



# planning, monitoring & evaluation

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Department:  
Planning, Monitoring and Evaluation  
**REPUBLIC OF SOUTH AFRICA**

## ANNEXURE B

**SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)  
FINAL IMPACT ASSESSMENT TEMPLATE FOR:**

**EMPLOYMENT EQUITY AMENDMENT BILL  
JULY 2017  
DEPARTMENT OF LABOUR**

## **The Final Impact Assessment for Employment Equity Amendment Bill, 2017**

The Final Impact Assessment provides a more detailed assessment of the ultimately policy/legislative/ regulations/ other proposal. In addition, it identifies **(a)** mechanisms for monitoring, evaluation and modification as required; and **(b)** a system for managing appeals that could emerge around the implementation process.

### **1. The problem Statement/ Theory of Change**

1.1. Give summary of the proposal, identifying the problem to be addressed and the root (causes) of the problem that will be addressed by the new rule.

#### **Summary of the proposal (Summary Background of the proposed policy/bill/ regulations/ other):**

- One of the key challenges in the post-apartheid South African labour market is the lack of equitable representation of designated groups, despite provisions in the Employment Equity Act 1998 geared towards identifying people that are suitably qualified based on normal qualifications.
- The trend analysis of population group and gender representation in the recent Employment Equity Act (EEA) report showed very little progress over a period in the top occupational levels. Thus, Whites and males continued to predominate in senior and top management ever since the birth of democracy until 2015.
- Due to the slow pace of transformation more than two decades since the inception of the Act, it has become clear that latest amendments of 2013 in relation to strengthening of the enforcement mechanisms (e.g. increase in penalties/ fines) are still inadequate to address non-compliance.
- As a result, the current proposed amendments are mainly intended to make provision for the promulgation of Section 53 of the EEA that deals with the issuing of Certificate of Compliance to organisations that wishes to access State contracts and wishes to do business with the State. This section has never been promulgated in the 19 years of the Act. Consequentially, other provisions dealing with affirmative action measures and assessment of compliance (i.e. Section 15 and Section 42) will

have to be amended to provide mechanisms/criteria to measure compliance before a Certificate of Compliance can be issued.

**Problem/s and root causes that the proposal is trying to address:**

Identified Problem	Root causes
Slow pace of transformation in the labour market. For example, over 68% of all Top management positions are still occupied by whites while females only account for 22% of these positions.	Self- regulated Employment Equity (EE) targets in EE Plans, which are flexible and dependent on individual organisation’s commitment to transformation.
Low levels of compliance with the objectives of the EEA 19 years after its enactment.	Lack of commitment and resistance to transformation – most organisations budgeting for penalties for non-compliance.
Absence of real financial consequences for non-compliant organisations. Non-compliant organisations still having access to business opportunities with the State (Access to State Contracts).	Section 53 dealing with State Contracts not yet promulgated since the inception of the EEA in 1999, hence the accrual of financial gains by non-compliant organisations to the EEA.
Definitions of “serve” or “submit” under section 1 of the EEA is not aligned to the electronic administrative functions (EE Online System)of submission of EE Reports in terms of Section 21 of the EEA.	The technical definition of “serve” or “submit” in the EEA is outdated and not aligned to the latest developments of the electronic administrative submission of EE reports in terms of Section 21 of the EEA.

1.2. Describe the intended outcomes of the proposal

- Increased pace of employment equity transformation to be ensured through ensuring the intervention of the Minister of Labour having powers to

establish sectoral numerical targets for the purpose of ensuring the equitable representation of suitably qualified people from the designated groups (blacks, women and persons with disabilities) at all occupational levels in the workforce; and

- Increased compliance with EEA through enforcement of Section 53 of the EEA which deals with State Contracts. This section will be proclaimed and implementable through the issuing of a Certificate of Compliance, which will form part of the criteria for access to State Contracts/ doing business with the State.

**1.3. Describe the groups that will benefit from the proposal, and the groups that will face the cost.** These groups could be described by their role in the economy or in society. As a minimum, consider if there will be specific benefits or costs for the poorest households (earning R 7000 a month or less); for black people, youth or women; for small and emerging enterprise; and /or for rural development. Add more rows if required:

Groups that will benefit	How will they benefit?
Black people, i.e. Africans, Coloureds and Indians)	<ul style="list-style-type: none"> <li>• EE targets for sectors will provide benchmarks towards the equitable representation of blacks across all occupational levels of the workforce and therefore ensure their representation.</li> <li>• They will also be protected against any forms of unfair discrimination in any employment policies and practices in the workplace based on any listed ground (race, gender, HIV status, pregnancy, sex, marital status, sexual orientation, etc), including on any other</li> </ul>
Women, i.e. Africans, Coloureds, Indians and White	
Persons with Disabilities, i.e. all races and gender	

	<p>arbitrary ground.</p> <ul style="list-style-type: none"> <li>• Furthermore, these groups will be protected against income inequalities and will be empowered to claim Equal Pay for Work of Equal Value.</li> </ul>
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Groups that will bear the cost or lose	How will they incur the costs or lose?
<p>Designated employers inclusive of Public, Private, NGOs and Academic institutions (i.e. those employers that employ 50 or more employees and those that have less than 50 employees, but their annual turnover threshold is equal or more than the stipulated threshold in terms of Schedule 4 of the EEA) in terms of Chapter III of the EEA.</p>	<ul style="list-style-type: none"> <li>• No Compliance Certificate to access State Contracts (financial consequences dependent on the amount attached to the Contract) will be issued to these employers if they do not comply with the requirements of the EEA, i.e. Chapter 11 (e.g. if the employer has a CCMA Awards against them for cases of unfair discrimination) and Chapter III (e.g. employers should have met the relevant numerical EE targets set for their specific sector, including submission of an EE Report); and in addition, such employer is not paying the National Minimum Wage (e.g. there is CCMA Award against the employer).</li> </ul>
<p>Non-designated employers (e.g. small employers) inclusive of Public, Private, NGOs and Academic institutions</p>	<ul style="list-style-type: none"> <li>• No Compliance Certificate to access State Contracts (financial consequences dependent on the amount attached to the Contract) will be issued to these employers if they do not comply with the requirements of <b>Chapter 11 of the EEA ONLY</b>, (e.g. if the employer has a CCMA Awards against them for cases of unfair</li> </ul>

Groups that will bear the cost or lose	How will they incur the costs or lose?
	discrimination) – a Declaration (automated) is required from these employers to confirm that there are no unfair discrimination practices in their organisations; and in addition, such employer is not paying the National Minimum Wage (e.g. there is CCMA Award against the employer).

1.4. Describe the behaviour that must be changed, main mechanisms to achieve the necessary changes. These mechanisms may include modifications in decision making process systems; changes in procedures; educational work; sanctions; and or incentives. Also identify groups inside or outside government whose behaviour will have to change to implement the proposal. Add more rows if required:

Groups inside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
National Departments	Non-compliance with the requirements of the EEA.	Setting EE sector targets to promote equitable representation of the designated groups (blacks, women and persons with disabilities) across all occupational levels.
Provincial Departments		Declarations on unfair discrimination cases to promote substantive equality and fair
Local Government		
Public Enterprises/ Public entities		

Organs of State (e.g. Parliamentary Services, Office of Public Protector, Office of the Auditor-General, etc.)		treatment in employment.
		Non-issuing of Certificate of compliance will ensure legislative compliance and expedite transformation within government as a good example of employer of choice and champions of legislation.

<b>Groups outside Government</b>	<b>Behaviour that must be changed (Current Behaviour)</b>	<b>Main mechanism to achieve the necessary changes</b>
Designated employers inclusive of Private, NGOs and Academic institutions (i.e. those employers that employ 50 or more employees and those that have less 50, but their annual turnover threshold is equal and more than the stipulated threshold in terms of Schedule 4 of the EEA) in terms of Chapter III of the EEA.	Non-compliance with the requirements of the EEA	Setting EE sector targets to promote equitable representation of the designated groups (blacks, women and persons with disabilities) across all occupational levels.
Non-designated employers (e.g. small employers) inclusive of Private, NGOs and Academic institutions.		Declarations on unfair discrimination cases to promote substantive equality and fair treatment in employment

		<p>Non-issuing of Certificate of compliance will ensure legislative compliance and expedite transformation within government as a good example of employer of choice and champions of legislation.</p>
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1.5. Report on **consultations on the proposal with the affected government agencies, business and other groupings**. What do they see as the main benefits, costs and risks? Do they support or oppose the proposal? What amendments do they propose? And have these amendments been incorporated in your proposal?

- Internal consultation has taken place within the Commission for Employment Equity (CEE). Secondly, after the CEE’s Advisory to the Minister on the proposed EE Amendment Bill and its regulations, these amendment proposals will be published for external public comment and submitted to NEDLAC for Social Partner negotiation. Thirdly, the proposals will be subjected to public consultations with broader stakeholders throughout various provinces, including through specific Sector stakeholder engagements. All constituencies agreed with the proposal and these will be reflected in EE Commission Meeting Minutes



Table on consultations: (NOT APPLICABLE AT THIS POINTING TIME)

Affected Stakeholders	What do they see as main <u>benefits, costs and risks?</u>	Do they <u>support or oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
1. Government Departments and Agencies (Name them)				
2. Commission for Employment Equity (CEE). The CEE is constituted by NEDLAC representatives of Organised Business, Organised Labour and Community Constituency.				
3. Organised Labour				
4. Civil Society				
5. The Public	The proposals will be			

	<p>subjected to public consultations with broader stakeholders throughout various provinces, including through specific Sector stakeholder engagements.</p>			
<p>6. Other groupings (Name them)</p>				

1.6. **Describe possible disputes arising out of the implementation of the proposal, and system for settling and appealing them.** How onerous will it likely be for members of the public to lodge a complaint and how burdensome and expeditious is the proposed dispute-settlement procedure?

- Disputes may arise on financial implication when employers resist and challenge the inclusion of the EE Compliance Certificate under Section 53 of the EEA as a criteria/requirement for access to State Contracts and also to challenge the setting of EE Sector targets.
- Dispute resolution mechanisms on how to deal with any disputes arising from the implementation of the Act are already covered under Section 10 of the EEA, the Act states that all disputes have to be referred to the CCMA and the Labour Court.

## 2. Impact Assessment

2.1. **Describe the costs and benefits of implementing the proposal** to the groups identified in point 1.5 above, using the following chart:

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
Government	Awareness campaigns and public hearings/workshops will form part of the current Annual EE Awareness campaigns -	R2.3 million	An equitable and inclusive economy with effects to poverty eradication as the target groups are mainly vulnerable and poor people.	No additional budget is required – already catered in the current allocations
Businesses	No cost to implement	Cost of State Contracts that	An equitable and inclusive diversified	

	amendments because business are already utilising existing EE processes, systems and human resources within their organisations to comply with the requirements of the EEA, e.g. submission of EE Reports.	business is unlikely to forego as a result of non-compliance to EEA will have to be assessed on case-by-case basis.	workplaces free of unfair discrimination based on any prohibited grounds or any other arbitrary ground.	
Organised Labour	No cost will be incurred	No cost will be incurred	Previously disadvantaged groups (black people, women and person with disabilities) will benefit by being part of the equitable and inclusive diversified economy through access to equal opportunities and fair treatment in the workplace	

**2.2. Describe the changes required in budgets and staffing in government in order to implement the proposal.** Identify where additional resources would be required for implementation. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks:

- The proposed EE amendments will be implemented within the current allocated resources in the Employment Equity Directorate and in relation to the existing IT System enhancements that will be required; these will also be catered for within the current DOL ICT existing resources. No additional financial or human resource or IT resources will be required to implement the amendments.
- Awareness campaigns and public hearings to be conducted to raise awareness to the target audience, i.e. employers, employees, trade unions, employers organisations, academics, civil society and other interest parties in the labour market, the financial resources required will be catered for within the allocated budget of the Employment Equity Directorate. The awareness campaigns will be incorporated into the current Annual EE Workshops that are being conducted throughout the country.

**2.3. Describe how the proposal minimises implementation and compliance costs:**

An automated implementation process of the proposals will expedite the turnaround time for assessment of compliance to employers and provision of individual feedback to employers through the issuing of an automated Certificate of Compliance within 24 hours of having captured and submitted both your Declarations and EE Reports through Online. Online facility via the internet allows easy and fast access to employers to log-into the System at any time (day and night) from anywhere in the world. As a result, minimise travel, courier and registered mail costs, including paper and printing costs.

### **3. Managing Risk**

- 3.1. Describe the main risks to the achievement of the desired ends of the policy/bill/regulations/other and/ or to the national priorities (aims) that could arise from adoption of the proposal. Also describe the measures taken to manage the identified risks.**

Identified Risk	Mitigation Measures
Resistance by employers to the setting of EE Sector targets as benchmarks to promote equitable representation of the designated groups across all occupational levels of the workforce.	Broader public consultation on the proposed EE Amendment Bill and its regulations, through external public comment; NEDLAC for Social Partner negotiation and in particular, through specific Sector stakeholder engagements.
Resistance by employers to the inclusion of the EE Compliance Certificate under Section 53 of the EEA as a criteria/requirement for access to State Contracts	Inter-governmental consultations between Department of Labour, National Treasury DTI; and other relevant departments. Broader public consultation on the proposed EE Amendment Bill and its regulations, through external public comment; NEDLAC for Social Partner negotiation and in particular, through specific Sector stakeholder engagements.

3.2. Describe the mechanisms **included in your proposal** for monitoring implementation, evaluating the outcomes, and modifying the implementation process if required. Estimate the minimum amount of time it would take from the start of the implementation process to identify a major problem and remedy it.

- An automated implementation process of the proposals will expedite the turnaround time for assessment of compliance to employers and provision of individual feedback to employers through the issuing of an automated Certificate of Compliance within 15 to 24 hours of having captured and submitted Declarations and EE Reports through Online facility. Therefore, within specified timeframe the DoL will be able to identify any problem that may arise within the EE Online System and develop strategies and mechanisms to remedy it.

## 4. Summary

### 4.1. Summarise the impact of the proposal on the main national priorities

National Priority	Impact
1. Social Cohesion	<ul style="list-style-type: none"><li>• Proposals are intended to expedite transformation and promote access to equal opportunities in employment without being unfairly treated or discriminated against based on race, gender, disability. This is linked with Outcome 14: Transforming society and uniting the country.</li><li>• It is also aimed to contribute to unity of designated groups with groups that had advantage before the introduction of the EEA.</li><li>• A transformed labour market will also contribute to a more effective one.</li></ul>
2. Security (Safety, Financial, Food, Energy and etc.)	<ul style="list-style-type: none"><li>• These amendments would contribute to the country's stability when people learn to work with each other despite the differences that come with the designated group characteristics.</li><li>• It would enforce recognition of these groups as equals in the labour market and lessen discrimination disputes in favour of some groups on the expense of others. South Africa has seen a number of cases where racial differences result in murders and assaults of the groups targeted by these amendments in the workplaces, e.g. the latest case in North West where a white employer drove a tractor over an African employee and left him to die in the field before seeking help for him.</li></ul>

3. Economic Growth	The provision of equal opportunity for the designated groups would result in economic growth as their participation in employment will result in them earning wages and spending capacity of the economy will increase, leading to high country tax revenue. Those benefiting from this increased spending may in return reinvest in the economy, create more employment, open factories etc.
4. Economic Inclusion (Job Creation and Equality)	All the previously disadvantaged groups, i.e. the designated groups (Blacks, women and persons with disabilities) will access equal opportunities to participate and contribute to the economic growth of the country without being unfairly treated and discriminated against based on their race, gender, disability, etc.
5. Environmental Sustainability	N/A

4.2. Identify the social and economic groups that would **benefit most** and that would **bear the most cost**. Add more rows if required:

Main Beneficiaries	Main Cost bearers
Black people (Africans, Coloureds and Indians)	Designated employers inclusive of Public, Private, NGOs and Academic institutions (i.e. those employers that employ 50 or more employees and those that have less 50, but their annual turnover threshold is equal and more than the stipulated threshold in terms of Schedule 4 of the EEA) in terms of Chapter III of the EEA.
Women of all race groups	Non-designated employers (e.g. small employers) inclusive of Private, NGOs and Academic institutions.
Persons with disabilities of all race groups and gender	



4.3. In conclusion, summarise **what should be done to reduce the costs, maximise the benefits, and mitigate the risks associated with the policy/bill/regulations/other.**

Note supplementary measures (such as educational campaigns or provision of financing) as well as amendments to the draft itself, if appropriate. Add more lines if required:

- a) Conduct EE Awareness campaigns through the media, e.g. radio to raise awareness around the proposals.
- b) Conduct National EE Stakeholder workshops on the proposals in various provinces.
- c) Conduct targeted Sector Stakeholder engagements on the proposals.

4.4. Please identify **areas where additional research would improve understanding of the costs, benefits and/ or risks of the policy/bill/regulations/other:**

- None

**For the purpose of building SEIAS body of knowledge please complete the following:**

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