

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NOTICE 140 OF 2021

A. INVITATION FOR PUBLIC COMMENTS

ON

AMENDMENTS TO THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000

1. INVITATION

- 1.1 The Department of Justice and Constitutional Development (the Department) invites interested parties to submit written comments on the proposed amendments to the Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (the Act). The proposed amendments to the Act, the invitation and a note explaining the background of the proposed amendments, are available on the website of the Department at the following address: <https://www.justice.gov.za/legislation/invitations/invites.htm>
- 1.2 The comments on the proposed amendments to the Act must be submitted not later than **30 working days after the date of publication of this invitation**, marked for the attention of **Ms F Bhayat**, and –
- (a) if they are forwarded by post, be addressed to –
The Director-General: Justice and Constitutional Development
Private Bag X81
Pretoria
0001
 - (b) if they are delivered by hand, be delivered at –
SALU Building, Room 23.23
316 Thabo Sehume Street
Pretoria
 - (c) if they are delivered by email, be emailed to: fbhayat@justice.gov.za
 - (d) if they are faxed, be faxed to **086 754 8493**.
- 1.3 For further information, please do not hesitate to contact **Dr I Botha** on **012 406 4756**.

B. BACKGROUND NOTE

2.1 The purpose of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Bill, 2021 (“the Bill”) is to address certain problems that have been identified with the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (the Act), following a review process of the Act.

2.2 The first part of the Act, which deals with, among others, **the prevention of equality** through the equality courts in which complaints about discrimination are adjudicated. These sections are in operation and a few amendments are proposed in the Bill to improve the protection of complainants.

2.3 The second part of the Act, which deals with **the promotion of equality** by Organs of State and public and private bodies, is not yet in operation. This is due, in part, to the regulatory burden on placed on all sectors of society, both public and private. This was identified in a Regulatory Impact Assessment conducted by the National Treasury. The Bill intends to address these challenges.

2.4. The aims of the Bill are the following:

2.4.1 PREVENTION OF UNFAIR DISCRIMINATION

The first part of the Bill (**clauses 1 to 3**) aims to improve the protection of complainants against discrimination. This is done as follows:

- (a) Broadening and amending the scope of the definitions of:
 - (i) “equality” by indicating that it includes equal rights and access to resources, opportunities, benefits and advantages; and
 - (ii) “discrimination” by indicating that intention to discriminate is not required. It is the effect that matters and this makes it easier for complainants to make out a case of discrimination.
- (b) Amending section 6 of the Act, (which contains the general prohibition of unfair discrimination), by adding two new subsections as follows:

- (i) The scope of the prohibition of unfair discrimination is extended to any person who causes, encourages or requests another person to discriminate against others. This enables legal proceedings against such a person. .
 - (ii) Provision is made in the Bill for joint and several liability which entails that both the employer and the employee can be held liable for discrimination.
- (c) Inserting section 9A in the Act to prohibit retaliation against a person who exercised his or her remedies in terms of the Act.

2.4.2 PROMOTION OF EQUALITY

The second part of the Bill (**clauses 4 to 9**) seeks to do the following:

- (a) Clarify and reduce certain duties relating to the promotion of equality of the State and public bodies to some extent, for example by not requiring municipalities to provide assistance, advice and training on issues of equality so that they can focus on their main mandate namely municipal service delivery to the people.
- (b) An integrated approach is followed by making use of existing financial reporting and monitoring mechanisms provided for in the PFMA and the Local Government Municipal Systems Act, 2000 (Act) 32 of 2000) to ensure proper planning, budgeting and reporting on measures implemented to promote equality by Organs of State and public bodies falling under the ambit of these Acts. State departments (national and provincial), municipalities and certain public bodies will in terms of the Bill have to provide certain information in their strategic, corporate and business plans instead of having to prepare and develop additional and separate equality plans and action plans as required by the Act.
- (c) Strengthen accountability for the implementation of measures aimed at promoting equality by ensuring that Annual Reports of Organs of State contain information on what they have done in this regard.
- (d) To enhance co-ordination and prevent overlapping actions and duties, a Minister must, before issuing regulations and codes of practice or charters, have regard to other measures aimed at promoting equality which are already in place before

additional duties are conferred upon bodies. For this purpose, the Department of Justice and Constitutional Development must make available on its website a list of all the Codes issued by the Ministers.

- (e) To strengthen enforcement of the provisions of the Act, the Bill now criminalises the wilful submission of false information by any person.