

Department of Trade, Industry & Competition
For attention: Mr Desmond Ramabulana
By email: companiesamendmentact@thedtic.gov.za

2 November 2021

Dear Mr Ramabulana

COMMENTS ON THE COMPANIES AMENDMENT BILL, 2021

1. The organisations listed below hereby co-submit the following comments on the Companies Amendment Bill, 2021 (“the Bill”):
 - Just Share NPC (<https://justshare.org.za/>)
 - Institute for Economic Justice (<https://www.iej.org.za/>)
 - National Minimum Wage Research Initiative (<https://nationalminimumwage.co.za/>)
 - Southern Centre for Inequality Studies (<https://www.wits.ac.za/scis/>)
 - Active Shareholder (<https://activeshareholder.co.za/>)
 - Global Environmental Trust (<http://globalenvironmentaltrust.org/>)
 - Mfolozi Community Environmental Justice Organisation

2. In addition, these organisations endorse the comments submitted here:
 - Centre for Applied Legal Studies (<https://www.wits.ac.za/cals/>)
 - Centre for Environmental Rights (<https://cer.org.za/>)
 - Open Secrets (<https://www.opensecrets.org.za/>)
 - Social Change Assistance Trust (<https://www.scats.org.za/>)

3. In short, our submissions are the following:
 - i. We welcome and support the introduction of long-overdue legal requirements for wage gap disclosure, a binding vote on executive pay, and transparency in relation to company ownership. The inequality which characterises South African society is widespread and multidimensional, and poses arguably the country’s biggest socio-economic challenge. Despite decades of recognition of this challenge, little progress has been made in addressing it since the end of apartheid.

 - ii. It is, in our view, irresponsible and disingenuous of business to argue against transparency in relation to wage gaps, in the most unequal society in the world, as some sectors of the business community continue to do. This is particularly inappropriate, given the near-universal claim by JSE-listed companies – without evidence – that executive remuneration is fair and responsible. It also demonstrates bad faith after agreement on wage gap disclosure provisions had been reached in the NEDLAC negotiations.

 - iii. Pay gap disclosure requirements should not be limited to public companies and state-owned entities, as these represent only a portion of large businesses in South Africa.

Furthermore, the EEA4 forms required to be submitted in terms of the Employment Equity Act should be publicly available.

- iv. It is essential that gender pay gaps be included in the requirements for wage gap disclosure.
 - v. The provisions should mandate the inclusion of part-time and contract workers in pay ratio calculations and disclosures.
 - vi. We support the binding shareholder vote on executive remuneration, and also support the view of labour that this vote should constitute a special resolution, i.e. require 75% of shareholder votes to pass. We submit that the Bill should be amended to reflect this.
4. Each of the organisations co-submitting these comments is briefly described below. All are committed to advancing social, environmental and economic justice, i.e. a fair distribution of wealth, opportunities, and privileges in South Africa.
 5. **Just Share NPC** is a non-profit shareholder activism organisation. We believe that responsible investment is necessary to create a just, inclusive and sustainable economy. We use research, engagement, advocacy and activism to drive urgent action to combat climate change and reduce inequality.
 6. Since Just Share's inception in late 2017, we have analysed the public reports and attended the annual general meetings (AGMs) of 42 companies listed on the JSE. At these AGMs, we have asked 84 questions of boards of directors, relating to executive remuneration, wage gap disclosure, diversity and transformation, and climate change, and associated governance issues. We have attended remuneration vote engagements, have engaged extensively with asset managers, pension funds and policy institutes, and made regulatory submissions on numerous regulatory proposals. We therefore submit that Just Share is uniquely positioned to provide input on the Bill, and trust that the Department of Trade, Industry and Competition (DTIC) will find these comments useful.
 7. The **Institute for Economic Justice (IEJ)** is a progressive economics think tank, which provides rigorous economic analysis designed to arm policy-makers and the public with progressive policy options to combat the scourge of poverty, underdevelopment, and inequality in South Africa, the region and the continent.
 8. The **National Minimum Wage Research Initiative (NMW-RI)** is an independent academic research project run by the Corporate Strategy and Industrial Development (CSID) Research Unit in the School of Economic and Business Sciences (SEBS) at the University of the Witwatersrand. It was undertaken in the context of a national dialogue on wage inequality and the potential introduction of a national minimum wage in South Africa.
 9. The **Southern Centre for Inequality Studies (SCIS)** at the University of the Witwatersrand is the first research institute of its kind in the global South. Its focus is understanding and addressing inequality in the global South.

10. **Active Shareholder** is a not for profit company that helps socially responsible shareholders to exercise their company rights. This is achieved by voting the shares at the general meetings of listed companies, interacting with companies and regulatory bodies and if necessary, raising issues in the public domain. The broad mission of Active Shareholder's members is the development of a more people-centred society, a society that respects people, their culture and the environment.
11. **Global Environmental Trust (GET)** is an NPO established in 2010 to support, promote and influence the wise use of the natural environment to ensure that biodiversity is maintained by challenging and containing human activities that degrade, debase and/or harm biodiversity and the sustainable livelihoods. For the past 10 years GET has been supporting three rural farming communities in Zululand affected by coal mining, exposing human, social and environmental injustices and non-compliance with legislation.
12. **Mfolozi Community Environmental Justice Organisation (MCEJO)** is a non-profit organization that aims to empower communities to participate in decision-making processes that affect their land, water and livelihoods, and to legally exercise the environmental rights of its 2000 members who are mostly rural farmers.
13. Our submission is structured as follows:
 - General observations and comments
 - Exclusion of the gender pay gap
 - Comments on areas of disagreement between business and labour
 - Comments on specific clauses of the Bill
 - Conclusion

General observations

14. We welcome the Department of Trade, Industry and Competition's ("the DTIC") recognition, in the Background Note and Explanatory Memorandum to the Bill ("the Background Note") that "the concerns internationally about inequity in society" have more relevance and resonance in South Africa than they do in many other countries, and in particular for its introduction in this Bill of long-overdue legal requirements for wage gap disclosure, a binding vote on executive pay, and transparency in relation to company ownership.
15. As documented in numerous studies, the inequality which characterises South African society is widespread and multidimensional. In 2019 Statistics South Africa (StatsSA), in partnership with the Southern Africa Labour and Development Research Unit and the Agence Francaise de Développement published a comprehensive study on *Inequality Trends in South Africa: A multidimensional diagnostic of inequality* ("the *Inequality Trends* report"),¹ which found that:

¹ <http://www.statssa.gov.za/publications/Report-03-10-19/Report-03-10-192017.pdf>.

From 2011 to 2015, the earners at the 10th and 50th percentile of the distribution have earned less (in real terms) by 25% and 15%, respectively; while people who earned at the 90th percentile have maintained an almost unchanged real earnings level. **In contrast, the people at the 98th percentile experienced an increase in real earnings of about 15% over this same time period, while those at the 99th percentile saw an improvement in their real earnings of 48%. Thus, the widening inequality is a combination of negative real earnings growth amongst low and median earners, with exceptionally high levels of real earnings amongst the very high earners²** (our emphasis).

16. Wage inequality is a key driver of overall inequality in South Africa. The authors of the *Inequality Trends* report state that “**labour market income is overwhelmingly the largest contributor to income inequality when compared to other income sources**”,³ and that “the labour market is vitally important for understanding inequality in South Africa”.⁴

17. It is important to point out that recognition that this extreme inequality poses serious dangers is not new: the Truth and Reconciliation Commission (TRC), in its final report, found that:

The huge and widening gap between the rich and poor is a disturbing legacy of the past, which has not been reduced by the democratic process. It is morally reprehensible, politically dangerous and economically unsound to allow this to continue. Business has a particularly significant role to play in this regard.⁵

18. Among other things, the TRC recommended that the feasibility of the following should be considered “as a means of empowering the poor”:

- a wealth tax;
- a once-off levy on corporate and private income;
- each company listed on the Johannesburg Stock Exchange to make a once-off donation of 1% of its market capitalisation;
- a retrospective surcharge on corporate profits extending back to a date to be suggested;
- a surcharge on golden handshakes given to senior public servants since 1990;
- the suspension of all taxes on land and other material donations to formerly disadvantaged communities.

19. None of the TRC’s recommendations as to steps that government and business should take to address the gap between rich and poor have been seriously considered in the post-apartheid era. As a result, inequality has worsened over the last 25 years.

20. The authors of the World Inequality Lab’s 2021 paper, “Wealth Inequality in South Africa, 1993-2017”⁶ document what they describe as:

² At page 65.

³ Statistics South Africa, “Inequality Trends in South Africa: a Multidimensional Diagnostic of Inequality”, October 2019, available at <http://www.statssa.gov.za/publications/Report-03-10-19/Report-03-10-192017.pdf> at page 145. Other income sources include social grants, remittance, and in-kind income.

⁴ At page 6.

⁵ *Truth and Reconciliation Commission of South Africa report*, 1999, Volume 5 Chapter 8, at page 318.

⁶ <https://wid.world/document/wealth-inequality-in-south-africa-wid-world-working-paper-2021-16/>.

... **unparalleled levels of wealth concentration.** The top 10% own 86% of aggregate wealth and the top 0.1% close to one third. The top 0.01% of the distribution (3500 individuals) concentrate 15% of household net worth, more than the bottom 90% as a whole. Such levels of inequality can be accounted for in all forms of assets at the top end, including housing, pension funds and financial assets. **We find no sign of decreasing inequality since the end of apartheid**⁷ (our emphasis).

21. As noted in the Background Note to the Bill, the King IV Report on Corporate Governance provides that *“the remuneration of executive management should be fair and responsible in the context of overall employee remuneration. It should be disclosed how this has been addressed. This acknowledges the need to address the gap between the remuneration of executives and those at the lower end of the pay scale”*.
22. Almost every remuneration report published by JSE-listed companies makes the claim that its executive remuneration is fair and responsible in the context of overall employee remuneration. However, it is impossible to verify or assess such claims without disclosure of wage gaps. We therefore fully support the rationale expressed in the Background Note to the Bill that *“the proposed publication of indicators of pay differentials will empower shareholders and other stakeholders to see trends and, where warranted, propose changes”*.
23. We note with concern that, despite the fact that the Background Note to the Bill confirms that *“both the business and labour representatives at NEDLAC support the proposals in the Bill on the publication of wage ratio information”*, there nevertheless appears to be a concerted effort by some sectors of business publicly to assert that these provisions will be detrimental to the South African economy.
24. This is particularly concerning in relation to assertions to that effect made on behalf of Business Leadership SA (BLSA). BLSA is a member of Business Unity South Africa (BUSA), the business representative in the NEDLAC process, and should therefore be aligned with BUSA’s support for the proposals.⁸ Many of the claims about the alleged detrimental impact of wage gap disclosure requirements on the *“investment attractiveness”* of South Africa are made without any supporting evidence, and we urge the DTIC to treat such assertions with extreme caution, in particular when they are made by executives who are amongst the highest earners in our society, and who therefore have a vested interest in avoiding scrutiny of wage gaps within their organisations.
25. It is, in our view, irresponsible and disingenuous of business to argue against transparency in relation to wage gaps, in the most unequal society in the world. This is particularly inappropriate, given the near-universal claim by JSE-listed companies – without evidence – that executive remuneration is fair and responsible. It also demonstrates bad faith after agreement on these provisions had been reached in the NEDLAC negotiations.

⁷ At page 2.

⁸ See for example: <https://www.news24.com/fin24/opinion/busi-mavuso-pay-gap-disclosure-will-do-little-to-address-inequality-in-sa-20211018>.

26. We support:
- the requirement for disclosure of the total remuneration of the employee with the highest total remuneration in the company, and the lowest total remuneration in the company; and
 - the requirement for disclosure of the average remuneration of all employees, the median remuneration of all employees, and the remuneration gap between the top 5% highest paid employees and the bottom 5% lowest paid employees.
27. **However, we submit that these disclosure requirements should not be limited to public companies and state-owned entities, as these represent only a portion of large businesses in South Africa. For the purposes of clarity and consistency, it would make sense for these wage gap disclosure requirements to apply to all companies other than those exempted from the requirement to provide public access to company records in section 26(e)(2A) of the Bill, i.e. all companies should be required to provide this disclosure unless they are companies with a Public Interest Score of less than 100 with an internally prepared annual financial statement, or with a Public Interest Score of less than 350 with an independently prepared annual financial statement.**
28. **This would also require the Bill to be amended to provide for public disclosure of wage gaps by entities which are not public companies or state-owned entities. The Employment Equity Act already requires companies to submit “EEA4 Forms” to the Department of Employment and Labour, disclosing wage differentials. These forms should be made publicly available, as per the recommendation of the NMW-RI:**

It is clear that the EEA4 forms, through s27 of the EEA, provide an opportunity to build a wage policy based on accurate and complete data. In particular, they allow for an examination of both vertical and horizontal pay wage inequality. Thus the insights these forms offer into the wage distribution in South Africa are unparalleled, and the forms should be used as originally intended. The data from these forms should be made publically available as a step towards ensuring companies comply with the terms of the Act where unacceptable pay differentials are identified.⁹

Exclusion of gender pay gap disclosure

29. We note with concern that the Bill does not propose disclosure of gender pay gaps. The gender pay gap in South Africa is severe, and, as emphasised in a June 2021 report by the Global Institute for Women’s Leadership at Kings College London:

Gender pay gaps ... are both a symptom and a cause of other forms of inequality ... With one gender being devalued in the workforce to a much greater extent than the other, we are perpetuating an imbalanced society and missing out on the full impact of what women and men can contribute.¹⁰

⁹ NMW-RI Wage Inequality Policy Brief No. 1 December 2017 at p. 9.

¹⁰ Bridging the gap? An analysis of gender pay gap reporting in six countries at <https://www.kcl.ac.uk/giwl/research/bridging-the-gap>

30. The *Inequality Trends* report found that:

When comparing the average monthly earnings for males and females by their different education levels ... it is observed that **on average females earned less than males across all educational levels**. Females with no education earned 54,4% of the income earned by their male counterparts, while females with high school or tertiary educations earned 68,2% and 63,1%, respectively, of their male counterparts' average income. Similar to the no education category, males with primary education earned almost double that of females with similar educational attainment, while those that had a tertiary qualification were earning almost 1,6 times more than their female counterparts. This is a good indication that **there are still huge disparities in the labour market between males and females, especially in terms of earnings for comparable levels of educational attainment. It is therefore clear that greater efforts need to be made on closing this wage disparity**¹¹ (our emphasis).

31. The National Minimum Wage Research Institute, at the University of the Witwatersrand, stated in its 2017 Policy Brief 1 on "Tackling Wage Inequality in South Africa: pay ratios and capping pay" that:

Bosch (2015) finds that the gender pay gap in South Africa is estimated to be between 15 and 17 percent. The gap in this case is defined as the difference in pay for individuals with equivalent skills and experience doing the same job. This difference means that, on average, a woman must work two additional months to earn the same salary that a man with the same skills and experience would earn in one year. Another report (BusinessTech, 2016) found that white male professionals earned up to 42% more than white females according to median earnings.

32. The International Labour Organisation's Global Wage Report 2020-21 finds that "women are over-represented among minimum and sub-minimum wage earners".¹² The *Inequality Trends* Report states that "it is important to also consider the impact of gender inequality as this overlaps with and amplifies many other disadvantages".¹³

33. Jurisdictions which have implemented requirements for gender pay gap disclosure include Australia, Austria, Belgium, Canada, Finland, France, Germany, Iceland, the USA, Spain and Portugal.¹⁴ The proposed amendments in the Bill are weaker for excluding gender pay gaps, and their effectiveness in achieving the desired outcomes of the Bill will be limited if gender pay gaps are not part of the required disclosures.

34. We submit that, as one of the three policy objectives of the Bill is to provide for greater transparency on wage ratios,¹⁵ there is no reason why gender wage gaps should be excluded. Gender wage gaps should be reported at every level of disclosure required by the Bill.

¹¹ At page 126.

¹² International Labour Organisation, "Global Wage Report 2020–21: Wages and minimum wages in the time of COVID-19", December 2020, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_762534.pdf at page 68.

¹³ At page 124.

¹⁴ See for example: <https://www.gapsquare.com/gender-pay-gap-regulations/>.

¹⁵ <http://www.thedtic.gov.za/the-dtic-outlines-the-main-features-of-the-draft-companies-amendment-bill-2021/>.

Comments on areas of disagreement between business and labour

Vote on remuneration implementation report

35. Over the past two years, shareholder dissatisfaction with executive pay has rocketed. In the past 12 months, remuneration votes at listed companies have failed to secure the requisite 75% of shareholder support at a large number of Top 40 JSE-listed companies. But this has failed to create any real-world change, because shareholder votes on remuneration are non-binding, requiring only that the company “engage” with dissenting shareholders should the vote fail to secure 75% support, in order to establish the reasons for shareholders’ concern.
36. Shareholders have been criticised because few of them appear to attend these post-vote meetings. But this criticism is unfounded: the problem lies not with the response by shareholders, but with flaws in the JSE Listings Requirements that mandate the engagement. Most asset managers engage regularly with companies about remuneration, and so votes against pay packages are likely to reflect shareholders’ protest at the failure of this engagement to elicit change. There is therefore no incentive for them to attend the post-vote engagements, because there is no evidence that these engagements result in any change. In addition, many asset managers prefer private, one-on-one engagement with management, and will not express their views in a group engagement.
37. The only way to incentivise change is for the board committee responsible for remuneration to face personal accountability for its decisions, which the Bill introduces, to a limited extent, by requiring that the remuneration committee take shareholder concerns into account, amend the implementation report accordingly, and stand for re-election.
38. We support the view of labour that this vote should be binding, and that it should constitute a special resolution, i.e. require 75% of shareholder votes to pass. We submit that the Bill should be amended to reflect this. The business view, that the vote should be advisory only, is no different from the status quo, which has given rise to many of the challenges and concerns regarding excessive executive remuneration highlighted in the Background Note to the Bill.
39. It is also crucial that the provision be explicit as to the requirement that the members of the remuneration committee must stand for re-election to the **board** of the company, not just for re-election to the remuneration committee. As currently drafted, companies will be most likely to interpret the clause to mean the latter, which would have no impact on accountability and transparency.

“On-target” vs actual remuneration disclosure

40. We support the view of labour that actual remuneration, rather than on-target remuneration, should be disclosed for executive pay, in order to provide a fair view of the wage gap. The full value of all incentives must be used, if it is to reflect the reality of remuneration received by executives. While there may be some challenges in estimating the current value of long-term incentives, this is already a challenge that companies have had to grapple with and overcome in the context of reporting on executive remuneration.

Disclosure of wages of sub-contracted employees

41. The argument that requiring wage gap disclosure will drive companies to sub-contract labour to improve ratios is regularly deployed as an argument against wage gap transparency. However, this argument is easily countered by requiring disclosure of the wages of outsourced employees to be included in wage ratio disclosure. The exclusion of the disclosure of the salaries of sub-contracted employees “potentially distorts the pay ratios and renders any comparisons difficult”.¹⁶
42. The Employment Equity Act already requires all companies with more than 50 employees to submit information for temporary employees, defined as employees employed to work for less than three months over a period of 12 months. The rationale for including temporary employees is to ensure that the actual corporate pay ratio has been presented by the company.

Should ratios reflect pre-tax or post-tax remuneration

43. We submit that ratios should reflect pre-tax remuneration, as is already the case for listed companies in their remuneration disclosures. It is unclear why there would be any benefit to changing disclosure requirements to include only post-tax remuneration ratios: in fact, it would be more burdensome to do so, as post-tax remuneration in the case of bonuses, share awards etc., can be complicated to calculate. If business is concerned about additional regulatory burdens, then it should support the disclosure of pre-tax remuneration.

Comment on draft clauses

Clause in Companies Amendment Bill	Proposed wording in Bill	Comment
5	Section 30 of the principal Act is hereby amended: (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph: “(a) the remuneration, as defined in subsection (6), and benefits received by each director, or [individual holding any prescribed office] prescribed officer in the company, and such individual must be named;”.	The rationale for the use of “or” here is unclear. Proposed change: “(a) the remuneration, as defined in subsection (6), and benefits received by each director, and [individual holding any prescribed office] prescribed officer in the company, and such individual must be named;”.
6	Section 30A.(2) The remuneration policy as contemplated in subsection (1) must be presented thereafter for approval by ordinary resolution at the annual general meeting and every three years or whenever any	The word “and” (highlighted) should be deleted, to make clear, as per the Briefing Note to the Bill, that the remuneration policy must only be presented for approval every three years or whenever any material

¹⁶ Rachel Kay and Luke Hildyard, High Pay Centre “Pay Ratios and the FTSE 350: An analysis of the first disclosures”, December 2020, available at https://highpaycentre.org/wp-content/uploads/2020/12/0.1_MUL1564-FOUNDATION-Pay-ratios-report.pdf at page 10.

	material change to the remuneration policy is made.	change to the remuneration policy is made. The current drafting is unclear.
6	<p>Section 30A.(3)(c) The remuneration report must, in the prescribed manner, consist of the following parts:</p> <p>...</p> <p>an implementation report containing details of remuneration and benefits received by each director or prescribed officer as required in terms of section 30(4), (5) and (6) of this Act;</p>	As above, the reference should be to each director and prescribed officer.
6	<p>Section 30A.(5) The voting on the remuneration report as contemplated in subsection (4) shall constitute the voting on the remuneration policy as contemplated in subsection (1) and (2) and the implementation report as contemplated in subsection (6).</p>	This does not make sense, as subsection (4) requires an annual vote, whereas it appears from section 30A(2) that the vote on the remuneration policy should only be held every three years or when there is a material change to the policy.
	<p>Section 30A.(6) The implementation report and the remuneration policy shall be construed as separate documents with separate voting requirements which shall be approved by ordinary resolution.</p>	As stated above, we submit that the threshold for approval of the remuneration implementation report should be 75%, i.e. this should be a special, and not an ordinary resolution.
6	<p>Section 30A.(7) Where the remuneration policy is not approved by ordinary resolution, it must be presented at the next annual general meeting or at the shareholders' meeting called for this purpose, until the approval of the remuneration policy is obtained.</p> <p>Section 30A.(8) Any changes to the remuneration policy may be implemented once the approval of the shareholders is obtained by ordinary resolution in terms of subsection (7).</p>	<p>This is unclear. If the policy is not approved, then it will have to be amended in order to obtain shareholder approval. However, the next clause states that it can only be changed once approval has been received from shareholders, creating a stalemate.</p> <p>If the policy is not approved by shareholders, then an amended policy should be presented at the next annual general meeting or special shareholders meeting called, until the approval is obtained. It should also be made clear that, until this takes place, the previous remuneration policy applies to remuneration for that year.</p>
6	<p>Section 30A.(9) Where the implementation report is not approved by ordinary resolution as contemplated in subsection (6) –</p> <p>a) the remuneration committee or the directors' committee responsible for remuneration matters of the company shall, in the following annual general meeting, present an explanation on the manner in</p>	The wording of this clause is unclear. If the implementation is not approved (and, as stated above, we submit that it should require 75% of shareholder votes in order to be approved), then the remuneration committee must surely, at the next annual general meeting, present a revised remuneration report, and explain how that revised remuneration report has addressed shareholder concerns.

	<p>which the shareholders' concerns have been taken into account; and</p> <p>b) the non-executive directors that serve on the directors' committee responsible for remuneration shall be required to stand down for re-election every year of such rejection of the implementation report.</p>	<p>The non-executive directors that serve on the remuneration committee should be required to stand down for re-election at the next annual general meeting, because shareholders will not be able to assess whether or not to vote in favour of or against the re-election of such directors unless they have been able to assess the nature of the revised implementation report. This cannot happen at the same meeting at which the report is rejected, because all votes take place simultaneously for a particular year.</p> <p>It should also be made explicit that the company cannot implement the remuneration as set out in the implementation report until it has been approved by shareholders.</p> <p>It is also crucial for the provision to be explicit that the members of the remuneration committee should be required to stand for re-election to the board of the company, not just for re-election to the remuneration committee of the board.</p>
<p>15</p>	<p>Section 72(13)(a) A social and ethics committee must present a social and ethics committee report in the prescribed manner and form describing how the committee performed its functions in terms of this Act and regulations.</p> <p>(c) The social and ethics committee must present its report –</p> <p>(i) in the case of a public company or state-owned company at its next annual general meeting; and</p> <p>(ii) in the case of any other company, annually at the shareholders' meeting or with a resolution as contemplated in section 60(1).</p> <p>(d) The social and ethics committee report presented to shareholders as contemplated in sub-paragraph (c) shall be approved by an ordinary resolution.</p> <p>(e) Where the social and ethics committee report fails to meet the approval in terms of sub-paragraph (d), the social and ethics committee shall-</p> <p>(i) engage with the shareholders who voted against the report and who are willing to engage on the vote; and</p> <p>(ii) within a period of four months after the meeting at which the report was rejected</p>	<p>This new provision appears to introduce, in relation to the social and ethics report, an identical system to the current flawed system of voting on executive remuneration.</p> <p>As described above, mandated post-vote engagement with dissenting shareholders has been shown to be an ineffective way to address concerns. It should be incumbent on the board and management to ascertain the reasons for the vote in their regular engagements with shareholders. We submit that it is appropriate for the same procedure to be followed here as set out in the proposal for the vote on executive remuneration: i.e., the social and ethics committee present a revised report in advance of the next annual general meeting, and be required to stand for re-election to the board at that meeting.</p> <p>However, we have concerns about a binding vote on the social and ethics committee report. These reports almost universally contain only "good news stories" about the impacts of</p>

	<p>publish a statement on its website, and Stock Exchange News Service in the case of public companies, which statement shall also form part of the committee report contemplated in subsection 13(a), setting out in such a statement –</p> <p>(aa) the steps that were taken to engage with the dissenting shareholders; (bb) the outcome of such engagement; and (cc) the actions that will be taken by the company to address the issues raised by dissenting shareholders.</p> <p>(iii) such a statement to be presented at the next annual general meeting as part of the committee report as contemplated in subsection (13)(a)</p>	<p>the company concerned, and the claims made in these reports are extremely difficult to verify. A shareholder vote on the social and ethics committee report is likely to become simply a tick-box exercise where the majority of shareholder vote in favour of the report because they have no means to know whether or not it is an accurate reflection of the company's impacts. We therefore recommend that this should be a non-binding vote.</p>
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Conclusion

44. We thank the DTIC for the opportunity to provide input on this important legislative initiative. We urge the Department to consider, as we are sure it does, the devastating impacts of inequality on our society, and on our ability to achieve social justice.
45. In conclusion, we quote from the section of the *Inequality Trends* report titled “Motivation for the Report”, which sets out simply and clearly why it is so essential for our country to adopt an uncompromising approach to tackling inequality:

In addition to these direct effects on individual well-being, there are good reasons to be concerned about high levels of inequality when one is concerned about economic development more generally....High levels of inequality mean that large segments of a society may be excluded from economic opportunities, thus limiting both those individual's outcomes, as well as the aggregate performance of the economy. Such inequality of opportunities is not in line with the aspirations of post-apartheid South Africa as reflected in the Constitution and in the RDP which has been the lodestar of all policy development since 1994. It reflects a loss to society of potential and productivity. People who receive the best opportunities are the ones who are the richest, and these are not necessarily the same as the ones who are the most talented or who would make the best use of such opportunities.

46. Please do not hesitate to contact us, should you have queries regarding any aspects of this submission. Please direct any queries to:

Tracey Davies

Executive Director, Just Share

tdavies@justshare.org.za

47. We would welcome an opportunity to discuss these submissions in a meeting with the Department, and also request that the Department invite representatives from the organisations making and endorsing this submission, to any engagements that the Department has with BUSA or other business representatives in relation to the Bill.
48. Kindly keep us updated on the progress of the Bill.

Your sincerely,

Just Share NPC
Institute for Economic Justice
National Minimum Wage Research Initiative
Southern Centre for Inequality Studies
Active Shareholder
Global Environmental Trust
Mjeco Community Environmental Justice Organisation
Centre for Applied Legal Studies
Centre for Environmental Rights
Open Secrets
Social Change Assistance Trust