black female targets in the applicable level

The achievability of the selected % black and/ or % black female targets in an occupational level is dependent on the number of black and/ or black female appointments that can realistically be made vs. opportunities anticipated to arise during the sector targets achievement period in the applicable level i.e., the availability of sufficient blacks and black females with the relevant qualification, skills and experience available that can to be appointed to the positions that become available in the level.

The availability of blacks and black females or rather their lack of availability generally in the two sub-sectors are dealt with in paragraph's 6.3.1 and 10.4 of SEIFSA's response dated 13 June 2022.

In dealing with the achievability of the % black and black female final targets proposed by the DOEL regard is had to:

- the % or number of backs or black females in the occupational level below;
- past appointment ratios of blacks vs opportunities (iro black targets); and
- past appointment ratios of black females in relation to black males (iro

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black female targets).

These figures are set out below when demonstrating that certain final targets proposed by the DOEL are unachievable on aggregate and we therefore are proposing alternative achievable targets.

Recruitment and promotional trends over the past two years

The recruitment and promotional trends over the past two years in each sub-sector has been determined, in respect of each occupational level, with reference to:

- the % increase in blacks over the past 2 years;
- the % ratio of black appointments vs. opportunities that arose over the past 2 years;
- the % black females in the level below; and
- the % ratio black females in relation to blacks in the level below.

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Although it is acknowledged that the pace of employment equity transformation in both sectors have historically been very low, this cannot be attributed to the attitude of employers hereto alone. The availability of suitably qualified persons in respective sectors no doubt also plays a role. In this regard the DOEL is referred to paragraph 8.5 of SEIFSA's response dated 13 June 2022.

This data has been calculated on the basis of the verified 2019, 2020 and 2021 EEA 2's collected by SEIFSA from its members in the respective sub-sectors.

This data is similarly used in dealing with the DOEL proposed final target found by SEIFSA to be unachievable and in support of SEIFSA's revised targets proposed as alternative targets in the level.

4. COMPARISON BETWEEN THE ABOVE CRITERIA AND THOSE SET OUT IN THE 2018 EMPLOYMENT EQUITY DRAFT REGULATIONS

Validation of the consideration of the above criteria in determining the achievability of the DOEL's proposed final targets in respect of both sub-sector 6 and sub-sector 7 is to be found in Cause 7A of the above regulations.

The clause reads as follows:

Determination of numerical targets for national economic sectors in terms of section 15A

(1) For the purpose of determining a numerical target in terms of section 7A, any relevant criteria may be taken into account including–

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(a) the qualification, skills, experience [and the capacity to acquire, within a reasonable timeframe, the ability to do the job];
(b) the rate of turn-over and natural attrition within a sector;
(c) recruitment and promotional trends within a sector.

It is therefore strongly suggested that the DOEL pay due regard to the information provided by SEIFSA below, on behalf of its affiliated membership, in both sub-sectors when considering our collective response.

5. SEIFSA'S RESPONSE TO THE DOEL'S PROPOSED FINAL TARGETS IN RESPECT OF BOTH SUB-SECTORS

Order in which SEIFSA is responding:

SEIFSA's response, on behalf of its affiliated membership, to the DOEL's proposed final targets for both sub-Sectors is dealt with below.

SEIFSA firstly deals below with the DOEL's proposed final sub-sector 6 targets for each occupational level and persons with disabilities, and thereafter with the DOEL's proposed final sub-sector 7 targets for each Occupational Level and Persons with Disabilities.

5.1 Table used to indicate SEIFSA's response to the DOEL's proposed final targets in respect of each occupational level of both sub-sectors.

SEIFSA's overall response is, in respect of each occupational level, set out in a table containing the following information in respect of each occupational level:

- the % black, black male and black female representivity at the commencement of the sector targets achievement period, according to the aggerate workforce profile extrapolated in respect of the 2021 EEA2 submissions in which sub-sector 6 was selected by Designated Employers when submitting their EEA2 Reports (the first above set);

- the % black, black male and black female retrospectivity at the commencement of the sector targets achievement period according to the aggerate workforce profile calculated by SEIFSA from the 2021 EEA 2's received from members verified by SEIFSA to resort in sub-sector 6 (the second above set);

- the initial % black, black male and black female targets proposed by the DOEL, the original % black, black male and black female targets proposed by SEIFSA;

- the final % black, black male and black female targets proposed by the DOEL;

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- the revised % black, black male and black female targets proposed by SEIFSA, where the DOEL's proposed final target have not been found to be achievable; and

- the number of opportunities calculated to arise over 7 years % blacks.

The cells containing the DOEL's proposed final % black, black male and black female targets have been colour coded using the key below indicating SEIFSA's response to each such target:

SEIFSA's Indicative Response Key:

Within acceptable range over 7 years
Middle ground possibly achievable
Too far apart to reach agreement

5.2 Table used to set out the basis for SEIFSA's conclusion that the DOEL's proposed final black target is unachievable and motivation for acceptance of SEIFSA's revised target by the DOEL

In the occupational levels that SEIFSA's membership has not accepted the DOEL's proposed final % black target – a table is used setting out the data and analysis below in support of its rejection of the DOEL's target for the level and in the process aiming to persuading the DOEL to accept SEIFSA's revised target. This is followed by submissions in support thereof.

- the median of the DOEL and SEIFSA's respective % blacks for the applicable sub-sector as at 30 September 2021;

- the final proposed target by the DOEL with SEIFSA's indicative response;

- the % increase in % blacks required over 7 years in order to achieve the DOEL's proposed final target;

- the % black attrition over the past 3 years based on 2019, 2020 and 2021 verified EEA 2's collected by SEIFSA from its members*;

- the % white and foreign national attrition over the past 3 years based on 2019, 2020 and 2021 verified EEA 2's collected by SEIFSA from its members*;

- the % ratio black appointments required vs. anticipated opportunities required to achieve the DOEL's proposed final target over 7 years;

- the median of the DOEL and SEIFSA's respective % blacks in the

applicable sub-sector as at 30 September 2021 in the level below (potential feeders to the level above);

- SEIFSA's proposed revised targets;
- the % increase in % blacks required over 7 years in order to achieve SEIFSA's proposed revised target;
- the % ratio black appointments required vs. anticipated opportunities required to achieve SEIFSA's proposed revised targets target over 7 years;
- the % increase in blacks over the past 2 years in the level; and
- the % ratio black appointments made vs. opportunities that arose over the past 2 years.

  * Based on the aggregate terminations indicated in Section C 4 of the EEA2s which includes terminations and retirements.

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5.3 Table used to set out the basis for SEIFSA's conclusion that the DOEL's proposed final % black female target is unachievable and motivation for acceptance of SEIFSA's revised target by the DOEL

In occupational levels that the SEIFSA affiliated membership has not accepted the DOEL's proposed final % black females target, a table is used setting out the data and analysis below in support of its rejection of the DOEL's black females target for the level and in the process aiming to persuade the DOEL to accept SEIFSA's revised target. This is followed by submissions in support thereof.

- the median of the DOEL and SEIFSA's respective % black females for the applicable sub-sector as at 30 September 2021;
- the final proposed target by the DOEL with SEIFSA's indicative response;
- the % increase in % black females required over 7 years in order to achieve the DOEL's proposed final target;
- % ratio black females appointments required in relation to black appointments required to achieve the DOEL's proposed final target over 7 years;
- median of the DOEL and SEIFSA's respective % black females for the applicable sub-sector as at 30 September 2021 in the level below (potential feeders to Senior Management);

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- SEIFSA's proposed revised targets;
- % ratio black females in relation to black males in the level below;
- The % increase in % black females required over 7 years in order to achieve SEIFSA's proposed revised target; and
- % ratio black females appointments required in relation to black appointments required to achieve SEIFSA's proposed revised target over 7 years.

6. SEIFSA'S RESPONSE TO THE DOEL'S PROPOSED FINAL SUB-SECTOR 6 TARGETS

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Top Management

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response
Black	**25,2%**	**20.2%**	**50,0%**	**38,0%**	**40,0%**
Black Male	**17,5%**	**14.0%**	**25,0%**	**25,5%**	**25,0%**
Black Female	**7,8%**	**6.1%**	**25,0%**	**12,5%**	**15,0%**

The DOEL's proposed final sector targets in respect of top management have been calculated by SEIFSA's membership to be achievable on aggregate over 7 years and therefore agreed in sub-sector 6 as indicated above.

Senior Management

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	SEIFSA Proposed Revised Targets
Black	32,1%	28,8%	60,0%	47,0%	55,0%	55,0%
Black Male	23,7%	22,3%	30,0%	34,0%	35,0%	40,0%
Black Female	8,4%	6,5%	30,0%	13,0%	20,0%	15,0%

The DOEL's proposed final sector target for blacks in respect of senior management has been calculated by SEIFSA to be achievable on aggregate over 7 years and therefore agreed to on behalf of its membership in sub-sector 6 as

indicated above. However, the DOEL's proposed final sector targets for black females of 20% has been calculated by the SEIFSA affiliated membership to be unachievable having regard to the data provided in respect of the criteria in the paragraph below.

Table setting out the basis for SEIFSA's conclusion that the DOELs proposed final % black female target is unachievable and motivation for acceptance by the DOEL of SEIFSA's revised target

Race and Gender Group	Median Workforce Profile 2021 Sub-Sector 6	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve DEL BF Target over 7 years	Median % Black Females in level below	% Ratio BF to Blacks in level below	SEIFSA Proposed Revised Target	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve SEIFSA's Target over 7 years
Black Female	7.45%	20,0%	12.55%	42.4%	11.4%	30%	15,0%	7.55%	37.4%

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It is submitted that it is clear from the above figures that the DOEL's proposed final target of 20% will be unachievable given the % black females in the senior management and professionally qualified levels in 2021 (of 7.5% and 10% respectively) and the difficulties experienced by the sub-sector to attract females as referred to in SEIFSA's 13 June 2022 response.

The % black females target proposed by SEIFSA, although still very challenging, will at least have a prospect of being achieved and SEIFSA will be do everything in its powers to encourage and facilitate their achievement.

If SEIFSA's proposed revised target are achieved, the % black females will double, which means that the DOEL's objective of significantly accelerating the pace of employment equity transformation in the Sub-Sector will be achieved. We therefore strongly urge the DOEL to accept our position.

Professionally Qualified

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	SEIFSA Proposed Revised Targets
Black	42,2%	42,9%	75,0%	65,0%	70,0%	68,0%
Black Male	32,2%	30,2%	37,0%	43%	45,0%	44,5%
Black Female	10,0%	12,7%	38,0%	22%	25,0%	23.5%

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The DEL's proposed final sector targets of 70% blacks and 25% black females have been calculated by the SEIFSA affiliated membership to be unachievable having regard to the data provided in respect of the criteria in the paragraph below.

Table setting out basis for SEIFSA's conclusion that the DOEL proposed final % black target is unachievable and motivation for acceptance by the DOEL of SEIFSA's revised target

Race and Gender Group	Median Workforce Profile 2021	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	Required increase in % Blacks over 7 years	The % Black attrition over the past 3 years	% White and Foreign National attrition over the past 3 years	% Ratio Black appointments vs Opportunities to achieve DEL target	Median % Blacks in level below	SEIFSA Proposed Revised Target	Required increase in % Blacks over 7 years	% Ratio Black appointments vs Opportunities to achieve SEIFSA's Revised target	% Increase in Blacks over the past 2 years	% Ratio Bl appointments made vs Opportunities that over past 2 years
Blacks	42.6%	70%	27.4%	6.11%	10.44%	75.7%	66%	68%	25.4%	72.4%	2.3%	46%

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It is submitted that although there is only a 2% difference between the DOEL's proposed final target and SEIFSA's revised targets, this % is significant when it comes to the achievability of the respective targets.

Although the 2.3% increase over the past two years (i.e., 8% projected over 7 years) and the 46% ratio of black appointments vs. opportunities is partly attributable to the current lack of drive to achieve employment equity transformation in both sectors, the contribution of the availability of blacks with the requisite qualification, skills and experience thereto cannot be ignored.

The achievement of a 72% ratio of black appointments in relation to the anticipated opportunities arising required to achieve SEIFSA's revised target of 68% is consequently already very challenging given the % blacks in the skilled technical occupational level with the required qualification, skills and experience that will need to be appointed to reach SEIFSA's revised target.

This is understandable given the fact that most designated employers in both sub-sectors 6 and 7 have engineering-based businesses, requiring a significant percentage of their employees in the top four levels to have engineering degrees and/or math's and/ or science qualifications.

It is a well-documented fact that as a result of historical and legacy schooling standards and related reasons, there is no alignment whatsoever between the percentage available blacks with such qualifications and their % representivity according to the EAP.

The achievement by SEIFSA's affiliated membership of the revised target of 68% is already extremely challenging given all the criteria and figures set out above.

Burdening members in the Sub-Sector with an even higher black target is bound to result in push back and will only serve to undermine the DOEL's objectives.

However, its achievement will be an incredible feat and should certainly go some way towards satisfying the DOEL's objective of significantly accelerating the pace of employment equity transformation in the sub-sector. We again, strongly urge the DOEL to accept our revised position.

Table setting out basis for SEIFSA's conclusion that the DOEL's proposed final % black female target for the level is unachievable and motivation for acceptance by the DOEL of SEIFSA's revised target

Race and Gender Group	Median Workforce Profile 2021 Sub-Sector 6	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve DEL BF Target over 7 years	Median % Black Females in level below	% Ratio BF to Blacks in level below	SEIFSA Proposed Revised Target	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve SEIFSA's target over 7 years
Black Female	11.4%	25,0%	13.6%	39%	11.5%	17.7%	23.5%	12.1%	37.4%

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It is submitted that it is clear from the above figures that the DOEL's proposed final target of 25% will be unachievable given the % black females in professionally qualified and skilled technical levels in 2021 and the difficulties experienced by the sub-sector to attract females as referred to in SEIFSA's 13 June 2022 response.

The % black female target proposed by SEIFSA, although still very challenging, at least will have a prospect of being achieved and SEIFSA will be do everything in its powers to encourage and facilitate its achievement.

If SEIFSA's proposed revised target is achieved, the % black females in the level will double, which means that the DOEL's objective of significantly accelerating the pace of employment equity transformation in the sub-Sector will be achieved. Again, we implore the DOEL to accept SEIFSA's counter position.

Skilled Technical

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	SEIFSA Proposed Revised Targets
Black	66,1%	66,0%	88,0%	81,0%	88,0%	84.5%
Black Male	54,9%	54,3%	44,0%	62,0%	50,4%	61.5%
Black Female	11,3%	11,7%	44,0%	19,0%	37,6%	23,0%

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The DOEL's proposed final sector targets of 88% blacks and 37.6% black females have been calculated to be unachievable having regard to the data provided in respect of the criteria in the paragraph below.

Table setting out basis for SEIFSA's conclusion that the DOEL's proposed final % black target is unachievable and motivation for acceptance by the DOEL of SEIFSA's revised target

Race and Gender Group	Median Workforce Profile 2021	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	Required increase in % Blacks over 7 years	The % Black attrition over the past 3 years	% White and Foreign National attrition over the past 3 years	% Ratio Black appointments vs Opportunities to achieve DEL target	% Blacks in level below (SEIFSA data set)	SEIFSA Proposed Revised Target	Required increase in % Blacks over 7 years	% Ratio Black appointments vs Opportunities to achieve SEIFSA's Revised target	% Increase in Blacks over the past 2 years	% Ratio Bl appointments made vs Opportunities that over past 2 years
Blacks	66%	88%	22%	15.3%	15.2%	86.71%	87.3%	84.5%	18.5%	84.3%	3.2%	74.1%

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It is submitted that although there is only a 2.3% difference between the DOEL's proposed final target and SEIFSA's revised targets, this % is significant when it comes to the achievability of the respective targets.

Although the 3.2% increase over the past two years (i.e., 11.2% projected over 7 years) and the 74% ratio of black appointments vs. opportunities is partly attributable to the current lack of drive to achieve employment equity transformation in the sub-sector (less than in the professionally qualified level, it is submitted), the contribution of the availability of blacks with the requisite qualification, skills and experience thereto cannot be ignored.

Increasing the ratio of % black appointments in relation to the anticipated opportunities arising by 10%, from 74% (presently) to 83% will already be very challenging in view of the above figures and the fact that members in sub-sectors 6 and 7 have engineering-based businesses, requiring a significant percentage of their employees in the top four levels to have engineering degrees and/or math's and/or science qualifications.
As mentioned above there is no alignment whatsoever between the percentage available blacks with such qualifications and their % representivity according to the EAP.

The achievement by SEIFSA's affiliated membership of a revised target of 84.5% is already extremely challenging given all the criteria and figures set out above.

Burdening members in the sub-sector with an even higher black target is bound to result in push back and will only serve to undermine the DOEL's above objective.

However, its achievement will be an incredible feat and should certainly satisfy the DOEL's objective of significantly accelerating the pace of employment equity

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transformation in the sub-sector. We therefore strongly urged the DOEL to accept this.

Table setting out basis for SEIFSA's conclusion that the DOELs proposed final % black female target for the level is unachievable and motivation for acceptance by the DOEL of SEIFSA's revised target

Race and Gender Group	Median Workforce Profile 2021 Sub-Sector 6	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve DEL BF Target over 7 years	% Black Females in level below (SEIFSA data set)	% Ratio BF to Blacks in level below	SEIFSA Proposed Revised Target	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve SEIFSA's Target over 7 years
Black Female	11.5%	37.6%	26.1%	41.5%	9.8%	11%	23%	11.5%	23%

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It is submitted that it is clear from the above figures that the DOEL's proposed final black female target of 37.6% will be totally unachievable given the % black females in skilled technical levels and semi-skilled levels in 2021 (of 11.5% and 9.8% respectively) and the difficulties experienced by the sub-sector to attract females referred to in SEIFSA's 13 June 2022 response in your possession.

The % black females target proposed by SEIFSA, although still very challenging, will at least have a prospect of being achieved and SEIFSA will do everything in its powers to encourage and facilitate its achievement.

If SEIFSA's proposed revised target is achieved, the % black females in the level will double, which means that the DOEL's objective of significantly accelerating the pace of employment equity transformation in the sub-sector will be achieved.

We strongly implore the DOEL to agree to this revised target.

Persons with Disabilities

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	SEIFSA Proposed Revised Targets
Disability	1,6%	1,8%	2,0%	2.0%	2,0%	2.0%

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The DOEL's proposed Final Sector Targets in respect of Persons with Disabilities have been calculated by SEIFSA to be achievable on aggregate over 7 years and therefore agreed on behalf of its affiliated membership in Sub-Sector 6 as indicated above.

SEIFSA'S RESPONSE TO THE DOEL'S PROPOSED FINAL SUB-SECTOR 7 TARGETS

Top Management

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response
Black	27%	30.3%	50,0%	39,0%	40,0%
Black Male	19%	15.8%	25,0%	21,0%	25,0%
Black Female	8%	14,5%	25,0%	18,0%	15,0%

The DOEL's proposed final sector targets in respect of top management have been calculated by SEIFSA's affiliated membership to be achievable on aggregate over 7 years and therefore agreed in Sub-Sector 7 as indicated above.

Senior Management

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response
Black	33,4%	37.5%	60,0%	55,0%	55,0%
Black Male	23,5%	24.8%	30,0%	34,0%	35,0%
Black Female	9,9%	12.7%	30,0%	21,0%	20,0%

The DOEL's proposed final sector targets in respect of senior management have been calculated by SEIFSA to be achievable on aggregate over 7 years and therefore agreed to on behalf of its membership in Sub-Sector 7 as indicated above.

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Professionally Qualified

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	SEIFSA Proposed Revised Targets
Black	47,7%	52,1%	75,0%	65,0%	70,0%	70,0%
Black Male	33,5%	38,6%	37,0%	45,0%	45,0%	47.0%
Black Female	14,2%	13,5%	38,0%	20,0%	25,0%	23%

The DOEL's proposed final sector target for blacks in respect of the professionally qualified occupational level has been calculated by SEIFSA to be achievable on aggregate over 7 years and therefore agreed to on behalf of its membership in sub-sector 7 as indicated above.

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However, the DOEL's proposed final sector targets for black females of 25% has been calculated to be unachievable having regard to the data provided in respect of the criteria in the paragraph below.

Table setting out basis for SEIFSA's conclusion that the DOELs proposed final % black female target for the level is unachievable and motivation for acceptance by the DOEL of SEIFSA's revised target

Race and Gender Group	Median Workforce Profile 2021 Sub-Sector 6	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve DEL BF Target over 7 years	Median % Black Females in level below	% Ratio BF to Blacks in level below	SEIFSA Proposed Revised Target	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve SEIFSA's Target over 7 years
Black Female	13.9%	25,0%	11.1%	43%	18%	23.4%	23.5%	9.6%	39.3%

It is submitted that it is clear from the above figures that the DOEL's proposed final target of 25% will be unachievable given the % black females in professionally qualified and skilled technical occupational levels in 2021 (of 13.9% and 18% respectively), the ratio of % females to blacks in skilled technical (of 23.4%), and the difficulties experienced by the sub-sector to attract females as referred to in SEIFSA's 13 June 2020 correspondence.

The % black females target proposed by SEIFSA, although still very challenging, at least will have a prospect of being achieved and SEIFSA will be do everything in its powers to encourage and facilitate its attainment.

If SEIFSA's proposed revised target is achieved, the % black females in the level

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would have increased significantly, which means that the DOEL's objective of significantly accelerating the pace of employment equity transformation in the sub-Sector will be achieved. We strongly urge the DOEL to accept it.

Skilled Technical

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	SEIFSA Proposed Revised Targets
Black	66,0%	81.9%	88,0%	88,0%	88,0%	88,0%
Black Male	49,2%	62.7%	44,0%	63,5%	50,4%	60,0%
Black Female	16,8%	19.2%	19.2%	24,5%	37,6%	28,0%

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The DOEL's proposed final sector target for blacks in respect of the professionally qualified occupational level has been calculated by SEIFSA to be achievable on aggregate over 7 years and therefore agreed to on behalf of its membership in sub-sector 7 as indicated above.

However, the DOEL's proposed final sector targets for black females of 37.6% has been calculated to be unachievable having regard to the data provided in respect of the criteria as set-out in the paragraph below.

Table setting out basis for SEIFSA's conclusion that the DOEL's proposed final % black female target for the level is unachievable and motivation for acceptance by the DEL of SEIFSA's revised target

Race and Gender Group	Median Workforce Profile 2021 Sub-Sector 6	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve DEL BF Target over 7 years	% Black Females in level below (SEIFSA data set)	% Ratio BF to Blacks in level below	SEIFSA Proposed Revised Target	Required increase in % Black Females over 7 years	% Ratio BF Appointments to Black Appointments required to achieve SEIFSA's Target over 7 years
Black Female	18%	37.6%	19.6%	64.7%	17.4%	17.9%	28%	10%	26.7%

It is submitted that it is clear from the above figures that the DOEL's proposed final black female target of 37.6% will be totally unachievable given the % black females in skilled technical levels and semi-skilled levels in 2021 (of 18% and 17.3% respectively), as well as the % ratio black females to blacks in semi-skilled of 17.9%, and the difficulties experienced by the sub-sector to attract females as referred to in SEIFSA's 13 June 2022 response.

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There is no possibility whatsoever, given the above 2021 figures, that the required % ratio of black females appointments in relation to black appointments of 64.7% required to achieve the DOEL's final black females target can be achieved over 7 years.

Insistence by the DOEL of such a totally unrealistic target can only lead to negativity and resistance by Sub-Sector 7 members to employment equity transformation and will result in the undermining of the DOEL's objective of introducing sector targets.

The % black females target proposed by SEIFSA, on the other hand, although still very challenging, will at least have a prospect of being achieved and SEIFSA will be do everything in its powers to encourage and facilitate its attainment.

If SEIFSA's proposed revised target is achieved, the % black females in the level would have increased significantly (by 10%), which means that the DOEL's objective of significantly accelerating the pace of employment equity transformation in the sub-sector will be achieved. We strongly urge the DOEL to accept this revised target.

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Persons with Disabilities

Race and Gender Group	Workforce Profile 2021 Sub-Sector 6 DEL	Workforce Profile 2021 Sub-Sector 6 SEIFSA	Initial Proposed Target By DEL	Original Targets Proposed by SEIFSA	'Final' Proposed Target by DEL with SEIFSA's Indicative Response	SEIFSA Proposed Revised Targets
Disability	2.0%	1,1%	2,0%	1.6%	2,0%	2.0%

The DOEL's proposed final sector targets in respect of persons with disabilities have been calculated by SEIFSA to be achievable on aggregate over 7 years and therefore agreed to on behalf of its membership in sub-sector 7 as indicated above.

7. CONCLUDING REMARKS

Thank you for allowing us the necessary time and space to finalise our internal processes.

Should you require, we would be more than happy to meet with you and your team in order for us to discuss any concerns you may have and deal with our submission in the hope that we may indeed find consensus on this critically important matter for the metals and engineering industry and indeed South Africa.

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Yours Faithfully

Lucio Trentini
Chief Executive Officer

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12 JUNE 2023

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Dear Mr Mkaliphi

SUBMISSION: DRAFT EMPLOYMENT EQUITY REGULATIONS 2023

Recalling that BUSA is the apex Business body in South Africa, representing Business's view on economic, social, trade, environment, and transformation issues; at national (inclusive of Nedlac), and international fora. BUSA was formed in 2003 and is constituted by organisational members such as: unisectoral business organisations; corporate representative organisations; chambers of commerce and industry; as well as professional organisations. Our membership reaches across the major sectors of the economy, from AgriSA, the Minerals Council of South Africa, the Steel & Engineering Federation of South Africa, the Hospital Association of South Africa, to the Banking Association of South Africa. It includes representation from chambers of commerce and industry, such as, Small Business Initiative; chambers representing multinationals such as Amcham; as well as, representatives of corporate South Africa, such as the Manufacturing Circle, and Business Leadership SA.

REGISTRATION NUMBER: 2014/042417/08
PRESIDENT: Bonang Mohale **VICE PRESIDENT:** Adrian Gore **CEO:** Cas Coovadia **NEDLAC CONVENOR:** Kaizer Moyane
DIRECTORS: Bongi Kunene, Busisiwe Mavuso, Busisa Jiya, Christopher Campbell, Deidre Penfold, Gareth Ackerman, John Dludlu, Mike Mabasa, Michelle Constant, Roger Baxter, Stavros Nicolaou, Zoleka Lisa.

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BUSA seeks to be a constructive contributor to economic growth, social prosperity, and transformation in South Africa.

BACKGROUND

BUSA has consistently and constructively engaged in the legislative process which culminated in the amendments that empower the Minister of Employment and Labour to set numerical employment equity (EE) targets for sector or sub-sectors. BUSA has always understood that sector EE targets would be set by means of regulations after proper consultation with the sector(s) concerned. We are aware that the Department of Employment and Labour (DEL), in anticipation of the eventual enactment of the empowering legislation, engaged informally with various sectors of the economy on proposed targets. Some sectors participated and arrived at tentative "agreements" with the DEL on their proposed sector targets. Other sectors opted to wait for the legislative amendments to be promulgated before consulting with the DEL on their proposed targets.

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The DEL published proposed targets for various economic sectors on 12 May 2023 for public comments within 30 days, i.e. until 12 June 2023. It is not clear whether the DEL considers the process of public comments as the consultation envisaged in the new section 15A(2) of the amended Employment Equity Act. In our view, the notice in the gazette is probably what is contemplated in section 15A(4), which should happen **after** consultation has taken place. These concerns are further explained below. BUSA would welcome clarity from the DEL on this aspect.

On 19 May 2023 BUSA wrote to the DEL to highlight, amongst other things, that the proposed EE targets published on 12 May 2023 were flawed in a number of respects and proposed their withdrawal and re-issuing to enable proper consideration. This step would have cured the defects in compliance with section 15A(4) insofar as public comments are concerned, but would not replace proper consultation with the sectors as envisaged under section 15A(2).

After following up with the DEL for its response, on 30 May 2023 BUSA received the following terse response via text: "*We don't respond to public comments. We just consider them as we are required by law.*" BUSA considers this response by the DEL not only arrogant, inappropriate and completely unacceptable – it seriously undermines our trust in the DEL's bona fides.

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CONCERNS

With respect to the draft regulations setting out proposed sector targets, BUSA makes the following observations:

Procedure

From a legal viewpoint, the Employment Equity Amendment Act (EEAA) has not been promulgated and therefore any publishing of regulations, draft or otherwise, are illegal. Our view is that there is no legislation of application that allows an interpretation that the Department could publish the draft regulations prior to the EEAA being of full force and effect.

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Further to the above, the provisions of section 15A have not been complied with as they first require the Department to publish the proposed Sectors and then engage in consultations, as well as thereafter publish the draft regulations for comment in the Gazette. This is an intentional provision as following this process will ensure rationality, justifiability and compliance.

Section 15A also requires consultation, and consultation in and of itself at law, requires a joint consensus-seeking exercise where parties disclose, engage on and share relevant data, information and insights in the interest of achieving the most appropriate outcome. It is common cause across almost all our members, that the engagement with the Department was fragmented, one-sided and characterised by bad faith. For example, in some instances, targets that had been aligned on, were significantly changed by the Department in the draft regulations without any justification. Also, information submitted by sectors was by and large omitted from deliberations.

The above approach does not comprise "consultations" required under section 15A of the EEAA nor as envisaged at law. The provisions of sections 15A have, in any event, not been complied with by the Minister. Section 15A of the EEAA provides that -

> *Determination of sectoral numerical targets 15A.*
>
> *(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).

The Minister has not complied with section 15A(1), in that for example, in consolidating the diverse sectors into one (e.g. manufacturing), the Minister has failed to consider the different circumstances being faced in the sub-sectors.

Substance

It is not clear which economic factors informed the DEL's thinking on its proposed targets per sector. Over the past few years, the South African economy has experienced various headwinds that constrain growth, including skills shortages, digitalisation, the Covid-19 pandemic, persistent electricity shortages and other service delivery failures. Our stubbornly high unemployment rate is symptomatic of this lack of economic growth, which limits the capacity of businesses to generate employment opportunities.

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We anticipate, given the current economic cycle, that businesses will focus on building efficiencies and productivity to offset material increases in input costs. This focus can result in the expansion of existing jobs that may not entail an upward movement in occupational levels. Incumbents may well benefit, but this will not be recognised in determining compliance with EE targets as the compliance measurements concentrate on changes in occupational levels only.

In our letter of 19 May 2023 we highlighted some of the problems with proposed targets, including the targets not adding up to 100% in some respects. It is also noted that the draft regulations require employers to select either national or regional Economically Active Population (EAP) figures; but not in combination (based on enterprise operations on a regional and/or national basis).

Given South Africa's skills shortage, there is an increased divergence between EAP ratios and the make-up of suitably qualified persons in South Africa. Notably there are multiple references in the EEA to equitable representation of suitably qualified people from designated groups. However, the draft sector numerical targets are built on EAP statistics alone and employers are required to formulate EE targets and plans on this basis. Whilst it is acknowledged that lack of available skills can constitute a justifiable reason for not attaining targets, it can be argued that it is incongruent and impracticable for the Minister and employers to set targets without appropriate cognizance taken of the pool of suitably qualified persons.

Existing regulations and legislation

BUSA is also concerned about the interpretation of Section 217 of the Constitution of the Republic of South Africa, 1996 ("the Constitution") which requires procurement by organs of state and statutory institutions to be fair, equitable, transparent, competitive and cost-effective and implemented in a manner which seeks to protect or advance previously disadvantaged persons. There is a serious concern that the EEAA provisions read along with the draft regulations create a framework for procurement that could lead to abuse. The draft regulations cannot in our view create a framework that contradicts that which is mandated in the PPPFA and related statutes.

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This submission is not exhaustive; BUSA members will also submit separate comments on these, and other concerns that may be specific to their sectors.

CONCLUSION

Given the importance of the transformation agenda for the country, and BUSA's commitment to inclusive growth, we urge the DEL to conduct the process of target-setting with extra care. We believe that a procedurally sound process is likely to arrive at realistic targets for sectors and/or sub-sectors and increase compliance with set targets. Otherwise, the DEL is likely to face avoidable and costly litigation, which will only derail the transformation objective.

We hold ourselves open to engagement and urge the Department of Employment and Labour to consult within the spirit of joint consensus-seeking. Our rights are reserved.

Kind regards

Cas Coovadia
CHIEF EXECUTIVE OFFICER

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RETAIL ASSOCIATION

12 June 2023

To: The Department of Employment & Labour

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SUBMISSION ON THE PROPOSED EMPLOYMENT EQUITY SECTOR TARGETS

1. INTRODUCTION

1.1 On 12 May 2023, the Minister of Employment and Labour published ("the Minister"), in the Government Gazette, for public comment, Draft Employment Equity Regulations in which he has proposed numerical targets for several sectors of the economy[1].

1.2 This submission is in response to that Government Gazette and is made by the Retail Association.

2. THE RETAIL ASSOCIATION

2.1 The Retail Association is a voluntary business association made up of a number of large national retailers who sell clothing, food, homeware, sportswear and jewellery.

2.2 The Retail Association deals with matters of broad labour and socio-economic interest to retailers, including employment equity.

2.3 As a point of departure, the Retail Association and its respective members acknowledge:

[1] Government Gazette No 48589 of 12 May 2023

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- that the pace of transformation in South Africa has not been as swift as the DeL and/or civil society might want (taking into account that the retail sector has been impacted by significant local and international events); and

- the importance of ensuring that workplaces are transformed so as to ensure the equitable representation of **suitably qualified** people from designated groups.

2.4 The Retail Association is fully committed to transformation within workplaces and its comments contained in this document are focused primarily on questions of process, practicality and implementation which we are of the view required reconsideration by the Minister before the final targets are published in the Government Gazette.

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3. STATUS OF LEGISLATION AT THE TIME OF SUBMITTING THESE COMMENTS

3.1 The Retail Association must, at the outset of this submission, note its concerns taking into account the status of the amended EE legislation:

3.1.1 Although the EE Amendment Act has been signed (assented to) by the President, the amendments contained therein are not yet in force and effect in that the President has not yet published a proclamation date in the Government Gazette.

3.1.2 Despite the EE Amendment Act not yet being in force and effect, the Minister has, by publishing the proposed EE numerical targets for public comment, exercised a power which is not yet conferred upon him in terms of law.

3.1.3 The sequence of events in terms of which the Minister / Department of Employment and Labour ("DeL") has elected to follow in preparation for the EE Amendment Act to be brought into force and effect, is questionable. As the Retail Association understands it, the statutory sequence of events should be as follows[2]:

[2] The RA is of the view that the Minister / DeL have failed to follow the correct statutory sequence

3.1.3.1 As already mentioned above, the President is required to publish, in the Government Gazette, a proclamation date on which the EE Amendment Act will come into force.

3.1.3.2 Only once the Amendment Act is in force and effect, is the Minister then empowered, from that date, to do the following:

a. publish a notice identifying specific national economic sectors;

b. publish regulations prescribing the criteria to be taken into account in determining numerical employment equity targets;

c. consult with each sector or part of a sector;

d. take advice from the Commission for Employment Equity;

e. publish, in the Government Gazette, for public comment (30 days), proposed numerical targets for each sector;

f. consider the comments received from interested parties; and

g. then set, by publication in the Government Gazette, numerical employment equity targets for any national economic sector or part of a sector.

3.1.4 It is noteworthy to comment on step (b) above in terms of which the Minister is required to publish regulations prescribing criteria to be taken into account in determining numerical targets. To the best of our knowledge, the status of the Draft

Regulations which were published in the Government Gazette[3] in September 2018 ("2018 Draft Regulations") for public comment, are unknown to the labour market in general. In order to give context to the Retail Association's concern:

3.1.4.1 There has been no indication whatsoever from the DeL as to whether the version of the 2018 Draft Regulation has or will change since being published for public comment in 2018 (almost 5 years ago).

3.1.4.2 The DeL expects interested parties to comment on the proposed EE sector targets when the status of the 2018 Draft Regulations (which will prescribe what criteria should be taken into account when the Minister sets targets) is unknown.

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3.1.4.3 In the absence of knowing whether the 2018 Draft Regulations have or will change, interested parties commenting on the current Government Gazette containing the proposed sector targets are doing so on the assumption that the criteria prescribed in the 2018 Draft Regulations will remain the same in the final version of the Regulations that will eventually be published. The Retail Association is of the view that it is unacceptable that interested parties have been called onto comment on the proposed EE targets in these circumstances.

3.1.4.4 Regulation 7A (Determination of Numerical Targets) and Regulation 16 (certificate in terms of s53) of the 2018 Draft Regulations have a direct bearing on the targets being proposed in the current Government Gazette.

3.1.4.5 In the event that the 2018 Draft Regulations have or will change before the Amendment Act comes into force and effect, such changes may have an impact on the submission being made by the Retail Association in this document.

3.1.5 In light of this, The Retail Association reserves its rights to supplement its comments, should it be required.

[3] Government Gazette No 41923 of 21 September 2018

4. PREVIOUS "CONSULTATION" WITH THE RETAIL ASSOCIATION

4.1 The DeL reached out to the Retail Association in October 2018 (shortly after the EE Amendment Bill and 2018 Draft Regulations were first published for public comment) in order to enter discussions with the retail sector on proposed EE targets.

4.2 To the best of our knowledge, the Retail Association was the very first employer association to meet with the DeL who requested that the retail sector start participating in the consultations in terms of the Employment Equity Amendment Bill.

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4.3 As the DeL knows, the Retail Association, from the outset, agreed to meet with the DeL on the understanding that the DeL's consultation was premature but that the retail sector was (and still is) committed to transformation and as such, was willing to engage the DeL.

4.4 The Retail Association was also willing to engage the DeL at that point in that the Retail Association was informed, on several occasions by the DeL officials who requested the meetings, that the EE Amendment Bill was imminently going to become law. As is now common knowledge, there was no imminency in the Amendment Bill becoming law. In fact, almost 5 years have passed since the Retail Association's first engagement with the DeL and for obvious reasons, this significant passing of time impacts the submissions made by the Retail Association.

4.5 At the very first meeting with the DeL in October 2018, the Retail Association informed the DeL that it (the Retail Association) does not represent the entire retail sector. The Retail Association requested the DeL to also contact the other employer bodies representing the retail sector[4] and more importantly, noted that most of the employer associations represent only large retailers (South African owned). The Retail Association noted that it would be important for the DeL to also reach out to the international retailers (who have operations in South Africa) and to also include the medium sized

[4] The Retail Association provided the DeL with contact details for both CGCSA and NCRF

retailers / franchise owned stores (most of which are family owned) to ensure a more inclusive engagement. The point that was made and remains to this day, is that the Retail Association is of the view that given the nature of the retail sector, the DeL needed to ensure that it consulted broadly enough within the industry.

4.6 The DeL will recall that in November 2020, the Retail Association withdrew from the "consultation" process with the DeL in that the members of the Retail Association were unable, at that point in time, to reach consensus on the targets proposed by the DeL.

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5. EXPECTATION OF "FRESH" CONSULTATION PROCESS & CONSULTATION IN GOOD FAITH

5.1 The Retail Association is of the view that there is an obligation on the DeL to start with a new / fresh consultation process with the retail sector.

5.2 As already mentioned, almost five years have passed since the DeL first (in 2018) started engaging with the retail sector on this matter. There have been significant changes in South Africa's labour market since 2018 and these changes (or disruptions) have had a direct impact on an employer's workforce.

5.3 The changes / disruptors, for obvious reasons, need not be dealt with in detail but for ease of reference they include COVID19 which started in 2019, loadshedding which continues to only get worse, the riots / unrest in 2021 which directly impacted the retail sector as well as the 2022 KZN floods which also significantly damaged businesses in the retail sector.

5.4 During the period that the Retail Association engaged with the DeL, the Retail Association relied on aggregated data (which data it spent a significant amount of time obtaining and analysing from its members) that is now out of date.

5.5 The Retail Association is of the view that the Minister is not relieved of his duty to consult under section 15A (2) of the Amendment Act once it is actually in force and effect. More importantly, that the consultation be based on the current (not outdated) economic,

social and labour market trends with specific regards to Regulation 7A as it appears in the 2018 Draft Regulations (which we have already mentioned we do not know the status of such Regulations). If the intention is for Regulation 7A (as it appears in the 2018 Draft Regulations) to remain the same when promulgated, such Regulation states the following: *"For the purpose of determining a numerical target in terms of section 7A, any relevant criteria may be taken into account including:*

a) *the qualification, skills, experience [and the capacity to acquire, within a reasonable timeframe, the ability to do the job];*

b) *the rate of turn-over and natural attrition within a sector;*

c) *recruitment and promotional trends within a sector."*

5.6 Of importance to note is that the above is not a closed list of criteria.

5.7 As a reminder, to ensure that the Retail Association's position on this matter does not come as a surprise to the DeL, set out below is an extract from a joint written submission the Retail Association and CGCSA made to the DeL in November 2019:

- *"The CGCSA, the RA and its respective members have agreed to participate in this "pre-consultation" process, in good faith, pending the promulgation of the Employment Equity Amendment Bill. However, the obligation to consult under section 15A (2) of the Amendment Bill <u>after</u> it has been passed into law, will still be required. As voluntary industry associations, we believe CGCSA and the RA's members have made significant strides to indicate their intention of engaging with DeL in good faith. This is despite the fact that the proposed Amendment Bill has not been passed into law, as yet.*

- *This "pre – consultation" is taking place in reference to data that may be out of date by the time the Amendment Bill is passed. As such, the revised proposal contained herein is subject to change depending on when the Amendment Bill is promulgated into law."*

5.8 It is not apparent to the Retail Association, from the targets proposed by the Minister in the current Gazette, that the DeL has taken into account, any of the criteria listed in Regulation 7A of the Draft 2018 Regulations in so far as the retail sector is concerned.

5.9 As the DeL knows, the Amendment Act clearly states that the setting of numerical targets are to ensure that ***suitably qualified*** people from designated groups are equitably represented at the workplace. While the Retail Association accepts that the EAP is certainly relevant, due consideration must also, in so far as it is possible, when determining targets, be given to what % of the population per race group has the qualifications/skills to perform the job at the occupational level concerned. This is data that one would certainly need when consulting with the sector to ensure that the targets set are rational, reasonable and achievable.

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5.10 The position of the Retail Association is that it is therefore important to note that while the EAP suggests a certain availability of candidates for Top and Senior Management levels (who require a minimum level of education, skills and experience), the availability of suitably qualified people in reality is significantly lower, inhibiting the sector's ability to achieve the targets set by the DEL. The reality for the DeL is that the Minister must comply with the law and as such, the Retail Association expects that it will have an opportunity to consult the DeL on more up to date data to demonstrate that the targets currently proposed by the Minister are simply not achievable, even within a 5-year period.

6. LAWS SHOULD BE CLEAR AND UNAMBIGIOUS

6.1 It is a well-established legal principle that laws should be drafted clearly and unambiguously.

6.2 The Retail Association is of the view that the proposed EE sector targets published in the Government Gazette for public comment significantly depart from this well-established legal principle.

6.3 Save for page 5 of the Government Gazette which sets out what is referred to as "*Very Important Information*", the Minister has published proposed EE sector targets in a manner in which raises several questions of implementation and application, all of which are not clear from the Government Gazette.

6.4 The confusion (resulting in assumptions being made from various quarters) within the labour market is apparent and this confusion will no doubt, if the proposed EE sector targets as they are currently set out in the Gazette remain unchanged, will no doubt result in unnecessary (and unintended) disputes and/or litigation which will only further delay the much-needed transformation at workplaces in South Africa.

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6.5 There is no explanation in the Government Gazette as to how the Minister envisages these proposed targets to apply in practice. For example, the targets are given in percentage format, but they do not add up to 100% and it is not clear why this is so. If the intention is not for the targets to add up to 100%, are employers then left to do as they wish, when developing their employment equity plans, with the remaining % of the workforce where no targets are prescribed?

6.6 Taking these concerns into account, the Minister should reconsider the format and manner in which he has chosen to set out the proposed targets and if not, at the very least, to provide the public with an explanation and / or documentation setting out how these targets were arrived at and how they are to be applied in practice.

7. NATIONAL VS REGIONAL EAP

7.1 The Retail Association is concerned with the information captured on page 5 of the Government Gazette under comment.

7.2 On page 5 of the Gazette is a heading "***VERY IMPORTANT INFORMATION***" and in the third paragraph (the paragraphs are not numbered), it states that "*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 /*

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operations in a particular Province. Designated employers cannot use the national and provincial demographics (EAP) at the same time."

7.3 As the DeL well knows, the large retailers in South Africa have stores in almost every Province in the country and their head offices (where top management and a significant number of senior management work from) are located in one Province only.

7.4 Applying only the National EAP for national retailers who have, by way of example, their head offices in KwaZulu-Natal or the Western Cape will result in unintended consequences and be difficult for national retailers. This is because given the demographics of where the head offices are located, appointing suitably qualified people from designated groups based on the National EAP only (to meet those targets) as opposed to the Provincial EAP may be impossible.

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7.5 The Retail Association is of the view that by restricting national employers from only being allowed to use the National EAP is setting employers up for failure from the start. This cannot be the intention of the DeL. A level of flexibility is required.

7.6 National employers should have a discretion to use National and/or or Regional EAP figures. For example, to use Regional for where their head office is located and then National for the remaining operations throughout the country.

8. SKILLS DEVELOPMENT

8.1 It is a well-known fact that South Africa's educational system (school and post school) continues to fail.

8.2 South Africa ranks, amongst the lowest in the world with its educational outcomes.

8.3 Prescribing unrealistic targets for a sector does not fix the real problem the country is facing – a dire skills crisis.

8.4 While the retail sector spends a considerable amount of time and money on skills training / initiatives for job seekers and youth as well as internal mentoring programmes, the skills crisis in South Africa is a significant barrier to ensuring equitable representation at workplaces by **suitably qualified people**.

8.5 The targets proposed by the Minister do not, to any extent, take into account the skills shortages experienced in South Africa and this again requires reference to the fact that it does not appear that when the Minister has, which he is required by law, taken into account Regulation 7A (a) of the 2018 Draft Regulations (which we again reiterate, we have no knowledge at the time of submitting these comments what the status of those Regulations are).

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9. DISABILITY TARGET

9.1 The Minister has proposed a disability target of 2% of the total workforce.

9.2 As the DeL knows, the members of the Retail Association are large retail employers and employ thousands of employees. For this reason, the proposed 2% target translates into a significant number of employees with disabilities who will need to be employed by the sector.

9.3 As repeatedly stated by the Retail Association when it engaged with the DeL from 2018 to 2020, the retail sector makes every attempt to employ people with disabilities.

9.4 The willingness of the retail sector to employ people with disabilities is not in question at all, the difficulty lies in job applicants / employees who are not willing, for various reasons, to disclose that they have a disability (bearing in mind that not all disabilities are visible).

9.5 Despite retail employers' best efforts to encourage employees to disclose their disability on employment, employees remain reluctant to disclose their disabilities / related

medical conditions. This was even evidenced during the COVID19 pandemic when employers were obliged (under COVID19 Directives published by the DeL) to accommodate people who were considered vulnerable for the purposes of COVID19. Despite retailers making every effort to get employees to disclose any comorbidities that would render them vulnerable at the workplace, employees simply did not do so.

9.6 The concern the Retail Association has is that the DeL has proposed a fairly robust target for disabilities in circumstances in which the employment of persons with disabilities is mostly out of an employer's control when job applicants /existing employees are not willing to disclose their disabilities (which they are entitled to do).

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9.7 The Retail Association, at the start of its engagements with the DeL in 2018, brought the following to the DeL's attention but it appears that what the Minister has proposed in the Gazette under comment, has ignored the below:

9.7.1 The South African Human Rights Commission ("SAHRC") published a research report on "Disability & Equality in South Africa (2013 – 2017)"[5]. According to that Report:

- *"As a designated employer in terms of the EEA, the public sector set its employment target for persons with disabilities at 2 percent for 2005. More than a decade later, this target has still not been met. In addition, even current statistics from the Commission for Employment Equity may not accurately reflect the position of persons with disabilities in the employment context, since people with 'invisible disabilities' (whether psychosocial, neurological, aural or intellectual) may not be aware of or report their disabilities, and will thus not be eligible to benefit from affirmative action measures such as those encompassed by the EEA."*

[5] https://www.sahrc.org.za/home/21/files/RESEARCH%20BRIEF%20ON%20DISABILITY%20AND%20EQUALITY%20IN%20SOUTH%20AFRICA%202013%20to%202017.pdf

9.8 As per the above extract from the SAHRC, the Public Sector has been unable to achieve a disability target of 2% over a period of more than 10 years.

9.9 Based on the fact that there is no EAP for persons with disabilities and given the difficulties experienced in recruiting and retaining disabled employees, the DeL should re-consider the disability target it intends prescribing.

10. **ARE THE TARGETS DISGUISED AS QUOTAS?**

10.1 The Retail Association is of the view that the answer to this question will be revealed in the manner in which the DeL expects implementation of the targets and the manner in which it reviews, assesses and enforces compliance with the prescribed targets.

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10.2 Section 15 (3) of the Employment Equity Act has always stated that the measures (affirmative action measures) include preferential treatment and numerical goals, but <u>exclude quotas</u>. What is clear is that the Minister is not permitted to treat the numerical targets as quotas.

10.3 Section 42 of the Employment Equity Act act empowers the Director-General ("DG") to assess whether a designated employer is implementing employment equity in compliance with the Act by considering a wide range of factors which now includes (in terms of section 42(aA) "*whether the employer has complied with a sectoral target as set out in terms of section 15A*" of the Act. It would be unlawful for the DG to order an employer to meet its sectoral targets if this was not reasonable in the circumstances.

10.4 The DeL would need to ensure that its officials, when conducting reviews/ assessments of compliance, strictly adhere to the provision that requires them to consider any reasonable justifications for non-compliance and that these are only goals/targets (not quotas).

10.5 Again, the Retail Association does not know the status of the 2018 Draft Regulations and to what extent, if at all, they will be amended before they are promulgated. If they change before promulgation, specifically Regulation 16 (4), the RA's comments provided in this submission may be subject to change.

11. UNINTENDED CONSEQUENCES

11.1 Taking into account the targets proposed by the Minister in the Government Gazette for the retail sector and in the event that the Minister decides to proceed with publishing these as the final targets (without following the correct legal process set out in paragraph 3.1.3.1 of this submission), the Retail Association is of the view that the following unintended consequences will follow:

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11.1.1 an exodus of needed skills from the country;

11.1.2 employers may choose to implement less optimal employment structures which will impact the employment rate in the country;

11.1.3 job creation at higher levels of occupation will be stifled;

11.1.4 foreign and local investment will be deterred;

11.1.5 companies will less likely be inclined to do mergers and acquisitions which could potentially lead to job losses;

11.1.6 effectively forcing certain race and gender job seekers out of their geographical residence locations in order to search for work if they do not match the provincial targets; and

11.1.7 result in greater salary differentials between low earning employees and senior / top management employees in that employers will be forced to attract the best talent from a specific race and gender (to meet the targets) which will, without a doubt, mean that these candidates will be in a position to negotiate salaries far higher than what is generally accepted as market related.

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11.2 Prescribing targets that are not based on up to date, relevant and accurate data as well an analysis of suitably qualified and skilled people within the EAP upon which the Dep appears to so heavily rely on in setting its targets cannot be said to be rational.

12. CONCLUSION

12.1 The Retail Association and its members remain committed to transformation but are strongly of the view that any sector targets proposed by the Minister must be based on accurate and up to date data so that such targets are rational, realistic and achievable.

12.2 The proposed sectoral targets have, in our view, been published with a lack of proper consultation. Once the Amendment Act comes into force and effect (a date yet to be determined by the President), consultation should start afresh and once there has been meaningful consultation based on accurate and up to date data applicable to the Sector, the Minister should only, at that point publish proposed targets for public comment.

12.3 To be clear, the Retail Association is not objecting to the concept of numerical targets being prescribed provided that:

12.3.1 the Minister follows the correct statutory process outlined in the Amendment Act;

12.3.2 the targets are based on accurate, credible and up to date data;

12.3.3 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; and

12.3.4 the targets are not, when the DeL undertakes reviews / assessments / enforcement of compliance, treated as quotas.

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12.4 In the circumstances, the Retail Association trusts that the DeL will seriously consider all of the submissions it receives from employers in response to the proposed EE Sector targets and that it will not treat this public comment process as a simple tick box exercise.

12.5 The Retail Association is firmly of the view that for numerical targets to achieve the purpose for which they were intended, there must, when the law empowers the Minister to do so, be a meaningful consultation process with the retail sector which is adequately representative of the retail sector and not just the large retailers.

Yours sincerely

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Electronically sent and therefore not signed

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Dear Sir/Madam

RE: COMMENTS IN RESPECT OF THE DRAFT EMPLOYMENT EQUITY REGULATIONS 2023 FOR PUBLIC COMMENT

1. INTRODUCTION

1.1 We act for the National Clothing Retail Federation of South Africa, (the **NCRF / our client**), who has instructed us to address this letter to you.

1.2 This letter is our client's response to the Department of Employment and Labour (the **DoEL**)'s publication of the Draft Employment Equity Regulations, 2023 (the **Draft Regulations**).

1.3 The Draft Regulations are purportedly published in terms of section 15A of the Employment Equity Act 55 of 1998 (the **Act**), which section is proposed to be inserted into the Act in terms of clause 4 of the Employment Equity Amendment Act 4 of 2022 (the **Amendment Act**) and public comment is invited. Written submissions are due by no later than Monday 12 June 2023.

1.4 We are instructed that the NCRF is a voluntary organisation whose members include retailers. It is noted for clarity that the NCRF members are at liberty to make individual submissions or submissions through other membership entities, which may differ in nuance and/or substance from this submission.

1.5 Our client has considered the Draft Regulations and in furtherance of legal advice, has noted various reviewable irregularities in the manner and procedure in terms of which the Draft Regulations have been published by the Minister of Employment and Labour (the **Minister**).

1.6 This letter sets out the NCRF's comments in response to the Draft Regulations, which comments are summarised as follows:

1.6.1 The Minister does not yet have authority to publish the Draft Regulations and thus the publication is *ultra vires* his powers;

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Senior Consultants CM Bouwer | IL Brink | RM Carr | PM Carter | RA Cohen | GH Damant | P Hart-Davies | MR Kyle | PM Maduna | A McAllister | MS Rusa | GI Rushton | JH Schlosberg | RJ van Voore | PE Whelan |
Group COO RJ Smith | **Group CFO** HI Harding | **Company Secretary** NL van Vuuren

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1.6.2 The pre-conditions prior to the publication of proposed sectoral targets as contemplated in section 15A(1)(2) and (4) of the Act have not been complied with by the Minister; and

1.6.3 The proposed sectoral targets include targets that create an absolute barrier to the prospective or continued employment or advancement of certain categories of people (including persons from designated groups).

1.7 For the reasons set out in this letter, our client urges the Minister to withdraw the Draft Regulations.

2. **THE MINISTER'S PUBLICATION OF THE DRAFT REGULATIONS IS *ULTRA VIRES***

2.1 We submit, on behalf of the NCRF, that the Minister's publication of the Draft Regulations is *ultra vires* of his powers because the procedural requirements contained in section 15A(1), (2) and (4) of the Act have not been complied with.

2.2 In addition, the Draft Regulations record that the Minister has published the notice "in terms of section 15A of the Amendment Act". For the reasons explained in this letter, the Minister cannot yet rely on section 15A as an empowering provision in the purported exercise of any power.

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2.3 Any exercise of power must be authorized by law.

2.4 Section 15A of the Act is the empowering legislation. This is also the section in terms of which the Draft Regulations are purportedly made. However, at the time of submission of this letter, there is no proclamation of an effective date for the Amendment Act. In the circumstances, the Minister does not have authority to publish the Draft Regulations as there is no empowering provision enabling him to do so.

2.5 Section 14 of the Interpretation Act 33 of 1957 (the **Interpretation Act**) permits certain actions to be undertaken *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 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 section 14. 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 to be 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).

2.6 In any event, even if section 14 of the Interpretation Act could be relied upon to justify the exercise of the powers in section 15A of the Act (which is denied), this section expressly states that the power to perform actions that may be necessary for bringing the law into operation only exists once the law is passed. A law is passed upon signature of the law concerned by the President - section 81 of the Constitution.

2.7 The Amendment Act was assented to and signed by the President on 6 April 2023. It was published in the Government Gazette on 14 April 2023.

2.8 Without suggesting that this is correct, at the earliest, the Minister was only empowered to perform the functions and exercise the powers contemplated in section 15A of the Act after 6 April 2023. These functions and powers include the identification of the national economic sectors and consultation with the sectors on the proposed sectoral targets. Insofar as the Minister sought to exercise these powers by means of the 2018 Regulations or sought to consult with "the sectors" prior to 6 April 2023, the Minister acted outside his powers.

2.9 The functions and powers contemplated in section 15A must be exercised in the prescribed sequence. The sequence is as follows:

2.9.1 the identification of the sectors with regard to the relevant Standard Industrial Classification codes (**SIC Codes**);

2.9.2 publication of the proposed sectors for public comment;

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2.9.3 consultation with the sectors concerned on proposed demographic targets (per occupational level, sub-sectors or regions within a sector, on the basis of any other relevant factor);

2.9.4 taking advice from the Commission for Employment Equity;

2.9.5 publication of the proposed sectoral targets for public comment.

2.10 The publication of the proposed targets on 12 May 2023 was made prematurely, out of sequence with the said prescribed process requirements.

2.11 In the circumstances, the Minister acted outside the scope of his powers under section 14 of the Interpretation Act, read with section 15A of the Act.

3. **THE IMPORTANCE OF THE PRE-CONDITIONS PRIOR TO THE PUBLICATION OF PROPOSED SECTORAL TARGETS AS CONTEMPLATED IN SECTION 15A(1)(2) AND (4) OF THE ACT**

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3.1 There is good reason for the requirement to first identify the sectors and to invite public comment before consulting on proposed sectoral targets. There is also a rational basis for section 15A(3) empowering the Minister to set different sectoral targets for various sub-sectors, in recognising that there may be certain sectors where a multitude of sub-sectors may require differentiation.

3.2 Varying skills sets are applicable within each sub-sector and the pool of suitably qualified persons from designated groups will differ, as well as varying degrees of an over- and under-representation of males or females (depending on the sector) which ought to be taken into account in identifying the various sub-sectors and proposing sectoral targets.

3.3 The power of the Minister to identify sub-sectors takes into account that there are variances in current workforce profiles, demographics, skills availability, qualifications, different challenges faced by each industry, and the extent to which some designated groups are under-represented in various sub-sectors. A 'one size fits all' approach was clearly not contemplated in the drafting of section 15A. This is also borne out by the fact that form EE 17 contained in the 2018 Regulations identified proposed sub-sectors. Yet, the proposed targets contained in the Draft Regulations published on 12 May 2023 failed to set targets for each of these sub-sectors. Despite the clear intention to set differentiated targets, the Draft Regulations adopt a 'one size fits all' approach which, in our view, exposes these targets to challenge for want of rationality.

3.4 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, our client has effectively been denied an opportunity to make any meaningful representations on the proposed sectoral targets.

3.5 The second pre-condition for the publication of proposed sectoral targets for public comment is consultation with the sectors concerned.

3.6 We are instructed that whilst certain engagements were conducted by the DoEL during the period 2019 to 2022, including with some entities in the retail sector, any purported consultation process prior to the Amendment Act having been passed is of no force and effect. In any event, any data that may have been provided by such entities is now out of date. On a proper reading of section 15A, fresh consultations ought to be conducted. Publication of proposed targets for 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 and each sector ought to be provided with an opportunity to be heard and to make representations before any targets are proposed and published for comment.

3.7 Only once the consultation process is concluded, should the Minister issue the draft sectoral targets for public comment in the Government Gazette.

3.8 It is therefore submitted on behalf of the NCRF that the procedural jurisdictional facts, whereby section 15A, once the Amendment Act takes effect, envisages a multi-stage process, have not been met by the Minister.

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3.9 For completeness' sake, the correct sequence of procedural requirements contemplated by section 15A is as follows:

3.9.1 The Minister must identify the proposed economic sectors, publish the proposed sectors in the Government Gazette, and, in terms of section 15A(4), invite public comment for a period of 30 days.

3.9.2 The Minister must seriously consider all public comments, amend the economic sectors if warranted, finalise the economic sectors, and publish same.

3.9.3 Once the sectors have been identified and published, the Minister must consult with the sectors on the proposed sectoral targets.

3.9.4 After consultation with the sectors concerned and on the advice of the Commission for Employment Equity, the Minister must publish the proposed sectoral targets for public comment for 30 days.

3.9.5 The Minister must seriously consider all public comments, amend the sectoral targets where applicable, and finalise and publish the sectoral targets.

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3.10 In addition to the procedural deficiencies set out above, our client is concerned that the proposed targets are deficient in that they include targets that amount to absolute barriers to the employment and/or advancement of certain categories of people.

3.11 By way of example, the proposed sectoral targets include 0% or 0.1% to 1.9% for certain designated groups, most noticeably for Coloured and Indian persons. This effectively amounts to an absolute barrier to prospective or continued employment or advancement of these categories of designated employees. The exclusion of members from designated groups (and people who are not from designated groups) is not constitutionally valid as it would not meet the constitutional imperative of recognition of equal respect and worth of all persons. Exclusion of these groups from competition for job opportunities means that the interests of those persons are ruled out of the equation from the outset.

3.12 In addition, the NCFRSA is concerned that the proposed targets do not meet the rationality test. In particular, it is not clear on what data the Minister's proposed sectoral targets are based. Our client requests to be provided with such data.

3.13 Our client further notes that there is very little correlation between the proposed targets and the economically active population numbers published by Statistics SA in the Quarterly Labour Force Survey for the fourth quarter of 2022 (October – December 2022). Whilst there does appear to be some correlation to the numbers presented to the retail sector during 2019, for the reasons already stated above, the consultation process in 2019 was premature and the various sectors ought to be consulted afresh.

3.14 In addition, our client notes that the Draft Regulations contain numerical inaccuracies in that certain of the percentage targets do not add up to 100%. Does this mean that a particular percentage of appointment or promotion decisions would not be subject to the application of demographic targets, or will these targets be amended to add up to 100%?

3.15 It is furthermore not clear how designated employers are to choose between national and provincial targets, particularly where head office structures and provincial outlets are concerned.

3.16 Our client respectfully refers the Minister to additional comments that our client understands will be submitted by the Retail Association and which are intended to address the substantive issues regarding the proposed targets in more detail.

4. CONCLUSION

4.1 Our client is committed to transformation in the workplace and supports affirmative action measures in the form of non-numerical initiatives and numerical goals but excluding quotas. Quotas are specifically excluded from the categories of affirmative action measures recognised

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in the Act. The NCRF takes comfort in the Minister's comment in his press release of 16 May 2023, that the targets are milestones and not quotas. The NCRF expresses the hope that any enforcement action based on an alleged failure to meet sectoral targets (once lawfully published) will properly take into account the justification for such alleged failure, as required by the Act.

4.2 For the reasons set out in this letter, we are instructed to urge the Minister to withdraw the Draft Regulations, as we hereby do, failing which our client's members shall be asked to consider their options.

4.3 Our client's rights are expressly reserved.

Yours faithfully

Sent electronically
Bowman Gilfillan
per: Talita Laubscher / James McKinnell / Melissa Cogger

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SEIFSA
Steel and Engineering Industries
Federation of Southern Africa

9 June 2023

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Dear Minister Nxesi,

DRAFT SECTORS AND EMPLOYMENT EQUITY SECTOR TARGETS IN TERMS OF SECTION 15 A OF THE AMENDED EMPLOYMENT EQUITY ACT NO 4 OF 2022: CALL FOR PUBLIC COMMENT

SEIFSA's response to the Department of Employment and Labour's final proposed Sector Targets, shared with ourselves in meetings held with Senior Officials from your Office on 13 and 14 October 2022 for manufacturing Sub-Sector 6 and 7, dated 28 November 2022, is attached hereto as ***Annexure A.***

The said ***Annexure A*** constitutes our final mandated position on the matter under reply.

Directors: E Monage (President), L Trentini (CEO)*, T Chibanguza (COO)*, N Ngwenya, P J du Plessis, T Tsehlo, E Volschenk, H Mamabolo,
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This notwithstanding, SEIFSA on behalf of its affiliated membership submits further motivation in response to the call for public comment related to Government Gazette No. 48589 dated 12 May 2023.

Accordingly, this letter is written in response to Government Gazette No. 48589 containing the list of Sectors and Sector Targets ('Draft Sector Targets Gazette'), as proposed by the Minister of Employment and Labour, pursuant to the provisions of Subsections (1), (2) and (4) of Section 15 A of the Amended Employment Equity Act No 4 of 2022. ('the Act').

SEIFSA, on behalf of its affiliated membership, strongly raises concerns in relation to:

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1. The exclusion of Sub-Sectors in the Sectors published pursuant to the provisions of Sub-Section (1) and (4) of the Act and targets for such Sub-Sectors and in particular Sub-Sectors 6 and 7 of the Manufacturing Sector.

2. The requirement in the Draft Sector Targets Gazette that designated employers conducting their businesses/ operations nationally shall apply the National EAP is in conflict with the Constitutional Court Judgment in the matter of *Solidarity and Others v Department of Correctional Services and Others (CCT 78/15) [2016] ZACC 18.*

3. One Sector Target proposed for both Sub-Sectors 6 and 7 of the Manufacturing Sector in respect of each Occupational Level.

4. The Numerical Targets set by the Minister of Employment and Labour for the Manufacturing Sector were not set pursuant to consultation by the said Minister as envisaged by Section 15 A of the Act.

<u>We deal with each point below:</u>

1. Exclusion of Sub-Sectors in the Sectors published pursuant to the provisions of Sub-Sections (1) and (4) of the Act

The Department of Employment and Labour published a comprehensive list of Sectors and Sub-Sectors in the 2018 Draft Employment Equity Regulations, based on the 7th Edition of the Standard Industrial Classification of all Economic Activities published by Statistics South Africa.

Sub-Sectors were identified and set out in 17 of the 18 Sectors listed in 2018 Draft Employment Equity Regulations, with SEIFSA's affiliated

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membership predominantly falling in two of the seven Sub-Sectors of Manufacturing, namely:

(a) Manufacture of basic metals; fabricated metal products; except machinery and equipment (Sub-Sector 6); and

(b) Manufacture of electrical equipment; machinery; equipment; motor vehicles; trailers; semi-trailers; transport equipment; installation of machinery and equipment (Sub-Sector 7).

The other Sub-Sectors of the Manufacturing Sector cater inter-alia for food, textiles, pharmaceuticals, wood, printing and petroleum manufacturers, whose industries, as well as those of Sub-Sectors 6 and 7, are all very diverse, situated in different localities and with different skills requirement, availability and working environments.

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These factors have all led to different percentage (%) Black, Black Male and Black Female representation in the top four Occupational Levels and as a result, the need for each of them to have their own, different Sector Targets.

It is respectively submitted that the reason that the Act provides for the setting of different numerical targets for different Sub-Sectors within a Sector, is that it recognizes that the above differences, which are not insignificant, exist between Sectors and Sub-Sectors within a Sector, justifying separate targets for Sectors and their Sub-Sectors.

This was furthermore recognised by the Department of Employment and Labour in engaging with different Employer Organisations representing designated employers in each of the two Sub-Sectors and its decision was vindicated by the analysis of the two above SEIFSA affiliated membership's Sub-Sectors' aggregated 2021 data via the EEA2 Reports. This point is further amplified in ***Annexure A*** attached to this submission.

Although closer to each other than to the other Sub-Sectors in Manufacturing, they clearly showed significant differences between the two Sub-Sectors' respective % Black, Black Male and Black Female representativity in each of the applicable occupational levels, which contributed to the affiliated membership deciding that each Sub-Sector should have its own Sector Targets as opposed to combined Sector Targets, which possibility SEIFSA could have explored if mooted from the outset.

There is no doubt similarly also differences between the % Black and Black Female representativity of designated employers in the other

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Sub-Sectors of the Manufacturing Sector, justifying each having their own Sector Targets in respect of each applicable occupational level.

Similarly, there are also very likely to be differences in the percentage black and black female representativity between the different Sub-Sectors of most Sectors, for which now one set of Sector Targets is proposed by the Department, irrespective of how big these differences are, or how achievable these targets on aggregate might be.

No explanation has been offered, or rationale advanced by the Department for doing away with Sector Targets in the Draft Sector Targets Gazette for the Sub-Sectors it had been consulting with, or abruptly, in midstream, abandoning all consultations with the employer organizations representing designated employers in the different Sectors and Sub-Sectors it had been engaging with at the time.

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The only explanation that one is unfortunately drawn too is that the Minister intends to implement Sector Targets on its publicly stated intended implementation date of 1 September 2023 at all costs, knowing full well that this cannot be achieved if it still has to engage and finalise the consultation process with all the above Sectors and Sub-Sectors that it was busy engaging with, when it abruptly stopped engaging with them at the beginning of the year.

By only publishing Sector Targets for 18 Sectors, the Department might be hoping that it will be easier to appease 18 Sectors as opposed to the 18+ Sectors and Sub-Sectors (which could be more than this number) when it publishes its final targets, following consideration of the comments and objection to its proposed Draft Sector Targets.

It is respectively submitted that it is clear from the above that the Department has erred in halting the consultation processes it was busy following with the different Sub-Sectors and Sectors as provided for in the Act and publishing only Sector Targets for the main sectors in an attempt to hopefully achieve implementation of Sector Targets on 1 September 2023. By doing so, it has opened itself up to legal challenges, which will inevitably lead to this implementation date not being achieved and the process that the Department had quite rightly embarked upon, being further halted until the exhaustion of the ensuing legal proceedings.

This will, in all likelihood, result in the implementation of Sector Targets being delayed for far longer than it would have been, had the Department continued with its consultation processes and not tried to fast-track the implementation of Sector Targets on 1 September 2023.

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The Department is respectively urged to reconsider this course of action and to firstly conclude the engagements and processes that started with the different Employer Organizations in the different Sectors and Sub-Sectors, before re-issuing Sector Targets pursuant to Sub-Section (1) of Section 15A of the Act and to include therein the same Sub-Sectors as that were published in the 2018 Draft Regulations – as well as a Sector for activities which have been omitted therefrom by the Department such as for Membership Organisations such as Trade Unions and very possibly also Employer Organisations such as those affiliated to SEIFSA, in which regard you are referred to ***Annexure B,*** which is a Comparison between the Categories and Activities listed in the *Stats SA Classification Industrial Code 7th Edition* and *Economic Sectors and Sub-Sectors Published in the 2018 Draft Regulations* and in particular page 6 thereof.

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It is in any event submitted that, on a proper reading of Section 15 A of the Act, the Minister is obliged to consider the selection of Sub-Sectors or Regions within a Sector for inclusion in the Sectors published pursuant to the provisions of Sub-Sector (1) and Sector Targets published for them pursuant to the provisions of Sub-Sector (4) of the Act.

As it is, the 2018 Draft Regulations never became operative, with the result that the legal standing of the comprehensive list of Sectors and Sub-Sectors published in these Regulations, correctly based on the 7th Edition of the Standard Industrial Classification of all Economic Activities published by Statistics South Africa, must be called into question.

It is respectively submitted therefore that this list will need to be republished pursuant to the provisions of Subsection (1) of Section 15 A of the Act after giving all stakeholders in the different Sectors and Sub-Sectors a full opportunity to consult with the Department with regard thereto, in order to have legal standing.

2. The requirement in the Draft Sector Targets Gazette that designated employers conducting their businesses/ operations nationally shall apply the National EAP is in conflict with the Constitutional Court Judgment in the matter of *Solidarity and Others v Department of Correctional Services and Others (CCT 78/15) [2016] ZACC 18*

The Draft Sector Targets Gazette states that the National Economically Active Population (EAP) shall apply to designated employers conducting their businesses / operations nationally and that Provincial

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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 at the same time.

We draw to your attention this is in stark conflict with the Judgment in the above Constitutional Court matter in which it was held that where a Designated Employers has a national footprint, it should use the applicable Regional/ Provincial EAP in setting Goals for employees that are employed in its operations in a particular Province / Region.

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 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 national EAP aligned EE goals that may be set for the employer in the different Occupational Levels and an inability to achieve the organisation's overall goals.

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It is therefore strongly proposed that the Minister of Employment and Labour amends these directives accordingly, failing which they will be *ultra-vires*.

3. One Sector Target proposed for both Sub-Sectors 6 and 7 of the Manufacturing Sector in respect of each Occupational Level

SEIFSA on behalf of its affiliated membership has set out the basis for its submission that it is the intention of the Act that where there are differences between Sub-Sectors with regard their skills requirement and availability, industries localities in which they operate and working environments that result in differences in the representativity of the percentage blacks, black males and black females, that such Sub-Sectors should have their own Sector Targets.

SEIFSA therefore strongly contends that the Minister should provide for Sector Targets for Sub-Sectors 6 and 7 of the Manufacturing Sector, in which regard SEIFSA refers the Department to its submission to the Department dated 28 November 2022 (attached as ***Annexure A***) in respect of the different Occupational Levels and Persons with Disabilities and requests that they be considered and specifically included herein.

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The major differences between the Department's Final Targets and those proposed by SEIFSA for Sub-Sectors 6 and 7 are in respect of:

- The % Blacks in Skilled Technical of Subsector 6; and
- The % Black Females in Skilled Technical of Sub-Sector 6 and 7

Although SEIFSA recognizes the movement made by the Department in meeting the targets proposed by SEIFSA for the above Sub-Sectors in the different Occupational Levels during the course of the consultation process, it is submitted that the Department has not given sufficient recognition to the difficulties experienced by these Sub-Sectors with regard to the availability of black females in the skilled technical occupational level as well as what is achievable in in respect of black targets in Sub-Sectors 6, given the variables that SEIFSA has taken into consideration in calculating such achievability.

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The Department is in this regard is referred to the mandated submission made by SEIFSA with regard to:

- The expected lack of growth and/ or shrinkage (p.5 of SEIFSA's response dated 28 November 2022).
- The lack of availability of blacks and black females generally in the two Sub-Sectors (Paragraph's 6.3.1, 8.5 and 10.4 of SEIFSA's response dated 13 June 2022, which you have on file).
- The Table setting out the basis for SEIFSA's conclusion that the DOEL's proposed final % Black target is unachievable and motivation for acceptance by the DOEL of SEIFSA's revised target and motivation below it (p.15 of SEIFSA's response dated 28 November 2022).

4. The Numerical Targets set by the Minister for the Manufacturing Sector were not set pursuant to the consultation by the Minister envisaged by Section 15A of the Act

Although the approach taken by the Department in its consultations with SEIFSA and other Employer Organisations in respect of Sub-Sectors 6 and 7, up to 6 March 2023, when the meeting below was arranged, is not without criticism, recognition is given to the fact that the Department did respond positively to the targets proposed by SEIFSA on behalf of its affiliated membership in the above Sub-Sectors and presumably to the reasoning advanced by SEIFSA for such targets.

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A meeting was, pursuant to SEIFSA's above submission of 28 November 2022, arranged by the Department for 16 March 2023 at which meeting, the Department was to share its response to SEIFSA's above submission in respect of Sub-Sectors 6 and 7.

The Department, however, cancelled this meeting the day before and no other meetings were arranged and/or requested thereafter.

The next time that SEIFSA had any communication from the Department with regard to Sector Targets was when it published the Draft Sector Targets Gazette on 12 May 2023, which contains no targets for either Sub-Sector 6 or 7.

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In closing it is therefore respectively submitted that the Department's cessation of the above consultation process in respect of Sub-Sectors 6 and 7 precludes the consultation that took place between the Department and SEIFSA from constituting *consultation by the Minister* envisaged in Section 15 A of the Act.

By the same token, the numerical targets set by the Minister in the Draft Sector Targets Gazette for the whole of the Manufacturing Sector were not set pursuant to any *consultation by the Minister* envisaged by Section 15A, as no consultation took place between any of the employer bodies and the Department in respect hereof.

As the Department plans the way forward, we trust that the Office of the Honourable Minister of Employment and Labour and Senior Officials in the Employment Equity Directive will take careful cognizance of our submission in the best interest of our Country's transformational goals and objectives.

In your endevours, Honourable Minister, we implore you to be mindful of the fact that the Employment Equity Act, as an instrument for transformation, if implemented properly, has the potential to fundamentally reduce inequality in not only our affiliated memberships workplaces, but more importantly across the Country.

Yours Faithfully

Lucio Trentini
Chief Executive Officer

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03/04/2024

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Dear Minister Thulas Nxesi

BUSA SUBMISSSION: DRAFT REGULATIONS ON PROPOSED SECTORAL NUMERICAL TARGETS: GOVERNMENT GAZETTE NO. 50058

Introduction

BUSA is the apex Business body in South Africa, representing Business' views on economic, social, trade, environment, and transformation issues; at national (inclusive of Nedlac), and international fora.

It was formed in 2003; and is constituted by organisational members such as: unisectoral business organisations; corporate representative organisations; chambers of commerce and industry; as well as professional organisations.

Our membership reaches across the major sectors of the economy, from AgriSA, the Minerals Council of South Africa, the Steel & Engineering Federation of South Africa, the Hospital Association of South Africa, to the Banking Association of South Africa. It includes representation from chambers of commerce and industry, such as, the Small Business

REGISTRATION NUMBER: 2014/042417/08
PRESIDENT: Mxolisi Mgojo VICE PRESIDENT: Adrian Gore **CEO:** Cas Coovadia **NEDLAC CONVENOR:** Kaizer Moyane
DIRECTORS: Bongi Kunene, Busisiwe Mavuso, Christopher Campbell, Charlotte Mokoena, Deidre Penfold, Gareth Ackerman, John Dludlu, Mike Mabasa, Michelle Constant, Mzila Mthenjane, Stavros Nicolaou.

Initiative; as well as, representatives of corporate South Africa, such as, the Manufacturing Circle, and Business Leadership South Africa.

Background

The amendments to the Employment Equity Amendment Act (EEA) are necessary as transformation in the workplace has been slow and hampered. BUSA 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. However, the success of sectoral targets in achieving this objective will depend on how such targets are in the final analysis implemented and enforced by the Department of Employment and Labour (The Department). BUSA is concerned about several provisions contained in the Draft Regulations, in that they may not pass constitutional muster in their current form.

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Lack of adequate consultation

The Act is an important piece of legislation that requires both Government and the private sector to act in the best interest of the country. In order to ensure that the goal of transformation is achieved, it is vital that the Department undertakes a consultation process with the sectors that is lawful. BUSA is of the view that the "consultation" process the Department undertook with some sectors (starting in 2018 and before the Employment Equity Act was amended) does not meet absolve the Department from commencing with a properly constituted consultation process now in 2024. BUSA, has in the past reiterated that 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. BUSA is of the view that the proposed targets in the 2024 Draft Regulations have not been the result of a lawful consultation process. They may be misaligned to the Solidarity Agreement which could attract unnecessary litigation, and which do not consider the specific circumstances being faced by designated employers who are facing many headwinds and barriers at this time.

Although the description of the targeted percentages has been changed from "Black" Representation" to "Designated Persons", which therefore includes people with disabilities, there has been no consideration of submissions made that sectors all have unique factors to address, including economic, social, skills-sets (scarce and critical), technological and legislative. The only substantive change was in relation to the Finance and Insurance Sector,

where corrections were made. All the remaining sector targets effectively have remained unchanged. Unfortunately, this renders the targets unreasonable and unjustifiable. BUSA implores the Department to demonstrate that the specific submissions of sector stakeholders have been considered. It is improbable that the overall "designated group" ministerial targets can remain unchanged from the previous draft regulations, if the submissions were considered. Even if we consider that the "designated group" targets include white female and white persons with disabilities, there is no clear rationale on key factors considered in arriving at the targets.

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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.

This provides for absolute exclusion of non-designated persons and potentially Indian and Coloured individuals. Whilst African representation deserves priority attention in most organisations, the current proposed wording disregards the existence of workforce strategies such as career and succession planning, and the context set out in the above point. The impact of this wording will have a materially prejudicial impact on organisations and their employees and may be tantamount to a Constitutional Infringement or a breach of the Labour Relations Act or the Employment Equity Act. BUSA would recommend removal of this specific reference and rather provide for the ability for designated employers to set justifiable targets based on the merits of each context.

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 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 EE Goals is higher than its % Target after factoring in its applicable Economically Active Population % but is lower than its % 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 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.

The requirement in the regulations to use either Provincial or National presents a challenge relating to legal precedent in that Constitutional Court in the matter between Solidarity and Others v Department of Correctional Services and Others (CCT 78/15) [2016] ZACC 18 found that there would have to be a provincial consideration embedded into the considerations of targets and implementation of affirmative action measures. It is proposed that the legal principles espoused in this judgement be provided for in the regulations.

The provisions in the regulations that "*Employers should not set targets for those groups whose representation have already exceeded their EAP in a particular occupational level*" conflict with the need to take reasonable and justifiable measures in s20(2)(c) of the EE Act. The "hard stop" on setting targets (i.e. an increase thereof) of groups who are exceeding the

EAP needs to be removed as there are already requirements to make reasonable progress towards numerical targets in the context of various influencing factors.

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 as well as that once the Ministerial Targets have been met there should be no regression but rather a move towards the EAP, are new and additional provisions that may also be in conflict with the Solidarity settlement. There is an urgent need to align 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 given the "as-is" and the "to-be", and then set targets taking the applicable EAP into account. This poses major uncertainty for designated employers as they either have to apply the EAP in direct proportion to the sub-race and gender groups, or failing this need to use their discretion and 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 critical and core skills availability, staff turnover, economic conditions and the like when setting targets. These variables are only offered as an opportunity to justify non-achievement of targets once there is an alleged contravention. The regulations should be reworded to specifically allow for the consideration of factors such as recruitment and promotion opportunities, core and critical skills, mergers, acquisitions, and other business impacting factors.

Use of accurate wording

The term used in the Targets column refers to "Designated Groups" and only differentiates between male and female. It is important to ensure 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 in respect to the wording used - "designated groups" - and refer to the definition in the EE Act as including 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. A 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 the 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 would propose 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 for rationality.

ENDS

As always, we remain available to the Department to engage on the regulations.

Yours Sincerely,

Business Unity South Africa - CEO Designate
Khulekani Mathe

BUSA

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RETAIL ASSOCIATION

02 May 2024

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SUBMISSION ON THE 2024 DRAFT EMPLOYMENT EQUITY SECTOR TARGETS

1. INTRODUCTION

1.1 On 1 February 2024, the Minister of Employment and Labour published ("the Minister"), in the Government Gazette, for public comment, Draft Employment Equity Regulations ("2024 Draft Regulations") in which he has revised and amended the version of Draft Regulations published in 2023 ("2023 Draft Regulations") and proposed numerical targets for several sectors of the economy[1].

1.2 As the Department knows, the Retail Association is a voluntary business association made up of a number of large national retailers who sell clothing, food, homeware, sportswear and jewellery.

1.3 The Retail Association submitted a comprehensive set of comments to the Department of Employment and Labour ("the Department") in response to the 2023 Draft Regulations and must, from the outset, acknowledge that to some extent, the Department has, in publishing the 2024 Draft Regulations clarified some of the uncertainty that arose from the 2023 Draft Regulations. However, despite this, the Retail Association submits that

[1] Government Gazette No 50058 of 1 February 2024

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the Minister's publication of the 2024 Draft Regulations, as was the case with the 2023 Draft Regulations, *ultra vires* in that the procedural requirements prescribed by section 15A of the Employment Equity Amendment Act, 2023 have still not been complied with.

2. THE CRITERIA TAKEN INTO ACCOUNT IN DETERMINING THE NUMERICAL TARGETS

2.1 The Retail Association is concerned with paragraphs 3.1.1, 3.1.2, 3.1.3 and 3.1.4 of the 2024 Draft Regulations. These four sub-paragraphs record the following factors as having been taken into account when determining the proposed numerical targets:

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2.1.1 The sector workforce profiles (the extent to which suitably qualified people from designated groups are represented within each category) in relation to the relevant EAPs.

2.1.2 The latest 2022 EE workforce profiles (based on the employment equity reports submitted by employers).

2.1.3 The various Sector Codes and the Sector Charters published under the BBBEE Act.

2.1.4 The unique sector dynamics (eg: skills availability, economic market forces, ownership etc) raised by stakeholders during the consultation process.

2.2 Insofar as the Retail Association and its members are concerned, the following should be noted:

2.2.1 The Department commenced "consultation" (be it prematurely) with the Retail Association in October 2018 (almost 6 years ago).

2.2.2 The Retail Association withdrew from the "consultation" process in 2020.

2.2.3 The information submitted / shared by the Retail Association during the purported "consultation" process is, for obvious reasons (given that the information / data relied on was largely from the year 2018).

2.2.4 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:

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2.2.4.1 COVID19 which resulted in lockdowns, regulations restricting trade / sale of certain items and an increase in operating costs (hand sanitisers in every store, signage, change of work to accommodate social distancing requirements, purchasing of masks for employees etc).

2.2.4.2 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).

2.2.4.3 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.

2.2.4.4 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.

2.2.4.5 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.

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2.3 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.*

2.4 The Retail Association is of the view that the above factors are important considerations when determining what the numerical targets should be but it appears that they have been ignored by the Minister / Department. In particular, it is the view of the Retail Association that it is not as simple as the Department simply saying that in South Africa there are X amount of designated people in the EAP and therefore there are people available and willing to work / be appointed 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.

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2.5 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.

2.6 Insofar as the disability target is concerned – it is proposed that all sectors of the economy will have the same disability target of 2% of an employer's total workforce (with no gender split). The Retail Association does still not, despite several enquiries to this effect during the purported "consultation" process, know how the Department determined that 2% of an employer's total workforce would be rational, reasonable and attainable? As far as the Retail Association knows – there is no EAP for the "disabled population" in South Africa? 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%.

3. EXPECTATION OF "FRESH" CONSULTATION PROCESS & CONSULTATION IN GOOD FAITH

3.1 As per the submission made by the Retail Association in June 2023, it maintains that there still is an obligation on the Department to start with a new / fresh consultation process with the retail sector.

3.2 During the period that the Retail Association engaged with the Department (2018 to 2020), the Retail Association relied on aggregated data (which data it spent a significant amount of time obtaining and analysing from its members). That data from 2018 is for obvious reasons, now out of date.

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3.3 The Retail Association is of the view that the Minister is not relieved of his duty to consult under section 15A (2) of the Amendment Act once it is actually in force and effect. More importantly, that the consultation be based on the current (not outdated) economic, social and labour market trends with specific regards to Regulation 7A as it appears in the 2018 Draft Regulations (which we have already mentioned we do not know the status of such Regulations).

3.4 As a reminder, set out below is an extract from a joint written submission the Retail Association and CGCSA made to the Department in November 2019:

- *"The CGCSA, the RA and its respective members have agreed to participate in this "pre-consultation" process, in good faith, pending the promulgation of the Employment Equity Amendment Bill. However, the obligation to consult under section 15A (2) of the Amendment Bill after it has been passed into law, will still be required. As voluntary industry associations, we believe CGCSA and the RA's members have made significant strides to indicate their intention of engaging with DeL in good faith. This is despite the fact that the proposed Amendment Bill has not been passed into law, as yet.*

- *This "pre – consultation" is taking place in reference to data that may be out of date by the time the Amendment Bill is passed. As such, the revised proposal contained herein is subject to change depending on when the Amendment Bill is promulgated into law."*

4. LAWS SHOULD BE CLEAR AND UNAMBIGIOUS

4.1 As stated in the Retail Association's June 2023 submission to the Department, it is a well-established legal principle that laws should be drafted clearly and unambiguously.

4.2 While the Retail Association acknowledges that the 2024 Draft Regulations provide further insight into the setting of numerical targets and the process of how they will be applied, the Retail Association remains concerned that there are still aspects of the 2024 Draft Regulations which require clarity and/or more thought in order to ensure that any cause for confusion and/or incorrect interpretation is limited.

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4.3 The aspects in terms of which the Retail Association require further clarity on are (and which can likely be resolved if the Department undertakes a legitimate consultation process with the sector):

4.3.1 The most significant change from the 2023 Draft Regulations to the 2024 Draft Regulations is that the tables prescribing the numerical targets are no longer broken down into race category:

4.3.1.1 The tables simply refer to "designated groups" (which is stated as an overall percentage) and then provides for a male and female gender split.

4.3.1.2 There appear to be different interpretations as to whether the Department "made a mistake" by referring to "designated groups" in the table or whether this was intentional and if intentional, whether the term "designated groups" as referred to in the 2024 Draft Regulations

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bears the same definition of that term as provided for in the Employment Equity Act.

4.3.1.3 Insofar as the retail sector is concerned, there has been no change to the overall percentages for the designated groups and as such, the Retail Association questions whether any of the submissions made by the retail sector in June 2023 were in fact taken into account by the Department.

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4.3.1.4 In addition to the above, it is apparent from the various legal articles, news reports and webinars that have been hosted on the topic of the 2024 Draft Regulations, that ambiguity remains.

4.3.1.5 There are also differing views on compliance and whether compliance will only be measured against the overall percentage prescribed by the Minister or not.

4.3.2 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.*"

4.3.3 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"?

4.3.4 Paragraph 3.1 of the 2024 Draft Regulations states that "*The proposed 5-year sectoral numerical targets are not intended to add up to 100% like the EAP and the total workforce at each occupational level. For example, the proposed sectoral numerical target excludes the foreign nationals as part of the workplace profile" (sic).* The Retail Association requires clarity on this. The purported explanation as to why the targets are not intended to add up to 100% is not clear and in fact contrary to what was explained to the Retail Association in 2018 when the Department first started its "consultation" with the Retail Sector.

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4.3.5 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.

5. CONCLUSION

5.1 This submission **is not intended** to object to the concept of numerical targets **provided that**:

5.1.1 the Minister follows the correct statutory process outlined in the Amendment Act (to date, the correct process has not been followed);

5.1.2 the targets are based on accurate, credible and up to date data;

5.1.3 the EAP is not used to the extent that the Department 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;

5.1.4 transitional arrangements are prescribed when the Amendment Act and Regulations are in fact promulgated; and

5.1.5 the targets are not, when the Department undertakes reviews / assessments / enforcement of compliance, treated as quotas.

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Yours sincerely

Siobhan Leyden

Director: Retail Association

Cell: 082 924 6183

E-mail: slc@leyden85.co.za

Electronically sent and therefore not signed

advancing patient care through MedTech

SUBMISSION BY THE SOUTH AFRICAN MEDICAL TECHNOLOGY INDUSTRY ASSOCIATION

On the
Draft Employment Equity Regulations
as published on 1 February 2024 in the Government Gazette No 50058, Notice No 4295

TO:
The Department of Employment and Labour ("DoEL")
c/o: innocent.makwarela@labour.gov.za
Christine.lehlokoa@labour.gov.za
Julian.mohale@labour.gov.za

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2 May 2024

1. About SAMED

SAMED is a not-for-gain voluntary trade association that represents the medical technology industry in South Africa. Its 152 members comprise large corporates, and smaller entities. It includes manufacturers, distributors, and wholesalers, ranging from micro enterprises to large multinational companies, of medical devices, medical equipment and invitro diagnostics (collectively termed medical technologies). SAMED is committed to ensuring a sustainable, transformed and ethical medtech industry in South Africa.

Of relevance to the process of setting targets for the medtech sector, which supplies vital health products to the healthcare sector, are several unique considerations.

The medical technology industry is comprised of:

- both multinational affiliates and local companies;
- in employment equity terms, smaller employers, as well a large employers;
- manufacturers, based both locally and internationally;
- entities that assemble, repackage, or package products locally;
- a vast array of products types spanning product-sectors such as textiles, plastics, metals, electronics, radioactive materials, etc.;

The South African Medical Technology Industry Association
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- "high-tech", as well as "low-tech" products and services;
- artificial intelligence, software and, also, robotic technologies;
- etc.

Medtech companies are also regulated by the South African Health Products Regulatory Authority (SAHPRA) under the Medicines and Related Substances Act, 1965, and the Hazardous Substances Act, 1974. The criteria set by SAHPRA includes mandatory requirements on staffing complements, required to be accountable to the authority, and to be able to provide the necessary scientific and technical input in the business and all its activities, requiring also oversight and professional accountability to SAHPRA.

2. SAMED's commitment to transformation in the medical technology sector

SAMED is committed to transformation in the medical technology sector, including in the ownership, and employment structures in business. To this effect, in 2013 SAMED established a committee to deal specifically with matters of transformation and diversity in the medical technology industry.

SAMED regards transformation as an economic and social imperative. It is committed to transformation and believes it has a responsibility to drive meaningful, impactful and sustainable change as an industry body.

SAMED wishes to state, in no uncertain terms, that it supports the Employment Equity Act, and the transformation agenda of the country, as is espoused in the Constitution of the Republic. Its comments below should be construed as pro-transformation and focusing on the practicalities of implementing real and lasting change.

3. The new Draft Regulations

SAMED applauds the fact that the DoEL has issued this new set of draft regulations, which includes improved explanation of the targets being set, such as the timeframe for a target, and the justifications for possible non-compliance.

Some concerns do remain, many of which relate to the business of the members of SAMED, the need to fairly compete, especially as the Compliance Certificates will be a requirement in government tenders.

Furthermore, the broadness of the classification means that SAMED members will, in spite of its fundamental differences with others in the same class, be subjected to targets set for businesses with significantly different staff profiles (e.g. textiles in general, and textiles as wound care products are significantly different businesses in terms of staff and staffing requirements). The same applies to the plastics sector, and so forth.

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It is important that the setting of these targets is done in a manner that is compliant with the empowering section 15A,[1] namely that the Minister:

- "may have regard" to the Standard Industrial Classification ("SIC"),
- may consult different sectors;
- may set differential targets; and
- may set targets per sub-sector.

Although not peremptory, in compliance with the principles of administrative justice, the decision relating to the classification of sectors, and the setting of appropriate targets per sector, necessitates such consultation and consideration of setting targets that are not overly broad in the industries captured under a single set of targets.

In its previous submission in June 2023 (attached hereto for ease of reference), SAMED pointed out:

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"…SAMED members undertaking comparable services, with similar employee requirements, could face vastly different targets, e.g. the target for "Professionally qualified" employees in health is at black employees, but in manufacturing, it is 62%, in professional and scientific, it is 65% and in wholesale and retail 75%. This means that unless the economic sub-sectors are set in a manner that is fair, and rational, the impact would be vastly different on similarly situated employers."

The most recent SAMED survey reveals that SAMED's members are in the following SIC categories:

- Human Health and Social Work;
- Wholesale and Retail;
- Manufacturing; and
- Professional, Scientific and Technical Activities

SAMED urges that the medtech industry be consulted, pursuant to section 15A. This is so that the targets are set in a manner that is fair towards competitors for state tenders. Fairness in procurement is a constitutional requirement in section 217 of the Constitution, 1996. For example, medtech employers should not be (inadvertently) included in broad industrial categories where staffing requirements are different to those required from SAMED members, such as those required through the application of the Medicines and Related

[1] ***15A.*** *(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, sub-sectors or regions within a sector or on the basis of any other relevant factor.
(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon.

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Substances Act, 1965, and the Medical Device Regulations, 2016, as well as the ISO13485 requirements.

To illustrate this point, SAMED, in its previous submission, made clear:

"SAMEDs preliminary analysis shows that members are in different categories, such as manufacturing, wholesale/retail, human health, etc. Even whilst most respondents are in "manufacturing", members are in different categories, ranging from pharmaceuticals and plastics to food products, to wood and paper. The same applies to the wholesale and retail sector."

4. Process and timelines: the annual targets and the section 53 certificate

SAMED welcomes the fact that employers would be able to set their own targets for years 1 to 4, and then by year 5 would have to achieve the ministerially-set targets.

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This, however, leaves uncertainty as to the criteria and process through which the section 53 certificate would be issued. In terms of criteria, it is assumed (but not clear in the draft regulations) that employers would be measured against their own targets for years 1 to 4. Then, in terms of the process, the start-date for "year 1" has to be clear and uniform, so as to ensure fairness between competitors.

Also, there are no clear process and timelines for the "measurement" (in par 3.4.3) and "compliance analysis" (in par 4.4), and consideration of the justifications of non-compliance (in par 4.5). In addition, opportunities have to be created for disputes on the acceptability of justifications. These timelines and processes are vital to the fairness of the process. A system that is easy to navigate and expeditious are critical for those who require such certificates in order to participate in state tenders.

SAMED urge the inclusion of processes and timelines relating to the implementation of section 53, in order to create a predicable, consistent system of compliance monitoring and certification.

5. The proposed targets

SAMED, as a member of BUSA, supports BUSA's submission and includes by reference the comments relating to the absolute barriers placed by implication on non-designated, or equitably-represented groups.

In addition, SAMED reiterates, from its previous submission, the mathematical impossibility of achieving targets that cater for all designated groups in smaller workplaces, where the numerical targets, per designated group, imply a sufficiently large employee group in that employment level:

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At senior management level, for a company in manufacturing with 18 positions at senior management level, the following numbers would be needed to achieve the targets:

	AF	CF	IF	WF
Female Target	*14.8%*	*1.7%*	*0.5%*	*3.5%*
Numbers needed	*2.7*	*0.3*	*0.09*	*0.6*
	AF	**CF**	**IF**	**WF**
Male Target	*28.7%*	*3.3%*	*1%*	*4.5%*
Numbers needed	*5.2*	*0.6*	*0.2*	*0.8*

The most recent SAMED survey shows that most employers regard the five-year targets as either "highly unlikely or impossible" to achieve, or "difficult but possible" to achieve. A minority stated that it would be achievable, and a few indicated that it would depend on various factors, such as organisational changes and the availability of suitably qualified staff or scarcity, salary expectations, etc.

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6. Justifications

Paragraph 4.5 refers to the Draft 2018 EE Regulations. As not being in force, its finalisation would be peremptory prior to the finalisation of these draft targets. Those regulations also propose provisions on the determination of numerical targets and the issuance of the section 53 certificate.

In order to avoid two different sets of rules applicable to the same issue, consultation would again be required prior to finalising the 2018 Draft Regulations. Such consultation is necessary given the substantial changes in the economy and in the employment sector since 2018 and post-Covid.

The correct sequencing of EE Regulations, Ministerial Targets and the proclamation to bring the Employment Equity Amendment Act into effect, is important to avoid legal challenges relating to the targets or regulations being authorised by the empowering Act and all provisions accompanying the targets, being aligned to the Act.

7. Conclusion

The Employment Equity system set through the system of 5-year goals, with own targets being set for years 1 to 4, provided that the "start date" of year 1 is uniform, should be achievable, practical, and fair between various employers.

SAMED supports the acceleration of transformation in the medtech sector, which must be achieved. SAMED believes this can happen, with consultation with the sector and by creating

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a clear and timeous system for certification that creates certainty for the sector, especially when the EE Compliance certificate is a mandatory criterion for state tenders.

SAMED would welcome the opportunity to engage with the Department and Minister on the matters set out in the Amendment Act. SAMED can be contacted at:

Tanya Vogt
SAMED Executive Officer
0836010343 / 011 704 2440 / tanya@samed.org.za

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Dear Ms. Jack

INVITATION TO VIRTUAL CONSULTATION MEETING ON NUMERICAL SECTOR TARGETS IN TERMS OF SECTION 15A (2) OF THE EMPLOYMENT EQUITY AMENDMENT ACT, NO.4 OF 2022

Published proclamation notice of the commencement of the Employment Equity Amendment Act, No. 4 of 2022 (EE Amendment Act) on 1 January 2025 has reference.

In accordance with Section 15A(2) of the EE Amendment Act, which mandates the setting of numerical sector targets to address the under-representation of designated groups of the workforce in the workplace, the Commission for Employment Equity jointly with the Department of Employment & Labour would like to convene a virtual consultation meeting with your sector.

The purpose of the meeting is to discuss the proposed sector numerical EE targets for the Administrative and Support Activities Sector before publishing the final sector EE targets for implementation.

The details of the virtual consultation meeting are as follows:
Date: Tuesday, 11 February 2025
Time: 12h00 – 13h00
Platform: Microsoft Teams

Your participation is crucial to ensure the successful implementation of these legislative requirements.

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Please note that the link will be sent to you upon confirmation of your attendance to Tsholofelo.ndlovu@labour.gov.za by Monday, 13 January 2025 as follows:

- Name and Surname: ----------
- Name of sector: ----------

Your cooperation will be highly appreciated.

Yours sincerely

NTSOAKI MAMASHELA (MRS)
DIRECTOR: EMPLOYMENT EQUITY

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2/7/2025 8:30:08 AM

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BUSINESS UNITY SOUTH AFRICA

NATIONAL OFFICE
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7 February 2025

Ms Ntsoaki Mamashela
Director: Employment Equity
Department of Employment and Labour
Laboria House, 215 Francis Baard Street
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Per e-mail: ntsoaki.mamashela@labour.gov.za
viwe.mlenzana@labour.gov.za

Dear Ms Mamashela

RE: REQUEST FOR MEANINGFUL CONSULTATIONS AND DATA TRANSPARENCY IN SECTOR TARGET CONSULTATIONS

Business Unity South Africa (BUSA) and its members recognise the essential role of employment equity in fostering inclusive growth and transformation. The business sector commends the Department of Employment and Labour (DEL) for its ongoing commitment to sector-specific targets and for its efforts to actively engage with employers. However, the successful implementation of the Employment Equity Amendment Act and the proposed sectoral targets necessitates collaboration and transparent communication with employers to ensure alignment with these objectives. Engaging with business is essential to:

- Provide employers with clear and practical guidance on sectoral targets to ensure compliance and build confidence in the process;
- Facilitate meaningful consultation to identify potential barriers to implementation, thereby minimising resistance;
- Enhance preparedness and understanding among businesses, increasing the likelihood of a seamless rollout and avoiding unnecessary workplace disruptions; and
- As sector targets are crucial in human resource planning, development, and deployment, they should align with strategic and operational imperatives and be achievable, rational, proportional, and justifiable.

REGISTRATION NUMBER: 2014/042417/08
PRESIDENT: Mxolisi Mgojo VICE PRESIDENT: Adrian Gore **CEO:** Khulekani Mathe **NEDLAC CONVENOR:** Kaizer Moyane
DIRECTORS: Anton Pillay, Bongi Kunene, Busisiwe Mavuso, Christopher Campbell, Charlotte Mokoena, Deidre Penfold, Gareth Ackerman, John Dludlu, Mike Mabasa, Michelle Constant, Mzila Mthenjane, Stavros Nicolaou.

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In this context, we express our concern that the one-hour sector target consultation period is inadequate for meaningful and substantive discussions. Employers expect the DEL to facilitate and lead the intended consultation process in accordance with the principles of meaningful consultations outlined in the Labour Relations Act (LRA) and the principles of good faith engagements. Employers view the DEL as the custodians of these standards, and the allocated time may render effective and proper consultations unattainable.

Consequently, we propose an extension of the consultation period to ensure that these sessions serve as meaningful engagements and enhance the quality of the discussions. This extension will allow for a more thorough and constructive dialogue and lead to more effective implementation of the proposed changes, adequately addressing the complexities and diverse needs of the sectors involved. We believe that these changes will bring about positive outcomes for all stakeholders.

To facilitate comprehensive and effective consultations, we request that the DEL provide advance distribution of information packs containing sector and sub-sector data supporting its proposed targets. Additionally, we request the disclosure of relevant information summarising submissions made regarding key draft regulations and earlier proposals on sector targets, including those adopted in revised proposals and the reasons for rejecting others. This approach will ensure that discussions are grounded in a thorough and transparent data analysis process, accurately reflecting the nuances and realities of each sector and sub-sector.

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Similarly, it is essential to note the long-standing approval and support from the DEL for bargaining councils dedicated to specific economic activities. A prime example is the establishment of separate councils for the textile and clothing manufacturing industries. Employers desire to see these and other examples replicated within the sector targets framework. Alternatively, the intent may be accommodated through regulations that permit varying gender and racial representation in specific sectors.

Finally, BUSA and its members have previously submitted comments and recommendations to the Department of Employment and Labour (DEL) and the former Minister. However, to date, no responses have been received. The absence of feedback impedes the employers' ability to address the critical issues raised and raises concerns regarding the extent to which these matters will be considered in the forthcoming consultations. Such clarification would also enhance understanding of transitional arrangements. For instance, will designated employers be required to develop new Employment Equity plans aligned with the sectoral targets or the 2027 reporting cycle? Additionally, will the next cycle of EEA2 reports for the 2024/25 reporting period be based on existing EE plans?

We want to reaffirm the business sector's commitment to transformation through inclusive economic growth. We remain dedicated to collaborating with the DEL to achieve sustainable and equitable progress, ensuring all stakeholders are aligned to foster a thriving and diverse economy. Therefore, we request a meeting between the BUSA office and your office to discuss organised business concerns and ensure that the Employment Equity Amendment Act achieves its intended objectives without placing undue strain on the labour market.

Thank you for your attention to this critical matter, and we look forward to your positive response.

Kind regards

Khulekani Mathe
Chief Executive Officer

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Employment and Labour
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Tel: 012 309 4040 Fax: (012) 309 4739

Enq: Masilo Lefika
Tel: 012 309 4214
Email: masilo.lefika@labour.gov.za

Mr Khulekani Mathe
Chief Executive Officer
Business Unity South Africa (BUSA)

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN
Private Bag X82, Braamfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

Email: Khulekani.Mathe@busa.org.za
Lebogang.Sethusha@busa.org.za; Tsakane.Muavha@busa.org.za;
Tholi.Cenenda@busa.org.za

RE: REQUEST FOR MEANINGFUL CONSULTATIONS AND DATA TRANSPARENCY IN SECTOR TARGET CONSULTATIONS

Your letter dated 7 February 2025, but received by the Department of Employment and Labour (Department) via email on 11 February 2025 has reference.

Kindly note that all concerns raised by BUSA in your correspondence regarding meaningful consultations on the sector EE targets have been noted. It is important to highlight that the Department and the Commission for Employment Equity (CEE) are committed to ensure that meaningful consultations with all the relevant sector stakeholders are undertaken.

In light of the above, other prior sector stakeholder engagements and bilaterals that have been undertaken with various key sector stakeholders across all economic sectors, including the publication of the two sets of Draft Regulations for public comments on the same subject, bear evidence to the commitment demonstrated by the Department and the CEE in ensuring that meaningful stakeholder engagements do take place to enhance the effective implementation of the EE Amendment Act, No. 4 of 2022.

Furthermore, please note that in the main, concerns raised in your correspondence have been raised by sector stakeholders during the consultations and have been responded and clarified. Of significance to highlight is that, where sector stakeholders have requested to be given an opportunity and time to go back for sector internal consultations, the request have been granted to make provision for sector stakeholder feedback to the Department.

Additionally, where sector stakeholders have requested for additional bilateral engagements/ meetings with employers' organisations in various economic sectors or sub-sectors, these requests are granted to ensure meaningful engagements.

Lastly, it is critical to explain that all the presentations for the sector stakeholder consultations have been circulated to all economic sectors to the email addresses of the CEOs and Senior EE Managers on the EE System database as per the details contained in the 2024 EE Reports submitted by employers on the EE System. Again, after each consultation meeting, the slide presentations are being circulated to all sector stakeholders that attended.

Therefore, please note that we are willing to meet with BUSA virtually on one of the following proposed dates:

Date: Wednesday, 19 or Thursday, 20 February 2025
Time: 13h30 – 15h00
Platform: Microsoft Teams

Please confirm which date and time suits you latest Tuesday, 18 February 2025 to masilo.lefika@labour.gov.za

Your cooperation and positive response will be highly appreciated.

Yours sincerely
Ntsoaki Mamashela
Digitally signed by Ntsoaki Mamashela
Date: 2025.02.14 15:36:38 +02'00'
NTSOAKI MAMASHELA (MRS)
DIRECTOR: EMPLOYMENT EQUITY

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

VIRTUAL MEETING TO DISCUSS SECTORS EE TARGETS IN THE AGRICULTURE SECTOR FOR IMPLEMENTATION

DATE : Tuesday, 13 February 2025
VENUE : Virtual Microsoft teams
TIME : 09h00 – 10h00

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Received at the Labour Court, Braamfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

Time	ITEMS FOR DISCUSSION	RESPONSIBLE
09H00 – 09H05	• OPENING & WELCOME • APOLOGIES	CHAIRPERSON – MS NICOLE DEOKIRAM
09H05 – 09H30	PRESENTATION ON THE EE SECTOR TARGETS IN THE AGRICULTURE SECTOR	CEE/ DEL
09H30 – 09H50	DISCUSSIONS	ALL
09H50 – 09H55	WAY FORWARD	CEE/DEL
09H55 – 10H00	CLOSURE	CHAIRPERSON

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Tel: 012 309 4040 Fax: (012) 309 4739

AGENDA

VIRTUAL MEETING TO DISCUSS SECTORS EE TARGETS IN THE ARTS, ENTERTAINMENT AND RECREATION SECTOR FOR IMPLEMENTATION

DATE : Monday, 17 February 2025
VENUE : Virtual Microsoft teams
TIME : 10h30 – 11h30

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN
Private Bag X82, Braamfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

Time	ITEMS FOR DISCUSSION	RESPONSIBLE
10H30 – 10H35	• OPENING & WELCOME • APOLOGIES	CHAIRPERSON – MS NICOLE DEOKIRAM
10H35 – 10H55	PRESENTATION ON THE EE SECTOR TARGETS IN THE ARTS, ENTERTAINMENT AND RECREATION SECTOR	CEE/ DEL
10H55 – 11H15	DISCUSSIONS	ALL
11H15 – 11H25	WAY FORWARD	CEE/DEL
11H25 – 11H30	CLOSURE	CHAIRPERSON

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Tel: 012 309 4040 Fax: (012) 309 4739

AGENDA

VIRTUAL MEETING TO DISCUSS SECTORS EE TARGETS IN THE HUMAN HEALTH AND SOCIAL WORK ACTIVITIES SECTOR FOR IMPLEMENTATION

DATE : Monday, 17February 2025
VENUE : Virtual Microsoft teams
TIME : 12h00 – 13h00

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN
Private Bag X82, Braamfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

Time	ITEMS FOR DISCUSSION	RESPONSIBLE
12H00 – 12H05	• OPENING & WELCOME • APOLOGIES	CHAIRPERSON – MS NICOLE DEOKIRAM
12H05 – 12H30	PRESENTATION ON THE EE SECTOR TARGETS IN THE HUMAN HEALTH AND SOCIAL WORK ACTIVITIES SECTOR	CEE/ DEL
12H30 – 12H45	DISCUSSIONS	ALL
12H45 – 12H55	WAY FORWARD	CEE/DEL
12H55 – 13H00	CLOSURE	CHAIRPERSON

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AGENDA

VIRTUAL MEETING TO DISCUSS SECTORS EE TARGETS IN THE MANUFACTURING SECTOR FOR IMPLEMENTATION

DATE : Wednesday, 19 February 2025
VENUE : Virtual Microsoft teams
TIME : 09h00 – 10h30

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN
Received at Bloemfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

Time	ITEMS FOR DISCUSSION	RESPONSIBLE
09H00 – 09H05	• OPENING & WELCOME • APOLOGIES	CHAIRPERSON – MS NICOLE DEOKIRAM
09H05 – 09H30	PRESENTATION ON THE EE SECTOR TARGETS IN THE MANUFACTURING SECTOR	CEE/ DEL
09H30 – 09H45	DISCUSSIONS	ALL
09H45 – 09H55	WAY FORWARD	CEE/DEL
09H55 – 10H30	CLOSURE	CHAIRPERSON

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AGENDA

VIRTUAL MEETING TO DISCUSS SECTORS EE TARGETS IN THE PROFFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES SECTOR FOR IMPLEMENTATION

DATE : Monday, 17 February 2025
VENUE : Virtual Microsoft teams
TIME : 09h00 – 10h00

REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN
Private Bag X82, Braamfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

Time	ITEMS FOR DISCUSSION	RESPONSIBLE
09H00 – 09H05	• OPENING & WELCOME • APOLOGIES	CHAIRPERSON – MS NICOLE DEOKIRAM
09H05 – 09H30	PRESENTATION ON THE EE SECTOR TARGETS IN THE PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES SECTOR	CEE/ DEL
09H30 – 09H45	DISCUSSIONS	ALL
09H45 – 09H55	WAY FORWARD	CEE/DEL
09H55 – 10H00	CLOSURE	CHAIRPERSON

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Tel: 012 309 4040 Fax: (012) 309 4739

AGENDA

VIRTUAL MEETING TO DISCUSS SECTORS EE TARGETS IN THE WHOLESALE & RETAIL TRADE; REPAIR OF MOTOR SECTOR FOR IMPLEMENTATION

DATE : Friday, 14 February 2025
VENUE : Virtual Microsoft teams
TIME : 10h30 – 11h30

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Private Bag X82, Braamfontein 2017
REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN

Time	ITEMS FOR DISCUSSION	RESPONSIBLE
10H30 – 10H35	• OPENING & WELCOME • APOLOGIES	CHAIRPERSON – MS NICOLE DEOKIRAM
10H35 – 10H55	PRESENTATION ON THE EE SECTOR TARGETS IN THE WHOLESALE & RETAIL TRADE;REPAIR OF MOTOR SECTOR	CEE/ DEL
10H55 – 11H15	DISCUSSIONS	ALL
11H15 – 11H25	WAY FORWARD	CEE/DEL
11H25 – 11H30	CLOSURE	CHAIRPERSON

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19 February 2025

Mr. Viwe Mlenzana
Acting Director-General of Department of Employment and Labour

By email: viwe.mlenzana@labour.gov.za

CC: Merriam Madupo: merriam.madupo@labour.gov.za

Dear Mr Mlenzana,

SUBJECT: URGENT REVIEW OF EMPLOYMENT EQUITY TARGETS FOR THE AGRICULTURAL SECTOR

We are writing to urgently address the proposed sector employment equity targets discussed during the recent stakeholder engagement between the Department of Employment and Labour (DoEL) and the agricultural sector on 13 February 2025. Your department's call for final representations by 21 February 2025 presents a critical opportunity for us to express our ongoing concerns.

As influential stakeholders and leaders within South Africa's agricultural industry, we stand in full support of the broader goals of employment equity and the drive to foster a more inclusive and representative workforce. However, we must make it clear: while the overall targets may appear well-intentioned, the practical implications for our sector are deeply concerning. The proposed employment equity targets, while seemingly reasonable at a national or macro level, fail to account for the specific challenges faced by many individual entities on the ground, rendering them virtually unachievable.

CHALLENGES AFFECTING COMPLIANCE WITH TARGETS

A recent workforce analysis conducted by AGBIZ, covering over 40 entities with more than 60,000 employees, highlights a stark contrast between larger and smaller agricultural organizations, as well as between those in urban and rural areas. Larger entities, particularly in urban locations, often exhibit greater workforce diversity due to better employee mobility and broader recruitment opportunities. In contrast, smaller organizations and those, large and small in rural areas, often lack robust leadership structures and face challenges in achieving diversity. These realities, rooted in both historical and ongoing sector-specific challenges, make it exceptionally difficult for many agricultural businesses to meet these proposed regulatory targets.

EVERYTHING HAS BEEN DONE TO ENSURE THE ACCURACY OF THIS INFORMATION. HOWEVER, AGBIZ TAKES NO RESPONSIBILITY FOR ANY LOSS OR DAMAGE INCURRED DUE TO THE USAGE THEREOF

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RETAIL ASSOCIATION

21 February 2025

To: The Department of Employment & Labour

Attention: The Director of Employment Equity
Ms Ntsoaki Mamashela

By email: ntsoakiM@labour.gov.za
Thembinkosi.Mkalipi@labour.gov.za

Dear Ms Mamashela

RESPONSE TO THE WHOLESALE, RETAIL & REPAIR OF MOTORVEHICLE MEETING HELD ON 14 FEBRUARY 2024

1. As the Department knows, the Retail Association ("RA") is a voluntary business association made up of a number of large national retailers who sell clothing, food, homeware, sportswear and jewellery.

2. On 14 February 2025, the Department convened what it called a "consultation" meeting with the Wholesale, Retail and Repair of Motor vehicles Sector ("14 February 2025 meeting"). At that meeting, the Department presented what we will, for the purposes of this letter, refer to as the "*new 2025 sector targets*" which have significantly increased from the targets proposed in the February 2024 Government Gazette.

3. The RA does not, given the statements made by officials of the Department at the 14 February 2025 meeting consider that meeting to be that of a consultation as contemplated by the Employment Equity Amendment Act. Instead of there being an opportunity for the

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sector to engage meaningfully with the Department, the strong impression created by the Department was that the new 2025 sector targets are final and the Department's mind has been made up.

4. The RA did not intend, when it attended the 14 February 2025 meeting, to focus on or become preoccupied on technicalities such as process (instead it wanted to participate in a meaningful consultation process) but it has become unfortunate, given the Department's approach at the 14 February 2025 meeting, that the RA has no choice but to record that the meeting was not treated by the Department as a proper consultation meeting as there was no real opportunity to engage in the true spirit of consultation. Be that as it may, the main purpose of this letter is to inform the Department that the RA is willing to consult, provided that there is a meaningful exchange of information and reasonable opportunity for the RA to engage its members and respond formally to the new 2025 sector targets.

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5. In order to facilitate a meaningful consultation process, the RA requests that the Department provide it with the following information:

5.1 What amendments will be made to the version of the draft Administrative Regulations (2018) before they are published in the Government Gazette for promulgation? Please explain / describe in detail what these changes will be, if any.

5.2 What amendments will be made to the text portions (appearing in sections 3 to 4) of the February 2024 Government Gazette. Please explain / describe in detail what these changes will be, if any.

5.3 It is important, at this juncture, to pause and mention (which perhaps was not apparent at the sector meeting held on 14 February 2025) that apart from the actual sector targets (the numbers themselves), there are several provisions contained in the 2018 Draft Administrative Regulations and in the text (sections 3 to 4) of the February 2024 Gazette that if not clarified / amended by the Department, will have an impact on an employer's

position to the actual targets themselves. It was not, in the RA's view, good enough for the Department, at the 14 February 2025 meeting, to simply state that there are amendments that will be made to the text but not actually share with the attendees what those amendments will be. It is reasonable to expect (particularly because so many of the stakeholders present at the 14 February 2025 meeting had made extensive comments on the February 2024 Gazette's text) that it would have been this very information that the Department would have been willing to share at the 14 February 2025 meeting if it was indeed treating it as a legitimate consultation.

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5.4 Taking into account the new 2025 sector targets, the RA requires the Department to please share exactly how it determined the new targets (apart from looking at the most recent CEE Report which is limited to only 1 (one) year of data). It would be helpful for the methodology to be explained step -by-step as opposed to sweeping statements that the targets are based on the most recent CEE Report and EAP.

5.5 In addition to whatever the Department's response may be to paragraph 5.4 above, did the Department, when it calculated the new 2025 sector targets, take into account, anyone or more of the following factors (and to what extent?):

5.5.1 the suitably qualified people within the EAP pool ((% of designated people within the EAP who can do the jobs);

5.5.2 the qualification, skills, experience [and the capacity to acquire, within a reasonable timeframe, the ability to do the job];

5.5.3 the rate of turn-over and natural attrition within a sector;

5.5.4 recruitment and promotional trends within a sector; and

5.5.5 the alignment to EAP of the proportions of the different constituents that make up the sector's designated group.

5.6 The methodology the Department used to determine that a disability target of 3% is both rational and reasonable. The RA is well aware, as indicated by the Department at the 14 February 2025 meeting that there is no EAP for the disabled population but this in itself does not relieve the Department from setting a target that is rational.

5.7 Written responses to all of the questions posed to the Department in the MS Teams online chat box from the 14 February 2025 meeting.

5.8 A copy of the recording of the 14 February 2025 meeting.

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6. Upon receipt of the information listed above in paragraph 5, the RA requests that it be given sixty (60) days within which to engage with its membership and to formally respond to the Department's 2025 sector targets.

7. Lastly, the Department may be assured that the RA and its members are committed to transformation. We acknowledge and recognise that all workplaces must be more demographically representative of our country and we trust that the Department will accept this letter in the spirit in which it is intended (to facilitate a meaningful consultation process).

Yours sincerely

Sleyden

Siobhan Leyden

Director: Retail Association

Cell: 082 924 6183

E-mail: slc@leyden85.co.za

BOWMANS

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Our Reference:	6226006	Your Reference:	15A Employment Equity Regulations
Direct Line:	021 480 7808	Date:	21 February 2025
Email Address:	talita.laubscher@bowmanslaw.com / melissa.cogger@bowmanslaw.com		

Ms Nomakhosazana Meth, MP
Minister of Employment and Labour
By email: jullian.mohale@labour.gov.za
ntsoaki.mamashela@labour.gov.za
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REGISTRAR OF THE LABOUR COURT OF SOUTH AFRICA BRAAMFONTEIN
Private Bag X82, Braamfontein 2017
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Dear Sir/Madam

RE: COMMENTS IN RESPECT OF THE VIRTUAL PROCEEDINGS CONDUCTED ON 14 FEBRUARY 2025, AND THE 2025 PROPOSED SECTOR EMPLOYMENT EQUITY TARGETS

1. INTRODUCTION

1.1 We act for the National Clothing Retail Federation of South Africa, (the **NCRF / our client**), who has instructed us to address this letter to you.

1.2 This letter is our client's response to the invitation provided to stakeholders within the Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles sector to provide "written input" on new draft sector employment equity targets presented during a virtual Microsoft Teams meeting conducted on Friday 14 February 2025 (the **Virtual Meeting**).

1.3 We are instructed that the NCRF is a voluntary organisation whose members are national clothing retailers who carry on business in the Wholesale and Retail sector. It is noted for clarity that the NCRF members are at liberty to make individual submissions or submissions through other membership entities, which may differ in nuance and/or substance from this submission.

1.4 We have previously submitted comments on behalf of the NCRF to the Minister of Employment and Labour (the **Minister**) in response to the:

1.4.1 'Draft Employment Equity Regulations 2023 for Public Comment' published by the Minister on 12 May 2023 (the **2023 Draft Regulations**), which comments were submitted on 9 June 2023 (the **2023 Submission**); and

1.4.2 'Draft Regulations on Proposed Sectoral Numerical Targets' published by the Minister on 1 February 2024 (the **2024 Draft Regulations**), which comments were submitted on 2 May 2024 (the **2024 Submission**).

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 **Attorneys Notaries Conveyancers**
Directors MEC Davids (Chairman & Senior Partner) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | JS Andropoulos | M Angumuthoo | J Augustyn | L Avivi | J Barnes | AM Barnes-Webb | TL Beira | JM Bellew | KJ Beretta | ZD Blieden | RJ Bryce | K Chisaka | J Choate | ML Cogger | CN Cunningham | L Dahms-Jansen | RA Davey | AD Davidson | O Deckers | JM de Hutton | D de Klerk | TC Dini | MS Dladla | CR Douglas | SB Dube | HD Duffey | S Ellary | N Erasmus | AA Felekis | KA Fulton | KE Gagné | BJ Garven | TM Gcabashe | E Geldenhuys | DJ Geral | TJ Gordon-Grant | AR Graham | S Grimwood-Norley | A Hale | N Hassan | VJ Herholdt | SC Heunis | NA Hlophe | JB Howard | HPM Irvine | V Jacklin-Levin | CS Jackson | P Jani | JR Janks | AJ Jones | T Jordaan | JR Kaapu | M Keep | CP Kennedy | KM Kern | ID Kirkman | RDW Kitcat | JG Kruger | JP Kruger | N Kwinana | R la Grange | R Labuschagne | T Laubscher | AB Leuta | LA Lewin | DA Lotter | L Ludick | J Lunie | KS Makapane | M Makola | HW Mandlana | HL Manson | NR Mather | TP McDougall | JM McKinnell | W Meintjes | AKV Mfuphi | MC Mkiva | L Mongie | ZNR Motloba | K Naicker | UEBU Naumann | RA Nelson | BNM Nhlapo | KT Nkaiseng | X Nyali | NT Nzima | CMR O'Connor | MAJ Oppenheim | AMT Pardini | KJ Paterson | KA Peter | DM Phillips | B Pillay | JD Prain | DM Pretorius | BC Price | JL Power | LV Raphulu | CL Reidy | CP Robinson | CDS Rodrigues | GJ Rudolph | S Saffy | JW Sahli | MY Sass | CG Schafer | HB Senekal | NJ Shaw | RZ Shein | BT Sibiya | AJ Simpson | A Siwisa | EC Steyn | LR Stockton | ML Swartland | L Thahane | BF Tibane | CFN Todd | FJ Trichardt | CE Tucker | D Vallabh | CL van Heerden | MR van Velden | MG Vermaak | IH Vorster | DS Webb | REE Webster | DCJ Wessels | RS Wessels | JWL Westgate | HJ Wilsenach | KS Wright | DD Yuill | **Senior Consultants** CM Bouwer | IL Brink | RM Carr | PM Carter | RA Cohen | GH Damant | AS Harris | P Hart-Davies | MR Kyle | PM Maduna | A McAllister | AJ Pike | MS Rusa | GI Rushton | JH Schlosberg | RJ van Voore | PE Whelan | **Group COO** RJ Smith | **Group CFO** HI Harding | **Company Secretary** NL van Vuuren

KENYA MAURITIUS NAMIBIA **SOUTH AFRICA** TANZANIA ZAMBIA
ALLIANCE FIRMS: ETHIOPIA | NIGERIA

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1.5 The submissions previously made by our client remain applicable. To avoid prolixity, the 2023 and 2024 Submissions are not repeated, but our client's rights to refer to and rely on previous subsmissions made should it be necessary in any forum, remain expressly reserved.

1.6 We are instructed that:

1.6.1 On or about 23 December 2024, various members of the NCRF received an invitation from the Department of Employment and Labour (the **Department**) to attend a "Virtual consultation meeting on numerical sector targets in terms of section 15A(2) of the Employment Equity Amendment Act, 2022".

1.6.2 Invitees were provided until 13 January 2025 to confirm their attendance.

1.6.3 The invitation recorded that "*the purpose of the meeting is to discuss the proposed sector numerical EE targets for the Wholesale and Retail trade, Repair of Motor Vehicles and Motorcycles Sector before publishing the final sector EE targets for implementation*".

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1.6.4 The invitation did not attach any new draft sector targets, nor did it record whether the 2024 Draft Regulations or new sector targets would be discussed during the Virtual Meeting.

1.6.5 Our client confirmed its attendance and received a Microsoft Teams meeting link. A proposed agenda for the Virtual Meeting was circulated on 7 February 2025. The proposed agenda for the Virtual Meeting allocated 20 minutes for "discussion" following the Department's presentation.

1.6.6 On or about Wednesday 12 February 2025 at approximately 22h14 we sent our client the Department's power point presentation titled "Sector Targets Consultation Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles." This presentation was not sent directly to our client by the Department and the presentation was circulated by another industry body that had received the presentation earlier that evening at approximately 19h00.

1.6.7 Slide 6 of the PowerPoint presentation appeared to include the following new proposed targets for a merged sector described as the Wholesale and Retail Trade, Repair of Motor Vehicles and Motor Cycles sector (the **Sector**):

18. WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES - 5-YEAR SECTORAL NUMERICAL TARGETS						
		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED TARGET	Male	24.2%	35.0%	42.2%	48.1%	3%
	Female	27.5%	38.6%	46.1%	46.1%	
	Total	51.7%	73.6%	88.3%	94.2%	

1.7 During the Virtual Meeting on 14 February 2025, it was communicated to attendees that the abovementioned numerical targets are new proposed Sector targets (**2025 Proposed Sector Targets**). An additional 20 minutes were provided to stakeholders for the purpose of further discussion during the Virtual Meeting.

1.8 In response to a request by stakeholders to be provided a reasonable opportunity to consider these new proposed Sector targets, Ms Ntsoaki Mamashela (**Ms Mamashela**) indicated that written input in response to the above new proposed Sector targets should be submitted by the latest, Friday 21 February 2025.

1.9 A roll-out plan was also presented at the Virtual Meeting on 14 February 2025, which set out the Department's intended roadmap for the implementation of the 2025 Proposed Sector Targets.

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In this regard, the Department would require employers to prepare revised employment equity plans with reference to the sectoral targets by 31 August 2025. All employers' employment equity plans must henceforth run from 1 September. This leaves employers with six months to conduct an analysis, prepare new employment equity plans and to consult with their employees, in circumstances where the sectoral targets have not even been finalised.

1.10 The purpose of this letter is to:

1.10.1 Place on record the procedurally unfair manner in which the virtual "consultation" process took place;

1.10.2 Request a reasonable time period for our client to consider the 2025 Proposed Sector Targets;

1.10.3 Highlight the lack of information shared by the Department on its methodology in formulating the 2025 Proposed Sector Targets;

1.10.4 Challenge the sector merging;

1.10.5 Question the methodology and absence of statistical information used to propose a disability target of 3% in the 2025 Proposed Sector Targets;

1.10.6 Highlight the proposed regression of women as a designated group in the skilled technical occupational level; and

1.10.7 Request that the Minister comply with the notice and comment process set out in section 15A(1)(2) and (4) of the Employment Equity Act, 1998 as amended (**EEA**) prior to the publication of regulations pertaining to sector targets and prior to the publication of final sector targets.

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Private Bag X82, Braamfontein 2017
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2. PROCEDURALLY UNFAIR "CONSULTATION" PROCESS & REQUEST FOR A REASONABLE TIMEFRAME TO CONSIDER THE 2025 PROPOSED SECTOR TARGETS

2.1 During the Virtual Meeting and when stakeholders requested a reasonable time period within which to submit comments on the 2025 Proposed Sector Targets, Ms Mamashela appeared to justify the expedited timeframe for submissions by stating that consultations took place from 2018 onwards, including on the Draft 2023 and 2024 Regulations. This is despite the fact that the Employment Equity Amendment Bill was only signed into law on 6 April 2023, and despite amendments only coming into force on 1 January 2025. Ms Mamashela appreciates this fact, as she stated during the Meeting that "the Minister is now empowered to regulate the sectoral targets with effect from 1 January 2025".

2.2 Ms Mamashela persisted in her view that the Virtual Meeting constituted a consultation, despite several attendees voicing their concerns regarding their exclusion from previous engagements and concerns voiced by various attendees that the Virtual Meeting was not a "consultation" but was in fact an information sharing session.

2.3 Ms Mamashela indicated that the 2025 Proposed Sector Targets were informed by the current workforce profiles of the Sector, as set out in the 2024 EEA reports and that this information is apparently known to the Sector. Further, it was explained that workforce profiles and economically active populations (**EAPs**) for the Sector are available from Statistics South Africa.

2.4 Ms Mamashela's reasoning does not justify a period of 5 working days to respond to the 2025 Proposed Sector Targets. It is not clear why the Department is urgently rushing through the consultation process as there does not appear to be a justifiable or rational reason to expedite the consultation process.

2.5 Our client has also been made aware that other sectors that were consulted with earlier in the week (i.e. 11 and 12 February 2025) were provided the same deadline of Friday, 21 February 2025 to provide written submissions on the relevant 2025 Proposed Sector Targets.

2.6 There appears to be no rational basis as to why some sectors were provided additional working days to consider and prepare a response. The fact that all sectors have been given the same

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deadline of 21 February 2025, regardless of when their virtual meeting took place, suggests that the Department is not affording each sector an equal and meaningful opportunity to properly consider and respond to the 2025 Proposed Sector Targets. In so saying, we do not suggest that the deadline for responses given to other sectors was reasonable. However, imposing the same rigid deadline - despite some sectors having had significantly less time to prepare - suggests that the Department is prioritising administrative convenience over meaningful engagement.

2.7 The 2025 Proposed Sector Targets are markedly different from the draft sector targets set out in the 2023 and 2024 Draft Regulations. Accordingly, the Minister cannot rely on any previous 'consultations' that took place in respect of those draft sector targets. Those draft sector targets were published prior to the empowering provisions of the EEA coming into effect, and on the Department's own reasoning appear to rely on outdated statistical information pertaining to the various sectors. In effect, our client had approximately 36 hours' to consider the 2025 Proposed Sector Targets ahead of the Virtual Meeting, and did not have the benefit of receiving information that informed the new methodology for formulating the said Targets.

2.8 Stakeholders were provided with no substantive information prior to the Virtual Meeting and could thus not meaningfully prepare or engage on any substantive submissions regarding the 2025 Proposed Sector Targets during the Virtual Meeting. In order for a consultation process to be fair, adequate notice of the consultation process is required, together with substantive information contained in the notice regarding the subject matter and proposed changes to allow stakeholders to prepare an informed response. A consultation without this prior notification and information cannot be considered meaningful engagement, nor consultation as envisioned in terms of the EEA.

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2.9 Moreover, a reasonable consultation process requires, at minimum, that meaningful opportunities are provided for engagement in the consultation process and further that measures are taken to ensure that stakeholders have the ability to take advantage of the opportunities provided. The consultation process should have been approached with an openness to consider dissenting views and should not be conducted as a mere formality or tick box exercise. Consultation requires genuine engagement on issues. Approaching a consultation process in this hurried manner indicates that the targets have been pre-determined and are not open to discussion or adjustment. Additionally, the proposed timeline for implementation which were presented, further cemented the view that these targets were not open for discussion or debate.

2.10 For the reasons above, our client requests that an extension is provided for the sector in which its members operate to properly consider the 2025 Proposed Sector Targets, and should such extension be granted, that a period of 60 days is provided from the date of the grant of the extension.

3. LACK OF INFORMATION ON THE METHODOLOGY APPLIED IN THE 2025 PROPOSED SECTOR TARGETS

3.1 During the Virtual Meeting it was explained that the Department has relied on the 2024 workforce profile applicable to the Sector, which is based on information submitted by designated employers for the 2024 reporting period. The Department apparently also took into account the increase in representivity of designated groups between the 2023 and 2024 reporting periods and used this increase as a measure to justify the percentage increases of the Targets above the 2024 workforce profile.

3.2 The 2024 workforce profile and a comparison between the 2023 and 2024 workforce profiles is a single-year reflection on growth, and may not fully capture industry trends, economic cycles, or historical progress in employment equity. The methodology behind these percentage increases is not clear. There appears to be a lack of a multi-year data analysis which raises questions about the rationality and feasibility of the 2025 Proposed Sector Targets. What is required is a scientific, actuarial and economic analysis of trends over a statistically relevant period of time (of at least 5 to 10 years) in order to determine the appropriate percentage by which the workforce profile numbers might increase in a realistic and achievable manner.

3.3 Data on the progress made in the Sector over a number of years should be considered, particularly if the Department's 2023 and 2024 draft targets appeared to underestimate the

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Sector's actual advancements. The data presented by the Department does not consider how aligned to EAP the designated groups are within the sector before proposing higher targets (EAP alignment being a key requirement in determining whether or not the sectorial numerical targets are met).

3.4 For reasons more fully explained below, reliance on the 2024 workforce profile of various sectors, being the sector conducting Wholesale and Retail trade except for the trade in Motor Vehicles and Motorcycles, the sector conducting Wholesale and Retail trade only of Motor Vehicles and Motorcycles, and the sector conducting the Repair of Motor Vehicle and Motorcycles, that are markedly different in demographics, gender and skill set is not rational, and results in a skewed data point for the Department to propose increases as a transformative goal.

4. FAILURE TO TAKE INTO ACCOUNT PREVIOUS SUBMISSIONS ON THE SEPARATION OF SECTORS

4.1 When a question was raised during the Virtual Meeting by the Motor Vehicle Industry (**RMI**) as to why different sectors were combined, despite previous requests from industry bodies to separate the distinct industries Mr Thembinkosi Mkalipi (**Mr Mkalipi**) stated that the Department had agreed at the National Economic, Development and Labour Council (**NEDLAC**) on what sectors would be put together and that the Department regarded that agreement as determinative of the issue.

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4.2 NEDLAC is not a consultative body contemplated in section 15A(1) and (2) of the EEA. Section 15A(1) and (2) contemplates consultation with the relevant sectors and advice of the Commission for Employment Equity.

4.3 The response by Mr Mkalipi appears to indicate that the Department is not willing to reconsider its position on the grouping together of these vastly different and nuanced industries due to an apparent agreement within NEDLAC. The Department has thus not complied with the requirement to consult with the relevant sectors and appears to be dismissing the requests by our client and other industry bodies to reconsider the separation of these sectors.

4.4 Our client does not intend to repeat its 2023 and 2024 Submissions on the necessity of separating these sectors. As previously stated by our client, the Standard Industrial Classification Codes (**SIC Codes**) for "Wholesale and Retail trade, Repair of Motor Vehicles and Motorcycles" is further divided into:

> *Division 45: wholesale and retail trade and repair of motor vehicles and motorcycles;*
>
> *Division 46: wholesale trade, except of motor vehicles and motorcycles; and*
>
> *Division 47: retail trade, except for motor vehicles and motorcycles.*

4.5 At the very least, the sector in the division 47 should not be included in a sector dealing with motor vehicles and motorcycles. There is no rational basis for grouping these sectors together, and collating statistical information of these sectors is likely to present a distorted workforce profile that fails to accurately reflect key factors such as demographics, skill sets, gender dynamics, and the pool of suitably qualified individuals in each sector. Combining these sectors for the purposes of employment equity target setting may result in absolute barriers to advancement of certain designated groups if the benchmark bears little resemblance to the realities of the distinct sectors.

4.6 The Department is again, urged to split the Wholesale and Retail sector (that conducts wholesale and retail trade in all goods except motor vehicles and motorcycles) from sectors engaged in the trade and repair of Motor Vehicles and Motorcycles and to consider the separate workforce profiles of each of these sectors when considering draft employment equity targets. Our client further requests that the separate statistics applicable to the workforce profiles of these sectors are made available to it, so that it can make meaningful submissions on the appropriateness of the 2025 Proposed Sector Targets and to enable our client to compare itself against the applicable sector, properly demarcated.

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5. **THE PROPOSED INCREASE OF DISABILITY TARGETS**

5.1 A comparison of the 2023 and the 2024 Draft Regulations against the 2025 Proposed Sector Targets for persons with disabilities (the **disability targets**) indicate an intention by the Department to increase disability targets from 2% to 3% across all sectors. This proposed increase does not appear to be informed by any methodology or statistical information from the sectors.

5.2 During the Virtual Meeting and when asked what information informed the increase, Ms Mamashela indicated that there is no statistical information available from Statistics South Africa on the Economically Active Population of persons with disabilities. It was explained that workforce profiles indicate that representation of persons with disabilities has hovered at around 1% for 26 years and the Department raised the issue that employers should conduct workplace audits, identify areas where employees can be accommodated and to engage with the universities to conduct a skills audit on available candidates with disabilities.

5.3 Based on the Department's response during the Virtual Meeting, it is apparent that the Department's proposed target of 3% is arbitrary and is not informed by any statistical data nor is it informed by the pool of suitably qualified people within the Sector who have declared a disability.

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5.4 Our client submits that it is incumbent on the Department to conduct a skills audit of persons with disabilities within each sector before proposing a disability target. Doing so will ensure that any proposed disability target is informed by accurate information that accounts for the realities of any particular sector.

5.5 The potential of being held to a target which is not reasonably, justifiably or logically set, is not rational.

6. **PROPOSED DECREASE OF FEMALES AS A DESIGNATED GROUP**

6.1 There is a proposed decrease in the target for females in the skilled technical occupational level of 4.9 percentage points. This is a proposed reduction in the representation of a designated group.

6.2 Significant barriers to advancement will be faced by females in the Sector if the 2025 Proposed Sector Targets are implemented. Overall, there appears to be a move to reduce female representation in the skilled technical occupational level, notwithstanding the fact that females are a designated group recognised in terms of the EEA.

6.3 Despite significant inroads regarding increased representation of females in each occupational level, the 2025 Proposed Sector Targets effectively have the result of a regression on the progress made in the industry. This is not rational and does not give effect to the purpose of the EEA, wherein females have been identified as a designated group and measures should be put in place to advance females in the workplace, rather than limit their advancement.

6.4 Moreover, it appears that the rationale behind the proposed regression is based on females apparently being over-represented in the workforce profile in the sector in the skilled technical occupational level. Regard should be had to the different gender split in the Wholesale and Retail sector, versus in the Motor Vehicle and Motorcycles industry.

6.5 Without the correct data being relied on for the relevant sector, it would not be rational for the Department to opine on whether there is indeed an over-representation of females and, if so, whether that over-representation of a designated group requires a decrease without regard to the pool of suitably qualified individuals and the gender split in the two sectors.

7. **THE NON-NUMERICAL PRINCIPLES SET OUT IN THE DRAFT 2024 REGULATIONS**

7.1 The power point presentation presented at the Virtual Meeting did not provide any information on the non-numerical information contained in the 2024 Draft Regulations and no clarity has been provided on previous concerns raised by our client in the 2024 Submission.

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7.2 Whilst it was mentioned during the Virtual Meeting that there will be a publication of two sets of employment equity regulations (i.e. the General Administrative Regulations and Regulations on the 5 year sector targets), it is not clear whether these regulations will first be published in draft form inviting public comment. To the extent that regulations are published on the 5 year sector targets, including non-numerical aspects of the sector targets and their application, it is a peremptory requirement for these regulations to be published for public comment in the *Government Gazette* in terms of section 15A(2) and (4) of the EEA.

7.3 There was no information in the presentation on whether the regulations that the Department intends to publish at the end of March 2025 will address the following various concerns raised by our client in the 2024 Submission, including but not limited to:

7.3.1 the status of paragraphs 3.4.2, 3.4.4 and 3.4.6 of the Draft 2024 Regulations and internal inconsistencies on the application of these principles;

7.3.2 information pertaining to the potential need to demarcate sectors; and

7.3.3 how the national and provincial EAP will be applied in circumstances where a designated employer's head office is situated in one province, which is likely to apply to the top four occupational levels, but the majority of employees are employed in other provinces.

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7.4 Our client requests that the Department complies with its obligations in section 15A of the EEA and urges the Department to publish draft regulations on the non-numerical principles applicable to the sector targets for public comment on reasonable terms.

7.5 Asking for comments on the targets, without further consultation on the non-numerical principles is another failure of the Virtual Meeting and any attempt at "consultation".

8. **THE MINISTER'S INTENTION TO PUBLISH FINAL TARGETS AT THE END OF MARCH 2025 IS PREMATURE**

8.1 During the Virtual Meeting, stakeholders requested clarity on whether the 2025 Proposed Sector Targets would first be published in the *Government Gazette* as contemplated in section 15A(2) and (4) of the EEA. The response was not clear, and instead, the Department responded that it intended to comply with its interpretation of the law, and if stakeholders disagreed with that interpretation they could resort to legal proceedings. This is an unfortunate attitude. The Department is responsible for taking the administrative action the law requires it to take – in accordance with the law. Recourse to courts should be a last resort, not a substitute for the fair and appropriate exercise of the executive's power.

8.2 Section 15A of the EEA requires that the following steps must be taken:

8.2.1 Identification of the proposed national economic sectors, and publication of draft sectors in the *Government Gazette* for public comment, allowing interested parties at least 30 days to comment;

8.2.2 Consultation with the relevant sectors;

8.2.3 Publication of draft targets in the *Government Gazette* for public comment, allowing interested parties at least 30 days to comment; and

8.2.4 After taking the advice of the Commission for Employment Equity, publication of the final sector targets.

8.3 There has been no prior publication identifying specific national economic sectors inviting public comment on such identification of sectors. Further, and should the Department seek to rely on the 2025 Proposed Sector Targets as a "final" target, the Department is obliged to first publish these new targets in the *Government Gazette*, inviting public comment. This has not been done in relation to the 2025 Proposed Sector Targets, and it is not clear on whether the Department intends to do so.

8.4 The Department is therefore urged to comply with the multi-stage process as contemplated in section 15A of the EEA.

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9. **CONCLUSION**

9.1 Our client is committed to transformation in the workplace and supports affirmative action measures in the form of non-numerical initiatives and numerical goals but excluding quotas. However, in order to ensure a genuine and fair consultation process, the Department is required to consider demarcated data points of two different sectors.

9.2 The Department is requested to grant our client an extension of time to consider the relevant numerical data for its sector against the 2025 Proposed Sector Targets, and for 60 days to be provided from the date of confirmation of such extension.

9.3 Lastly, in order to enable our client to meaningfully engage in a consultation process, our client requests access to information pertaining to the methodology and workforce profiles of the two distinct sectors.

9.4 For the reasons set out in this letter, we are instructed to urge the Minister, as we hereby do, to comply with section 15A and to engage in a genuine consultation process, failing which our client and its members will consider their options.

9.5 Our client's rights are expressly reserved.

Yours faithfully

**Sent electronically*
Bowman Gilfillan
per: Talita Laubscher / Melissa Cogger

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SEIFSA
Voice of Industry

21 February 2025

Ms. Ntsoaki Mamashela
Director Employment Equity
Department of Employment and Labour
Private Bag X117
Pretoria
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Dear Ms Mamashela,

SECTOR TARGETS CONSULTATION MANUFACTURING: 19 FEBRUARY 2025

Thank you and your colleagues for the presentation on the above and the ensuing brief engagement.

At the outset and before responding to the revised 5-year sectoral numerical targets presented at this session, allow me to reiterate that SEIFSA on behalf of its membership, supports the goals and objectives of the Employment Equity Act as a means of accelerating the pace of transformation across the different sectors of the economy.

However, the success of sectoral targets in achieving this objective will depend on how such targets are set, enforced by the Department of Employment and Labour and ultimately embraced by employers.

We raise the last point in light of the nature and tone of the consultation session. With over 1000 employer representatives on a Teams Platform not set-up for the overwhelming attendance by employers, many reporting that the presentation itself (incorporating the revised targets) had not been received prior to the session and delegates either not being able to access the session (due to the session being oversubscribed) or delegates being exited from the session due to the vast number of attendees on the platform did not make for a productive engagement.

This I'm sure, you would agree, is not appropriate for the matter under discussion. Whilst we acknowledge and accept your public apology offered on the platform,

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the entire two-and-a-half-hour session, notwithstanding your attempts to press that the engagement was indeed consultation may be found to be less than what the Labour Relations Act and case law recognises as good faith consultation.

Nevertheless, we acknowledge the authority of the Minister of Employment and Labour to set numerical targets after having consulted with economic sectors to promote employment equity at all occupational levels of the workplace. We also remain firmly of the view that the Minister, after having considered all submissions, has the authority to set numerical targets for a sector and may also set different numerical targets for different occupational levels, subsectors or regions within a sector.

We raise this point in light of the principle concern we raised in the session that the categorisation of Manufacturing, as an all-encompassing category of all forms of manufacturing is patently wrong. Manufacturing entails vastly different economic sub-sectors engaged in manufacturing activities across the economy. Auto assemblers, the automotive component manufactures, textile and metal instrumentation manufacturing are all vastly different in size, complexity of operations, demographics, input costs to name a few. Even within the metals and engineering industries, there is no uniformity. As illustrated hereunder:

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Sub-Sector	% of Manfacturing	% of M&E
Plastic products	2,05	7,8
Basic iron and steel products	2,92	11,1
Non-ferrous metal products	3,54	13,5
Structural metal products	2,01	7,7
Other fabricated metal products	3,65	13,9
General purpose machinery	3,45	13,2
Special purpose machinery	3,73	14,2
Household Appliances	0,66	2,5
Electrical machinery and apparatus	2,14	8,2
Bodies - MV, trailers and semi-trailers	0,75	2,9
Other transport equipment	1,32	5,0
Total M & E Sector	26,22	100,0

The sector constitutes 26.2% of the manufacturing sector based on output, representing the metal production, fabrication, the heavy engineering value chain and the plastics product sub-sector.

The definition of the sector is as per the Metals and Engineering Industries Bargaining Council (MEIBC).

The respective weights of the sub-sectors relative to total manufacturing and the rebalanced weights to indicate the sub-sectors weighting in the aggregated metals and engineering sector production index.

From the outset of consultations with you and/or Senior Officials from the Department going as far back as February 2022, we have always categorised the metals and engineering industries according to the Standard Industrial Classification (SIC) of all Economic Actives in terms of Sub-Sector 6 (refer to the

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green box above) and Sub-Sector 7 (the red box). At the time this was never not accepted and, in engagements going back to 13 and 14 October 2022 your Office had even proposed final sector targets for both sub-sectors.

Regrettably in May 2023 the stance on the part of the Minister and/or Senior Officials advising the Minister shifted and reference began to be made to Manufacturing as a one-size-fits-all category. This we believe is fatally wrong and simply ignores the actual, real-world realities of different sectors and sub-sectors prevalent in the economy.

Even if one were to reluctantly accept the notion of manufacturing being bundled under one category, which we do not, the notion that the Minister and/or the Department might consider introducing sub-sector targets (e.g., for the metals and engineering industries) after the observance of the generic manufacturing targets after the expiry of the first 5-year period is non-sensical. Surely to start off with sub-sector targets and then phase into generic targets would make more sense. We made this point at the session and we record it again here for your consideration.

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On the 28 November 2023 the SEIFSA Council, the mandating body of the Federation, reaffirmed its final position on sector targets, giving due consideration to the various iterations either shared with us and/or published and in the spirit of setting targets that are strategic, achievable, rational, proportional and justifiable confirmed a final position on Sub-Sector 6 and Sub-Sector 7 which we detail hereunder:

AS PRESENTED BY DOEL ON THE 19 FEBRUARY 2025				
		MANUFACTURING	SUB-SECTOR 6	SUB-SECTOR 7
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	24,1%	25,0%	25,0%
	Female	25,0%	15,0%	15,0%
	Total	49,1%	40,0%	40,0%
Senior Management	Male	32,4%	40,0%	35%
	Female	33,6%	15,0%	20,0%
	Total	66,0%	55,0%	55,0%
Professionally Qualified & Middle Management	Male	40,4%	44,5%	47,0%
	Female	37,7%	23,5%	23,0%
	Total	78,1%	68,0%	70,0%
Skilled Technical	Male	49,8%	61,5%	60,0%
	Female	39,6%	23,0%	28,0%
	Total	89,4%	84,5%	88,0%
Disability only	All	3%	2%	2%

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We reaffirm on record all the technical points raised in our previous correspondence and especially the points raised in our letter of 30 April 2024. We also attached on record all correspondence to your Office, namely: our letter of 30 April 2024, 9 June 2023, 28 November 2022 and 13 June 2022 respectively.

In closing, we raise serious concerns in relation to the extremely ambitious targets you presented, particularly in light of the prevailing low economic growth environment, little or no movement in the aggregate number of employees at top and senior levels, worrying attrition trends, especially in the three upper occupation levels and generally challenges in filling vacancies.

With the South African economy expected to grow at best by 1.8% over the next three to five years and growth in the metals and engineering industries, on average or overall, expected to be flat and headcount expected to continue to trend downwards we are facing an environment where new opportunities will remain constrained and will be mostly driven by promotions, retirements and vacancies.

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Delays, confusion and moving of goalposts on sector targets do little to advance competitiveness of businesses and economic growth in the country which are precursors to job creation, economic inclusivity and diversity.

Yours Faithfully

Lucio Trentini
Chief Executive Officer
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advancing patient care through MedTech

24 February 2025

Ms. Ntsoaki Mamashela

Director Employment Equity

Department of Employment and Labour

Private Bag X117

Pretoria, 0001

By Email: ntsoaki.mamashela@labour.gov.za

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Dear Ms Mamashela

Meetings held during the weeks of 10 – 21 February 2025

SAMED is a not-for-gain voluntary trade association and represents its members i.e. importers, manufacturers and distributors of medical devices and in vitro diagnostics in South Africa. Medical devices are defined in the Medicines and Related Substances Act, 1965, and are, as such also subject to that law, and the regulations issued thereunder. This law requires specific human resource obligations on companies, which are distinct from those applicable to others in the various sectors within which members might have self-classified in the past.

It is within this context that SAMED wishes to reiterate its support for the transformation of South African society, the economy and more specifically, the labour force. To attest to this, SAMED members' involvement in the YES campaign is well-documented, as is its programs on the empowerment of women.[1]

SAMED is also part of the newly launched Medtech Master Plan, under the auspices of the Department of Trade, Industry and Competition.

SAMED has previously pointed to its concerns in relation to the absence of targets being set for sub-sectors, and the unfair results that flow from a one-size fits all when targets are set in broad industrial sectors, the key features of which differ significantly from those of SAMED's membership. For ease of reference, SAMED attaches its submissions previously made.

[1] https://blog.yes4youth.co.za/press/samed-launched-two-ground-breaking-initiatives

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When attending the meetings during the past two weeks, SAMED's members noted with concern that the proposed sector targets have increased, in some instances quite significantly. And whilst appreciating the clarity on the synchronised timelines for the EE Reports, SAMED remains concerned about the following:

- **The inability of our members to model the proposed, increased targets and to, subsequently, meaningfully respond to it**. The targets were released a day before the consultations were held, making such assessments impossible. Audiences were also large, and diverse, and there was very little time for meaningful engagement.
- **Inability to achieve targets, even if best efforts are made.** It appears that for some, even if every single vacancy and new position or promotional opportunity is filled with a designated person, the targets will not be met. And if so, the reasons justifying non-achievement would not apply.

- **Consideration of the right of access to healthcare:**
  - SAMED members' products are, in some instances, life-saving, and in others, key elements of the right of access to healthcare of individuals. It seems inappropriate to penalise patients based on the inability of a supplier to meet the ministerial targets, specifically if there are no alternatives available, or if considerations of competition are not accounted for.
  - Where a product in the public sector appears on the National Department of Health's Master Product List,[2] the requirement set by the targets would mean the removal of such products from that list, with an impact on patient care in the public sector.

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- **Large range of targets for players in medical device sector.** The targets vary significantly depending on how suppliers have self-classified. This means that suppliers in the medical device sector, to which the Medtech Master Plan apply, will face a significantly large range of targets in the same occupational level. For example, designated group targets in top management range from, for manufacturing at 41.9%, to human health at 71.3%.

- **B-BBEE alignment**. Although the attempts to align with the B-BBEE codes are appreciated, the targets set are very different (and points allocated also for partial achievement), as is the description of who is designated. Practically speaking, there would still be two different systems relating to labour that businesses have to comply with.

SAMED hereby requests a bilateral consultation with the Department of Employment and Labour, so as to unpack the above considerations, and the previous submissions it has made.

Yours Sincerely

Tanya Vogt
SAMED Executive Officer

[2] https://www.health.gov.za/wp-content/uploads/2025/02/Current-Master-Health-Product-List-1-Feb-2025.xlsx

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From: Ntsoaki Mamashela (HQ)
To: Thapelo Machaba
Cc: Annelize Crosby; Lebogang Sethusha; Masilo Lefika (HQ); Jullian Mohale (HQ)
Subject: RE: Request for Bilateral Meeting on Employment Equity Targets
Date: 20 March 2025 11:46:11 AM
Attachments: image001.png
Importance: High

Dear Mr Machaba

I have noted your request in the email below and apologies for the delayed response due to the hectic work schedule and prior work commitments.

Kindly note that we are overwhelmed with work commitments prior to your request and having to round-off the financial year end. Unfortunately, due to this hectic work schedule, we will not be in a position to meet with AGBIZ before end of March.

Thanking you in advance for your understanding

Ntsoaki

From: Thapelo Machaba <policy@agbiz.co.za>
Sent: Thursday, 20 March 2025 09:06
To: Ntsoaki Mamashela (HQ) <ntsoakiM@labour.gov.za>
Cc: Annelize Crosby <Annelize@agbiz.co.za>; Lebogang Sethusha <Lebogang.Sethusha@busa.org.za>
Subject: RE: Request for Bilateral Meeting on Employment Equity Targets

Good morning, Sisi Ntsoaki,

I trust you're doing well; I am writing to check on the matter below.

Regards

From: Ntsoaki Mamashela (HQ) <ntsoakiM@labour.gov.za>
Sent: Wednesday, 26 February 2025 12:21
To: Thapelo Machaba <policy@agbiz.co.za>
Cc: Annelize Crosby <Annelize@agbiz.co.za>; Lebogang Sethusha <Lebogang.Sethusha@busa.org.za>
Subject: RE: Request for Bilateral Meeting on Employment Equity Targets

Dear Thapelo

We hereby acknowledge receipt of your letter. We will revert back to you in due course.

Thanks
Ntsoaki

KK
KM

From: Thapelo Machaba < policy@agbiz.co.za >
Sent: Wednesday, 26 February 2025 11:22
To: Ntsoaki Mamashela (HQ) < ntsoakiM@labour.gov.za >
Cc: Annelize Crosby < Annelize@agbiz.co.za >; Lebogang Sethusha < Lebogang.Sethusha@busa.org.za >
Subject: Request for Bilateral Meeting on Employment Equity Targets

Good morning, Ms Mamashela

Please find attached a letter from Agbiz requesting a bilateral meeting with the department. We would appreciate the opportunity to engage in discussions at your earliest convenience.

Regards

agbiz
agricultural business chamber
the way to prosperity

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Thapelo Machaba
Agricultural Economist and Policy Analyst

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The Willows, Pretoria, South Africa, 0184
Tel: +27 12 807 6686
policy@agbiz.co.za
www.agbiz.co.za

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Attention: Ms. Nomakhosazana Meth, MP
Minister of Employment and Labour
Department: Employment and Labour
Private Bag X117
Pretoria, 0001

Per email: innocent.makwarela@labour.gov.za
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masilo.lefika@labour.gov.za
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thembinkosi.mkalipi@labour.gov.za

cc: Lsaungweme@asisa.org.za

14 March 2025

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Re: Response to Proposed Sector Targets of 11 February 2025

Thank you for engaging with us regarding the draft Sectoral Numerical Targets for the financial sector which were proposed on 11 February 2025. We appreciate the Department's willingness to consider industry feedback and the opportunity to submit a counterproposal.

Throughout our interactions, including in our submissions dated 29 April 2024 and most recently on the 21 February 2025, ASISA has consistently aimed to contribute constructively towards developing equitable and practical employment equity targets.

As we prepare our counterproposal, we remain committed to a dialogue that respects the unique dynamics of our sub-sector and addresses the practical realities we face. We believe that targets based on a thorough understanding of the actual demographic profiles of suitably qualified individuals, rather than solely on the Employment Equity Act's EAP guidelines, will better serve the intent of equitable representation.

With this in mind, ASISA proposes that the Department reverts to the employment equity targets published on 1 February 2024 under Government Gazette No. 50058 (hereinafter referred to as "the 2024 targets"). These targets were proposed by the Department as a conscious departure from those previously agreed with the financial sector in 2020. ASISA proposes the 2024 targets notwithstanding our abiding concern with the targets for skilled junior occupational level, which are too high relative to suitably qualified individuals.

FIVE YEAR SECTORAL NUMERICAL TARGETS				
5.FINANCIAL AND INDUSRANCE ACTIVITIES				
		1 Feb 2024 PROPOSAL	**11 Feb 2025 PROPOSAL**	**DIFFERENCE**
		Extract from gg. No 50058.	**Extract from DoEL ppt**	
DESCRIPTION	**GENDER**	**DESIGNATED GROUPS**	**DESIGNATED GROUPS**	
Top Management	**Male**	26.0%	27.8%	+1.8%
	Female	20.0%	35.3%	+15.3%
	Total	**46.0%**	**63.1%**	**+17.1%**

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Senior Management	**Male**	24.0%	31.7%	+7.7%
	Female	24.0%	45.3%	+21.3%
	Total	**48.0%**	**77.0%**	**+29.0%**
Professionally Qualified & Middle Management	**Male**	30.0%	40.7%	+10.7%
	Female	34.0%	46.1%	+12.1%
	Total	**64.0%**	**86.8%**	**+22.8%**
Skilled Technical	**Male**	47.4%	49.5%	+2.1%
	Female	40.8%	46.1%	+5.3%
	Total	**88.2%**	**95.6%**	**+7.4%**
Disability Only		**2% OF TOTAL WORKFORCE**	**3% OF TOTAL WORKFORCE**	**+1%**

The Department's proposed targets for 2025 represent significant increases that do not align with the current realities of the demographic and the suitably qualified landscape in our sector. Our analysis suggests that 2024 targets provide a more feasible and justified roadmap towards achieving the objectives of employment equity.

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Attached to this letter is a high-level research and justification for our proposal to use the 2024 targets for our sector. The information demonstrates the vast differences between the makeup of the sector's suitably qualified individuals and the National EAP. It also highlights the implications of the Department's proposed targets on affected designated employers.

We acknowledge the Department's efforts in facilitating engagements with our sub-sector as seek to arrive at meaningful but realistic targets. To this end, we remain available to further engagements with the Department, including on all the other non-target related concerns that we have raised previously but that are yet to be discussed.

For further engagement, kindly contact Mr Kaizer Moyane @kmoyane@asisa.org.za and/or Ms. Lister Saungweme @LSaungweme@asisa.org.za.

Sincerely,

Kaizer Moyane

ASISA CEO

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High level Analysis of the Suitably Qualified Demographic Profile – South African Financial Services Sector

Background

The proposal introduced on 11 February 2025 includes significant amendments to employment equity targets for the financial sector, notably:

- A substantial increase in gender representation targets across all employment levels, without accompanying justification or analysis.
- Future compliance requirements aligned strictly with the National Economically Active Population (EAP), which do not adequately reflect the reality of suitably qualified individuals as defined by section 20(3) of the Employment Equity Act.

The table below provides a comparative analysis of the targets issued on 1 February 2024 and the proposed targets presented to the sector on 11 February 2025, underscoring the significant changes under discussion.

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FIVE YEAR SECTORAL NUMERICAL TARGETS				
5.FINANCIAL AND INDUSRANCE ACTIVITIES				
		1 Feb 2024 PROPOSAL	**11 Feb 2025 PROPOSAL**	**DIFFERENCE**
		Extract from gg. No 50058.	**Extract from DoEL ppt**	
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	Total	**64.0%**	**86.8%**	**+22.8%**
Skilled Technical	**Male**	47.4%	49.5%	+2.1%
	Female	40.8%	46.1%	+5.3%
	Total	**88.2%**	**95.6%**	**+7.4%**
Disability Only		**2% OF TOTAL WORKFORCE**	**3% OF TOTAL WORKFORCE**	**+1%**

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Sector Realities

The financial services sector—including insurance, savings, and investment industries—is highly regulated and demands a workforce with specialized qualifications and skills.

While the Department of Employment and Labour (DoEL) proposes aligning employment equity targets strictly with the National Economically Active Population (EAP), this approach overlooks the practical realities of the sector. Specifically, the EAP demographic profile[1] is significantly different from the demographics of the suitably qualified talent pool, especially in highly specialized and regulated occupations. The insistence on strict adherence to National EAP targets, particularly at junior management and professional levels, risks overlooking critical sector-specific qualification requirements. Our analysis highlights specific skills gaps in critical areas such as actuarial science, compliance, data analytics, and advisory services. While transformation and equity remain essential priorities, the feasibility and practicality of meeting these targets must reflect actual workforce demographics and skill availability.

The review below provides a high-level analysis of the demographic profile of suitably qualified individuals in the sector, drawing on official statistics and industry reports. It covers the supply of graduates and qualified talent, typical qualifications and skills for various roles (from entry-level to senior management), identified skills gaps and shortages, per demographic profile.

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Workforce Educational Profile

Based on the data provided by the Insurance services Seta (INSETA) the **insurance industry** employs roughly 95% of employees who have at least a **matric (NQF Level 4) qualification**, and only a very small share (under 5%) lack a matric. About one-third of insurance employees hold tertiary qualifications: 16% have diplomas or certificates (NQF 5–6) and **17% hold a bachelor's degree or higher**. Of those with higher degrees in insurance, about two-thirds have a first degree (NQF 7) and one-quarter an honours degree (NQF 8). This high education level reflects the skills-intensive nature of financial services. By comparison, in the broader finance industry (including banking and investment), around 18% of workers are in low-skill jobs and less than 25% are in highly skilled occupations, implying that the majority are in mid-skilled roles that typically require some tertiary education or specialized training. Whilst we cannot speak for all the other sectors and sub-sectors, using the data from a national insurance skills database as provided by INSETA highlights the minimum skills or qualifications requirements for the financial sector.

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6.1. National Economically Active Population (EAP) by Population Group and Gender

Table 1: National EAP by Population Group and Gender[2] (Source: Statistics South Africa, QLFS, Quarter 3, 2023)

MALE			FEMALE			TOTAL
AM	African Male	43.1%	AF	African Female	37.6%	80.7%
CM	Coloured Male	4.8%	CF	Coloured Female	4.2%	9.0%
IM	Indian Male	1.6%	IF	Indian Female	1.0%	2.6%
WM	White Male	4.2%	WF	White Female	3.5%	7.7%
TOTAL		53.7%			46.3%	100.0%

Table 1 above provides the demographics of the EAP per population and gender groups at the National level.

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In analysis of the insurance sub-sector skills plan, as highlighted in the extracts below, one can note that the 10 sectoral priority skills for 2022 and 2023 required at least an NQF level 4 or a basic matric pass.

Table 19: Top 10 Sectoral Priority Occupations for 2022 2023

PERIOD	OCCUPATION CODE	OCCUPATION	SPECIALISATION/ ALTERNATIVE TITLE	THE INTERVENTION PLANNED BY THE SETA	NQF LEVEL	NQF ALIGNED Y/N	QUANTITY NEEDED	QUANTITY SUPPORTED BY THE SETA	0-100	101-1000	1001 & ABOVE
2022-2023	2019-332101	1. Insurance Agent	Insurance Client Services Agent Commercial Underwriter	Training on commercial and personal lines insurance as well as technical and medical underwriting. Focus on Fit and Proper Requirements to conduct effective insurance sales	4	Y	71	200	x		
2022-2023	2019-212101	2. Actuary	Actuary Manager Average Adjuster	Training of actuaries to undertake Moses testing, VBA & C++ programming and risk calculations. Training of qualified actuaries to obtain long-term business experience.	7	Y	58	70	x		
2022-2023	2019-251201	3. Software Developer	Software Architect Software Designer	Training in designing and developing computer software systems. Also, on evaluating the requirements for these systems.	5	Y	27	80	x		
2022-2023	2019-122101	4. Sales & Marketing Manager	Insurance Sales and Marketing Manager Key Account Manager	Advanced training in budgets, sales methods, expenditure control and allocation of resources	7	Y	23	80	x		
2022-2023	2019-332102	5. Insurance Broker	Short Term Insurance Consultant	Advanced training in new aspects of the three major categories of insurance, viz. short and long term, and collective investments. Training in new facets of insurance and risk coverage and premium calculation	5	Y	23	80	x		
2022-2023	2019-331503	6. Insurance Loss Adjuster	Accident Claims Officer Insurance Loss Assessor	Training candidates in credit management, analytical, and administrative skills.	4		18	60	x		

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PERIOD	OCCUPATION CODE	OCCUPATION	SPECIALISATION/ ALTERNATIVE TITLE	THE INTERVENTION PLANNED BY THE SETA	NQF LEVEL	NQF ALIGNED Y/N	QUANTITY NEEDED	QUANTITY SUPPORTED BY THE SETA	0-100	101-1000	1001 & ABOVE
2022-2023	2019-241301	7. Financial Investment Advisor	Insurance Claims Clerk Claims Analyst	Advanced training programmes on liability and audit insurance settlements. Acquiring further knowledge in the areas of statistical or actuarial data, bonds and shares	5	Y	17	50	x		
2022-2023	2019-242207	8. Compliance Officer	Financial Markets Compliance Officer Compliance Officer (Financial Sector)	Intermediate training in compliance services to comply with applicable regulatory requirements	6	Y	16	50	x		
2022-2023	2029-251101	9. ICT Systems Analyst	ICT Systems Coordinator ICT Systems Architect	Advanced training in existing and new ICT systems. Training on new, additional and unique system components	7	Y	16	50	x		
2022-2023	2019-431204	10. Insurance Claims Administrator	Insurance Claims Clerk Claims Analyst	Advanced training programmes on liability and audit insurance settlements. Acquiring further knowledge in the areas of statistical or actuarial data, bonds, and shares	4	Y	16	50	x		

Source: WSP/ATR data 2021/2022

Chief Executive Officer: Ms Gugu Mkhize

Date: 27 July 2021

Chairman of the Board: Mr Sihle Ngubane

Date: 27 July 2021

Again without speaking for all the other sectors and sub-sectors, and using the data from a national insurance skills database as provided by INSETA, we submit that the matric demographic profile should be used as the bare minimum baseline for setting the targets.

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Race and Gender Profile

Notably, Africans make up about 65% of employment in the broader financial sector and over 75% of the total services sector workforce, so their 54% share in insurance indicates a gap in representation. The gender profile skews strongly in favour of females in many financial services areas. Insurance employment is about 61.6% female.

Table 7: Employees in the Insurance Sector by Race, Gender, Disability Status, and Occupation, 2021

		Share (%)							
Occupation	**Total ('000s)**	**African**	**Coloured**	**Asian**	**White**	**Other**	**Male**	**Female**	**Living with Disability**
High Skill Occupations	***53.8***	***41.7***	***14.1***	***11.4***	***31.6***	***1.1***	***46.8***	***54.2***	***1.0***
Managers	21.6	36.2	13.1	12.6	36.9	1.1	46.4	53.6	1.0
Professionals	32.2	45.4	14.8	10.7	28.1	1.1	45.4	54.6	0.9
Skilled Occupations	***92.4***	***60.8***	***14.5***	***7.2***	***16.8***	***0.7***	***34.3***	***65.7***	***1.3***
Technicians & Associate Prof.	49.6	62.8	10.2	7.1	19.0	0.9	36.9	63.1	0.6
Clerks	38.1	55.6	20.8	7.9	15.4	0.4	29.3	70.7	2.3
Service & Sales Workers	4.1	82.0	7.9	3.7	5.9	0.5	43.0	57.0	0.1
Skilled Agricultural, Craft & Related Trades	0.1	73.6	10.4	3.2	9.6	3.2	73.6	26.4	0.8
Operators & Assemblers	0.4	82.8	8.6	2.6	3.1	2.9	88.3	11.7	0.0
Low Skill Occupations	***1.5***	***87.5***	***8.6***	***0.5***	***1.8***	***1.6***	***22.0***	***78.0***	***0.9***
Elementary Occupations	1.5	87.5	8.6	0.5	1.8	1.6	22.0	78.0	0.9
Total	**147.7**	**54.1**	**14.3**	**8.7**	**22.1**	**0.8**	**38.4**	**61.6**	**1.2**

Source: Own calculations, WSP 2021/22 (INSETA 2021b)

Extract from the INSETA Sector Skills Plan 2022/2023

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With the above profile in mind, we submit that in order to meet the Department's proposed targets by using the EAP instead of suitably qualified persons as an overlay on sector employment, the hiring of racial groups that are overrepresented compared to their EAP would effectively be embargoed. Designated employers may not set targets for Whites and Indians (both male and female), nor for Coloured males or females in professionally qualified or skilled junior roles. Additionally, targets may not be set for Coloured females in senior management, nor for African females in skilled junior roles (*see below*).

Section 15A(2) states that the purpose of the targets is to ensure "the equitable representation of suitably qualified people from designated groups".

As the proposed EAP-based targets are significantly higher than those for suitably qualified individuals, the inability to hire from racial groups (or to set targets for these groups) that are overrepresented in the EAP would result in an absolute barrier, which is in conflict with the law (s15(4) of the Employment Equity Act) and would expose the affected designated employers to legal risks.. We submit that allowing reasonable grounds for non-compliance in the Regulations does not eliminate the concerns about the targets themselves.

While it is true that the Department's proposed targets are not intended to match the National EAP but to strive towards it, we submit that setting sector targets for suitably qualified individuals would only be justified and proper is it takes account of the realities of the relevant sector's skills profile. It is clear that matric (NQF Level 4) is a basic qualification benchmark for identifying suitably qualified individuals within the financial sector. The disparity between EAP demographics and the actual pool of suitably qualified individuals becomes increasingly pronounced at higher occupational levels and within specialized roles within the industry.

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Demographics of Suitably Qualified Persons

Examples of Demographic profiles of suitably qualified persons in different occupational levels vs the Economically Active Population

Category	African	Coloured	Indian	White	Total
Economically Active population (EAP)	**81.0%**	**8.8%**	**2.7%**	**7.5%**	**100%**
Entry level Employees vs Matric Pass rate					
• Pass rate above 60% in Mathematics (2020)	**65.6%**	**4.5%**	**7.8%**	**22.2%**	**100%**
• Pass rate above 60% in Mathematics (2020)	**65.5%**	**5.9%**	**10.0%**	**18.7%**	**100%**
Senior & Middle Management:					
• CAs registered as at December 2024	**19.3%**	**4.7%**	**13.4%**	**62.5%**	**100%**
• CFPs registered as at December 2024	**7.9%**	**3.3%**	**8.2%**	**80.6%**	**100%**
• Actuaries registered at a technical level as at December 2024	**30.3%**	**5.2%**	**21.1%**	**61.2%**	**100%**

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Examples of Demographic profiles of suitably qualified persons in different occupational levels vs the Economically Active Population in numbers

Category	African	Coloured	Indian	White	Total
Economically Active Population (%)	81.0%	8.8%	2.7%	7.5%	100.0%
Headcount of Matriculants with Pass rate above 60% in Mathematics (2020)*	20,154	1,376	395	6,815	30,740
Pass rate above 60% Mathematics (2020) (%)*	65.6%	4.5%	7.8%	22.2%	100.0%
Headcount with Pass rate above 60% in Accounting (2020)*	12,871	1,161	1,958	3,672	19,662
Pass rate above 60% Accounting (2020) (%)*	65.5%	5.9%	10.0%	18.7%	100.0%
Headcount CAs registered as at December 2024*	10,321	2,532	7,166	33,356	53,375
CAs registered as at December 2024 (%)	19.3%	4.7%	13.4%	62.5%	100.0%
Headcount of CAs registered as at December 2024	10,232	2,491	7,108	33,185	53,016
CFPs registered as at December 2024 (%)	7.9%	3.3%	8.2%	80.6%	100.0%
Headcount of CFPs registered as at December 2024	390	166	407	4,002	4,965
Actuaries registered as at December 2024 (%)	30.3%	5.2%	21.1%	43.4%	100.0%
Headcount of Actuaries registered as at December 2024	342	59	238	491	1,130

**Source: Department of Basic Education*

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Additional EAP Constraint

Hard EAP restrictions are imposed on hiring when sub-sector targets have been exceeded

- A key complication is that each organization now has to manage 8 sector targets and 32 sub-sector targets.
- When addressing the gap between the actual sector achievements and the proposed 11 February 2025 targets, hiring is effectively embargoed for racial groups that are overrepresented compared to EAP in each company.
- The below table illustrates the 2022[2] sector racial breakdown, compared to the Department's 11 February 2025 proposed targets. It shows that the industry runs the risk of non-compliance if it hires any further White or Indian male or females. Coloured males can only be hired in top management and senior management and Coloured females in top management. Worryingly, no further African female skilled junior employees.
- The significant delta between the current sectoral achievements and the 11 February 2025 proposed targets would have to be achieved by almost wholly employing African males and females (which would have implications for employment and labour relations in the affected designated companies).

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2022 Demographics of Sector compared to 2025 targets

	Male						Female					
	African	Coloured	Indian	White	Designated achieved	11/2/2025 target	African	Coloured	Indian	White	Designated achieved	11/2/2025 target
Top Management	10.5%	2.8%	8.0%	45.5%	21.3%	**27.8%**	8.3%	2.5%	4.1%	13.8%	28.7%	**35.3%**
Senior Management	11.7%	4.1%	9.6%	28.6%	25.4%	**31.7%**	11.2%	4.2%	7.3%	18.6%	41.3%	**45.3%**
Professionally Qualified	17.9%	5.6%	7.3%	15.9%	30.8%	**40.7%**	19.6%	7.1%	7.8%	16.2%	50.7%	**46.1%**
Skilled junior	19.7%	5.6%	3.5%	5.9%	28.8%	**49.5%**	36.4%	11.3%	5.4%	10.8%	63.9%	**46.1%**
Economic Active Population	43.5%	4.6%	1.7%	4.1%			37.5%	4.2%	1.0%	3.4%		

[2] With more time, an updated racial breakdown analysis may be conducted.

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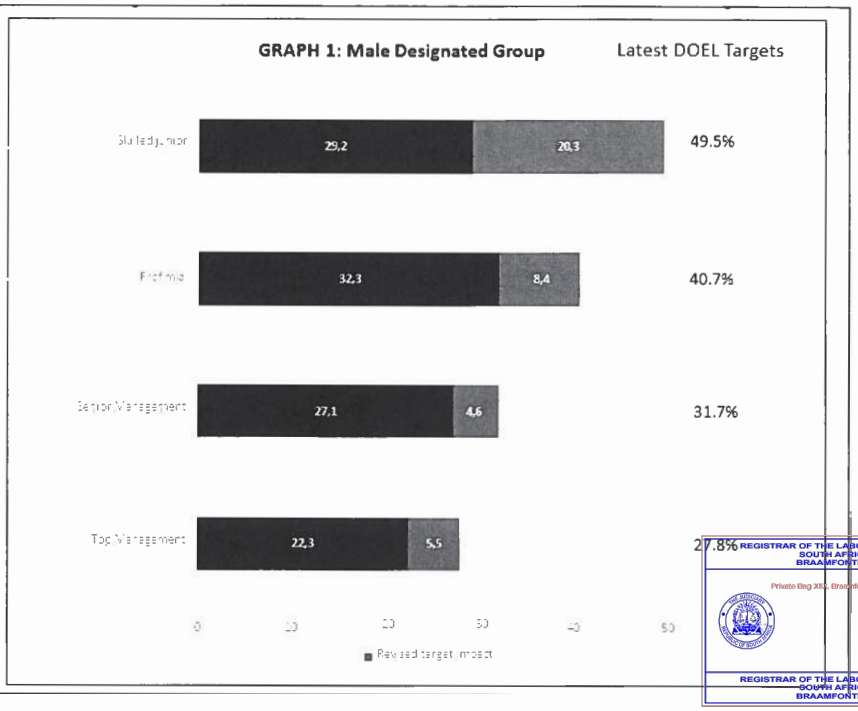
The Implication of the additional Constraint – Male

To achieve a delta of **20,3%** would require an appointment of **18 075 African Male** junior managers in the industry over the next 5 years *(the sector currently appoints 89 041 in this level)*

To achieve the delta of **8,4%** would require the appointment of **3 715 African Male** professionals in the industry over the next 5 years *(the sector currently appoints 46 439 in this level)*



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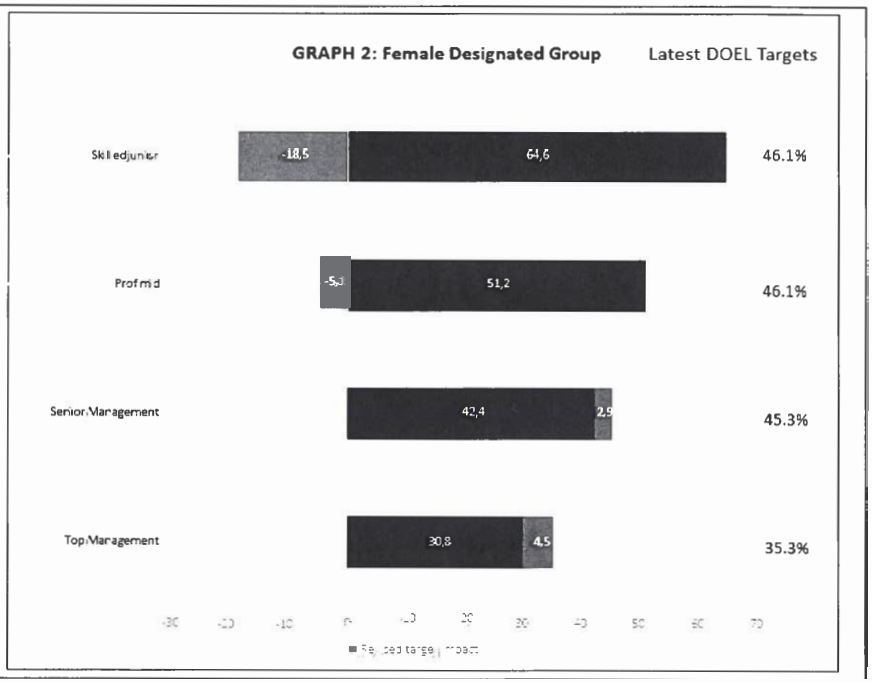
The Implication of the additional Constraint – Female

The negative delta of -18.5% implies **thatno females** can be appointed in the next 5 years as skilled junior managers

The negative delta of -5.1% implies that **no females** can be appointed in the next 5 years as professional mid-managers



References

Commission on Employment Equity Report (2024). *Quarterly report on national economically active population targets.*

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From: Ntsoaki Mamashela (HQ)
To: Thapelo Machaba
Cc: Annelize Crosby; Lebogang Sethusha; Masilo Lefika (HQ); Jullian Mohale (HQ)
Subject: RE: Request for Bilateral Meeting on Employment Equity Targets
Date: 20 March 2025 11:46:11 AM
Attachments: image001.png
Importance: High

Dear Mr Machaba

I have noted your request in the email below and apologies for the delayed response due to the hectic work schedule and prior work commitments.

Kindly note that we are overwhelmed with work commitments prior to your request and having to round-off the financial year end. Unfortunately, due to this hectic work schedule, we will not be in a position to meet with AGBIZ before end of March.

Thanking you in advance for your understanding

Ntsoaki

From: Thapelo Machaba <policy@agbiz.co.za>
Sent: Thursday, 20 March 2025 09:06
To: Ntsoaki Mamashela (HQ) <ntsoakiM@labour.gov.za>
Cc: Annelize Crosby <Annelize@agbiz.co.za>; Lebogang Sethusha <Lebogang.Sethusha@busa.org.za>
Subject: RE: Request for Bilateral Meeting on Employment Equity Targets

Good morning, Sisi Ntsoaki,

I trust you're doing well; I am writing to check on the matter below.

Regards

From: Ntsoaki Mamashela (HQ) <ntsoakiM@labour.gov.za>
Sent: Wednesday, 26 February 2025 12:21
To: Thapelo Machaba <policy@agbiz.co.za>
Cc: Annelize Crosby <Annelize@agbiz.co.za>; Lebogang Sethusha <Lebogang.Sethusha@busa.org.za>
Subject: RE: Request for Bilateral Meeting on Employment Equity Targets

Dear Thapelo

We hereby acknowledge receipt of your letter. We will revert back to you in due course.

Thanks
Ntsoaki

KK
KM

From: Thapelo Machaba < policy@agbiz.co.za >
Sent: Wednesday, 26 February 2025 11:22
To: Ntsoaki Mamashela (HQ) < ntsoakiM@labour.gov.za >
Cc: Annelize Crosby < Annelize@agbiz.co.za >; Lebogang Sethusha < Lebogang.Sethusha@busa.org.za >
Subject: Request for Bilateral Meeting on Employment Equity Targets

Good morning, Ms Mamashela

Please find attached a letter from Agbiz requesting a bilateral meeting with the department. We would appreciate the opportunity to engage in discussions at your earliest convenience.

Regards

agbiz
agricultural business chamber
the way to prosperity

The message may contain information which is confidential, private or privileged in nature. If you are not the intended recipient, you may not use, peruse, distribute or copy this message or file. Any views attached to this message. If you have received this message in error, please notify the sender immediately by e-mail, fax, mail or telephone and thereafter return/destroy the original message. Please note that the recipient must scan this e-mail and any attached files for viruses. The Agricultural Business Chamber (AGBIZ) accepts no liability of whatever nature for whatever loss, liability, damage or expense resulting directly or indirectly from the access of this e-mail or any files which are attached to this message.

Thapelo Machaba
Agricultural Economist and Policy Analyst

Agri-Hub Office Park
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The Willows, Pretoria, South Africa, 0184
Tel: +27 12 807 6686
policy@agbiz.co.za
www.agbiz.co.za

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FA25
22/9/2025-9:30:08 AM

BUSINESS UNITY SOUTH AFRICA

NATIONAL OFFICE
61 Katherine Street, Sandton, 2196
P.O. Box 652807, Benmore, 2010
+27 11 784 8000

24 April 2025

Ms Nomakhosazana Meth, MP
Minister of Employment and Labour
215 Laboria House
Cnr Francis Baard and Paul Kruger Streets
Pretoria 0001

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Per e-mail: Nomfundo.Douw-Jack@labour.gov.za

Dear Minister Meth

URGENT REQUEST FOR MEETING TO DISCUSS EMPLOYMENT EQUITY AMENDMENT ACT REGULATIONS AND SECTOR NUMERICAL TARGETS

Following my indication to you at the Government Business Partnership meeting held at Hollard in Parktown on Thursday 17 April 2025, following the gazetting of the Employment Equity Act Regulations, I wish to urgently request a meeting with you to discuss our members' concerns.

Business Unity South Africa (BUSA) acknowledges that workplace transformation is crucial for many sectors of our economy. We recognise the essential role of employment equity in fostering inclusive growth and transformation. The Employment Equity Amendment Act and sectoral numerical targets are significant policy efforts to ensure fair representation across sectors.

Successful implementation of the Employment Equity Amendment Act and the sectoral numerical targets requires administrative reasonableness, transparency, and accountability in the information provided to ensure alignment with these objectives. We express concern regarding the publication of the Employment Equity Act regulations, including the sector numerical targets (hereafter referred to as "sector targets"), which show that employers' views and evidence were disregarded.

From the outset, the sector target consultation process was marred by procedural irregularities and a lack of transparency, raising serious concerns about its substantive integrity. Employers received requests for participation on 24 December 2024 - a period when most businesses were closed for the festive season, severely limiting their ability to respond in time. Furthermore, the Department of Employment and Labour circulated critical presentation materials just before scheduled meetings, providing employers insufficient time to prepare and engage substantively with the content during consultations.

REGISTRATION NUMBER: 2014/042417/08
PRESIDENT: Mxolisi Mgojo VICE PRESIDENT: Adrian Gore **CEO:** Khulekani Mathe **NEDLAC CONVENOR:** Kaizer Moyane
DIRECTORS: Anton Pillay, Bongi Kunene, Busisiwe Mavuso, Christopher Campbell, Charlotte Mokoena, Deidre Penfold, Gareth Ackerman, John Dludlu, Mike Mabasa, Michelle Constant, Mzila Mthenjane, Stavros Nicolaou.

KK
KM

The sector consultations scheduled for February 2025 often exceeded 800 participants per meeting, lacking the depth and structure required for meaningful consultations. Discussions were predominantly led by consultants, with minimal opportunities for employers to raise substantive sector-specific concerns within a constrained one-hour timeframe. These procedural shortcomings suggest that the consultation process risks becoming performative rather than genuinely participatory.

Several sectors were afforded a narrow window of one to two weeks to prepare and submit detailed input on far-reaching sector targets. These compressed timelines were unreasonable for larger sectors and appear to prioritise administrative expediency over meaningful engagement.

A pressing concern relates to the upward revision of sectoral targets from those initially published and several sectors agreed upon in February 2024. The Department confirmed that these are sector-wide targets and rejected calls for sub-sector differentiation. This one-size-fits-all approach fails to account for the diverse nature of sectors such as retail, manufacturing, agriculture, and maritime, each operating under distinct conditions and workforce profiles. Furthermore, the Department has not transparently explained the methodology used to determine the revised targets. The absence of supporting empirical evidence or a sector-level impact analysis raises serious questions about the targets' appropriateness, fairness, and feasibility.

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The published sector targets are disconnected from operational realities and may, in practice, undermine both compliance and sustainable transformation. Equally concerning is the Department's admission that the increase in targets for the employment of persons with disabilities is not supported by any statistical data or empirical studies; rather, the revisions were made at the Department's discretion. This lack of an evidence-based rationale further undermines the credibility and defensibility of the policy proposals.

While BUSA supported the Department's decision to engage specific sectors through bilateral consultations after articulating our members' concerns on the deficiencies of the consultations, it is worrying that several other sectors were informed that such engagements could not take place before the end of March 2025 and were thus never held. Moreover, during the held bilateral meetings, the Department reiterated its firm stance on the sector targets and continuously advised that aggrieved parties may seek recourse through litigation. Such a posture misaligns with the cooperative and inclusive spirit envisaged by the Employment Equity Act and contradicts its foundational values.

Accordingly, BUSA has formally advised the Department that the cumulative effect of these shortcomings—ranging from a lack of procedural fairness and transparency to the absence of an evidential base—undermines the overarching objectives of equity and workplace transformation. A lawful and effective consultation process must go beyond procedural formalism, requiring the genuine incorporation of stakeholder input into final policy outcomes. The published sector targets may fail to deliver on their intended objectives and could be susceptible to legal challenges on the grounds of irrationality and unreasonableness.

BUSA urgently requests a meeting to discuss employers' concerns and ensure that the Employment Equity Amendment Act achieves its intended objectives without placing undue strain on the labour market.

Thank you for your attention to this critical matter; I look forward to your prompt response.

Yours sincerely

Khulekani Mathe
Chief Executive Officer

Copied:

Mr Thembinkosi Mkalipi
Deputy Director General: Labour Policy and Industrial Relations
Department of Employment and Labour
Laboria House, 215 Francis Baard Street
PRETORIA 0001
Per e-mail: Thembinkosi.Mkalipi@labour.gov.za

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Ms Ntsoaki Mamashela
Director: Employment Equity Department of Employment and Labour
Laboria House, 215 Francis Baard Street
PRETORIA 0001
Per e-mail: ntsoakiM@labour.gov.za

BUSA

K.K
3

From: Khulekani Mathe
To: Nokuzola Jones (MIN); Sinesipho Mdutshane (MIN)
Cc: Thenji Nhlapo; Sanelisiwe Jantjies; Lebogang Sethusha
Subject: RE: MEETING WITH MINISTER METH TO DISCUSS RAISED CONCERNS
Date: 22 May 2025 03:26:50 PM

Good-day Messrs Jones and Mdutshane

Please confirm when you will be sending the MST Link for tomorrow's meeting and we would also request that we have management rights to enable us to let invited people in.

Kind regards

Thenji Nhlapo
Executive Assistant to the CEO Khulekani Mathe

Phone: +27 11 784 8000
Mobile: +27832325578
Email: Thenji.Nhlapo@busa.org.za

61 Katherine St, Sandhurst, Sandton, 2196

Registration: https://sustaining-progress.busa.org.za
Queries: sustainingprogress2025@busa.org.za

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From: Nokuzola Jones (MIN) <Nokuzola.Jones@LABOUR.gov.za>
Sent: Monday, 19 May 2025 17:08
To: Khulekani Mathe <Khulekani.Mathe@busa.org.za>; Thenji Nhlapo <Thenji.Nhlapo@busa.org.za>
Cc: Sinesipho Mdutshane (MIN) <Sinesipho.Mdutshane@LABOUR.gov.za>
Subject: MEETING WITH MINISTER METH TO DISCUSS RAISED CONCERNS

Good day,

I trust that you are well.

This email serves to confirm your meeting with Minister Nomakhosazana Meth as follows:

Date: Friday, 23 May 2025
Time: 14h00 – 16h00
Link: MS Teams

Please note that the meeting link and presentations will be sent in due time.

Kind regards,

Nokuzola "Zoe" Jones
Office of the Minister

K.K
KM

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BUSINESS UNITY SOUTH AFRICA

Reaching Our Common Goal: A Reflection on Employment Equity Sector Numerical Targets

BUSA Presentation to the Hon., Minister Meth

23 May 2025

NATIONAL OFFICE
61 Katherine Street,
Sandton, 2196
P.O. Box 652807, Benmore, 2010

CONTENTS

1. Our Common Goal
2. Background
3. Key Business Concerns
4. Substantive Concerns
5. Procedural Irregularities
6. W&R Sector Analysis Example
7. Recommendations

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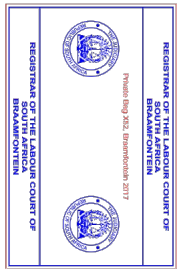

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OUR COMMON GOAL

Workplace transformation: To foster a diverse and inclusive work environment representative of the demographics of South Africa.

Redress historical inequalities: To dismantle apartheid-era disparities in employment, income, and opportunity.

Promote equitable access: To ensure fair recruitment, promotion, and skills development for designated groups.

Enhance economic participation: By enabling broader participation in the economy, particularly by previously disadvantaged communities.

Objectives of Sector Targets:

1. **Tailored realistic transformation**: Recognise each sector's unique characteristics, challenges, and demographics.
2. **Measured progress**: Provide clear, measurable equity targets to track long-term transformation.
3. **Regulatory certainty**: Assist employers in understanding expectations and aligning their Employment Equity Plans accordingly.
4. **Broader economic equity**: Encourage equitable opportunities and representation across the economy.

While BUSA does not, in principle, object to the provisions of Section 15A, it remains concerned about the irregularities that occurred in formulating the final sectoral targets for 2025.

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BACKGROUND

- Sectors have been engaging with the Department of Employment and Labour (DEL) from October 2018 regarding the EE Amendment Bill and, more specifically, the setting of sector-specific employment equity (EE) numerical targets in alignment with Section 15A of the amendment bill.

- The gazette, on proposed sectoral numerical targets, was published in May 2023 and February 2024 for public comment.

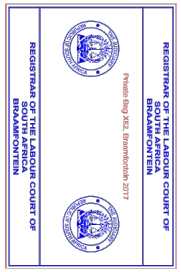
- Sectors had submitted their comments on the proposed numerical targets within the prescribed period on 30 April 2024 and requested further engagements with DEL for clarity and discussion on the proposed targets.

- The President of RSA signed a proclamation in November 2024 setting the EE Amendment Act implementation date as 1 January 2025.

- The DEL held an initial consultation/meeting with sectors during February 2025 to share, amongst others, the proposed sector targets.

- Sectors, through BUSA, arranged bilateral meetings between the parties to further engage and deliberate on the EE sector targets.

BUSA



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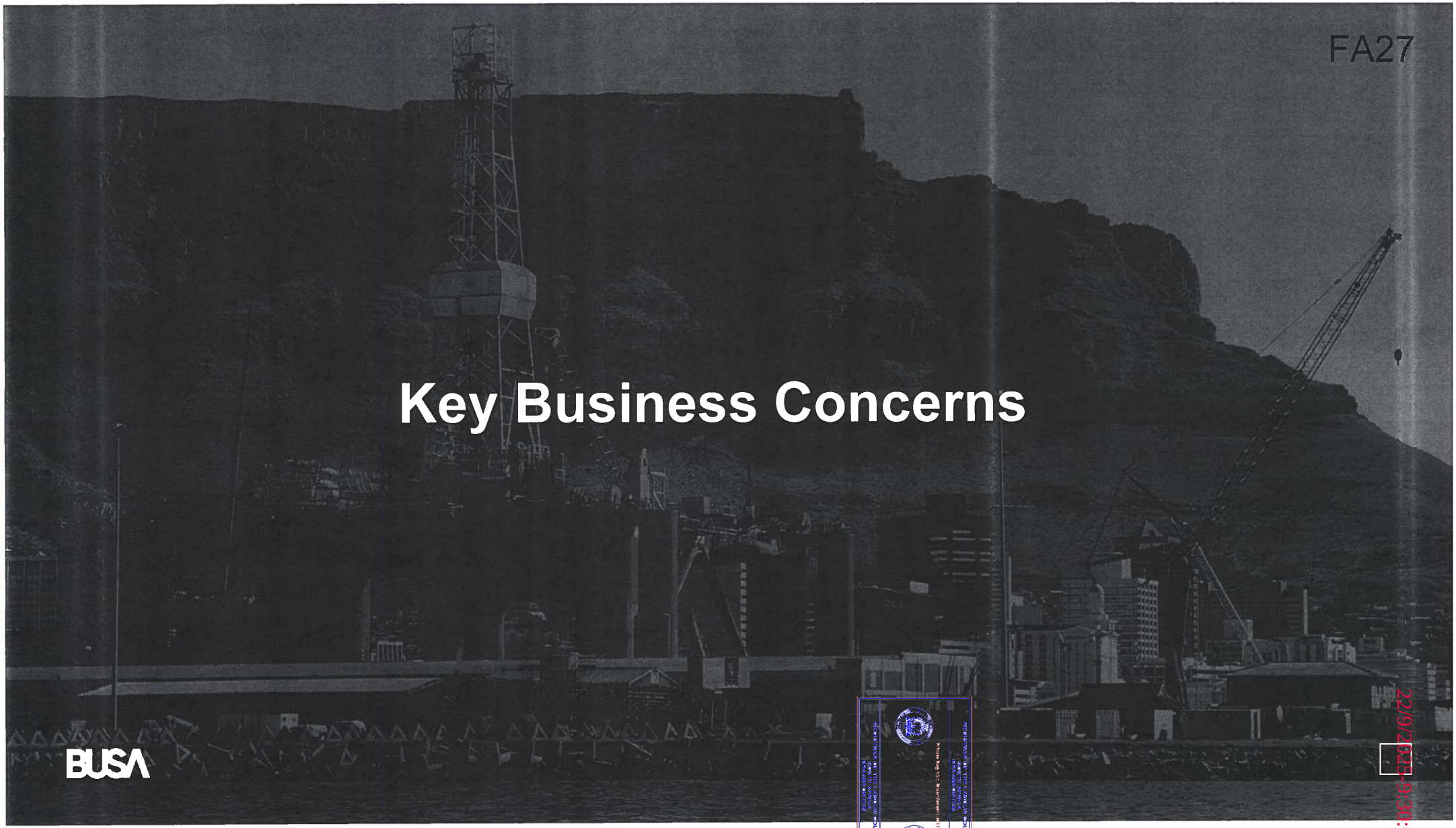

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SUBSTANTIVE CONCERNS

- **Premature Consultations:** Although public comments were invited on the 2023 and 2024 Draft Regulations, the Minister did not yet have the legal authority to do so, as the Employment Equity Amendment Act had not come into effect. Therefore, any consultation processes or notices issued before 1 January 2025 were premature and beyond the Minister's legal powers.

- **The identification of sectors:** There is limited alignment between the published sector targets and the actual workforce profiles of the diverse sub-sectors within the broader industry. Applying a single sectoral target to the entire sectors despite their varied sub-sectors is not rational. Therefore, the Minister has the power **to identify subsectors** and has failed to do so. **On the public comments there were numerous legitimate concerns around this and notwithstanding that there has been no engagement to look at subsectors.**

- The proposed targets require significant annual increases in representation, especially at senior levels. However, achieving these targets faces several substantial structural challenges. Notably, they are being introduced during a period of constrained economic growth and a challenging labour market, which further impedes their feasibility.

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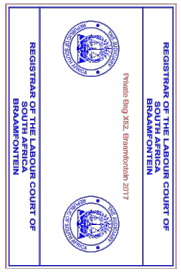

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SUBSTANTIVE CONCERNS CONTINUED…

- **Lack of Empirical data and Methodology:** The Minister has set sector targets without adequate reliance on empirical or statistical data. Despite repeated requests, the DEL has not demonstrated that it considered key factors such as:
  - *the availability of suitably qualified individuals within the EAP pool;*
  - *relevant qualifications,*
  - *skills, experience, and potential for development;*
  - *sector-specific turnover and attrition rates;*
  - *recruitment and promotion trends; and*
  - *the extent to which designated groups within the sector align with EAP demographics.*

Solution: DEL must conduct sector-specific analysis to know this grouping

- The DEL has not provided a clear explanation for its decision to raise the disability target to 3%, particularly given that during the consultations, it was stated that there were no available disability statistics to support this target.
- **Regulations Contradict Enabling Legislation:** The **Employment Equity Regulations, 2025*('Admin Regulations')*** contradict section 20(2)(e) of the EEA, which clearly stipulates that a plan must have a duration of no less than one year and no more than five years. Regulations cannot supersede the provisions of primary legislation, such as the EEA.

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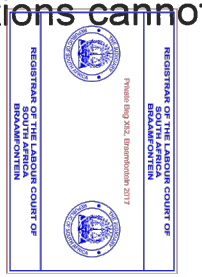

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EXCESSIVE TARGETS UNDERMINE THE 7 JUSTIFIABLE REASONS

Example from the Motor Industry Sector

These reasons will mostly apply to the sector, making the EE targets meaningless for the automotive aftermarket sector.

Recruitment: MIBCO jobs growth indicates slow growth of 1% in 5 years
Lack of skills: Artisan degradation over the years, our members would like to work together with the DEL to train artisans, accelerate current programmes to address real issues.

Impact on business and economic circumstances:

- **GDP**
  - 5.3% - automotive industry as a whole
  - 3.2% - manufacturing only
  - 2.1% - retail and aftermarket
- **Loss of business and income** - Cannot fix this within a year
- The **Labour inspectorate takes a narrow view**, needs to adopt a pragmatic approach

The Sectoral Targets must be meaningful and achievable. Setting them unrealistically high risks of non-compliance, thereby undermining the core objective of the Employment Equity Amendment Act.

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EXAMPLE FROM A W&R SECTOR ANALYSIS

Designated Employer Ministerial Targets

The table below sets out the **W&R Sector race and gender sub-category deficit** that will have to be bridged between now and the period ending December 2030.

- ❑ **Top Management:** Deficit of 1197 AM's and 731 AF's = 1928 African individuals in total
- ❑ **Senior Management:** Deficit of 2805 AM's and 2244 AF's = 5049 African individuals in total

Top Management	**AM**	**CM**	**IM**	**WM**	**AF**	**CF**	**IF**	**WF**	**Total**
Ministerial Targets (2029) %	21,7	2,5	0,9	30	13	1,5	0,4	30	100
W&R Sector status for all designated employers at 2022) %	5	2,7	12,6	55,5	2,8	1,8	4	15,6	100
Deficit in representation / Over-representation %	16,7	-0,2	-11,7	-25,5	10,2	-0,3	-3,6	14,4	
Current actual Top Managers in W&R SETA									**7165**
Deficit in representation / Over-representation (actual headcount)	**1197**	**-14**	**-838**		**731**	**-21**	**-258**		

Senior Management	**AM**	**CM**	**IM**	**WM**	**AF**	**CF**	**IF**	**WF**	**Total**
Ministerial Targets (2029) %	28,7	3,3	1	22	20	2,3	0,7	22	100
W&R Sector status for all designated employers at 2022) %	12,7	5,8	10,7	34,5	7,2	4,3	5,1	19,7	100
Deficit in representation / Over-representation %	16	-2,5	-9,7	-12,5	12,8	-2	-4,4	2,3	
Current actual Top Managers in W&R SETA									**17529**
Deficit in representation / Over-representation (actual headcount)	**2805**	**-438**	**-1700**		**2244**	**-351**	**-771**		

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PROCEDURAL IRREGULARITIES

- **Non-compliance with Statutory Consultation Requirements:** DEL did not adhere to Section 15A(2) and (4) of the Amendment Act, which mandates a minimum 30-day public comment period following publication of draft sector targets in the Government Gazette.
- **Inadequate Notice Periods for Stakeholder Input:** Several sectors were afforded insufficient time, sometimes as little as five working days, to submit written representations, undermining meaningful participation. The consultation process failed to comply with the Promotion of Administrative Justice Act (PAJA), which requires fair administrative procedures, including adequate notice and a reasonable period for comment.
- **Procedural Unfairness Undermines Legality:** The DEL's failure to publish revised targets and allow sufficient time for public input may render the process procedurally unfair and legally deficient.
- **Potential for Judicial Review:** The procedural flaws expose the DEL's sector targets to legal challenge under PAJA, with risks including invalidation due to inadequate consultation, insufficient notice, and unjustified deviations from previous targets.

Consultation needs to go beyond being a mere procedural exercise. Genuine engagement marked by transparency, sector-specific insights, and meaningful feedback integration is essential. Consultation periods should acknowledge the complexity of the issues, and responses must move beyond mere formality. This approach could effectively counter a PAJA application, showcasing procedural fairness and substantive responsiveness.

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RECOMMENDATIONS

Employment Equity Regulations, 2025, together with the Determination of Sectoral Numerical Targets, must be formally **withdrawn.**

The DEL must undertake comprehensive consultations and republish the revised sectoral targets in draft format for public comment for 30 days.

01

The Minister should **reevaluate the identification of sectors** and establish targets for sub-sectors, rather than consolidating all sub-sectors into a single category.

These targets should also be made available for public comment.

02

A scientific, actuarial, and economic analysis of trends over a statistically relevant period (of at least 5 to 10 years) should be conducted to determine the appropriate percentage by which the workforce profile numbers might realistically and achievably increase.

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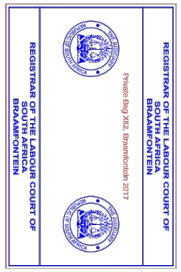

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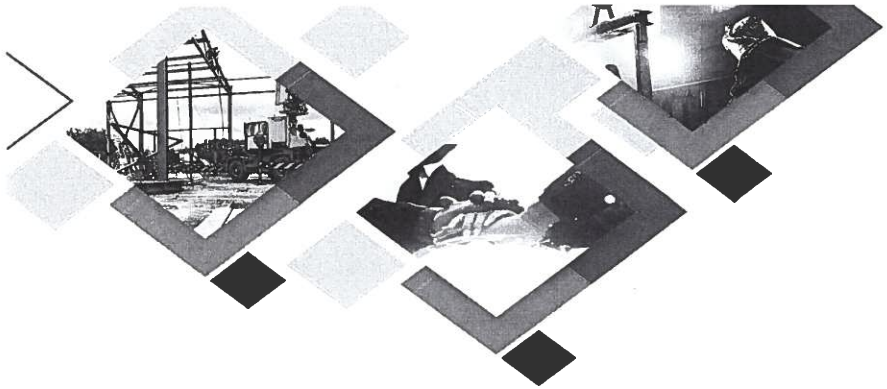

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DEL RESPONSE TO BUSA PRESENTATION

"Reaching Our Common Goal: A Reflection on Employment Equity Sector Numerical Target"

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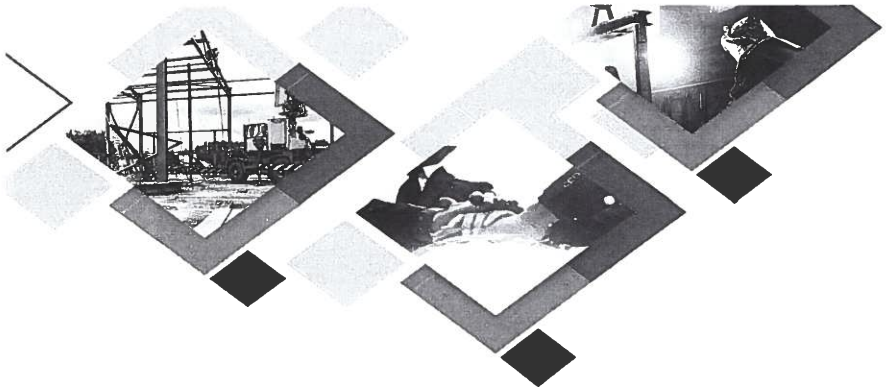

Content Outline

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- Context
- Background
- BBBEE Codes (EE targets in various sector) vs sector EE targets
- 3- year EE trend analysis for Consumer Goods Council and ASISA vs 5-year sector EE targets for Wholesale Retail and Financial and Insurance Activities sector
- BUSA's concerns and DEL's response
- Way forward – BUSA's Recommendations and DEL's response

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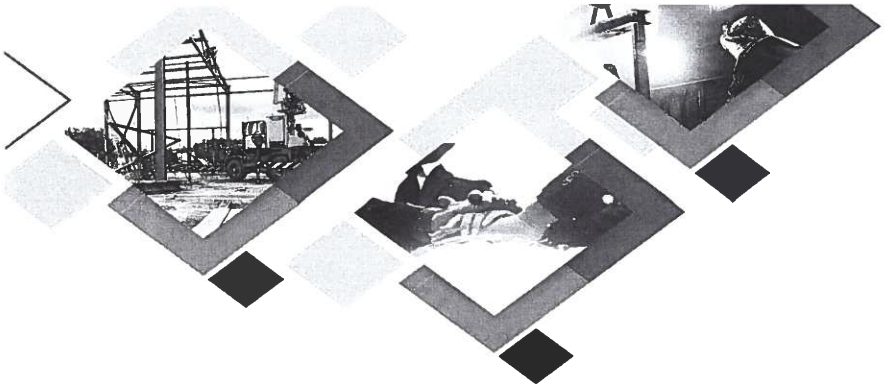

Context

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- BUSA sent a letter dated 24 April 2025 to the Minister's office via email requesting a meeting with the Minister to discuss Regulations on Sector numerical EE targets.
- Meeting between Minister and BUSA was held on 23 May 2025 at 14h00 Online.
- BUSA expressed their commitment for transformation and in principle, supports the dismantling of apartheid-era disparities in employment, income, and opportunity to ensure fair recruitment, promotion, and skills development for designated groups.
- However, BUSA remained concerned about the irregularities that occurred in formulating the final sectoral EE targets published on 15 April 2025.

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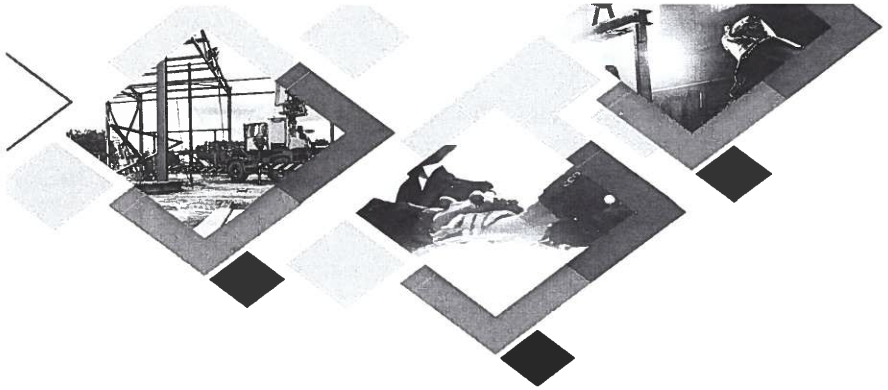

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Background

- In September 2018, both the EE Amendment Bill and its Draft EE Regulations were published for public comment for 60 days; and subsequently tabled in NEDLAC for Social Partners deliberations. NEDLAC negotiations were finalized in April 2019.

- As Parliamentary deliberations were unfolding from June 2020 until May 2022 when the EE Amendment Bill, 2022 was passed by Parliament, both the Department and the CEE embarked on sector stakeholder preparatory consultation processes from June 2019 until 2022.

- BUSA confirmed at the meeting that these consultations did take place in good faith. As a result, out of the 18 economic sectors, consensus/ agreement on proposed sector EE targets was reached only with the Financial and Insurance Activities sector in 2021 and 2023, respectively.

- In addition, a partial agreement was reached with the Consumer Goods Council (Wholesale Retail sector) in relation to proposed sector EE targets at Senior Management, Professionally qualified/ Middle Management and Skilled Technical/ Junior Management levels.

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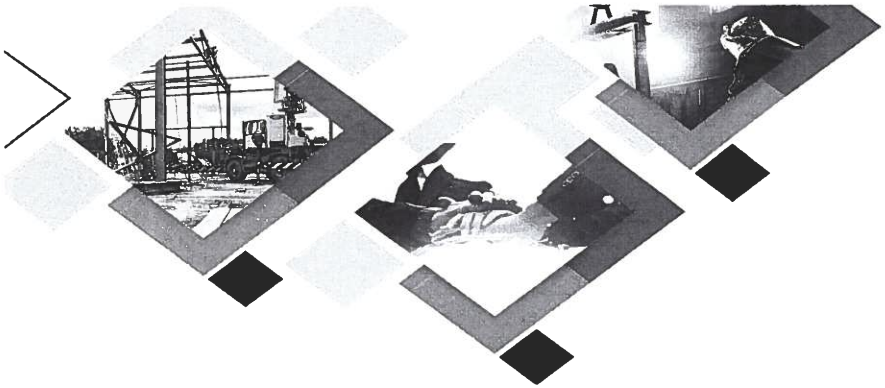

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Background Cont…

- As per Section 15A of the EE Amendment Act, 2022, as soon as the President assented/ signed into law the EE Amendment Bill, 2022 on 6 April 2023 followed by the publication in the Government Gazette of the EE Amendment Act, No. 4 of 2022 on 14 April 2023, the 1st Draft Regulations on the proposed sector numerical EE targets was published in the Gazette in May 2023 for 30 days' public comment.
- Upon consideration of all written public comments received, including from BUSA, the Department together with the CEE, incorporated the relevant public comments into the revised 2nd Draft Regulations on the proposed sector numerical EE targets, which was subsequently re-published in the Gazette in February 2024 for further public comment for a period of 90 days.
- Again, upon consideration of the second-round of public comments, the Department and the CEE sourced the expertise of the Legal Drafter to incorporate the relevant public comments into the Final Regulations on the sector numerical EE targets.
- Prior to the publication of the final sector numerical targets, the Department and the CEE, again, conducted sector stakeholder consultations in February 2024 to discuss the sector EE targets for the 18 economic sectors. At these consultation meetings, which were held Online, the stakeholders were given an opportunity to submit further written comments, and where extensions of deadlines for submissions were requested, such extensions were granted.
- Upon receipt of requests for Bilateral meetings from BUSA and other employers' associations in various sectors to further discuss their concerns regarding the sector EE targets, this was granted. Furthermore, 3-year trend analysis of EE data was conducted for members from some of these Employers' organisations.

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BBBEE Codes – EE targets in various Sectors

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Occupational levels	BBBEE Codes- Generic Management Control Scorecard	BBBEE – Financial & Insurance Sector Charter	Mining Charter	BBBEE – Forestry & AGRI	BBBEE - Construction
Top Management	50%	50%	50%	60%	60%
Senior Management	60%	60%	60%	60%	60%
Professionally Qualified/ Middle Management	75%	75%	60%	75%	75%
Skilled Technical/ Junior Management	88%%	88%	70%	88%	88%
Persons with disabilities	2%	2%	1.5%	2%(only Black)	2%

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CGCSA - WORKFORCE PROFILE 2022 TO 2024 VS WHOLESALE RETAIL TRADE SECTOR 5-YEAR EE TARGETS

		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED SECTOR EE TARGETS	Male	25.2%	35.0%	41.6%	49.1%	3%
	Female	26.5%	38.6%	46.7%	46.1%	
	Total	51.7%	73.6%	88.2%	95.2%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2024	Male	23.9%	42.0%	60.0%	70.5%	1.2%
	Female	67.3%	50.3%	31.2%	18.4%	
	Total	91.2%	92.3%	91.2%	88.9%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2023	Male	22.3%	41.2%	58.8%	71.7%	1.2%
	Female	69.9%	51.7%	32.4%	17.6%	
	Total	92.2%	92.9%	91.1%	89.3%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2022	Male	21.0%	39.9%	57.5%	70.9%	1.1%
	Female	72.0%	52.6%	33.7%	18.6%	
	Total	93.0%	92.5%	91.2%	89.5%	

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MINERALS COUNCIL OF SOUTH AFRICA - WORKFORCE PROFILE 2022 TO 2024 VS MINING & QUARRYING SECTOR 6-YEAR EE TARGETS						
		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED TARGET	Male	33.1%	36.3%	43.2%	49.8%	3%
	Female	24.4%	28.2%	34.4%	36.9%	
	Total	57.5%	64.5%	77.6%	86.7%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2024	Male	39.3%	36.8%	41.9%	59.8%	1%
	Female	23.8%	27.9%	33.9%	23.9%	
	Total	63.1%	64.7%	75.8%	83.7%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2023	Male	37.6%	36.3%	41.0%	58.2%	1.1%
	Female	24.1%	25.9%	32.6%	23.6%	
	Total	61.8%	62.2%	73.6%	81.8%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2022	Male	35.9%	34.5%	40.0%	57.0%	1.3%
	Female	23.5%	26.0%	31.3%	22.8%	
	Total	59.4%	60.5%	71.3%	79.8%	

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ASISA - WORKFORCE PROFILE 2022 TO 2024 VS FINANCIAL & INSURANCE ACTIVITIES SECTOR 5-YEAR EE TARGETS

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		TOP MANAGEMENT	SENIOR MANAGEMENT	PROFESSIONALLY QUALIFIED & MIDDLE MANAGEMENT	SKILLED TECHNICAL	DISABILITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DISABILITY
PROPOSED TARGET	Male	27.8%	31.7%	40.7%	49.5%	3%
	Female	35.3%	45.3%	46.1%	46.1%	
	Total	63.1%	77.0%	86.8%	95.6%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2024	Male	26.7%	27.3%	32.6%	28.2%	1.6%
	Female	33.9%	41.2%	52.0%	66.5%	
	Total	60.6%	68.5%	84.6%	94.8%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2023	Male	24.7%	25.7%	31.7%	28.7%	2%
	Female	35.0%	41.3%	51.4%	65.3%	
	Total	59.7%	67.0%	83.2%	94.0%	
WORKFORCE PROFILE (DESIGNATED EMPLOYERS WITH 50 PLUS EMPLOYEES) - 2022	Male	23.7%	25.6%	31.1%	29.9%	2.2%
	Female	35.4%	39.6%	51.1%	64.1%	
	Total	59.1%	65.2%	82.2%	94.0%	

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DEL's Response to BUSA's concerns

BUSA's concerns	DEL's responses
• **Premature Consultations:** Although public comments were invited on the 2023 and 2024 Draft Regulations, the Minister did not yet have the legal authority to do so, as the Employment Equity Amendment Act had not come into effect. Therefore, any consultation processes or notices issued before 1 January 2025 were premature and beyond the Minister's legal powers.	• In terms of section 14 of the Interpretation Act, No 33 of 1957 as Amended (Exercise of conferred powers between passing and commencement of the Law), allows the process for consultation before the commencement of a Law. The President assented/ signed into law the EE Amendment Bill, 2022 on 6 April 2023 followed by the publication in the Government Gazette of the EE Amendment Act, No. 4 of 2022 on 14 April 2023, the 1st Draft Regulations on the proposed sector numerical EE targets was published in the Gazette in May 2023 for 30 days' public comment. • Above argument has been confirmed in the High Court judgement "in the *Case of Mulaudzi v Minister of Human Settlement and Others (12774/22) [2022] ZAGPJHC 617 (22 April 2022)",* where the applicant alleged that the appointment of the Board of the Authority by the Minister is *ultra vires* because the Board was appointed before the Property Practitioners Act 22 of 2019 came into effect. In this regard, the High Court confirmed that appointment of the Board before the Act (PPA) came into effect is not ultra vires and the appointment of the Board was legally valid, therefore there is nothing illegal for the Minister to exercise the powers conferred by this Act before it came into operation (See paras 32, 39 and 40 of the Judgement)

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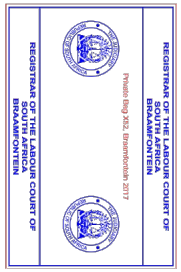
DEL's Response to BUSA's concerns Cont...

BUSA's concerns	DEL's responses
• **Premature Consultations:** Although public comments were invited on the 2023 and 2024 Draft Regulations, the Minister did not yet have the legal authority to do so, as the Employment Equity Amendment Act had not come into effect. Therefore, any consultation processes or notices issued before 1 January 2025 were premature and beyond the Minister's legal powers.	• Upon consideration of all written public comments received, including from BUSA, the Department together with the CEE, incorporated the relevant public comments into the revised 2nd Draft Regulations on the proposed sector numerical EE targets, which was subsequently re-published in the Gazette in February 2024 for further public comment for a period of 90 days. Therefore, the Department and the Commission for Employment Equity (CEE) have followed the law to the latter.



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DEL's Response to BUSA's concerns Cont.

BUSA's concerns	DEL's responses
• **The identification of sectors:** There is limited alignment between the published sector targets and the actual workforce profiles of the diverse sub-sectors within the broader industry. Applying a single sectoral target to the entire sectors despite their varied sub-sectors is not rational. Therefore, the Minister has the power **to identify subsectors** and has failed to do so. **On the public comments there were numerous legitimate concerns around this and notwithstanding that there has been no engagement to look at subsectors.**	• The identification of sectors was included in the 2018 EE Regulation that the Department and the CEE tabled at NEDLAC with the purpose of setting the sector targets and it was agreed and endorsed by NEDLAC Constituencies including Organised Business in the NEDLAC Report. • Section 15(A)(3) gives the Minister the discretion to set the Sector targets. It states that the Minister **may** set the different numerical targets for different occupational levels, sub-Sectors or regions within a sector or on the basis of any other relevant factor. Furthermore, in relation to setting sub-sector target, there were no compelling substantive arguments advanced by ASISA in their written submissions as to why the Minister should set the targets for sub-sector in the Financial and Insurance sector because the activities and operations of the Financial sub-sector and Insurance Sub-sector are inter-woven, especially because the type of skills set required by both the Financial and Insurance sub-sectors are similar. Similarly, in the Wholesale, Retail and Trade, RMI was the only one that argued for the sub-sector target for Motor Retail, however there were also no compelling substantive arguments advanced because the skills requirements are the same.
• The proposed targets require significant annual increases in representation, especially at senior levels. However, achieving these targets faces several substantial structural challenges. Notably, they are being introduced during a period of constrained economic growth and a challenging labour market, which further impedes their feasibility.	• The sector EE targets are key milestones towards the reflection of the EAP demographics and are very flexible because employers still have powers to self-regulate their own annual EE targets in their EE Plans towards achieving the regulated 5-year sector EE targets. Furthermore, employers who fail to achieve their own annual EE targets, have a legal right to raise justifiable grounds/reasons for failure to comply with their own annual EE targets. Therefore, even in a period of a constraint economic growth, there are still opportunities created by natural attrition which must be used to advance Employment Equity in various workplaces.

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DEL Response to BUSA's concerns Cont...

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BUSA's concerns	DEL's responses
• **Lack of Empirical data and Methodology:** The Minister has set sector targets without adequate reliance on empirical or statistical data. Despite repeated requests, the DEL has not demonstrated that it considered key factors such as: o *the availability of suitably qualified individuals within the EAP pool;* o *relevant qualifications,* o *skills, experience, and potential for development;* o *sector-specific turnover and attrition rates;* o *recruitment and promotion trends; and* o *the extent to which designated groups within the sector align with EAP demographics.*	• It is critical to highlight that in the setting of the sector EE targets in terms of Section 15(A) of EE Amendment Act of 2022, there is no legal requirement for the Minister to determine the suitably qualified individuals. • In fact, section 20(3) read with 20(4) and 20(5) of the EEA, put legal obligation on the employers to consider all the factors listed in 20(3) when determining a suitably qualified individual for a job. • Furthermore, Section 15(2)(d)(ii) of the EEA, prescribe that Affirmative Action measures implemented by designated employer must include measures to retain and develop people from designated group and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development. • It should be noted that the Department and the CEE would have set the sector EE target without providing justifiable reasons in the EE Regulations if there was availability of a pool of suitably qualified individuals for each sector. • However, the following factors were taken into account by the CEE and the Department, when setting the sector EE targets: o The latest 2024 EE sector workforce profile/ composition in terms of race, gender and disability at each of the occupational levels as reported by designated employers in their 2024 EE reports in each sector; o EE progress made by each sector over the previous years and the annual progress rate per sector; o Trend analysis in workforce movements (issues of natural attrition in terms of trends in recruitments; promotions; and terminations, etc.); o The existing BBBEE Codes (Generic Management Scorecard with EE targets); various BBBEE Sector Council Charters/ Codes (with EE targets); Mining Charter (with EE targets); and o Dynamics and nature of operations in each sector such as issues of ownership, especially in the Agricultural sector; Wholesale Trade, etc. • Stats SA does not collect EA data per sector in the QLFS

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DEL's Response to BUSA's concerns Cont...

BUSA's concerns	DEL's responses
	• Furthermore, the EE status of each of the economic sector changed in the 2024 EE data submitted by employers in the 2024 EE reporting period. The EE data indicated substantial progress, wherein all sectors' EE status in terms of the representation of the designated groups in the 4 upper occupational levels was higher than the proposed sector EE targets published in February 2024 for public comment. Therefore, it will be regressive to continue chasing the same sector EE targets, which have already been surpassed by employers in the 18 economic sectors.
• The DEL has not provided a clear explanation for its decision to raise the disability target to 3%, particularly given that **during the consultations**, it was stated that there were no available disability statistics to support this target.	• Stats SA does not collect EAP for persons with disabilities in the QLFS. BBBEE Codes set a 2% target for black persons with disabilities which excludes white persons with disabilities. 3% sector target is inclusive of all races and gender which is below the 7% in the National Development Plan to be achieved in 2030. Furthermore, employers who fail to achieve this 3% target have a legal right to raise justifiable reason for failure to comply.
• **Regulations Contradict Enabling Legislation:** The **Employment Equity Regulations, 2025** contradict section 20(2)(e) of the EEA, which clearly stipulates that a plan must have a duration of no less than one year and no more than five years. Regulations cannot supersede the provisions of primary legislation, such as the EEA.	• There is no contradiction - Regulation 9 provides the time **period** in which designated employers must set the duration of their EE Plan taking into account section 20(2)(e) of the EEA, which states that the duration of the plan, may not be shorter than 1-year or longer than 5-years.

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DEL's Response to BUSA's concerns Cont...

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BUSA's concerns	DEL's responses
• **Lack of skills:** Artisan degradation over the years, our members would like to work together with the DEL to train artisans, accelerate current programmes to address real issues.	• Section 15(2)(d)(ii) of the EEA, prescribe that Affirmative Action measures implemented by designated employer must include measures to retain and develop people from designated group and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development. • In light of the above employers have a legal obligation to develop and train Artisans in line with requirements of the Skills Development Act and Skills Development Levies Act to ensure that there is a pool of suitably qualified Artisans. • In addition, Organised Business is in a better position to influence the National Skills Development Strategy because they sit in the various SETA Boards.
• The **Labour inspectorate takes a narrow view**, needs to adopt a pragmatic approach	• The Department is conducting continues capacity building programmes for EE Inspectors to be able to advocate, inspect and enforce compliance with the requirement of EEA.
• The Sectoral Targets must be meaningful and achievable. Setting them unrealistically high risks of non- compliance, thereby undermining the core objective of the Employment Equity Amendment Act.	• The sector EE targets are key milestones towards the reflection of the EAP demographics and are very flexible because employers still have powers to self-regulate their own annual EE targets in their EE Plans towards achieving the regulated 5-year sector EE targets. Furthermore, employers who fail to achieve their own annual EE targets, have a legal right to raise justifiable grounds/reasons for failure to comply with their own annual EE targets.

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DEL's Response to BUSA's concerns Cont…

BUSA's concerns	DEL's responses
• **Non-compliance with Statutory Consultation Requirements:** DEL did not adhere to Section 15A(2) and (4) of the Amendment Act, which mandates a minimum 30-day public comment period following publication of draft sector targets in the Government Gazette.	• Please refer to Section 14 of the Interpretation Act, which confirms that DEL complied with the statutory requirements of section 15(A). As a result, the 1st Draft Regulations on the proposed sector numerical EE targets was published in the Gazette in May 2023 for 30 days' public comment. • Upon consideration of all written public comments received, including from BUSA, the Department together with the CEE, incorporated the relevant public comments into the revised 2nd Draft Regulations on the proposed sector numerical EE targets, which was subsequently re-published in the Gazette in February 2024 for further public comment for a period of 90 days.
• **Inadequate Notice Periods for Stakeholder Input:** Several sectors were afforded insufficient time, sometimes as little as five working days, to submit written representations, undermining meaningful participation. The consultation process failed to comply with the Promotion of Administrative Justice Act (PAJA), which requires fair administrative procedures, including adequate notice and a reasonable period for comment.	• This is not true, prior to the publication of the final sector numerical targets, the Department and the CEE, again, conducted sector stakeholder consultations in February 2024 to discuss the sector EE targets for the 18 economic sectors. At these consultation meetings, which were held Online, the stakeholders were given an opportunity to submit further written comments, and where extensions of deadlines for submissions were requested, such extensions were granted. • Upon receipt of requests for Bilateral meetings from BUSA and other employers' associations in various sectors to further discuss their concerns regarding the sector EE targets, this was granted. Furthermore, 3-year trend analysis of EE data was conducted for members from some of these Employers' organisations.
• **Procedural Unfairness Undermines Legality:** The DEL's failure to publish revised targets and allow sufficient time for public input may render the process procedurally unfair and legally deficient.	• DEL and the CEE have complied with procedural fairness because the proposed sector targets were published twice, in May 2023 and February 2024 for public comment, for a period of 4 months to solicit sector stakeholder inputs and the general public inputs.

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DEL's Response to BUSA's concerns Cont...

BUSA's concerns	DEL's responses
• **Potential for Judicial Review:** The procedural flaws expose the DEL's sector targets to legal challenge under PAJA, with risks including invalidation due to inadequate consultation, insufficient notice, and unjustified deviations from previous targets. Consultation needs to go beyond being a mere procedural exercise. Genuine engagement marked by transparency, sector-specific insights, and meaningful feedback integration is essential. Consultation periods should acknowledge the complexity of the issues, and responses must move beyond mere formality. This approach could effectively counter a PAJA application, showcasing procedural fairness and substantive responsiveness.	• DEL and CEE have extensively consulted on sector targets, in September 2018, both the EE Amendment Bill and its Draft EE Regulations were published for public comment for 60 days; and subsequently tabled in NEDLAC for Social Partners deliberations. NEDLAC negotiations were finalized in April 2019. • As Parliamentary deliberations were unfolding from June 2020 until May 2022 when the EE Amendment Bill, 2022 was passed by Parliament, both the Department and the CEE embarked on sector stakeholder preparatory consultation processes from June 2019 until 2022. • Prior publication of the final sector numerical targets, the Department and the CEE, again, conducted sector stakeholder consultations in February 2024 to discuss the sector EE targets for the 18 economic sectors. At these consultation meetings which were held Online, the stakeholders were given an opportunity to submit further written comments, and where extensions of deadlines for submissions were requested, such extensions were granted. • Additionally, upon receipt of requests for Bilateral meetings from BUSA and other employers' associations in various sectors to further discuss their concerns regarding the sector EE targets, this was granted, and including conducting further 3-year trend analysis of EE data for members from some of these Employers' organisations. • The 3-year trend analysis of EE data conducted for these members of Employers' organizations provided significant empirical evidence and insight, which indicated that the proposed 5-year sector EE targets are realistic and achievable in 5-years.

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Way forward

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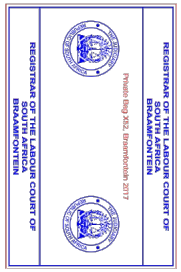
BUSA's Recommendations	DEL's responses
1. Employment Equity Regulations, 2025, together with the Determination of Sectoral Numerical Targets, must be formally **withdrawn** - The DEL must undertake comprehensive consultations and republish the revised sectoral targets in draft format for public comment for 30 days.	Recommendation rejected, there was extensive consultations. Draft Regulations on sector targets were published twice for public comment for 4 months (120 days) not for 30 days.
2. The Minister should **reevaluate the identification of sectors** and establish targets for sub-sectors, rather than consolidating all sub-sectors into a single category. These targets should also be made available for public comment.	Recommendation rejected, there were no compelling arguments advanced why sub-sector targets are critical especially in Financial and Insurance Sector and Wholesale and Retail Sector.
3. **A scientific, actuarial, and economic analysis** of trends over a statistically relevant period (of at least 5 to 10 years) should be conducted to determine the appropriate percentage by which the workforce profile numbers might realistically and achievably increase.	Recommendation rejected, the CEE has monitored the EE trends across all economic sectors over 24 years of EE Reporting by employers. Refer to the previous 24 Reports of the CEE from 2001 for Analysis EE trends



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Thank You...

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23 June 2025

Honourable Minister Nomakhosazana Meth, MP
The Department of Employment and Labour
215 Laboria House
Cnr Francis Baard and Paul Kruger Streets
Pretoria
0001

By Email: sinesipho.mdutshane@labour.gov.za; jacky.molisane@labour.gov.za

Dear Hon., Minister Nomakhosazana Meth

RE: EMPLOYMENT EQUITY REGULATIONS, 2025 – CLARIFICATION OF INACCURATE STATEMENTS MADE DURING MEETING WITH THE MINISTER OF EMPLOYMENT AND LABOUR

Business Unity South Africa (BUSA) wishes to thank the Minister for meeting with its leadership team and members on Friday, 20 June 2025. We also want to express our appreciation for your willingness to engage on BUSA's concerns regarding the Employment Equity Regulations 2025 and the Determination on Sectoral Numerical Targets (Sector Targets). Upon reflection of the meeting, it is important for BUSA to place the following clarifications on record regarding several inaccuracies observed during that engagement:

1. NEDLAC AGREEMENT

During the meeting, a Department of Employment & Labour ("the Department") official stated that BUSA, at the Nedlac process, agreed to the 18 published sectors. This is not true. For ease of reference, the Nedlac Report on the engagements held at Nedlac states the following:

"1.1.1. *Clause (2) was agreed by Government and Labour with the following inclusion:*
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).* ***This was not agreed to by business.***

REGISTRATION NUMBER: 2014/042417/08
PRESIDENT: Mxolisi Mgojo VICE PRESIDENT: Adrian Gore **CEO:** Khulekani Mathe **NEDLAC CONVENOR:** Kaizer Moyane
DIRECTORS: Anton Pillay, Bongi Kunene, Busisiwe Mavuso, Christopher Campbell, Charlotte Mokoena, Deidre Penfold, Gareth Ackerman, John Dludlu, Mike Mabasa, Michelle Constant, Mzila Mthenjane, Stavros Nicolaou.

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4.3.2 Business disagreed to clause (2) on the basis that Government was not prepared to amend section 42aA of the Amendment Bill to incorporate "reasonable steps taken by a designated employer".

4.3.3. Business disagreed to clauses (3) and (4)."

In addition:

- The Department stated that the Nedlac process concluded in April 2019. This is incorrect; the Nedlac process concluded in April 2018.
- The Department stated that after the draft Employment Equity (EE) Regulations were published for public comment in September 2018, the revised Draft Regulations, which incorporated public feedback, returned to Nedlac for further engagement. This is also incorrect, as this did not occur.
- If we are mistaken, we would appreciate it if the Department could clarify with evidence from the Nedlac report that demonstrates that the 2018 version of the Regulations, which included public comments, was sent back to Nedlac for additional engagement.

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2. CONSULTATION PROCESS

BUSA maintains that the Department of Employment and Labour's (DEL) consultation process has been both procedurally and substantively flawed. Almost all of BUSA's members who met with the Department between 2018 and 2024 to discuss targets clearly indicated that such discussions were premature (because the Employment Equity Amendment Act (EEAA) was not yet law) and that while organised business was prepared, in good faith, to meet with the Department, it did not consider those meetings to be statutory consultations and there was an expectation that the formal statutory consultations would commence once the EEAA came into force. For the Department to emphatically state that there were statutory consultations from 2023 to 2024 is misleading as in BUSA's view those were not statutory consultations (and this is dealt with in more detail in paragraph 2.2 below).

2.1. Section 15A Consultation

BUSA has maintained that the engagements undertaken by the DEL do not meet the standard or spirit of consultation as envisaged in Section 15A of the EEAA. Section 15A outlines two distinct consultation processes: one involving sector-specific consultation, and the other, a 30-day public comment period following the publication of a Gazette. The public comment period, initiated through the gazetting of proposed sectoral targets, is not intended to replace consultation with the relevant sectors or sub-sectors. Accordingly, the use of the public

consultation process is only appropriate where the proposed targets have not already been determined through adequate consultation with the affected sectors.

It is important to further reiterate that the DEL initiated consultations on the 2025 sectoral targets (which differed significantly from the targets previously presented in 2023 and 2024 when the EEAA was not yet in force and effect) by issuing notifications to employers on 24 December 2024, a period during which most businesses were closed. These notifications were followed by brief virtual meetings via Microsoft Teams, ranging in duration from approximately one hour to 90 minutes, depending on the sector. Such limited engagements cannot reasonably be regarded as consultation.

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Moreover, it was apparent, from the remarks made by the Department at the consultations (which we consider to be the first statutory consultations) held in February 2025, that the Minister had already determined the 2025 sectoral targets prior to the commencement of these engagements and presented them with a closed mind. It did not appear that the Department had any intention of actually engaging the sectors in good faith. BUSA is of the view that this approach undermined the requirement to set the targets *in consultation* with the relevant sectors, as contemplated by the legislative framework mentioned above. Accordingly, BUSA maintains that the final sectoral targets published on 15 April 2025 are procedurally irregular.

The Department also mentioned during its presentation to BUSA on Friday, 20 June 2025, that since it had commenced its roadshows and no employer had complained about the procedure for setting targets at those roadshows, this implies that employers have endorsed the targets. This statement raises serious concerns as you will appreciate, a departmental roadshow are not an appropriate platform for organised business to raise objections to the process, particularly while formal engagements between BUSA and the Minister were still ongoing.

2.2 Prematurity of Process

BUSA maintains that the consultations initiated by DEL took place prior to the enabling legislation came into force. At the meeting on Friday, the Department confidently cited and relied on the Interpretation Act together with a judgment in the case *Mulaudzi v Minister of Human Settlement and Others (12774/22) [2022] ZAGPJHC 617 (22 April 2022)* to justify this approach.

BUSA is of the view that the Department has misunderstood the legal principles of the Interpretation Act and the context within which the above judgment was decided. In that judgment (and in others), the significant point is that a Minister can, before an Act comes into force and effect, exercise powers in terms of that Act if the provision of the Act being exercised is specifically necessary to bring the Act into force and effect. In other words, if the Minister does not exercise the power, the Act cannot come into force and effect (or the machinery and implementation of the Act will be affected). In the case relied on so heavily by the Department, that concerned the appointment of a Board. The Act could not come into force and effect unless the Board was appointed.

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Suppose one has regard to the EEAA together with section 15A of that Amendment Act, in that case, the consultation with sectors and the setting of sector targets are not, in any form or manner, necessary to bring the Amendment Act into force and effect. For this reason, BUSA maintains its position that anything done by the Department (on behalf of the Minister) before 1 January 2025 was *ultra vires* and not permitted in terms of the EEAA, as it was not yet in force and effect. It also follows that the 2023 and 2024 Targets published in the Gazette for public comment were *ultra vires*. What is important to note, at this juncture, is that the 2025 Sector Targets were published in the Gazette as a final version. The 2025 sector targets were never published for public comment and should have been given that the versions published in 2023 and 2024 were not capable of being published because the EEAA was not yet in force and effect.

To reiterate in that this does not appear to have been understood by the Department - as outlined in BUSA's presentation to the Minister on 23 May 2025, sectors agreed to participate in informal consultations from 2018 in good faith, understanding that such engagements did not replace the DEL obligation to undertake proper, legally compliant consultations once the EEAA came into force and effect.

The DEL's assertion that adequate consultation have already occurred (as it began consulting in 2018) is respectfully viewed as being in bad faith and undermines confidence in the integrity of future processes.

3. Consideration of Sectoral Submissions

While the Department stated that it considered submissions from sectors during the 2024 public comment period, it has not provided any evidence showing how these inputs were

assessed or incorporated into the final 2025 targets. The published sector targets reflect little to no integration of sectoral feedback. This was illustrated in the Department's presentation on the application of a uniform sectoral target across an entire sector, despite the significant diversity within its sub-sectors. For example, it is evident that within the Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles sector, the skills required for vehicle repair differ markedly from those needed for fashion and food in the retail sector. Similarly, the financial sector encompasses distinct sub-sectors such as banking, insurance, and asset management, each demanding specialised skill sets. While the Minister holds the authority to identify and set targets for these subsectors, this has not been duly considered and exercised, notwithstanding numerous legitimate concerns raised by employers during Nedlac engagements to date. The failure to consider the availability of suitably qualified persons, in the absence of robust data, renders the Department's position unsubstantiated.

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CONCLUSION

In light of the above concerns, BUSA and its members are considering all available options in response to the process followed in the development and promulgation of the 2025 Employment Equity sectoral targets.

Yours sincerely,

.....

Khulekani Mathe
Chief Executive Officer

Copied:

Mr Thembinkosi Mkalipi
Deputy Director General: Labour Policy and Industrial Relations
Department of Employment and Labour
Laboria House, 215 Francis Baard Street
PRETORIA
0001

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Critical Skills List

Published under

GN R3934 in *GG* 49402 of 3 October 2023

I, Dr P A Motsoaledi, Minister of Home Affairs, hereby, in terms of sections 19(4) and 27*(b)* of the Immigration Act, 2002 (Act 13 of 2002), determine the following skills or qualifications to be critical for the Republic of South Africa in relation to an application for a critical skills work visa or permanent residence permit.

(Signed)

DR P A MOTSOALEDI, MP
Minister of Home Affairs

DATE: 18/9/2023

SCHEDULE

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
1	2021-112101	Director (Enterprise/Organisation) (medium enterprises or larger)	Determines, formulates, and reviews the general policy program and the overall direction of an organisation, within the framework established by a board of directors or a similar governing body.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
2	2021-121301	Policy and Planning Manager	Plans, develops, organises, directs, controls and coordinates policy advice and strategic planning within organisations.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
3	2021-121901	Corporate General Manager (medium enterprises or larger)	Plans, organises, directs, controls and reviews the day-to-day operations and major functions of a commercial, industrial or other organisation (excluding government or local government) through departmental managers and subordinate executives.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
4	2021-121905	Programme or Project Manager	Plans, organises, directs, controls and coordinates special programmes or projects.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
5	2021-121908	Quality Systems Manager	Plans, organises, directs, controls and coordinates the deployment of quality systems and certification processes within an organisation.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
6	2021-122105	Customer Service Manager (Business Process Outsourcing sector)	Plans, administers and reviews customer services and after-sales services and maintains sound customer relations.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
7	2021-122301	Research and Development Manager	Plans, organises, directs, controls and coordinate research and development activities within organisations.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
8	2021-132102	Manufacturing Operations Manager	Plans, organises, directs and controls the manufacturing activities of an organisation including physical and human resources. Measures	Bachelor Honours Degree, Postgraduate Diploma, or	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			performance, quality and implements continuous improvement strategies.	Bachelor's Degree (NQF Level 8)	where applicable, regulation 18(5)*(b)*
9	2021-132104	Engineering Manager	Plans, organises, directs, controls and coordinates the design, operation and construction of engineering and process plants and mining operations.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
10	2021-132401	Supply and Distribution Manager	Plans, administers and reviews the supply, storage and distribution of equipment, materials and goods used and produced by an organisation, enterprise or business.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
11	2021-133101	Chief Information Officer	Plans, organises, directs, controls and coordinates the ICT strategies, plans and operations of an organisation to ensure the ICT infrastructure supports the organisation's overall operations and priorities.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
12	2021-133103	Data Management Manager	Plans, coordinates, and supervises all activities related to the design, development, and implementation of organisational data base systems.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation I8(5)*(b)*
13	2021-134901	Environmental Manager	Plans, organises, directs, controls and coordinates the development and implementation of an environmental management system within an organisation by identifying, solving and alleviating environmental issues such as pollution and waste treatment in compliance with environmental legislation and ensures corporate sustainable development.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
14	2021-143905	Call or Contact Centre Manager	Manages the performance of call centre workers, processes and technology against financial and non-financial operational targets.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
15	2021-211101	Physicist	Studies matter, space, time, energy, forces and fields and the interrelationship between these physical phenomena to further understanding of the laws governing the behaviour of the universe, and seeks to apply these laws to solve practical	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			problems and discover new information about the earth and the universe.		

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16	2021-211205	Climate Change Scientist	Evaluate scientific data, carries out research on the climate to create predictive models of likely changes in the earth's climate, and concomitant impacts on natural ecosystems and civilisation.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
17	2021-211301	Chemist	Studies the chemical and physical properties of substances, and develops and monitors chemical processes and production.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
18	2021-211401	Geologist	Studies the composition, structure and other physical attributes of the earth to increase scientific knowledge and to develop practical applications in fields such as mineral exploration, civil engineering, environmental protection and rehabilitation of land after mining.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
19	2021-211402	Geophysicist	Studies the composition, structure and other physical attributes of the earth, locates minerals, petroleum or ground water, and detects, monitors and forecasts seismic, magnetic, electrical, thermal and oceanographic activity.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
20	2021-211403	Materials Scientist	Studies the properties and uses of non-metallic materials and advises on the technical aspects of their manufacture and processing.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
21	2021-211405	Mineralogist	Studies the chemistry, crystal structure, and physical (including optical) properties of minerals.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
22	2021-211406	Hydrologist	Research the distribution, circulation and physical properties of underground and surface waters; and the form and intensity of precipitation, its rate of infiltration into the soil, movement through the earth, and its return to the ocean and atmosphere.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a) or* where applicable, regulation 18(5)*(b)*

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
23	2021-211407	Oceanographer	Studies the physical, chemical and biological properties of the ocean water masses.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
24	2021-212101	Actuary	Analyses mathematical, statistical, demographic, financial or economic data to predict and assess the long-term risk involved in financial decisions and planning.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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25	2021-213102	General Biologist	Studies the origin, anatomy, physiology, reproduction and behaviour of living organisms and the ways in which they interact with the environment in which they live.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
26	2021-213105	Biotechnologist	Studies the anatomy, physiology and characteristics of living organisms and isolated biological molecules, and develops new materials for applying to a range of purposes.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
27	2021-213108	Microbiologist	Studies microscopic forms of life such as bacteria, viruses and protozoa.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
28	2021-213109	Zoologist	Studies the anatomy, physiology, characteristics, ecology, behaviour and environments of animals.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
29	2021-213202	Agricultural Scientist	Studies commercial plants, animals and cultivation techniques to enhance the productivity of farms and agricultural industries.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
30	2021-213205	Food and Beverage Scientist	Studies the physical and chemical properties of food and beverages and develops new and improved food and beverage products, and sets standards for producing, packaging and marketing food and beverages.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
31	2021-213301	Conservation Scientist	Develops and implements programs and regulations for the protection of fish, wildlife and other natural resources.		Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
32	2021-213302	Environmental Scientist	Studies and develops policies and plans for the control of factors which may produce pollution, imbalance or degradation of the environment.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
33	2021-214101	Industrial Engineer	Investigates and reviews the utilisation of personnel, facilities, equipment and materials, current operational processes and established practices, to recommend improvement in the efficiency of operations in a variety of commercial, industrial and production environments.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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34	2021-214102	Industrial Engineering Technologist	Analyses and modifies new and existing industrial engineering technologies and applies them in the testing and implementation of industrial engineering projects.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
35	2021-214201	Civil Engineer	Plans, designs, organises and oversees the construction and operation of civil engineering projects such as structural, transportation or hydraulic engineering systems.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
36	2021-214202	Civil Engineering Technologist	Analyses and modifies new and existing engineering technologies and applies them in the testing and implementation of civil, mechanical, electrical or electronic engineering projects.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
37	2021-214401	Mechanical Engineer	Plans, designs, organises and oversees the assembly, erection, operation and maintenance of mechanical and process plant and installations.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
38	2021-214402	Mechanical Engineering Technologist	Analyses and modifies new and existing mechanical engineering technologies and applies them in the testing and implementation of mechanical engineering projects.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
39	2021-214403	Aeronautical Engineer	Performs and supervises engineering work concerned with the design, development,	Bachelor Honours Degree, Postgraduate Diploma, or	Relevant Professional body, council or board recognised by SAQA as contemplated in

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			manufacture, maintenance and modification of aircraft for flight.	Bachelor's Degree (NQF Level 8)	regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
40	2021-214404	Aeronautical Engineering Technologist	Analyses and modifies new and existing engineering technologies relating to the design and construction of aircraft for flight.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
41	2021-214405	Naval Architect	Designs, constructs and repairs ships, boats, other marine vessels and offshore structures, both civil and military.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
42	2021-214501	Chemical Engineer	Designs and prepares specifications for chemical process systems and the construction and operation of commercial-scale chemical plants, and supervises industrial processing, fabrication and manufacturing of products undergoing physical and chemical changes and related technologies.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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43	2021-214502	Chemical Engineering Technologist	Analyses and modifies new and existing chemical engineering technologies and applies them in the testing and implementation of chemical engineering projects.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
44	2021-214601	Mining Engineer	Plans and directs the engineering aspects of locating and extracting minerals (excluding Petroleum) from the earth.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
45	2021-214605	Metallurgist	Researches, develops, controls and provides advice on processes used in extracting metals from their ores, and processes used for casting, alloying, heat treating or welding refined metals, alloys and other materials to produce commercial metal products or develop new alloys and processes.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
46	2021-214901	Biomedical Engineer	Combines biology, engineering and medicine to help solve medical and scientific health problems.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
47	2021-214904	Quantity Surveyor	Estimates and monitors construction costs from the feasibility stage, through tender preparation, to the construction period and beyond.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
48	2021-214905	Agricultural Engineer	Performs and supervises engineering work related to the use and development of agricultural land, buildings, machines and equipment.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
49	2021-214906	Agricultural Engineering Technologist	Analyses and modifies new and existing engineering technologies relating to the use and development of agricultural land, buildings, machines and equipment.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
50	2021-215102	Electrical Engineering Technologist	Analyses and modifies new and existing electrical engineering technologies and applies them in the testing and implementation of electrical engineering projects.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
51	2021-215103	Energy Engineer	Plans, designs, organises and oversees the construction or remodelling of energy generation plants and designs, develops, or evaluates energy related projects to reduce energy costs or improve energy efficiency.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
52	2021-215104	Energy Engineering Technologist	Analyses and modifies new and existing engineering technologies relating to the design and construction of nuclear reactors and auxiliary facilities.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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53	2021-215201	Electronics Engineer	Designs, develops, adapts, installs, tests and maintains electronic components, circuits and systems used for computer systems, communication systems and other industrial applications.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
54	2021-216101	Architect	Designs buildings and advises on the procurement of buildings, provides concepts, plans, specifications and detailed drawings, and negotiates with builders.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
55	2021-216401	Urban and Regional Planner	Develops and implements plans and policies for the controlled	Master's Degree (NQF Level 9)	Relevant Professional body, council or board

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			use of urban and rural land, and advises on economic, environmental and social needs of land areas.		recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
56	2021-216603	Multimedia Designer	Plans, designs and develops the production of digitally delivered information, promotional content, instructional material and entertainment through online and recorded digital media using static and animated information, text, pictures, video and sound to produce information and entertainment tailored to an intended audience and purpose.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
57	2021-222114	Specialist Nurse Educator	Lectures students and conducts tutorials in one or more subjects within a Specialist Nursing Programme at a Nursing Education Institution, (including a Nursing Department within a University (Nursing Faculty)), conducts clinical facilitation and accompaniment, conducts research in a particular field of knowledge.	A qualification in Nursing Education, a Master's Degree and a Postgraduate Diploma in the relevant nursing speciality	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
58	2021-231101	University Lecturer – Senior Lecturer and above for only those CESM categories listed in Annexure 2	Lectures students and conducts tutorials in one or more subjects within a prescribed course of study at a University and conducts research in a particular field of knowledge.	Professional Doctoral Qualification (NQF Level 9) or Doctorate (NQF Level 10)	SAQA Professional Body not required. Letter of support from the Dean/Head of the Faculty or School or University Registrar.
59	2021-233107	FET Phase School Teacher (Grades 10-12) – Only for STEM subjects	Teaches one or more subjects at FET phase, including subjects intended to prepare students for employment in specific occupational areas as well as vocational.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
60	2021-233108	Senior Phase School Teacher (Grades 8 – 9) – Only for STEM subjects	Teaches one or more subjects at FET phase of schooling.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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61	2021-241103	Tax Professional	Analyses, reports and provides advice on taxation issues to tax entities, prepares and reviews tax returns and reports and handles disputes.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
62	2021-241104	External Auditor	Designs and operates information and reporting systems, procedures and	Bachelor Honours Degree, Postgraduate	Relevant Professional body, council or board recognised by SAQA as

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			controls to meet external financial reporting requirements.	Diploma, or Bachelor's Degree (NQF Level 8)	contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
63	2021-241108	Forensic Accountant	Examines financial records to detect and deter fraud and white collar crime.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
64	2021-241201	Investment Analyst	Analyses individual securities, industries and the economy, publishes reports and makes recommendations regarding investments.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
65	2021-241202	Investment Manager	Manages a portfolio of securities, in which he/she may exercise his/her own discretion, on behalf of clients.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
66	2021-241203	Investment Advisor	Advises clients in respect of securities and other financial investments and instruments.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
67	2021-242103	Business Development Officer	Supports the coordination, implementation, monitoring and reporting of local economic development initiatives in creating a conducive environment for entrepreneurs and businesses, encouraging investment, job opportunities to improve the economy and social upliftment of an area.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
68	2021-242202	Policy Analyst	Collects and analyses information and data to produce intelligence for public or private sector organisations to support planning, operations and human resource functions.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
69	2021-242204	Corporate Treasurer	Manages corporate funding, liquidity and financial risk associated with the profitable development and operation of an organisation. May be involved in acquisitions, disposals and joint ventures.	Bachelor Honours Degree, Postgraduate Diploma, or Bachelor's Degree (NQF Level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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70	2021-242208	Organisational Risk Manager	Advises organisations on assessment processes to determine actual and potential	Bachelor Honours Degree, Postgraduate	Relevant Professional body, council or board recognised by SAQA as

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			risks pertaining to the organisation as a total entity.	Diploma, or Bachelor's Degree (NQF Level 8)	contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
71	2021-242211	Internal Auditor	Evaluates and improves the effectiveness of risk management, control, and governance processes within an organisation.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
72	2021-242402	Occupational Instructor (Air-Traffic Space)	Conducts and assesses training and development to ensure management and staff acquire the skills and develop the competencies required by an organisation to meet organisational objectives.	Bachelor's Degree or Advanced Diploma (NQF Level 7) and Air-traffic qualification not benchmarked to the NQF	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
73	2021-243102	Market Research Analyst	Determines the market for new goods and services, develops advertising strategies, and evaluates the best business sites for commercial organisations.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
74	2021-251101	ICT Systems Analyst	Evaluates processes and methods used in existing ICT systems, proposes modifications, additional system components or new systems to meet user needs as expressed in specifications and other documentation.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
75	2021-251102	Data Scientist	Data Scientist collect large amounts of unruly data and transform it into a more usable format. They solve business-related problems using data driven techniques. They work with a variety of programming languages, including SAS, R and Python. They look for patterns in data, as well as spotting trends that can help businesses. Data Scientists use the most powerful programming systems and the most efficient algorithms to solve problems.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
76	2021-251201	Software Developer	Researches, analyses and evaluates requirements for existing or new software applications and designs, develops, tests and maintains software solutions.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
77	2021-251202	Programmer Analyst	Designs, develops, modifies documents and tests, implements. installs and	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			supports software applications and systems.		regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
78	2021-251203	Developer Programmer	Interprets specifications, technical designs and flow charts, builds, maintains and modifies the code for software applications, constructs technical specifications from a business functional model, and tests and writes technical documentation.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
79	2021-251301	Multimedia Specialist	Creates and manipulates computer animation, audio, video and graphic image files into multimedia programs to produce data and content for information kiosks, multimedia presentations, web sites, mobile telephone resources, electronic gaming environments, e-commerce and e-security solutions, and entertainment and education products.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
80	2021-251401	Applications Programmer	Writes and maintains programmable code of software applications and operating systems.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
81	2021-251901	Computers Quality Assurance Analyst	Installs software and hardware and configures operating system software in preparation for testing and conduct testing.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
82	2021-252301	Computer Network and Systems Engineer	Plans, develops, deploys, tests and optimises network and system services taking responsibility for configuration management and overall operational readiness of network systems, especially environments with multiple operating systems and configurations, and provides troubleshooting and fault finding services for network problems.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
83	2021-252302	Network Analyst	Researches and analyses network architecture, recommends policies and strategies for designing, planning and coordinating an organisation's network such as the total system environment and architecture. May also perform operational tasks such	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			as monitoring system performance, software and hardware upgrades, backups, support and network maintenance.		

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84	2021-252901	ICT Security Specialist	Establishes, manages and administers an organisation's ICT security policy and procedures to ensure preventive and recovery strategies are in place, and minimise the risk of internal and external security threats.	Bachelor's Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
85	2021-263101	Economist	Performs economic research and analysis; develops and applies theories about production and distribution of goods and services, and people's spending and financial behaviour; and provides advice to governments and organisations on subjects relating to economic policies.	Master's Degree (NQF Level 9)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
86	2021-311101	Chemistry Technician	Performs laboratory tests on organic and inorganic chemicals, analyses test data and carries out technical functions in support of chemists or chemical engineers and technologists in a wide variety of areas such as fuels, pharmaceuticals, paints, metals, plastics, textiles, detergents, paper, fertilisers and cosmetics.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
87	2021-311203	Town Planning Technician	Provides technical support to town planners by preparing and maintaining plans, documents, charts, photographs, tables, reports, and exhibition material for projects, public meetings and committees related to the controlled use of urban and rural land.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
88	2021-311401	Electronic Engineering Technician	Conducts tests of electronic systems, collects and analyses data, and assembles circuitry in support of electronics engineers and engineering technologists.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
89	2021-311501	Mechanical Engineering Technician	Conducts tests of mechanical systems, collects and analyses data, and assembles and installs mechanical assemblies in support of mechanical engineers and engineering technologists.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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90	2021-311801	Draughtsperson	Prepares technical drawings, maps and illustrations from sketches, measurements and other data, and copy final drawings and paintings onto printing plates in support of architects, engineers and engineering technologists. Note: the terms drafting technician or drafting officer can be used interchangeably.	Diploma or Advanced Certificate (NQF Level 6)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
91	2021-315401	Air Traffic Controller	Ensures the safe and efficient movement of aircraft in controlled airspace and aerodromes by directing aircraft movements.	National Certificate (NQF Level 4) and Air-traffic qualification not benchmarked to the NQF	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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92	2021-422201	Inbound Contact Centre Consultant (with first language speaking and translating capabilities in the following languages: German, Swiss, German [sic], Flemish, Greek, Swedish, Danish, Italian, Dutch, Spanish, Mandarin and French)	Provides expert response to complex customer enquiries according to agreed key performance indicators.	National Certificate (NQF Level 4)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
93	2021-422202	Outbound Contact Centre Consultant (with first language speaking and translating capabilities in the following languages: German, Swiss, German [sic], Flemish, Greek, Swedish, Danish, Italian, Dutch, Spanish, Mandarin and French)	Initiates specialised contact with targeted and/or selected customers according to agreed key performance indicators or outcomes.	National Certificate (NQF Level 4)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
94	2021-642701	Air-conditioning and Refrigeration Mechanic	Installs, maintains and repairs piping, ducting and equipment for heating, cooling and ventilation of buildings or vessels.	Intermediate Certificate (NQF Level 3)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
95	2021-652301	Metal Machinist	Sets up and operates machine tools to shape and form metal stock and castings to fine tolerances, using detailed drawings and specifications.	Intermediate Certificate (NQF Level 3)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
					where applicable, regulation 18(5)*(b)*
96	2021-671202	Millwright	Installs, maintains, troubleshoots and repairs stationary industrial machinery and electromechanical equipment.	National Certificate (NQF Level 4)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
97	2021-671203	Mechatronics Technician	Repairs and maintains integrated industrial systems based on mechanical, electrical, electronic and information technology and advanced technology components.	Intermediate Certificate (NQF Level 3)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
98	2021-671204	Lift Mechanic	Designs, installs, maintains, services and repairs electric and hydraulic passenger and freight lifts, escalators, moving walkways and other lift equipment.	Intermediate Certificate (NQF Level 3)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
99	2021-671206	Electrical Equipment Mechanic	Services and repairs electrical equipment and household appliances.	Intermediate Certificate (NQF Level 3)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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100	2021-671208	Transportation Electrician	Installs, maintains and repairs electrical wiring and electronic components in motorised vehicles.	National Certificate (NQF Level 4)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
101	2021-672105	Instrument Mechanician (Industrial Instrumentation & Process Control)	Installs, modifies, maintains and repairs electronic instruments and control systems.	Intermediate Certificate (NQF Level 3)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
Unit Group OFO Code: 2021 - 2212		**Specialist Medical Practitioners (Occupation 102 to 133 on this List)**	Specialist medical practitioners diagnose, treat and prevent illness, disease, injury, and other physical and mental impairments in humans, using specialised testing, diagnostic, medical, surgical, physical and psychiatric techniques, through application of the principles and procedures of modern medicine. They specialise in certain disease categories, types of patient or methods of treatment and may conduct medical education and research in their chosen areas of specialisation.		
102	Unit Group OFO Code: 2021-2212	Dentist – Specialist (COMMUNITY DENTISTRY)	Provide health services in dentistry confined to the specialty of community dentistry.	B Dental Surgery Master of Dentistry (Community Dentistry).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of dentistry from the foreign country where they are

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
					practicing their profession.
103	Unit Group OFO Code: 2021 - 2212	Dentist – Specialist (MAXILLO AND ORAL PATHOLOGY)	Provide health services in dentistry confined to the specialty of Maxillo and Oral Pathology.	8 Dental Surgery Master of Dentistry (Maxillo and Oral Pathology).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of dentistry from the foreign country where they are practicing their profession.
104	Unit Group OFO Code: 2021 - 2212	Dentist Specialist (MAXILLO FACIAL AND ORAL SURGERY)	Provide health services in dentistry confined to the specialty of Maxillo and Oral Surgery.	B Dental Surgery Master of Dentistry (Maxillo and Oral Surgery).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of dentistry from the foreign country where they are practicing their profession.
105	Unit Group OFO Code: 2021 - 2212	Dentist – Specialist (ORAL MEDICINE AND PERIODONTICS)	Provide health services in dentistry confined to the specialty of Oral Medicine and Periodontics.	B Dental Surgery Master of Dentistry (Oral Medicine and Periodontics).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of dentistry from the foreign country where they are practicing their profession.
106	Unit Group OFO Code: 2021 - 2212	Dentist – specialist PROSTHODONTICS	Provide health services in dentistry confined to the specialty of Prosthodontics.	B Dental Surgery Master of Dentistry (Prosthodontics).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of dentistry from the foreign country where they are practicing their profession.

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107	Unit Group OFO Code: 2021 - 2212	Medical Practitioner - specialist ANAESTHESIOLOGY	Provide health services in medicine confined to the specialty of Anaesthesiology.	Medical degree Master of Medicine (Anaesthesiology).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
108	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist CARDIOTHORACIC SURGERY	Provide health services in medicine confined to the specialty of Cardiothoracic Surgery.	Medical degree Master of Medicine (Cardiothoracic Surgery).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
109	Unit Group OFO	Medical Practitioner – specialist CLINICAL PHARMACOLOGY.	Provide health services in medicine confined to the	Medical degree	Health Professions Council. Candidate must have active registration

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No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
	Code: 2021 -2212		specialty of Clinical Pharmacology.	Master of Medicine (Clinical Pharmacology.).	with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
110	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PUBLIC HEALTH.	Provide health services in medicine confined to the specialty of Public Health.	Medical degree Master of Medicine (Community Health). Fellow of the Colleges of Medicine in Public Health.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
111	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist DERMATOLOGY.	Provide health services in medicine confined to the specialty of Dermatology.	Medical degree Master of Medicine (Dermatology). Fellow of the Colleges of Medicine in Dermatology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
112	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist DIAGNOSTIC RADIOLOGY.	Provide health services in medicine confined to the specialty of Diagnostic Radiology.	Medical degree Master of Medicine (Diagnostic Radiology). Fellow of the Colleges of Radiology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
113	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist EMERGENCY MEDICINE.	Provide health services in medicine confined to the specialty of Emergency Medicine.	Medical degree Master of Medicine (Emergency Medicine). Fellow of the Colleges of Emergency Medicine.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.

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114	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist MEDICINE.	Provide health services in medicine confined to the specialty of Medicine.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Medicine.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
115	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist NEUROLOGY.	Provide health services in medicine confined to the specialty of Neurology.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Medicine in Neurology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
					practicing their profession.
116	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist NEUROSURGERY.	Provide health services in medicine confined to the specialty of Neurosurgery.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Medicine in Neurosurgery.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
117	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist OBSTETRICS AND GYNAECOLOGY.	Provide health services in medicine confined to the specialty of Obstetrics and Gynaecology.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Obstetrics and Gynaecology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
118	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist OPHTHALMOLOGY.	Provide health services in medicine confined to the specialty of Ophthalmology.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Ophthalmology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
119	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist ORTHOPAEDICS.	Provide health services in medicine confined to the specialty of Orthopaedics.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Orthopaedics.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
120	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist OTORHINOLARYNGOLOGY.	Provide health services in medicine confined to the specialty of Otorhinolaryngology.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Otorhinolaryngology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.

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121	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PAEDIATRICS.	Provide health services in medicine confined to the specialty of Paediatrics.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Paediatrics.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
122	Unit Group OFO	Medical Practitioner – specialist	Provide health services in medicine confined to the	Medical degree Master of Medicine (Medicine).	Health Professions Council. Candidate must have active registration

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
	Code: 2021-2212	PATHOLOGY (ANATOMICAL).	specialty of Pathology (Anatomical).	Fellow of the Colleges of Pathology (Anatomical).	with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
123	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PATHOLOGY (CHEMICAL).	Provide health services in medicine confined to the specialty of Pathology (Chemical).	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Pathology (Chemical).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
124	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PATHOLOGY (CLINICAL).	Provide health services in medicine confined to the specialty of Pathology (Clinical).	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Pathology (Clinical).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
125	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PATHOLOGY (FORENSIC).	Provide health services in medicine confined to the specialty of Pathology (Forensic).	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Pathology (Forensic).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
126	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PATHOLOGY (HAEMATOLOGICAL).	Provide health services in medicine confined to the specialty of Pathology (Haematological).	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Pathology (Haematological).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
127	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PATHOLOGY (MICROBIOLOGICAL).	Provide health services in medicine confined to the specialty of Pathology (Microbiological).	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Pathology (Microbiological).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.

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128	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PATHOLOGY (VIROLOGICAL).	Provide health services in medicine confined to the specialty of Pathology (Virological).	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Pathology (Virological).	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
					practicing their profession.
129	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PLASTIC AND RECONSTRUCTIVE SURGERY.	Provide health services in medicine confined to the specialty of Plastic and Reconstructive Surgery.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Plastic and Reconstructive Surgery.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
130	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist PSYCHIATRY.	Provide health services in medicine confined to the specialty of Psychiatry.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Psychiatry.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
131	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist RADIATION ONCOLOGY.	Provide health services in medicine confined to the specialty of Radiation Oncology.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Radiation Oncology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
132	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist SURGERY.	Provide health services in medicine confined to the specialty of Surgery.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Surgery.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
133	Unit Group OFO Code: 2021 - 2212	Medical Practitioner – specialist UROLOGY.	Provide health services in medicine confined to the specialty of Urology.	Medical degree Master of Medicine (Medicine). Fellow of the Colleges of Urology.	Health Professions Council. Candidate must have active registration with relevant Regulatory Body in the field of Medicine from the foreign country where they are practicing their profession.
134	2021 - 222108	Registered Nurse – Intensive/Critical Care Nursing	Provides nursing care to patients with life threatening illnesses in an Intensive/Critical Care Unit as part of a multi-disciplinary team, in Health Establishments as defined by the National Health Act, 2003 (Act 61 of 2003).	Diploma in Nursing & Nurse Specialist in Intensive/Critical Care	Relevant Professional body (SANC), council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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135	2021 - 222110	Registered Nurse – Mental Health (Psychiatric) Nursing	Provides nursing care to patients with mental health/psychiatric illnesses as part of a multi-disciplinary team, in and out of Health Establishments as	Diploma in Nursing & Mental Health/Psychiatry	Relevant Professional body (SANC), council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or

No	OFO-code	Occupation name	Description (OFO)	Minimum Qualification required	Professional Body Registration
			defined by the National Health Act, 2003 (Act 61 of 2003).		where applicable, regulation 18(5)*(b)*
136	2021-222111	Registered Nurse - Peri-operative Nursing (Theater Technique)	Provides nursing care to patients before, during and immediately after surgery and assists surgeons and anaesthetists during surgery.	Diploma in Nursing & in Peri-operative Nursing (Theater Technique)	Relevant Professional body (SANC), council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
137	2021-222105	Registered Nurse - Emergency Nursing (Trauma)	Provides nursing care to trauma and emergency patients as part of a multi-disciplinary team, in Health Establishments as defined by the National Health Act, 2003 (Act 61 of 2003).	Diploma in Nursing & in Emergency Nursing (Trauma)	Relevant Professional body (SANC), council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
138	2021-222113	Registered Nurse - Child Nursing (Paediatric Nursing)	Provides nursing care to children in the paediatric setting as part of a multi-disciplinary team, in Health Establishments as defined by the National Health Act, 2003 (Act 61 of 2003).	Diploma in Nursing & in Child Nursing (Paediatric Nursing)	Relevant Professional body (SANC), council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
139	2021-222101	Registered Nurse - Midwife Specialist	Provides advanced maternal and neonatal care to ante-natal (before), intrapartum (during labour) and post-natal (after delivery) patients.	Diploma in Nursing & Post Graduate Diploma in Midwifery	Relevant Professional body (SANC), council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
140	2021-226202	Industrial Pharmacist	Undertakes research, testing and analysis related to the development, production, storage, quality control and distribution of drugs and related supplies.	B Degree or Advanced Diploma (NQF Level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
141	2021-225101	Veterinarian	Veterinarians diagnose, prevent and treat diseases, injuries and dysfunctions of animals. They may provide care to a wide range of animals or specialise in the treatment of a particular animal group or in a particular specialty area, or provide professional services to commercial firms producing biological and pharmaceutical products.	Bachelor of Veterinary Science (BVSc): (NQF level 8) OR Bachelor of Veterinary Medicine and Surgery (BVMCh): (NQF level 8)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*
142	2021-324101	Veterinary Nurse	Cares for animals under treatment or in temporary residence at veterinary facilities and assists veterinarians to perform procedures and operations.	National Diploma of Veterinary Nursing (DVN) – (NQF level 6) OR Bachelor of Veterinary Nursing (BVN): (NQF level 7)	Relevant Professional body, council or board recognised by SAQA as contemplated in regulation 18(5)*(a)* or where applicable, regulation 18(5)*(b)*

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(a) A critical skills work visa is not a work-seekers visa. All applications must be accompanied by an offer of employment from employers who are verifiable and are in good standing with the Department of Employment and Labour.

(b) For all Corporate General Manager (CGM) and Director occupations check the additional requirements in Table 10 of the Critical Skills Technical Report available on http://www.dha.gov.za/index.php/notices.

(c) University lecturers must specify the classification of education subject matter as per Annexure 2 of the Critical Skills Technical Report available on http://www.dha.gov.za/index.php/notices.

(d) Engineering applicants registered with a SAQA Professional Body as 'Candidate' and others similarly graded in the occupations listed above will be considered for a critical skills work visa provided they meet all other requirements and on condition that on receipt of the work visa they will be working under the supervision of a qualified professional where applicable.

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Sector & Level		2023 (Old) Targets	2024 (Draft/New) Targets	2025 (Final Gazette) Targets		Difference between 2024 and 2023	Difference between 2025 and 2024	Difference between 2025 and 2023
Accommodation and Food Service Activities								
Top Management	Male	22.5%	22.5%	18.6%		0.0%		
	Female	22.5%	22.5%	38.1%		0.0%	15.6%	15.6%
	Total	45.0%	45.0%	56.7%		0.0%	11.7%	11.7%
Senior Management	Male	28.0%	28.0%	32.2%		0.0%	4.2%	4.2%
	Female	30.0%	30.0%	46.1%		0.0%	16.1%	16.1%
	Total	58.0%	58.0%	78.3%		0.0%	20.3%	20.3%
Professionally Qualified & Middle Management	Male	33.5%	33.5%	38.6%		0.0%	5.1%	5.1%
	Female	37.5%	37.5%	46.1%		0.0%	8.6%	8.6%
	Total	71.0%	71.0%	84.7%		0.0%	13.7%	13.7%
Skilled Technical	Male	47.0%	47.0%	49.8%		0.0%	2.8%	2.8%
	Female	41.0%	41.0%	46.1%		0.0%	5.1%	5.1%
	Total	88.0%	88.0%	95.9%		0.0%	7.9%	7.9%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Administrative and Support Activities								
Top Management	Male	30.0%	30.0%	33.2%		0.0%	3.2%	3.2%
	Female	20.0%	20.0%	36.7%		0.0%	16.7%	16.7%
	Total	50.0%	50.0%	69.9%		0.0%	19.9%	19.9%
Senior Management	Male	38.0%	38.0%	42.3%		0.0%	4.3%	4.3%
	Female	27.0%	27.0%	43.5%		0.0%	16.5%	16.5%
	Total	65.0%	65.0%	85.8%		0.0%	20.8%	20.8%
Professionally Qualified & Middle Management	Male	44.2%	44.2%	49.2%		0.0%	5.0%	5.0%
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	85.0%	85.0%	95.3%		0.0%	10.3%	10.3%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Agriculture, Forestry & Fishing								
Top Management	Male	20.0%	20.0%	13.2%		0.0%		
	Female	15.0%	15.0%	20.8%		0.0%	5.8%	5.8%
	Total	35.0%	35.0%	34.0%		0.0%		
Senior Management	Male	25.0%	25.0%	21.6%		0.0%		
	Female	15.0%	15.0%	31.0%		0.0%	16.0%	16.0%
	Total	40.0%	40.0%	52.6%		0.0%	12.6%	12.6%
Professionally Qualified & Middle Management	Male	35.0%	35.0%	34.7%		0.0%		
	Female	25.0%	25.0%	41.7%		0.0%	16.7%	16.7%
	Total	60.0%	60.0%	76.4%		0.0%	16.4%	16.4%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	27.6%	27.6%	44.0%		0.0%	16.4%	16.4%
	Total	78.0%	78.0%	93.8%		0.0%	15.8%	15.8%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Arts, Entertainment and Recreation								
Top Management	Male	25.0%	25.0%	35.1%		0.0%	10.1%	10.1%
	Female	25.0%	25.0%	33.5%		0.0%	8.5%	8.5%
	Total	50.0%	50.0%	68.6%		0.0%	18.6%	18.6%
Senior Management	Male	45.0%	45.0%	40.3%		0.0%		
	Female	30.0%	30.0%	43.8%		0.0%	13.8%	13.8%
	Total	75.0%	75.0%	84.1%		0.0%	9.1%	9.1%
Professionally Qualified & Middle Management	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Construction								
Top Management	Male	33.0%	33.0%	30.0%		0.0%		
	Female	17.0%	17.0%	24.8%		0.0%	7.8%	7.8%

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Sector & Level		2023 (Old) Targets	2024 (Draft/New) Targets	2025 (Final Gazette) Targets		Difference between 2024 and 2023	Difference between 2025 and 2024	Difference between 2025 and 2023
	Total	50.0%	50.0%	54.8%		0.0%	4.8%	4.8%
Senior Management	Male	40.0%	40.0%	38.3%		0.0%		
	Female	20.0%	20.0%	27.8%		0.0%	7.8%	7.8%
	Total	60.0%	60.0%	66.1%		0.0%	6.1%	6.1%
Professionally Qualified & Middle Management	Male	50.0%	50.0%	46.7%		0.0%		
	Female	25.0%	25.0%	34.4%		0.0%	9.4%	9.4%
	Total	75.0%	75.0%	81.1%		0.0%	6.1%	6.1%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	37.6%	37.6%	46.1%		0.0%	8.5%	8.5%
	Total	88.0%	88.0%	95.9%		0.0%	7.9%	7.9%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Education								
Top Management	Male	33.0%	33.0%	27.6%		0.0%		
	Female	25.0%	25.0%	46.1%		0.0%	21.1%	21.1%
	Total	58.0%	58.0%	73.7%		0.0%	15.7%	15.7%
Senior Management	Male	31.5%	31.5%	30.5%		0.0%		
	Female	29.5%	29.5%	46.1%		0.0%	16.6%	16.6%
	Total	61.0%	61.0%	76.6%		0.0%	15.6%	15.6%
Professionally Qualified & Middle Management	Male	35.0%	35.0%	43.0%		0.0%	8.0%	8.0%
	Female	35.5%	35.5%	46.1%		0.0%	10.6%	10.6%
	Total	70.5%	70.5%	89.1%		0.0%	18.6%	18.6%
Skilled Technical	Male	42.0%	42.0%	49.8%		0.0%	7.8%	7.8%
	Female	42.5%	42.5%	46.1%		0.0%	3.6%	3.6%
	Total	84.5%	84.5%	95.9%		0.0%	11.4%	11.4%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Electricity, Gas, Steam and Air Conditioning Supply								
Top Management	Male	28.0%	28.0%	31.7%		0.0%	3.7%	3.7%
	Female	22.0%	22.0%	27.9%		0.0%	5.9%	5.9%
	Total	50.0%	50.0%	59.6%		0.0%	9.6%	9.6%
Senior Management	Male	39.0%	39.0%	42.7%		0.0%	3.7%	3.7%
	Female	26.0%	26.0%	39.5%		0.0%	13.5%	13.5%
	Total	65.0%	65.0%	82.2%		0.0%	17.2%	17.2%
Professionally Qualified & Middle Management	Male	47.0%	47.0%	49.8%		0.0%	2.8%	2.8%
	Female	33.0%	33.0%	46.1%		0.0%	13.1%	13.1%
	Total	80.0%	80.0%	95.9%		0.0%	15.9%	15.9%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	37.6%	37.6%	46.1%		0.0%	8.5%	8.5%
	Total	88.0%	88.0%	95.9%		0.0%	7.9%	7.9%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Financial and Insurance Activities								
Top Management	Male	30.0%	26.0%	27.8%			1.8%	
	Female	21.3%	20.0%	35.3%			15.3%	14.0%
	Total	51.3%	46.0%	63.1%			17.1%	11.8%
Senior Management	Male	31.0%	24.0%	31.7%			7.7%	0.7%
	Female	26.0%	24.0%	45.3%			21.3%	19.3%
	Total	57.0%	48.0%	77.0%			29.0%	20.0%
Professionally Qualified & Middle Management	Male	36.0%	30.0%	40.7%			10.7%	4.7%
	Female	34.0%	34.0%	46.1%		0.0%	12.1%	12.1%
	Total	70.0%	64.0%	86.8%			22.8%	16.8%
Skilled Technical	Male	42.0%	47.4%	49.5%		5.4%	2.1%	7.5%
	Female	46.2%	40.8%	46.1%			5.3%	
	Total	88.2%	88.2%	95.6%		0.0%	7.4%	7.4%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Human Health and Social Work Activities								
Top Management	Male	25.0%	25.0%	27.6%		0.0%	2.6%	2.6%
	Female	25.0%	25.0%	43.7%		0.0%	18.7%	18.7%
	Total	50.0%	50.0%	71.3%		0.0%	21.3%	21.3%
	Male	30.0%	30.0%	39.8%		0.0%	9.8%	9.8%

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Sector & Level		2023 (Old) Targets	2024 (Draft/New) Targets	2025 (Final Gazette) Targets		Difference between 2024 and 2023	Difference between 2025 and 2024	Difference between 2025 and 2023
Senior Management	Female	30.0%	30.0%	46.1%		0.0%	16.1%	16.1%
	Total	60.0%	60.0%	85.9%		0.0%	25.9%	25.9%
Professionally Qualified & Middle Management	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Information and Communication								
Top Management	Male	28.0%	28.0%	25.4%		0.0%		
	Female	22.0%	22.0%	31.2%		0.0%	9.2%	9.2%
	Total	50.0%	50.0%	56.6%		0.0%	6.6%	6.6%
Senior Management	Male	35.0%	35.0%	28.6%		0.0%		
	Female	25.0%	25.0%	40.0%		0.0%	15.0%	15.0%
	Total	60.0%	60.0%	68.6%		0.0%	8.6%	8.6%
Professionally Qualified & Middle Management	Male	40.0%	40.0%	37.9%		0.0%		
	Female	30.0%	30.0%	38.9%		0.0%		8.9%
	Total	70.0%	70.0%	76.8%		0.0%	6.8%	6.8%
Skilled Technical	Male	48.0%	48.0%	46.0%		0.0%		
	Female	37.0%	37.0%	45.7%		0.0%	8.7%	8.7%
	Total	85.0%	85.0%	91.7%		0.0%	6.7%	6.7%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Manufacturing								
Top Management	Male	25.0%	25.0%	24.1%		0.0%		
	Female	15.0%	15.0%	25.0%		0.0%	10.0%	10.0%
	Total	40.0%	40.0%	49.1%		0.0%	9.1%	9.1%
Senior Management	Male	33.0%	33.0%	32.4%		0.0%		
	Female	17.0%	17.0%	33.6%		0.0%	16.6%	16.6%
	Total	50.0%	50.0%	66.0%		0.0%	16.0%	16.0%
Professionally Qualified & Middle Management	Male	37.0%	37.0%	40.4%		0.0%	3.4%	3.4%
	Female	25.0%	25.0%	37.7%		0.0%	12.7%	12.7%
	Total	62.0%	62.0%	78.1%		0.0%	16.1%	16.1%
Skilled Technical	Male	50.0%	50.0%	49.8%		0.0%		
	Female	34.0%	34.0%	39.6%		0.0%	5.6%	5.6%
	Total	84.0%	84.0%	89.4%		0.0%	5.4%	5.4%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Mining and Quarrying								
Top Management	Male	29.9%	29.9%	33.1%		0.0%	3.2%	3.2%
	Female	20.1%	20.1%	24.4%		0.0%	4.3%	4.3%
	Total	50.0%	50.0%	57.5%		0.0%	7.5%	7.5%
Senior Management	Male	35.0%	35.0%	36.3%		0.0%	1.3%	1.3%
	Female	21.0%	21.0%	28.2%		0.0%	7.2%	7.2%
	Total	56.0%	56.0%	64.5%		0.0%	8.5%	8.5%
Professionally Qualified & Middle Management	Male	41.0%	41.0%	43.2%		0.0%	2.2%	2.2%
	Female	24.0%	24.0%	34.4%		0.0%	10.4%	10.4%
	Total	65.0%	65.0%	77.6%		0.0%	12.6%	12.6%
Skilled Technical	Male	49.1%	49.1%	49.8%		0.0%	0.7%	0.7%
	Female	25.9%	25.9%	36.9%		0.0%	11.0%	11.0%
	Total	75.0%	75.0%	86.7%		0.0%	11.7%	11.7%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Professional, Scientific and Technical Activities								
Top Management	Male	33.0%	25.0%	24.4%				
	Female	32.0%	20.0%	38.1%			18.1%	6.1%
	Total	65.0%	45.0%	62.5%			17.5%	
Senior Management	Male	44.0%	27.0%	29.9%			2.9%	
	Female	44.0%	23.0%	46.1%			23.1%	2.1%
	Total	88.0%	50.0%	76.0%			26.0%	

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Sector & Level		2023 (Old) Targets	2024 (Draft/New) Targets	2025 (Final Gazette) Targets		Difference between 2024 and 2023	Difference between 2025 and 2024	Difference between 2025 and 2023
Professionally Qualified & Middle Management	Male	33.0%	33.0%	35.9%		0.0%	2.9%	2.9%
	Female	32.0%	32.0%	46.1%		0.0%	14.1%	14.1%
	Total	65.0%	65.0%	82.0%		0.0%	17.0%	17.0%
Skilled Technical	Male	44.0%	44.0%	49.8%		0.0%	5.8%	5.8%
	Female	44.0%	44.0%	46.1%		0.0%	2.1%	2.1%
	Total	88.0%	88.0%	95.9%		0.0%	7.9%	7.9%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Public Administration and Defence, Compulsory Social Security								
Top Management	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	41.9%		0.0%	1.1%	1.1%
	Total	91.2%	91.2%	91.7%		0.0%	0.5%	0.5%
Senior Management	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Professionally Qualified & Middle Management	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Real Estate Activities								
Top Management	Male	25.0%	25.0%	18.9%		0.0%		
	Female	20.0%	20.0%	30.3%		0.0%	10.3%	10.3%
	Total	45.0%	45.0%	49.2%		0.0%	4.2%	4.2%
Senior Management	Male	27.0%	27.0%	22.9%		0.0%		
	Female	23.0%	23.0%	46.1%		0.0%	23.1%	23.1%
	Total	50.0%	50.0%	69.0%		0.0%	19.0%	19.0%
Professionally Qualified & Middle Management	Male	30.0%	30.0%	32.4%		0.0%	2.4%	2.4%
	Female	35.0%	35.0%	46.1%		0.0%	11.1%	11.1%
	Total	65.0%	65.0%	78.5%		0.0%	13.5%	13.5%
Skilled Technical	Male	33.0%	33.0%	38.3%		0.0%	5.3%	5.3%
	Female	37.0%	37.0%	46.1%		0.0%	9.1%	9.1%
	Total	70.0%	70.0%	84.4%		0.0%	14.4%	14.4%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Transportation and Storage								
Top Management	Male	30.0%	30.0%	32.2%		0.0%	2.2%	2.2%
	Female	20.0%	20.0%	30.0%		0.0%	10.0%	10.0%
	Total	50.0%	50.0%	62.2%		0.0%	12.2%	12.2%
Senior Management	Male	38.0%	38.0%	42.1%		0.0%	4.1%	4.1%
	Female	22.0%	22.0%	35.9%		0.0%	13.9%	13.9%
	Total	60.0%	60.0%	78.0%		0.0%	18.0%	18.0%
Professionally Qualified & Middle Management	Male	48.0%	48.0%	46.3%		0.0%		
	Female	27.0%	27.0%	40.7%		0.0%	13.7%	13.7%
	Total	75.0%	75.0%	87.0%		0.0%	12.0%	12.0%
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	37.6%	37.6%	41.4%		0.0%	3.8%	3.8%
	Total	88.0%	88.0%	91.2%		0.0%	3.2%	3.2%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Water Supply, Sewerage, Waste Management and Remediation Activities								
Top Management	Male	45.0%	45.0%	49.8%		0.0%	4.8%	4.8%
	Female	35.0%	35.0%	35.9%		0.0%	0.9%	0.9%
	Total	80.0%	80.0%	85.7%		0.0%	5.7%	5.7%
Senior Management	Male	50.0%	50.0%	49.8%		0.0%		
	Female	38.0%	38.0%	41.0%		0.0%	3.0%	3.0%
	Total	88.0%	88.0%	90.8%		0.0%	2.8%	2.8%
Professionally Qualified & Middle Management	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%

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Sector & Level		2023 (Old) Targets	2024 (Draft/New) Targets	2025 (Final Gazette) Targets		Difference between 2024 and 2023	Difference between 2025 and 2024	Difference between 2025 and 2023
Skilled Technical	Male	50.4%	50.4%	49.8%		0.0%		
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	91.2%	91.2%	95.9%		0.0%	4.7%	4.7%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%
Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles								
Top Management	Male	25.0%	25.0%	24.2%		0.0%		
	Female	15.0%	15.0%	27.5%		0.0%	12.5%	12.5%
	Total	40.0%	40.0%	51.7%		0.0%	11.7%	11.7%
Senior Management	Male	33.0%	33.0%	35.0%		0.0%	2.0%	2.0%
	Female	23.0%	23.0%	38.6%		0.0%	15.6%	15.6%
	Total	56.0%	56.0%	73.6%		0.0%	17.6%	17.6%
Professionally Qualified & Middle Management	Male	37.0%	37.0%	42.2%		0.0%	5.2%	5.2%
	Female	38.0%	38.0%	46.1%		0.0%	8.1%	8.1%
	Total	75.0%	75.0%	88.3%		0.0%	13.3%	13.3%
Skilled Technical	Male	47.2%	47.2%	48.1%		0.0%	0.9%	0.9%
	Female	40.8%	40.8%	46.1%		0.0%	5.3%	5.3%
	Total	88.0%	88.0%	94.2%		0.0%	6.2%	6.2%
Disability only	All	2.0%	2.0%	3.0%		0.0%	1.0%	1.0%

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