

REPUBLIC OF SOUTH AFRICA

**PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75), explanatory
summary of Bill published in Government Gazette No. of) (The English
text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B — 2021]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments
_____ Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to amend certain definitions and to insert a new definition; to extend the scope of the prohibition of unfair discrimination; to provide for joint and several liability; to provide for a prohibition of retaliation; to amend the duties and responsibilities of the State, public bodies and all other persons relating to the promotion of equality; to criminalise the wilful submission of false information by any person required to provide information in terms of the Act and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:—

Amendment of section 1 of Act 4 of 2000, as amended by section 16 of Act 22 of 2005 and section 30 of Act 8 of 2017

1. Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (hereinafter referred to as the principal Act), is hereby amended by—

(a) the substitution for the definition of "discrimination" of the following definition:

" **'discrimination'** means any act or omission, including a policy, law, rule, practice, condition or situation which, whether intentionally or not, directly or indirectly—

(a) imposes burdens, obligations or disadvantage on;**[or]**

(b) withholds benefits, opportunities or advantages from[.,,];

(c) causes prejudice to; or

(d) otherwise undermines the dignity of,

any person **[on]** related to one or more of the prohibited grounds[.;].

irrespective of whether or not the discrimination on a particular ground

was the sole or dominant reason for the discriminatory act or

omission;";

(b) the substitution for the definition of "equality" of the following definition:

" **'equality'** includes—

(a) the full and equal enjoyment of rights and freedoms as contemplated in the Constitution;

(b) equal right and access to resources, opportunities, benefits and advantages;

(c) **[and includes]** *de jure* and *de facto* equality;

(d) **[and also]** equality in terms of impact and outcomes; and

(e) substantive equality;";

(c) the insertion after the definition of "prohibited ground" of the following definition :

" **'public body'** means any institution or functionary—

(a) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(b) exercising a public power or performing a public function in terms of any legislation or under customary law or tradition;

and

(d) the substitution for the definition of "the State" of the following definition:

" **'the State'** [~~includes—~~] means

[(a)] any department of State or administration in the national, provincial or local sphere of government;

[(b)] any other functionary or institution—

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation or under customary law or tradition;]".

Substitution of section 6 of Act 4 of 2000

2. The following section is hereby substituted for section 6 of the principal Act:

"Prevention and general prohibition of unfair discrimination

6. (1) Neither the State, a public body nor any person may unfairly discriminate against any person.

(2) Any person who causes, encourages or requests another person to discriminate against any other person, is deemed to have discriminated against such other person.

(3) If a worker, employee or agent of a person contravenes the Act in the course of his or her work or while acting as agent, both the person and the worker, employee or agent, as the case may be, are jointly and severally liable for a contravention and proceedings under the Act may be instituted against either or both of them unless the person took reasonable steps to prevent the worker, employee or agent from contravening the Act."

Insertion of section 9A in Act 4 of 2000

3. The following section is hereby inserted in the principal Act after section 9:

"Prohibition of retaliation

9A. No person may retaliate or threaten to retaliate against a person who—

(a) objects to a discriminatory act or omission; or

(b) instituted or wishes to institute proceedings in terms of or under the Act."

Substitution of section 24 of Act 4 of 2000

4. The following section is hereby substituted for section 24 of the principal Act:

"General responsibility to promote equality

24. (1) The State **[has]** and public bodies have a duty and responsibility to eliminate discrimination and to promote and achieve equality.

(2) All persons have a duty and responsibility to eliminate discrimination and to promote equality.

(3) The State, public bodies and all persons have a duty and responsibility in particular to—

(a) eliminate discrimination on the grounds of race, gender and disability;
and

(b) promote equality in respect of race, gender and disability.

(4) The State, public bodies and the organisations and institutions referred to in section 28(1) must take reasonable measures, within available resources, to make provision in their budgets for funds to implement measures aimed at eliminating discrimination and promoting equality referred to in this Chapter."

Amendment of section 25 of Act 4 of 2000

5. Section 25 of the principal Act is hereby amended by—

(a) the substitution for the words preceding subsection (1) of the following words:

"(1) The State must —";

(b) the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraph, respectively:

"(b) conduct information campaigns to popularise this Act;
(c) develop appropriate internal mechanisms to deal with
complaints of unfair discrimination, hate speech or harassment;
and";

(b) the addition in subsection (1) after paragraph (c) of the following paragraph:

"(d) adopt and implement, within available resources, measures to
eliminate discrimination and to promote and achieve equality in
line with the objectives of this Act.";

(c) the substitution for subsections (2), (3), (4) and (5) of the following subsections, respectively:

"(2) The measures referred to in subsection (1)(d) must be
included—

(a) in the case of a department of State or administration in the national or
provincial sphere of government, in the strategic plans contemplated in
the Regulations issued under section 76 of the Public Finance
Management Act, 1999 (Act No. 1 of 1999); and

(b) in the case of a department of State or administration in the local
sphere of government, in the integrated development plans
contemplated in the Local Government: Municipal Systems Act, 2000
(Act No. 32 of 2000).

(3) The measures referred to in subsection (1)(d) must
include—

(i) the amendment of existing legislation or the enactment of further
legislation;

- (ii) the amendment of existing policies or the development of new policies;
- (iii) the amendment of existing codes or the development of new codes;
- (iv) the amendment of existing practices or the adoption of new practices; or
- (v) the adoption of any other measure giving effect to the objectives of the Act.

(4) In order to determine which measures must be adopted to eliminate discrimination and to promote and achieve equality, the State must—

- (i) prepare a list of the laws, policies, codes, practices, structures or other measures which have a bearing on equality;
- (ii) scrutinise these laws, policies, codes, practices, structures and measures with a view to identifying discriminatory aspects thereof;
- (iii) consider possible remedial measures to remove the discriminatory aspects;
- (iv) identify areas or potential areas of inequalities; and
- (v) consider possible measures to promote social and economic equality.

(5) The measures referred to in subsection (1)(d) may only be adopted after—

- (a) proper investigation and analysis of the aspects in question;
- (b) in-depth research in respect of the aspects in question; and

- (c) consultation with civil society on the measures to be adopted."; and
- (d) the addition of the following subsections after subsection (5):

"(6) The measures to be adopted by the State to achieve equality must—

- (a) proactively address systemic and multidimensional patterns of inequality and discrimination found in social structures, rules, attitudes, actions or omissions which prevent the full and equal enjoyment of rights and freedoms as contemplated in the Constitution, including equal access to resources, opportunities, benefits and advantages and social goods; and
- (b) provide for reasonable accommodation of the needs of persons on the basis of any of the prohibited grounds.

(7) In the annual reports referred to in section 40 of the Public Finance Management Act, 1999, and section 121 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), a report should be included—

- (a) on the funds provided for the particular year for the implementation of the measures referred to in subsection (1)(d); or
- (b) on the reasons why no funds for the particular year have been provided for the implementation of those measures.

(8) The Board of Directors, appointed in terms of section 6 of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014), must, when making recommendations to the Cabinet member responsible for the administration of justice for purposes of the regulations to be made in terms of section 23 of that Act, consider recommending, subject to the criteria determined by that

member in terms of the said regulations, that legal aid be granted to persons who wish to institute proceedings in terms of this Act.

(9) A judicial officer presiding in any civil or criminal matter must, where an equality issue is raised, inform the relevant party of his or her rights in terms of the Act and, where appropriate, refer the matter to the clerk of the equality court having jurisdiction who must deal with the matter in accordance with section 20(3).

(10) (a) The Department must keep a register of all the codes of practice referred to in this Act and make available the Register on the website of the Department.

(b) The Director-General of the Department must decide the form of the register and ensure that the register is updated regularly."

(c) All functionaries who have, prior to the coming into operation of this section, issued codes of practice relating to the elimination of discrimination or the promotion of equality in terms of any law, policy or other document requiring such codes, must within three months after the coming into operation of this section submit to the Director-General the codes already issued for inclusion in the Register.

(d) A Minister who has, after the coming into operation of this section, issued a code of practice in terms of this Act, must ensure that the code is submitted to the Director-General for inclusion in the register.

(e) An amendment of a code referred to in paragraph (d) must be submitted to the Director-General of the Department so that the register can be updated.

(f) The purpose of the register is to ensure that a Minister, before issuing a code of practice in terms of this Act, has regard to the codes issued by other Ministers, in order to prevent overlapping or duplication of, or contradictions between, the codes."

Substitution of section 26 of Act 4 of 2000

6. The following section is hereby substituted for section 26 of the principal Act:

"Specific duty of constitutional institutions

26. (1) The constitutional institutions must—

(a) develop awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equality;

(b) conduct information campaigns to popularise the Act; and

(c) provide assistance, advice and training on issues of discrimination and equality.

(2) The constitutional institutions may, in addition to any other obligation in terms of the Constitution or any law, request the State or any person to supply information on any measures relating to the promotion or achievement of equality, including where appropriate, on legislative and executive action and compliance with legislation, codes of practice and programmes.

(3) The constitutional institution which requested information as contemplated in subsection (2), may make recommendations relating to the measures which must be considered by the department, administration or person that supplied the information.

(4) In addition to any other powers and functions of the constitutional institutions, these institutions are also competent to—

(a) assist complainants in instituting proceedings in an equality court, particularly complainants who are disadvantaged;

(b) conduct investigations into cases and make recommendations as directed by the court regarding persistent contraventions of this Act or cases of unfair discrimination, hate speech or harassment referred to them by an equality court; and

(c) request from the Department regular reports regarding the number of cases and the nature and outcome thereof.

(5) The South African Human Rights Commission must, in its report referred to in section 18 of the South African Human Rights Commission Act, 2013 (Act No. 40 of 2013), include an assessment on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the unfair discrimination and any effects thereof."

Insertion of section 26A in Act 4 of 2000

7. The following section is hereby inserted in the principal Act after section 26:

"Duty of public bodies to promote equality

26A. (1) Public bodies must adopt and implement measures to eliminate discrimination and to promote and achieve equality in line with the objectives of this Act.

(2) A public body, which in terms of the Public Finance Management Act, 1999, is required to prepare a strategic plan, corporate plan or business plan, must include the measures referred to in subsection (1) in its plan.

(3) In the annual report of a public body referred to in section 55 of the Public Finance Management Act, 1999, there must be included a report—

(a) on the funds provided for the particular year for the implementation of the measures referred to in subsection (1); or

(b) on the reasons why no funds for that year have been provided for the implementation of the measures referred to in subsection (1).

(4) The provisions of—

(a) section 25(3)(a), where applicable, (b), (c), (d) and (e), (5) and (6); and

(b) section 25(4).

with the necessary changes as may be required by the context, are applicable to the public bodies referred to in subsection (2).

(5) A public body which is not required to prepare a strategic plan, corporate plan or business plan in terms of the Public Finance Management Act, 1999, must—

(a) adopt and implement the measures determined by regulation or otherwise; or

(b) abide by the code of practice issued, by the Minister responsible for the public body.

(6) The Minister in question must, when determining the measures or issuing the code referred to in subsection (4), have regard to the existing measures relating to the elimination of discrimination and the promotion of equality provided for in any law, policy or other document, with which the public body must comply."

Substitution of section 27 of Act 4 of 2000

8. The following section is hereby substituted for section 27 of the principal Act:

"Duty of persons contracting with State

27. (1) Any person exercising a power or performing a function on behalf of the State in terms of a contract, which constitutes a public power or public function, must—

(a) adopt and implement measures to eliminate discrimination and to promote equality, determined by regulation or otherwise; or

(b) abide by the code of practice issued, by the Minister on whose behalf the person is exercising the power or performing the function.

(2) The Minister in question must, when determining the measures or issuing the code referred to in subsection (1), have regard to the existing measures relating to the elimination of discrimination and the promotion of equality provided for in any law, policy or other document, with which that person must comply."

Substitution of section 28 of Act 4 of 2000

9. The following section is hereby substituted for section 28 of the principal Act:

"Duty of all persons to promote equality

28. (1) All persons, non-governmental organisations, community-based organisations or traditional institutions must promote equality in their relationships with other bodies and in their public activities.

(2) Subject to subsection (3), the Minister who is responsible for the portfolio in which persons, non-governmental organisations, community-based organisations or traditional institutions contemplated in subsection (1) operate must—

- (a) determine, by regulation or otherwise, the measures to be adopted and implemented; or
- (b) issue a code of practice,

dealing with the elimination of discrimination and the promotion of equality, in respect of those persons, non-governmental organisations, community-based organisations or traditional institutions.

(3) A Minister who has, at the date of commencement of this Act, already issued measures or a code as contemplated in subsection (2) is exempted from the obligation imposed under that subsection.

(4) Different measures may be determined and different codes may be issued for different persons, non-governmental organisations, community-based organisations or traditional institutions, depending on their size, resources and influence.

(5) A Minister must, when determining measures or issuing a code in terms of this section, have regard to any existing measures in place in any law, directive, policy or charter which relate to the elimination of discrimination and the promotion of equality."

Insertion of section 29A in Act 4 of 2000

10. The following section is hereby inserted in the principal Act after section 29:

"Special measures to promote equality with regard to race, gender and disability

29A. If it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part

in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence."

Amendment of section 30 of Act 4 of 2000, as amended by section 25 of Act 39 of 2014

11. Section 30 of the principal Act is hereby amended by the substitution for paragraph (t) of subsection (1) of the following paragraph:

"(t) the reports contemplated in **[sections] section[25(3)(c) and 26(c)]26(4)(c)** and the equality **[plans] measures** contemplated in **[section]sections[25(4)(b) and (5)(a) and section 27(2)]25(1)(d), 26A, 27(1) and 28(2);"**

Amendment of section 31 of Act 4 of 2000, as substituted by section 3 of Act 52 of 2002 and amended by section 11 of Act 24 of 2015

12. Section 31 of the principal Act is hereby amended by the addition of following subsection after subsection (7):

"(8) Any person who, when required to submit information in terms of this Act, intentionally submits false information, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding three years, or in the case of a corporate body as contemplated in section 332(2) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), to a fine not exceeding R100 000,00."

Amendment of Table of Contents of Act 4 of 2000

13. The Table of Contents of the principal Act is hereby amended—

(a) by the insertion after item 9 of the following item:

"9A. Prohibition of retaliation";

(b) by the substitution for item 26 of the following item

"26. **[Responsibility of persons operating in public domain to promote equality]** Specific duty of constitutional institution";

(c) by the insertion after item 26 of the following item:

"26A. Duty of public bodies to promote equality";

(d) by the substitution for items 27 and 28 of the following items:

"27. **[Social commitment by all persons to promote equality]**
Duty of persons contracting with State

28. **[Special measures to promote equality with regard to race, gender and disability]** Duty of all persons to promote equality"; and

(e) by the insertion after item 29 of the following item:

"29A. Special measures to promote equality with regard to race, gender and disability".

Short title and commencement

13. This Act is called the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.