

# Comments on the draft regulations on proposed sectoral numerical targets, 2024

2 May 2024

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Dear Ms Lehlokoa

## Comments on the draft regulations on proposed sectoral numerical targets, 2024

1. Just Share is 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 have extensive experience in analysing corporate reporting and in engaging with business in relation to issues of inequality, diversity and transformation.
3. Our advocacy, among other things, encompasses calling for more transformed and inclusive boards and management teams, and for progressive diversity targets that reflect South Africa's unique demographics. It is against this background that we **support the introduction of employment equity (EE) sectoral targets** as a measure to drive transformation and achieve equity in the labour market.
4. As with many measures aimed at redressing inequality, the corporate sector can be expected to lobby strongly against the introduction of these targets. To date, this kind of lobbying has served to delay and weaken efforts to address glaring disparities in employment, occupation and income within the national labour market. In order to "promote the constitutional right of equality and the exercise of true democracy",<sup>1</sup> the Department should strongly resist these efforts.
5. Below, we provide comment on the Draft Regulations on Proposed Sectoral Numerical Targets, 2024 ("the draft regulations"). We also highlight our concerns regarding the lack of transparency and consistency in employers' EE reporting, which continues to hamper stakeholders' ability to measure corporate compliance with EE and to hold companies accountable.

### Background

6. South Africa's historical legacy of systemic discrimination, particularly in limiting economic opportunities for designated groups such as black (Africans, Coloureds, and Indians) individuals,

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<sup>1</sup> Preamble to the EEA.





women, and people with disabilities, is well-documented. According to the 1994 White Paper on Reconstruction and Development (“the White Paper”):

*“Our history has been a bitter one dominated by colonialism, racism, apartheid, sexism and repressive labour practices. The result is that poverty and degradation exist side by side with modern cities and a developed mining, industrial and commercial infrastructure. **Our income distribution is racially distorted and ranks as one of the most unequal in the world. Women are still subject to innumerable forms of discrimination and bias**, rural people and youth are marginalised. A combination of lavish wealth and abject poverty characterises our society”.*<sup>2</sup> (our emphasis)

7. The right to equality is enshrined in the Constitution of the Republic of South Africa, 1996.<sup>3</sup> To promote the achievement of equality, the Constitution allows for legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination. Affirmative action is defined as preferential treatment based on race, ethnicity or gender. Affirmative action programmes are developed and implemented to help eliminate existing and ongoing discrimination, to remedy effects of past discrimination and to create systems that promote and achieve substantive equality.<sup>4</sup>
8. The 23<sup>rd</sup> annual report of the Commission for Employment Equity (CEE) (2022-2023) highlights the ongoing inequality in the labour markets. Despite black individuals constituting 92% of the economically active population (EAP), they hold only 31.2% of top management and 41.7% of senior management positions in the private sector. Similarly, women, comprising 45.5% of the EAP, occupy just 25.3% of top management and 35.8% of senior management positions in the private sector.
9. These figures demonstrate that affirmative action policies in the private sector have had limited success in addressing inequity. This is partly because the principal Employment Equity Act, 1998 (EEA), did not impose transformation targets, instead relying on companies to develop their employment equity plans and set their diversity targets and timelines to achieve “reasonable progress” towards employment equity. However, this laissez-faire approach has failed to drive meaningful transformation, especially in key decision-making structures within organisations.

#### Making employment equity reports publicly available

10. In terms of section 20(1) of the EEA, a “designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer’s workforce”. Section 20(2) sets out the information to be contained in such plan.

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<sup>2</sup> Para 1.2.1 of the White Paper.

<sup>3</sup> Chapter 2, Section 9 of the Bill of Rights.

<sup>4</sup> South African Human Rights Commission. Case reference no. WC/2008/0411. In the matter of James Kemp (complainant) vs. University of Cape Town (respondent).



11. Section 20(2) of the EEA will be amended to require that numerical goals to achieve the equitable representation of suitably qualified people from designated groups in an employer's EE plan must comply with the sectoral targets.
12. Section 21 provides that a designated employer must submit an annual report to the Director-General setting out the information prescribed. Regulation 10 of the Employment Equity Regulations, 2014 (EER) indicates that this information must be reported using the EEA2 form. These EE reports contain crucial information on an employer's progress in achieving employment equity. Section 21(6) states that "Every report prepared in terms of this section is a public document". Section 22(1) requires public company employers to publish a summary of EE reports in their annual financial reports. Regulation 10 of the EER indicates that the EEA10 form should be used for guidance here.
13. Despite section 21(6) of the EEA designating EE reports as public documents, the annual EE reports (on EEA2 forms) are not readily accessible to the public. This hinders stakeholders, including shareholders, in their ability to hold company governance structures, such as the boards of designated employers, accountable for any lack of reasonable progress in transformation.
  - 13.1. We are aware of the current process set out in regulation 10(10) of the EER, which confirms that the EEA2 is a public document and states that "a copy may be requested by the public by completing and submitting the EEA11 form to the Department of Labour, Employment Equity Registry".
  - 13.2. Requiring stakeholders to go through a separate application process to access EE reports, despite these being public documents, adds an unnecessary administrative and time burden to obtaining information. There is no reason why companies cannot put these reports on their websites.
  - 13.3. Stakeholders, including investors, rely heavily on the annual reports of public listed companies to access EE information. However, based on our experience in analysing publicly available reports, we have observed that companies often do not align their reporting consistently with the format of the EEA10 form.
  - 13.4. This leads to sporadic, inconsistent, and incomparable reporting of EE-related information and progress. If this trend continues, it will remain challenging for stakeholders to assess employers' EE progress. It will also make it difficult to measure progress against annual targets set towards meeting the relevant 5-year sectoral numerical targets, especially if companies continue to disregard the EEA10 guidance. In our view, compliance with the EEA10 form should be mandatory.



### Five-year sectoral targets and gender imbalances

14. The draft regulations set out factors that the Minister took into account when setting the proposed five-year targets, having consulted with the relevant sectors and receiving advice from the CEE. These factors include: the representation of designated groups in the sector's workforce compared to the national and regional EAP; the latest 2022 EE workforce profiles for each economic sector; B-BBEE Act Sector Codes and Sector Charters; and 'unique sector dynamics' such as skills availability, economic and market forces, and ownership within each sector.
15. We note that the proposed targets appear to significantly favour male representation, especially in top and senior management roles. The draft regulations do not make clear how these factors, particularly the unique dynamics of each sector, inform the targets that have been set. This lack of substantiation raises questions about the justification for these differential targets and whether they genuinely promote equitable gender representation across all levels of management.
16. We support the provision in the draft regulations (3.4.6) which prevents regression when a numerical target has been exceeded at an occupational level. In Just Share's work, we regularly see backsliding on issues of diversity, equality and transformation. There are also various instances in which companies set targets they have already achieved. In our view, this is disingenuous and demonstrates a clear unwillingness to do more to achieve EE.

### Conclusion

17. Just Share endorses the implementation of sector-specific EE numerical targets. These targets are crucial for achieving equitable representation of suitably qualified individuals from designated groups across different occupational levels.
18. While the alignment of EE Plans to the sector targets will enable the CEE to assess and monitor the progress of transformation in different sectors of the labour market, EE reports (EEA2 forms) should be more readily available, not only to ensure transparency and facilitate meaningful public engagement, but also to enable various stakeholders, including shareholders, to hold designated employers accountable. For the same reasons, compliance with the EEA10 form should be mandatory.
19. In our view, without clear justification for the differential targets across management levels concerning gender, such as historical imbalances in the sector or specified industry dynamics outlining how these inform targets for each sector, there is a danger that these sectoral targets could be interpreted as arbitrary or irrational. To strengthen these draft regulations and limit this risk, the Department should ensure that these targets do not undermine gender equity and more detail should be provided to explain the basis for the specific targets.
20. Please contact the writer should you have questions about any aspect of these comments.



Yours faithfully  
**JUST SHARE**

Per:

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