

1 October 2023

Ms J Hermans

Chairperson: Portfolio Committee on Trade, Industry and Competition

For attention of: Mr A Hermans

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Dear Ms Hermans

Just Share NPC's comments on the Companies Amendment Bill, 2023 [B27-2023]

1. 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 engagement, advocacy and activism to drive urgent action to combat climate change and reduce inequality.
2. We welcome the opportunity to provide additional written comments on the Companies Amendment Bill [B 27-2023] ("the Bill"). We also request an opportunity to make oral submissions to the Committee in the public hearings scheduled to take place in October 2023. We reiterate and maintain our position as outlined in [our previous submissions on the Bill \[B-2021\] dated 2 November 2021](#). Our comments are set out below, covering issues related to the insertion of section 30A in the principal Act.
3. **Inclusion of sub-contracted workers in the disclosure of the lowest total remuneration in the company**
 - 3.1. We welcome the provision in section 30A(3)(e) of the Bill requiring the disclosure of the remuneration of the employee with the lowest total remuneration in the company. However, as highlighted in the Background Note and Explanatory Memorandum to the Bill, "a concern has been expressed to Government that a potential consequence of the disclosure requirement may be greater resort to outsourcing of the lowest paid employees, simply to improve company ratios."¹

Section 30A(3)(e) of the Companies Amendment Bill provides as follows –

The remuneration report must consist of the following parts:

¹ See point 5.25 of the Background Note and Explanatory Memorandum on the Companies Amendment Bill





...

(e) the total remuneration, including all salary and benefits, including employer contributions to benefit funds and incentives or bonuses, as recorded in the company's payroll record, of an employee as defined by section 213 of the Labour Relations Act, 1995 (Act No.66 of 1995), of the company, with the lowest total remuneration in the company; (our emphasis)

3.2. Section 213 of the Labour Relations Act defines an employee as follows (our emphasis):

- (a) any person, **excluding an independent contractor**, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and*
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and "employed" and "employment" have meanings corresponding to that of "employee".*

3.3. Based on this definition, sub-contracted employees could be excluded from the disclosure required by section 30A(3)(e) of the Bill. This is of concern because outsourcing and casualisation are prevalent aspects of South Africa's labour market.

3.4. We note that for some who raise the concern that pay ratio disclosures might result in greater use of outsourcing, the solution is to scrap the disclosure requirement altogether. It therefore appears that this concern is raised not out of consideration for potential employees who might be outsourced, but to justify a position that there should be no disclosure of the wages of the lowest paid at all.

3.5. There is, however, a simple way to mitigate the risk of increased outsourcing to improve pay ratio scores. In this respect we share the perspective proposed and highlighted in the Background Note and Explanatory Memorandum on the Bill which states that "disclosure of the salaries of sub-contracted employees who perform most or all of their work for or in the firm concerned, should also be required."² This is important because "the exclusion of indirectly employed workers potentially distorts the ratios and renders comparisons more difficult".³

3.6. **We also submit that it is imperative for companies to explicitly specify the job position that represents the lowest grade eligible for the minimum remuneration.** If they do not do so, it is impossible for stakeholders to verify the numbers provided, and also makes it impossible to ascertain the extent to which low-paid roles in the company are being performed by outsourced workers.

3.7. To illustrate why this is important, we can use the example of disclosure provided by the JSE Limited in its most recent integrated reports. The JSE states that its lowest grade total

² Ibid

³ 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, p10.



guaranteed package is R419,585 per annum.⁴ However, the report of the chair of the remuneration committee states that in 2022 “for staff earning less than R350,000 per annum, the annual total guaranteed package (TGP) adjustment was significantly above inflation”.⁵

3.8. This appears to refer to total guaranteed packages which are significantly lower than the reported lowest grade TGP of R419,585 per annum. It also seems unlikely that support staff at the JSE like cleaners and security guards are earning in excess of R400 000 per annum. Without disclosure of what the role of the lowest paid employee is, it is very difficult to understand the numbers or to ascertain whether a company is trying to avoid disclosure of the wages of its lowest paid employees.

3.9. Just Share therefore proposes the following amendment to section 30A(3)(e):

The remuneration report must consist of the following parts:

...

(e) the total remuneration, including all salary and benefits, including employer contributions to benefit funds and incentives or bonuses, as recorded in the company’s payroll record, of an employee as defined by section 213 of the Labour Relations Act, 1995 (Act No.66 of 1995), of the company, with the lowest total remuneration in the company, and the job title of that employee;

3.10. Just Share also proposes the inclusion of the following additional subsection in section 30A:

The remuneration report must consist of the following parts:

...

(g) the total remuneration of the lowest-paid sub-contracted worker who performs most or all of his/her work for or in the firm concerned, as well as the job title of that worker, and the number of workers in that category of pay.

4. Disclosure of remuneration and wage differentials

4.1. We welcome and reiterate our support for the introduction of a legal requirement for wage gap disclosure as provided in section 30A(3)(f) of the Bill. This disclosure is a crucial first step in understanding and addressing the high labour market inequality that is so damaging to our economy and society for the reasons outlined below.

4.2. According to Stats SA’s report *Inequality Trends in South Africa: A multidimensional diagnostic of inequality* “the labour market remains one of the key institutions through which South Africa’s exceptionally high levels of both vertical and horizontal inequality get transmitted.”⁶ Furthermore, “[a] wide range of sources point to the unusually wide

⁴ JSE 2022 Remuneration Report, p 36.

⁵ JSE 2022 Remuneration Report, p 4.

⁶ Statistics South Africa 2019, p 70.



inequalities in remuneration in the formal sector in South Africa compared with the rest of the world. **Analysis of Statistics South Africa data in the annual Labour Market Dynamics survey shows that inequality in pay contributes as much to overall income inequality as joblessness**.⁷ (our emphasis)

- 4.3. In other words, contrary to popular belief, it is not “just” unemployment that contributes to South Africa's status as having the highest inequality in the world. Exceptionally high levels of real earnings growth for high earners, together with low wages and no real earnings growth amongst low and median earners, are key drivers of high levels of inequality.
- 4.4. This is evident from the findings of Just Share’s study on vertical wage gaps at JSE-listed companies, which compared the total remuneration of CEOs with the salaries of the lowest-paid workers for listed companies that are already making some disclosure in this regard.

CEO REMUNERATION VS DISCLOSED INTERNAL MINIMUM PAY

JSE-listed company	CEO single-figure remuneration (ZAR) 2022	Disclosed internal minimum pay (ZAR) 2022	Pay ratio (multiple)
JSE	20,668,000	419,585	49
Old Mutual	22,078,000	180,000	123
Nedbank	33,466,000	190,000	176
Absa	46,058,000	200,000	230
Standard Bank	55,694,000	215,700	258
Woolworths	36,133,000	85,500	423
Shoprite	63,458,000	58,700	1081

- 4.5. Our study also underscores the inconsistencies stemming from 'voluntary reporting,' which arise due to the absence of a mandatory mechanism for measuring pay disparities. These inconsistencies include variations in the methodologies used to calculate pay gaps and a lack of clarity regarding which elements of remuneration should be included when determining pay ratios.
- 4.6. Out of the companies which disclosed vertical pay gaps voluntarily in their latest reports, only Old Mutual, Investec, and Nedbank included total remuneration in their wage gap analysis, as opposed to solely using total guaranteed pay. Old Mutual was the only company that adopted the approach outlined in Section 30A(3)(f) of the Bill.
- 4.7. The implementation of a compulsory mechanism for calculating pay gap ratios will help address these issues. We emphasize that these ratios should be based on **pre-tax ‘actual**

⁷ See 5.2



remuneration', which companies are already reporting in their annual reports for executive management in order to provide a fair view of the wage gap.

- 4.8. The publication of pay differentials will enable various stakeholders including shareholders to verify or assess whether the remuneration of executive management is fair and responsible in the context of overall employee remuneration as recommended by the King IV Report on Corporate GovernanceTM ("the King Code") when exercising their voting rights on remuneration policies and implementation reports.
- 4.9. It is important to remember, in relation to any potential arguments that the requirement to make this disclosure will add unreasonable cost or be unduly onerous on reporting entities, that wage gap disclosure is already required to be made to the Department of Employment and Labour in terms of the Employment Equity Act, in particular via Form EEA4. The objective of the EEA4 Form "is to collect information for the assessment of the remuneration gap between the highest paid and lowest paid employees and, at the same time, to assess inequalities in remuneration in relation to race and gender in the various occupational levels".
- 4.10. Listed companies are therefore already required to collect and present this data to government. The key difference is that the EEA4 Forms are not publicly available.

5. Inclusion of gender wage gaps

- 5.1. It is very concerning that the Bill does not include disclosure of gender wage gaps as part of its mandatory requirements for wage gap disclosure, particularly since one of the three prime categories of policy objectives sought to be addressed by the amendments is:

"the achievement of equity as between directors and senior management on the one hand, and shareholders and workers on the other hand as well as addressing public concerns regarding high levels of inequalities in society".⁸

- 5.2. The Bill addresses the issue of vertical wage differentials but inexplicably neglects the gender dimension. Women represent 46% of South Africa's economically active population (EAP), and "despite the significant progress that has been made in reducing gender gaps in education in South Africa, there remain significant gender gaps in labour market outcomes".⁹ Women earn approximately 30% less in real monthly earnings compared to men.¹⁰
- 5.3. Following the 2018 Job Summit convened between government, community organisations, organised labour and business, the the Presidential Jobs Summit Framework Agreement ("the agreement") emphasizes that "[g]ender parity is fundamental to whether and how economies and societies thrive" and "addressing the issue of the gender wage gap is a

⁸ See 2.2.2 in the Background Note and Explanatory Memorandum.

⁹ Statistics South Africa, 2019 Inequality Trends in South Africa: A multidimensional diagnostic of inequality, p 124.

¹⁰ Ibid



crucial issue to increase inclusion in the economy and drive transformation”.¹¹ Furthermore “by addressing the gender pay gap, organisations can begin to unpack and understand the complex nature gender equity manifests [sic] within the workplace and the implications it has on society”.¹²

- 5.4. The agreement also notes that “while companies are required to disclose salary information in the Employment Equity reporting, there is inconsistency in measurement and calculation of the pay disparity in terms of gender”¹³. The EEA4 forms required to be submitted in terms of the Employment Equity Act are also not publicly available.¹⁴
- 5.5. The agreement outlined key interventions in this regard, including a pilot project to develop a standardised methodology for the calculation of the gender wage gap, to be adopted by individual companies; for companies to conduct pay equity analysis to understand existing pay disparities; and working towards improving and correcting disparities with timelines and targets set.¹⁵ To date, there has been little to no progress in this regard. This is unfortunate, given that it has been over two decades since the promulgation of the Bill of Rights, and the introduction of legislation to give effect to the right to equality in the workplace.
- 5.6. The 23rd Commission for Employment Equity Annual Report (2022 - 2023) has concluded that the labour market in South Africa remains divided along racial and gender lines. These findings align with Just Share’s recent briefing, *Women in leadership: Assessing gender equality in the JSE Top 40* which reveals a significant underrepresentation of women in key decision-making roles within corporate South Africa. On average, women hold just 35% of board positions and only 25% of executive roles in the top 40 companies listed on the JSE, despite comprising 46% of the EAP in South Africa. This gender imbalance in senior leadership roles no doubt contributes to the reluctance of the business sector to tackle gender wage gaps.
- 5.7. Furthermore, in the 109th Session of the International Labour Conference convened in 2021, “ILO constituents [including South Africa] adopted the Resolution concerning inequalities and the world of work, which calls upon Members to ensure gender equality and non-discrimination and to promote equality, diversity and inclusion, which requires an integrated and comprehensive approach that puts people at the centre; takes into account the impact of intersecting personal identities, as well as conditions of vulnerability; and addresses equality through the entire life cycle. This entails, among others, closing gender pay gaps.”¹⁶

¹¹ [The Presidential Jobs Summit Framework Agreement](#) 2018, p 68.

¹² Ibid

¹³ Ibid

¹⁴ The objective of the EEA4 Form is to collect information for the assessment of the remuneration gap between the highest paid and lowest paid employees and, at the same time, to assess inequalities in remuneration in relation to race and gender in the various occupational levels.

¹⁵ Ibid

¹⁶ See the executive summary, “Pay transparency legislation: Implications for employers and workers’ organizations”. International Labour Organization– Geneva: ILO, 2022, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_849209.pdf



- 5.8. To address the gender pay gap, a number of countries have implemented pay transparency legislation or policies.¹⁷ These include Austria, Belgium, Canada, Chile, Denmark, Finland, France, Germany, Iceland, Italy, Lithuania, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the United States (at the state level).¹⁸ The European Union’s [EU Pay Transparency Directive](#) came into effect on 6 June 2023. This directive must be implemented into the national laws of member states by June 2026, and will require private and public organisations with more than 100 employees to report annually on their gender pay gap.
- 5.9. Given our current context of gendered and racialized labour market outcomes, standardized and mandatory reporting of gender wage gaps in South Africa is crucial for addressing entrenched gender inequalities in the workforce, promoting gender equity, and fostering a more inclusive and equitable society.
- 5.10. Some examples of the wording of gender pay gap reporting requirements are included in Appendix A to this submission.

6. Binding votes on remuneration

- 6.1. Excessive executive remuneration is a significant driver of the widening gap in income distribution in the labour market. The King Code requires remuneration committees to “include provision for...arrangements towards ensuring that the remuneration of executive management is fair and responsible in the context of overall employee remuneration in the organisation”.¹⁹
- 6.2. Proposed amendments in the Bill will, for the first time in South Africa’s corporate history, require public companies to secure shareholder approval for their remuneration policy and its implementation.
- 6.3. Until now, South African shareholders have had to rely on the JSE’s Listings Requirements, which require the company’s remuneration committee simply to “engage” with shareholders in the event that 25% or more shareholders vote against the remuneration policy or its implementation report.
- 6.4. This requirement involves no real consequences, and as a result the engagement process has been futile. It has failed to have any impact on rapidly escalating levels of executive pay. Without any real consequences, remuneration committees have little reason to adapt their remuneration policies and remuneration levels to reflect and incorporate the concerns of shareholders.

¹⁷ Ibid

¹⁸ See the summary of pay transparency legislation and pay transparency measures that have been implemented by these countries from page 15 to page 23 in the report cited in footnote 16.

¹⁹ See Principle 14 of the [King IV Report on Corporate Governance](#)TM



6.5. The proposed amendments will result in a more considered engagement, and incentivise remuneration committees to take shareholders' concerns seriously.

7. Conclusion

7.1. In conclusion, we quote from volume 5 of the Truth & Reconciliation Commission (TRC) report, which in 1998 not only warned against the devastating impacts of inequality in our society, but clearly articulated the role of business in building a fair, inclusive and just society:

“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”²⁰

7.2. We submit that it is “morally reprehensible, politically dangerous and economically unsound” that over 20 years after this crucial observation by the TRC so little progress has been made in reducing inequality in South Africa. An important reason for this is the enormous rise in executive pay, while the already-low pay of ordinary workers has barely kept pace with inflation.

7.3. The Bill is a long-overdue attempt to ensure disclosure that can at least trigger a more meaningful societal conversation about these crucial issues. We appeal to the Committee to be wary of corporate lobbying which attempts to portray the requirements in the Bill as damaging to job creation and economic growth.

7.4. Please do not hesitate to contact us, should you have queries regarding any aspects of this submission, and please keep us updated on the further progress of these amendments.

Yours faithfully

JUST SHARE

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²⁰ The report of the Truth and Reconciliation Commission: Volume 5, 1998, p 318.



Appendix A: examples of gender pay gap disclosure requirements from the United Kingdom and Australia

1. United Kingdom

The Equality Act 2010

78 Gender pay gap information

- (1) Regulations may require employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.
- (2) This section does not apply to—
 - (a) an employer who has fewer than 250 employees;
 - (b) a person specified in Schedule 19;
 - (c) a government department or part of the armed forces not specified in that Schedule.
- (3) The regulations may prescribe—
 - (a) descriptions of employer;
 - (b) descriptions of employee;
 - (c) how to calculate the number of employees that an employer has;
 - (d) descriptions of information;
 - (e) the time at which information is to be published;
 - (f) the form and manner in which it is to be published.
- (4) Regulations under subsection (3)(e) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months.
- (5) The regulations may make provision for a failure to comply with the regulations—
 - (a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
 - (b) to be enforced, otherwise than as an offence, by such means as are prescribed.
- (6) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

See next page for regulations.



The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

Duty to publish annual information relating to pay

2.—(1) A relevant employer must publish, for 2017 and each subsequent year, the following information—

- (a) the difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 8);
- (b) the difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 9);
- (c) the difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 10);
- (d) the difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 11);
- (e) the proportions of male and female relevant employees who were paid bonus pay (see regulation 12); and
- (f) the proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands (see regulation 13).

(2) The relevant employer must publish the information required by paragraph (1) within the period of 12 months beginning with the snapshot date.

(3) In compiling the information required by paragraph (1), the relevant employer is not required to include data relating to a relevant employee if—

- (a) the employee is employed under a contract personally to do work, and
- (b) the employer does not have, and it is not reasonably practicable for the employer to obtain, the data.

2. Australia

The Workplace Gender Equality Act 2012

Part IV—Reports by relevant employers

13 Relevant employers to prepare reports relating to gender equality indicators

- (1) In respect of each reporting period, a relevant employer must prepare a public report in writing containing information relating to the employer and to the gender equality indicators.

Matters that must be included in the report

- (2) The public report in respect of a reporting period must contain details of the matters specified in an instrument under subsection (3).
- (3) For the purposes of subsection (2), the Minister must, by legislative instrument, specify matters in relation to each gender equality indicator.

Note: See also section 33A.

Timing of instrument

- (4) An instrument under subsection (3) has no effect in relation to a reporting period unless it is made before the first day of that period.

Reports to be signed

- (5) The public report must be signed by the chief executive officer (however described) of the relevant employer.



gender equality indicators means the following:

- (a) gender composition of the workforce;
- (b) gender composition of governing bodies of relevant employers;
- (c) equal remuneration between women and men;
- (d) availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities;
- (e) consultation with employees on issues concerning gender equality in the workplace;
- (f) any other matters specified in an instrument under subsection (1A).

Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023

8 Gender equality indicator 3—equal remuneration between women and men

- (1) For the purposes of subsection 13(3) of the Act, the following matters are specified in relation to equal remuneration between women and men:
 - (a) disaggregated data regarding the remuneration profile of managers (other than key management personnel with a reporting distance above the Chief Executive Officer or equivalent) and non-managers by gender and by workplace profile categories, which includes the following:
 - (i) employment status;
 - (ii) number of hours worked by employees other than employees who work full-time hours;
 - (iii) actual earnings;
 - (b) the existence of, and information about, an equal remuneration policy or strategy;
 - (c) whether any gender remuneration gap analysis has been undertaken and, if so, when;
 - (d) the actions taken, if any, as a result of a gender remuneration pay analysis.
- (2) In this section:

actual earnings includes the following:

 - (a) base salary;
 - (b) total remuneration, except for remuneration components paid on a non-pro-rata or fixed-amount basis;
 - (c) a fixed total remuneration amount for remuneration components paid on a non-pro-rata or fixed-amount basis.