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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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**CONTENTS • INHOUD****No.****Page  
No.      Gazette  
No.****GOVERNMENT NOTICE • GENERAL NOTICE****Justice and Constitutional Development, Department of***Government Notice*

563 Promotion of Equality and Prevention of Unfair Discrimination Act (4/2000): Regulations ..... 3 26316

*General Notice*

743 Promotion of Equality and Prevention of Unfair Discrimination Act (4/2000): Invitation to comment on the proposed date of commencement of Chapter 5 and the regulations under section 30 of the Act ..... 20 26316

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## GOVERNMENT NOTICE

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### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. 563

30 April 2004

### PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000 REGULATIONS

The Minister for Justice and Constitutional Development has under section 30 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), made the regulations in the Schedule.

### SCHEDULE

#### Definitions

1. In this Schedule "the Regulations" means the regulations published by Government Notice No. R. 764 of 13 June 2003.

#### Amendment of Classification of regulations

2. The Classification of the Regulations is hereby amended by-
  - (a) the insertion of the following Chapters after CHAPTER VI:

#### "CHAPTER VII

#### PROMOTION OF EQUALITY BY THE STATE

23. Request for progress report

24. Preparation of equality plan by State
25. Manner of dealing with equality plan
26. Progress report
27. Availability of Act in official languages

#### **CHAPTER VIII**

#### **PROMOTION OF EQUALITY BY ALL PERSONS**

28. Application of Chapter
29. Promotion of equality by entity with 150 and more employees
30. Promotion of equality by entity with more than 50 but less than 150 employees
31. Promotion of quality by entity with less than 50 employees”;

- (b) renumbering “CHAPTER VII” as follows:

#### **“ CHAPTER IX**

#### **MISCELLANEOUS**

32. Offences and penalties
33. Tabling of report on training courses
34. Short title and commencement”;

- (c) substituting the word “ANNEXURE” for the phrase “ANNEXURE A”; and

- (d) inserting the following Annexures after “ANNEXURE A”:

#### **“ANNEXURE B**

**PART A:** Letter to Director-General

**PART B:** Particulars required per case

**PART C:** General information

#### **ANNEXURE C**

#### **CODE OF PRACTICE”.**

**Amendment of the Definitions to the Regulations**

2. The Definitions to the Regulations is hereby amended by inserting the following definition after the definition of "Director-General":

"entity" means for purposes of Chapter VIII of the Regulations, a person, companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations as contemplated in section 27 of the Act;"

**Insertion of Chapters VII and VIII in the Regulations**

3. The Regulations are hereby amended by the insertion of the following Chapters after Chapter VII of the Regulations:

**"CHAPTER VI****PROMOTION OF EQUALITY BY THE STATE****Request for progress report**

23.(1) A request from a constitutional institution for a progress report regarding the number of cases and the nature and outcome thereof contemplated in section 25(3)(c) of the Act, must correspond substantially with Annexure B and must-

- (a) be in writing;
- (b) be addressed to the Director-General of the Department;
- (c) be signed by the chief executive officer of the constitutional institution, or a person designated by him or her;
- (d) indicate the period for which the information is required;
- (e) indicate the date on which the report is due;
- (f) indicate which of the following particulars are required-
  - (i) in regard to the number of cases -
    - (aa) the number of cases instituted in the equality court in terms of section 20(2) of the Act; and
    - (bb) the number of cases finalised by the equality court or an alternative forum;

- (ii) in regard to the nature of the cases -
  - (aa) the ground of discrimination;
  - (bb) the category of discrimination involved for example in respect of procurement, employment, access to places and facilities, accommodation (land/housing), education, sport, insurance, provisioning of goods and services, registered clubs, advertisements etc.;
  - (cc) the area from which the complaint originates (rural/metropolitan);
  - (dd) the age, gender, race, and where applicable, the disability of the complainant;
  - (ee) the gender and race of the person against whom the allegations are made;
- (iii) in regard to the outcome of the case -
  - (aa) the finding and order of the equality court; or
  - (bb) in the event of the case being dealt with by an alternative forum, the name of the forum, the outcome of the case and form of dispute resolution mechanism used to solve the case;
- (g) invite the Director-General of the Department to make any additional relevant comments, either in general or in respect of a specific case, or in respect of any apparent tendencies in respect of the cases reported.

#### **Preparation of equality plan by State**

24.(1) An equality plan contemplated in section 25(4)(b) of the Act must be prepared-

- (a) with due consideration to the provisions of section 28(3) of the Act; and
- (b) for a period of five years co-inciding with the financial year contemplated in the Public Finance Management Act, 1999 (Act

No. 1 of 1999).

(2) In preparing an equality plan contemplated in section 25(4)(b) of the Act, a Minister must consult -

- (a) the Minister of Finance;
- (b) the Commission on Gender Equality, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Public Protector; and
- (c) the community and business sector through any means including a public hearing.

(3) An equality plan contemplated in section 25(4)(b) of the Act must-

- (a) be in writing;
- (b) be signed by the responsible Minister; and
- (c) contain the following information -
  - (i) an analysis of the areas of unfair discrimination and inequalities;
  - (ii) the goals and objectives to be achieved;
  - (iii) the measures to be implemented to achieve these goals and objectives;
  - (iv) time frames for the implementation of each of the measures;
  - (v) the mechanisms to monitor the implementation of the equality plan; and
  - (vi) the criteria to evaluate the implementation of the equality plan;
- (d) within 30 days after the responsible Minister has signed it be -
  - (i) published in the *Gazette*;
  - (ii) made available on the website, if any, of the relevant department;
  - (iii) circulated under the signature of the relevant head of the department to all its employees;
  - (iv) submitted to the South African Human Rights Commission in an



- electronic format, if possible;
- (v) tabled in Parliament; and
- (vi) submitted to the Minister of Finance.

### **Manner of dealing with equality plan**

25.(1) The South African Human Rights Commission must, upon receipt of an equality plan in terms of regulation 24(3)(d)(iv), submit the equality plan to the Commission on Gender Equality for purposes of consultation in terms of section 25(5)(b) of the Act.

(2) On receipt of an equality plan contemplated in section 25(4)(b) of the Act, the South African Human Rights Commission must, with due regard to its functions and duties conferred upon it by section 184 of the Constitution and the provisions of the Act and the Human Rights Commission Act, 1994 (Act No. 54 of 1994), consider every equality plan with a view to -

- (a) ascertaining whether an equality plan addresses the areas of unfair discrimination and inequalities;
- (b) assessing whether the goals and objectives are directed towards the promotion of equality;
- (c) assessing whether the measures to be implemented will achieve the stated goals and objectives;
- (d) assessing whether the measures adopted to monitor the implementation of the equality plan are appropriate;
- (e) assessing whether the criteria to evaluate the implementation of the equality plan are appropriate;
- (f) assessing whether the equality plan will achieve reasonable progress towards the eradication of systemic discrimination and the promotion of equality;
- (g) in general, reporting on the shortcomings of the equality plan, if any;



- (h) making recommendations in regard to the equality plan; and
- (i) reporting on the above matters in its report to the National Assembly required in terms of section 181(5) of the Constitution of the Republic of South Africa, 1996 (Act NO. 108 of 1996)

(3) The South African Human Rights Commission may, when considering an equality plan as contemplated in subregulation (2), also identify any important goal or objective not included in the equality plan and advise the relevant Minister regarding -

- (a) the goal or objective not included;
- (b) the effect thereof; and
- (c) measures to be implemented to achieve the goal or objective.

(4) The South African Human Rights Commission may make any other recommendation it deems fit to the relevant Minister.

### **Progress report**

26.(1) A progress report in respect of the implementation of an equality plan must annually be submitted to the South African Human Rights Commission.

(2) A progress report must -

- (a) indicate the progress made in the implementation of the equality plan;
- (b) indicate to what extent the areas referred to in regulation 24(3)(c)(i) have been addressed; and
- (c) indicate which time frames have not been met, the reasons therefor and the measures which have been put in place to expedite the implementation of the plan.

(3) The Human Rights Commission must, upon receipt of the progress

report, consider the progress report with a view to -

- (a) assessing whether sufficient progress has been made with the implementation of the equality plan;
- (b) assessing compliance with time frames contained in the equality plan; and
- (c) advising on the measures put in place to expedite the implementation of the equality plan.

### **Availability of Act in official languages**

27.(1) The Minister must, for purposes of section 31(2)(b) of the Act, make the Act available in all official languages by -

- (a) publishing it in the *Gazette*;
- (b) putting it on the website of the Department;
- (c) submitting it to all the constitutional institutions; and
- (d) circulating it to all magistrates' offices.

(2) The constitutional institutions and magistrates' offices must, during office hours, make the Act available to every person who wishes to inspect the Act in the official language so requested.

## **CHAPTER VIII**

### **PROMOTION OF EQUALITY BY ALL PERSONS**

#### **Application of Chapter**

28. This Chapter applies to entities that employ-

- (a) 150 and more employees;
- (b) more than 50 but less than 150 employees; and
- (c) less than 50 employees.

#### **Promotion of equality by entity with 150 and more employees**

29.(1) An entity with 150 and more employees must within two years after

the commencement of this regulation prepare an equality plan contemplated in section 27(2) of the Act.

(2) An equality plan referred to in subregulation (1) must -

- (a) be prepared for a period of five years and must coincide with the financial years of the entity;
- (b) be prepared in consultation with and consideration thereof by the community and business sector through any means including the publication of the draft equality plan in the *Gazette*;
- (c) be in writing;
- (d) be signed by the chief executive officer of the entity;
- (e) contain -
  - (i) an analysis of the areas of unfair discrimination and inequality;
  - (ii) the goals and objectives to be achieved;
  - (iii) the measures to be implemented to achieve these goals and objectives;
  - (iv) time frames for the implementation of each of the measures;
  - (v) the mechanisms to monitor the implementation of the equality plan; and
  - (vi) the criteria to evaluate the implementation of the equality plan;
- (f) within 30 days after the signing thereof be -
  - (i) submitted to the Director-General of the Department;
  - (ii) made available for inspection at the office of the entity on request of a member of the public; and
  - (iii) made available on the website, if any, of the entity, or be published in the *Gazette*.

(3) An entity must annually and not later than September of each year submit a progress report in respect of the equality plan to the Director-

General of the Department.

(4) A progress report must -

- (a) indicate the progress made in the implementation of the equality plan;
- (b) indicate to what extent the areas of unfair discrimination and inequality have been addressed; and
- (c) indicate which time frames have not been met, the reasons therefor and the measures put in place to expedite the implementation of the equality plan.

(5)(a) The Director-General of the Department, or a person designated by him or her in writing must, upon receipt of an equality plan in terms of subregulation (2)(f)(i), or a progress report in terms of subregulation (3), forward the equality plan or progress report, as the case may be, to the appropriate department in the national sphere of government.

(b) Upon receipt of the equality plan or report as contemplated in paragraph (a), the department in the national sphere of government must analyse the equality plan in accordance with the provisions of regulation 25(2)(a), (b), (c), (d), (e), (f), (g) and (h).

(c) The department in the national sphere of government must, upon receipt of the progress report, consider the progress report with a view to-

- (i) assessing whether sufficient progress has been made with the implementation of the equality plan;
- (ii) assessing compliance with time frames contained in the equality plan; and
- (iii) advising on the measures put in place to expedite the implementation of the equality plan.

- (6) An entity must-
- (a) adhere to the Code of Practice contained in Annexure C;
  - (b) cause a declaration of adherence to the Code of Practice contained in Annexure C to be signed by the chief executive officer of the entity and the executive authority of the entity, where applicable; and
  - (c) on request of a member of the public, cause the equality plan or report to be made available for inspection at the office of the entity.
- (7) An entity must display a summary of the Act at a place to which members of the public have access.

**Promotion of equality by entity with more than 50 but less than 150 employees**

30.(1) An entity with more than 50 but less than 150 employees must-

- (a) adopt measures in writing to promote equality;
- (b) report in writing thereon upon the written request by a department in the national sphere of government;
- (c) adhere to the Code of Practice contained in Annexure C;
- (d) cause a declaration of adherence to the Code of Practice contained in Annexure C to be signed by the chief executive officer of the entity and the executive authority of the entity, where applicable; and
- (e) on request of a member of the public, cause the equality plan or report to be made available for inspection at the office of the entity.

(2) An entity must display a summary of the Act at a place to which members of the public have access.

**Promotion of equality by entity with less than 50 employees**

31.(1) An entity with less than 50 employees must-

- (a) adopt measures in writing to promote equality;
- (b) report in writing thereon upon the written request by a department in the national sphere of government;
- (c) adhere to the Code of Practice contained in Annexure C; and
- (d) cause a declaration of adherence to the Code of Practice contained in Annexure C to be signed by the chief executive officer of the entity and the executive authority of the entity, where applicable.”.

#### **Substitution of regulation 32 of the Regulations**

4. Regulation 32 of the Regulations is hereby substituted for the following regulation:

##### **“Offences and penalties**

32. Any person or entity who submits false information in terms of a provision of these regulations, or contravenes regulations 29(1),(2)(f), (3), (6)(b) and (c) and (7), 30(1)(a), (b), (d) and (e) and (2) and 31(a),(b) and (d) is guilty of an offence and is on conviction liable to a fine or to imprisonment for a period not exceeding twelve months.”.

#### **Insertion of Annexure B into the Regulations**

5. The following Annexure is hereby inserted in the Regulations after Annexure A:

##### **“ANNEXURE B**

##### **[Regulation 23]**

##### **PART A OF ANNEXURE B**

##### **LETTER TO DIRECTOR-GENERAL**

.....  
.....  
.....  
.....

(Address of constitutional  
institution)

The Director-General  
 Department of Justice and Constitutional Development  
 Private Bag X 81  
 PRETORIA  
 0001

**REQUEST FOR A PROGRESS REPORT IN TERMS OF SECTION 25(3)(c) OF  
 THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR  
 DISCRIMINATION ACT, 2000 (ACT No. 4 OF 2000)**

A report in terms of section 25(3)(c) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), is hereby requested.

The information is required for the period:.....

The information required is indicated in the Annexure hereto.

The information must reach this office on or  
 before.....

Any enquiries can be made to:.....

.....  
 Head of constitutional institution

**PART B OF ANNEXURE B**

**PARTICULARS REQUIRED PER CASE**

(Note: Information required is marked with "X")

Case No:.....

**A. PARTICULARS OF COMPLAINANT**

☐ Full names:.....

☐ Age:.....



- ☐ Gender:.....
- ☐ Race:.....
- ☐ Disability:.....

**B. PARTICULARS OF RESPONDENT**

- ☐ Full names:.....
- ☐ Gender:.....
- ☐ Race:.....

**C. NATURE OF CASE**

- ☐ Grounds:.....
- ☐ Category:.....
- ☐ Area from which case emanates:.....

**D. OUTCOME OF CASE**

- ☐ Equality Court
- ☐ Finding:.....
- ☐ Order:.....
- ☐ Alternative Forum
- ☐ Name of forum:.....
- ☐ Outcome:.....

☐ Method of ADR used:.....

**D. DURATION OF CASE**

☐ Date of inception:.....

☐ Date of finalisation:.....

**E. REPRESENTATION**

☐ In person

☐ Represented

**PART C OF ANNEXURE B**

**GENERAL INFORMATION**

(Note: Information required is marked with "X")

**A. NUMBER OF CASES**

|   |                          |
|---|--------------------------|
| <input type="checkbox"/> Instituted in Equality Court:              | <input type="checkbox"/> |
| <input type="checkbox"/> Referred to alternative forum:             | <input type="checkbox"/> |
| <input type="checkbox"/> Finalised by alternative forum:            | <input type="checkbox"/> |
| <input type="checkbox"/> Where complainant was legally represented: | <input type="checkbox"/> |
| <input type="checkbox"/> Finalised by equality court:               | <input type="checkbox"/> |

**B. NATURE OF CASES**

☐ Area from which case emanates:.....

☐ Category of discrimination:.....

☐ Grounds of discrimination:.....

**C. OUTCOME**

☐ Average duration of case:.....

☐ Findings

☐ No. of cases where court found in favour of complainant

☐ No. of cases where alternative forum found in favour of complainant

☐ Number of orders in terms of section 21(2)

☐ S21(2)(a).....

☐ S21(2)(b).....

☐ S21(2)(c).....

☐ S21(2)(d).....

☐ S21(2)(e).....

☐ S21(2)(f).....

☐ S21(2)(g).....

☐ S21(2)(h).....

☐ S21(2)(i).....

☐ S21(2)(j).....

|   |                          |
|---|--------------------------|
| <input type="checkbox"/> S21(2)(k)..... | <input type="checkbox"/> |
| <input type="checkbox"/> S21(2)(l)..... | <input type="checkbox"/> |
| <input type="checkbox"/> S21(2)(m)..... | <input type="checkbox"/> |
| <input type="checkbox"/> S21(2)(n)..... | <input type="checkbox"/> |
| <input type="checkbox"/> S21(2)(o)..... | <input type="checkbox"/> |
| <input type="checkbox"/> S21(2)(p)..... | <input type="checkbox"/> |

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## GENERAL NOTICE

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### NOTICE 743 OF 2004

#### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

#### PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000 (ACT 4 OF 2000)

#### INVITATION TO COMMENT ON THE PROPOSED DATE OF COMMENCEMENT OF CHAPTER 5 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000 (ACT 4 OF 2000) AND THE REGULATIONS UNDER SECTION 30 OF THE ACT

1. You are hereby invited to comment on –
  - (a) the proposed date of commencement of certain provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) (hereafter referred to as the Act); and
  - (b) the draft regulations to be made under section 30 of the Act which will facilitate the implementation of the provisions concerned.
2. The Act was published in Government Gazette No. 20876 of 9 February 2000. In terms of section 35 of the Act, the Act shall come into operation on a date fixed by the President by proclamation in the Gazette.
3. Sections 1, 2, 3, 4(2), 5, 6, 29 (with the exception of subsection (2)), 32, 33 and 34(1), which mainly deal with the powers and the functions of the Equality review Committee, came into operation on 1 September 2000. Sections 4(1), 7 to 23, 30, 31 and 34(2) of the Act and the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination, 2003, made under section 30 of the Act and which regulate the functioning of the equality courts came into operation on 16 June 2003.

4. It is intended to put the remainder of the Act (sections 24 to 28 and section 29(2)) into operation with effect from 9 August 2004.

5. Section 30(1)(t) and (u) of the Act provide for the promulgation of regulations by the Minister regarding the reports contemplated in sections 25(3)(c), 26(c), the equality plans contemplated in section 25(4)(b) and (5)(a) and section 27(2), as well as the translation of the Act into the official languages and the distribution thereof as contemplated in section 31(2)(b). As it is intended to put the remaining sections of the Act into operation on 9 August 2004, draft regulations addressing the said issues, were formulated. A copy thereof is hereby attached for your attention.

6. In view of the impact of the Act and these regulations on your activities and operations it is important that proper consideration be given to the matter. Draft regulations 1 and 2 are of a very technical nature and you do not need to comment on them. In considering the draft regulations, it is very important to take cognizance of the definitions set out in section 1 of the Act.

7. Please submit your comment on or before 21 May 2004 to:

**The Chief Director: Legislative Development**  
**Department of Justice and Constitutional Development**  
**Private Bag X 81**  
**PRETORIA**  
**0001**

or

**Ms K Pillay**  
**Room 9.35**  
**Momentum Centre: East Tower**  
**329 Pretorius Street**  
**PRETORIA**  
**0001**

**or**

**Fax to: (012) 315 1821**

**or**

**E-mail to [kalapillay@justice.gov.za](mailto:kalapillay@justice.gov.za)**

8. Please refer to the Equality Booklet, 2003 for more information on the provisions of the Act. This booklet is available on the Departmental website at the following address:

[http://www.doj.gov.za/equality%20act/eqc\\_other%20docs.htm](http://www.doj.gov.za/equality%20act/eqc_other%20docs.htm)



**The Minister may, in terms of section 27 read with section 30 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) prescribe a Code of Practice.**

## **ANNEXURE C**

### **CODE OF PRACTICE**

#### **1. PURPOSE AND STATUS OF THE CODE**

1.1 The code forms part of the regulations promulgated by the Minister of Justice and Constitutional Development in terms of section 30 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)(the Equality Act) and has as such the force of law.

1.2 The code aims to improve understanding on the Equality Act to enhance efforts for effective implementation.

1.3. The code also aims to give practical guidelines to assist in auditing policies and practices, developing new policies and practices and adopting action plans for the promotion and achievement of equality.

1.4. A failure of a person to follow the guidelines contained in this code does not in itself render such person/s liable to proceedings of any kind. Evidence of such breach may be admissible in other proceedings, for instance in an Equality Court where matters relating to unfair discrimination will be adjudicated.

## 2. BACKGROUND

### 2.1 The Constitution

The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) creates a new order in which all South Africans are entitled to a common South African citizenship in a sovereign and democratic state in which there is **equality between men and women of all races. The right to equality enshrined in the Constitution enables all men and women to enjoy and exercise their fundamental rights and freedoms as contemplated in the Bill of Rights.**

The right to equality is entrenched in section 9 of the Constitution. What does this right entail? **Equality includes the full and equal enjoyment of all rights and freedoms.**

Section 9 of the Constitution further provides that **neither the state nor any person may unfairly discriminate directly or indirectly against anyone on one or more grounds**, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. These are called the **grounds of discrimination.**

**Direct discrimination** occurs where a person is disadvantaged simply on the ground of his or her race, sex, ethnicity, religion or some other distinguishing feature, or on the grounds of some characteristics that are specific to members of a particular group. **Indirect discrimination** occurs when policies are applied which appear to be neutral, but which adversely affect a disproportionate number of a certain group.

In terms of section 9 of the Constitution **legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination, may be taken to promote equality.** This means that redistributive measures are permitted. They are designed to counteract patterns of inequality persisting from the past into the present. In this regard one can, for example, refer to the so-called affirmative action measures which have the effect of ensuring that equality is achieved.

Section 9 of the Constitution also requires that **national legislation be enacted** to prevent or prohibit unfair discrimination. Particulars of the legislation that has been enacted are dealt with in paragraph 2.2 below.

## **2.2 The Promotion of Equality and Prevention of Unfair Discrimination Act**

**The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000** (Act No. 4 of 2000) (the Equality Act) was promulgated to give effect to section 9 of the Constitution. It endeavours to facilitate the transition to a **democratic society united in its diversity and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom.**

The Equality Act makes provision for the prevention and prohibition of unfair discrimination. **Discrimination means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly –**

(a) **imposes burdens, obligations or disadvantages on; or**

(b) **withholds benefits, opportunities or advantages from,**

**any person on one or more of the grounds of discrimination.** The Equality Act sets out the procedures for the determination of circumstances under which discrimination is unfair. The Equality Act also facilitates the setting up of Equality Courts for the hearing of matters relating to this Act.

The Equality Act is based on the premise that there are systemic patterns of discrimination and material disadvantage based on race, gender, class and other forms of inequality. It therefore facilitates the implementation of pro-active measures to eradicate such patterns and hence requires positive action. The Equality Act therefore also provides for the promotion of equality.

The **promotion of equality** entails the promotion of a society in which all people are secure in the knowledge that **they are recognised as human beings equally deserving of concern, respect and consideration.** It also entails the development of opportunities which allow people to realise their full human potential within positive social relationships.

Section 24 read with section 28 of the Equality Act provides that **the State and all persons have a duty and responsibility to -**

- (a) eliminate discrimination on the grounds of race, gender and disability; and
- (b) **promote equality in respect of race, gender and disability.**

In carrying out the aforementioned **duties and responsibilities -**

- (a) **policies and practices must be audited, with a view to eliminating all discriminatory aspects thereof;**
- (b) **progressive policies must be developed and codes of practice must be initiated in order to eliminate discrimination on the grounds of race, gender and disability;**
- (c) **viable action plans must be adopted for the promotion and achievement of equality in respect of race, gender and disability; and**
- (d) **priority must be given to the elimination of unfair discrimination and the promotion of equality in respect of race, gender and disability.**

**Section 27 of the Equality Act deals with the social commitment by all persons to promote equality.** It includes persons (natural and juristic), non-governmental organisations, community-based organisations and traditional institutions. This section places an obligation on the **Minister** for Justice and Constitutional Development to **develop regulations in relation to the Equality Act, which require companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations to prepare, amongst other things, equality plans or abide by prescribed codes of practice.**

### **3. APPLICATION OF THE CODE**

This code applies to all persons (natural and juristic), non-governmental organisations, community-based organisations and traditional institutions as contemplated in section 27 of the Equality Act. This includes, for example, companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations.

## 4. CONTENT OF CODE

### 4.1 Notes and Explanations

**Remember** that acts of discrimination are unlawful if all of the following are present:

- (a) people are treated differently;
- (b) the different treatment constitutes discrimination;
- (c) the discrimination is unfair; and
- (d) the discrimination is not reasonable and justifiable in accordance with the provisions of section 36 of the Constitution.

**Note** that it is not unfair discrimination to take measures to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.

**Further remember** that the guidelines provided for in this code must be read within the context of the Equality Act which prohibits unfair discrimination.

Where-ever in this code reference is made to **equal treatment**, this means **treating like cases alike and unlike cases differently in proportion to their likeness or difference**. This means that in certain cases it is the very essence of equality to make distinctions between groups and individuals in order to accommodate their different needs and interests.

### 4.2 General aspects

- ❖ **Policies and practices:** Review current policies and practices to eliminate factors that undermine equality. Remove all discriminatory provisions from policies and practices.
- ❖ **Language:** To the extent possible, the language used must accommodate differences. Measures must be taken to ensure that language usage is responsive to the language needs of different persons.
- ❖ **Promotion of equality:** In the first instance, exclusion must be avoided. Secondly, pro-active measures must be designed to address indirect exclusions that are a result of past discriminatory practices. Thirdly, pro-active measures must be implemented to promote equality for the present and the future.

### **4.3 Specific sectors**

In this part of the code, reference is made to different sectors such as education, pensions and employment. In respect of each sector, general statements are made, followed by specific do's and don'ts as examples.

#### **❖ Membership of organisations, clubs or sport associations**

Pro-active measures should be developed and implemented to include persons who were previously excluded from membership due to past patterns of discrimination. Membership criteria must be of such a nature to ensure representivity.

#### **The following are examples:**

- (a) No person is excluded from membership solely because of him or her being a member of a particular group for example exclusion on the grounds of race, gender, disability, etc;
- (b) Certain groups are not relegated to certain categories of membership;  
and
- (c) Every member enjoys the same rights, for example the right to vote, to elect the leadership of organisations, clubs or sport associations, etc, and the equal right to participate in the decision-making processes of such entities.

#### **❖ Procuring goods and services**

In procuring goods and services, no person must be excluded solely on the basis of her or his race, gender or disability. Moreover, measures must be developed and implemented to ensure that goods and services are procured from persons who were previously disadvantaged.

#### **The following are examples:**

- (a) An invitation for the procurement of goods and services must be formulated in a manner that ensures that every person has an equal opportunity in supplying the goods or rendering the service. The specifications and the conditions in the invitation must not by their mere nature have the effect of excluding persons from disadvantaged groups.



- (b) The media used in inviting persons to supply the goods or to render the services must be chosen with circumspection so as to ensure that all categories of the community have access thereto and are allowed an equal opportunity to respond to the invitation. It must therefore be as inclusive as possible and include new ways to reach people previously excluded.
- (c) The time periods mentioned in the invitations must ensure that all persons are afforded an equal opportunity to respond timeously thereto.
- (d) The language used in the invitation must, as far as possible, be understandable to all persons.
- (e) The criteria for selection must be non-discriminatory. It must furthermore include measures to address historical imbalances particularly in terms of race, gender and disability.
- (f) Contracts for the procurement of goods and services must not contain discriminatory (directly or indirectly) clauses. Contracts must also not bring about less favourable terms for persons previously disadvantaged.
- (g) In securing accommodation for events, make sure that the facilities are accessible to all. This includes accommodating differences, for example disability, or accessibility by means of public transport, etc.
- (h) In securing accommodation for events, special measures must be implemented and efforts must be made to make use of accommodation owned or controlled by previously disadvantaged persons.

**❖ Accommodation, property, land and facilities**

Accommodation refers to residential and business accommodation. Equal opportunity and non-discrimination must guide policies and practices relating to the above.

**The following are examples:**

- (a) Make sure that your business premises and the facilities are accessible to all persons. This includes accommodating differences such as disability.
- (b) If you provide accommodation as part of your business, all persons making use thereof must be treated equally.
- (c) If you have property to let, all prospective tenants must be treated equally and you may not refuse to offer premises to a person owing to his or her race, gender, disability, etc.



- (d) No person may be evicted solely on the basis of him or her being a member of a particular group.
- (e) No person may refuse to sell his or her property to a person solely based on his or her race, gender, disability, etc.
- (f) Steps must be taken to remove existing obstacles that unfairly limit or restrict disabled persons from access to accommodation.

#### ❖ Employment

The following is applicable to any person who is not included in the definition of "designated employer" in section 1 of the Employment Equity Act, 1998. It includes local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service.

Employment policies and practices must not have the effect of excluding persons from groups identified through grounds of discrimination. Pro-active measures must be adopted and implemented to address indirect exclusion that is the result of systemic discrimination based on gender and past forms of discrimination and practices.

Employment practices and policies include –

- (a) recruitment procedures, advertising and selection criteria;
- (b) the appointment process and appointments;
- (c) job classification and grading;
- (d) remuneration, employment benefits and terms and conditions of employment;
- (e) job assignments;
- (f) the working environment and facilities;
- (g) training and development;
- (h) performance evaluation systems;
- (i) promotion;
- (j) transfer;
- (k) demotion;
- (l) disciplinary measures other than dismissal;
- (m) dismissal;
- (n) adoption of measures to prevent harassment;
- (o) adoption of measures prohibiting hate speech.

**The following are examples:**

- (a) Review current employment practices and policies to eliminate factors or criteria that undermine equal access and enjoyment of employment opportunities.
- (b) The wording of a job advertisement must be drafted in such a way as to ensure that it reaches all potential applicants from all sectors of society, be it geographical, gender based, or other means of differentiation, for example advertisements must not have a gender bias towards men or urban based communities.
- (c) Methods and procedures used in selecting applicants for employment must be fair. The same processes and procedures for assessing all applications must be followed. The processes and procedures must be inclusive and culturally friendly.
- (d) Terms or conditions of employment must be equal for all applicants, include the full range of benefits available from employment and be non-discriminatory. This includes the salary package, promotion, leave, training, transfers, retrenchment and any other benefits
- (e) Conditions of service must accommodate differences relating to parental responsibilities and disability, for example employees must be afforded sufficient time for child rearing responsibilities and they may not be disadvantaged as a result of having such time. This includes adequate leave, or the arrangements to work flexi-time, etc.
- (f) Persons previously disadvantaged may not be appointed on less favourable terms.
- (g) The endorsement of a policy prohibiting hate speech.
- (h) The endorsement of a policy addressing harassment.
- (i) The removal of existing obstacles that unfairly limit or restrict disabled persons from obtaining employment.

**❖ Rendering of services and provisioning of goods**

In rendering services and providing goods -

- (a) persons previously excluded on grounds of discrimination must be included; and
- (b) equal and non-discriminatory policies and practices must guide your actions.

In planning and rendering services, attention must be given to differences in respect of clients with regard to gender, race, language, disability and other appropriate factors such as economic status.

**The following are examples:**

- (a) If part of your business is to render a service, you must ensure that the quality of your service is always the same, irrespective of who your client is.
- (b) In rendering your services, you must ensure that you properly understand your client and where possible, make use of somebody who is conversant with the language used by your client.
- (c) If you are an NGO or CBO make sure that your funds are utilised for the betterment of all the citizens.
- (d) You may not refuse or fail to provide any goods or render any service to any person or group of persons on one or more of the grounds of discrimination.
- (e) You may not impose any term, condition or follow any practice that perpetuates the consequences of unfair discrimination or make an exclusion regarding access to financial resources.
- (f) You may not unreasonably refuse to grant a service to persons solely on the basis of their HIV/AIDS status.
- (g) You may not refuse to make available a policy to any person on one or more of the grounds of discrimination.
- (h) You also may not unfairly discriminate in the provisioning of benefits, facilities and services related to insurance.
- (i) You may not unfairly deny or refuse a person access to health care facilities.
- (j) You may not unfairly fail to make health care facilities accessible to any person.
- (k) You are not allowed to refuse to provide emergency medical treatment to persons of particular groups identified by one or more of the grounds of discrimination.
- (l) Special measures must be developed and implemented to ensure that persons, who were previously excluded from receiving treatment at a particular facility, are benefiting from the service.
- (m) Staff at health care facilities must be responsive to the needs of all people and treat them as equals, with compassion and respect.
- (n) Steps must be taken to remove existing obstacles that unfairly limit or restrict disabled persons from access to goods and services.

### ❖ Partnerships

No one must be excluded as a partner in a partnership solely on the grounds of his or her race, gender or disability. Pro-active measures must be taken to include as partners persons who were excluded as a result of historical patterns of discrimination.

#### **The following are examples:**

- (a) You may not determine in an unfair and discriminatory manner who should be invited to become a partner in a partnership.
- (b) A person who is invited to become a partner or is admitted as a partner must be so invited or admitted on equal terms as other partners.
- (c) Special measures must be adopted and implemented to include persons from previously disadvantaged groups as partners.

### ❖ Professional bodies

No person may be excluded as a member of a professional body on one or more grounds of discrimination. Measures must be adopted and implemented to broaden access to such bodies for members of historically disadvantaged groups.

#### **The following are examples:**

- (a) You may not unfairly refuse to consider a person's application for membership on any of the grounds of discrimination.
- (b) You may not unfairly deny a member access to or limit a member's
- (c) Conditions to become a member should not unfairly exclude people on the basis of, amongst other things, race, gender or disability.
- (d) Bodies must review their governing structures such as boards, councils, etc, and other decision-making structures to assess the extent of representation and inclusiveness of particular groups.  
access to any benefit provided by a body.
- (e) Measures must be adopted and targets must be set to achieve equitable representation of historically disadvantaged groups particularly women and disabled persons.

- (f) There must be active promotion of diversity awareness.
- (g) A policy prohibiting hate speech must be endorsed.
- (i) Steps must be taken to remove existing obstacles that unfairly limit or restrict disabled persons from access to membership of and participation in professional bodies.

## **5. CONTACT PARTICULARS**

Should you require any advice or assistance relating to any aspect of the promotion of equality, the following institutions can be contacted:

- The South African Human Rights Commission.
  - The Commission on Gender Equality.
-

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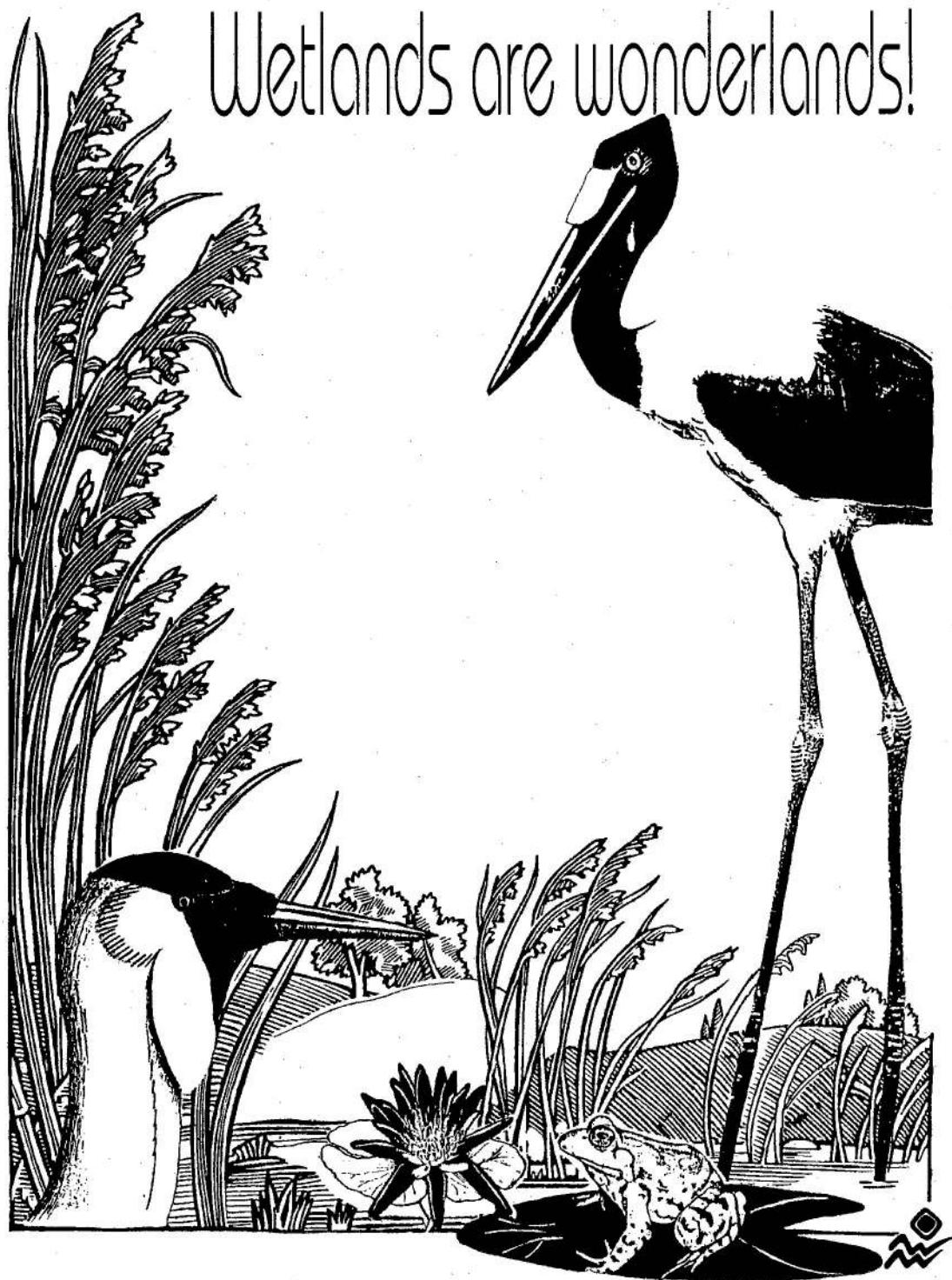
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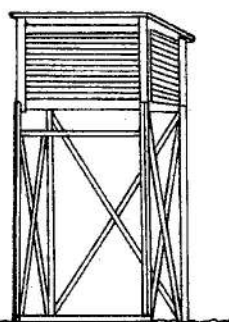
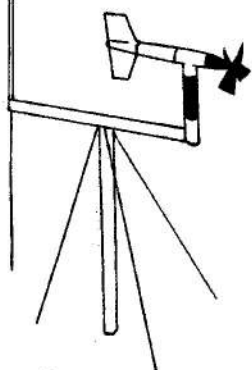
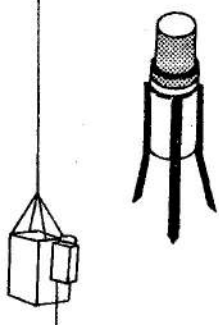


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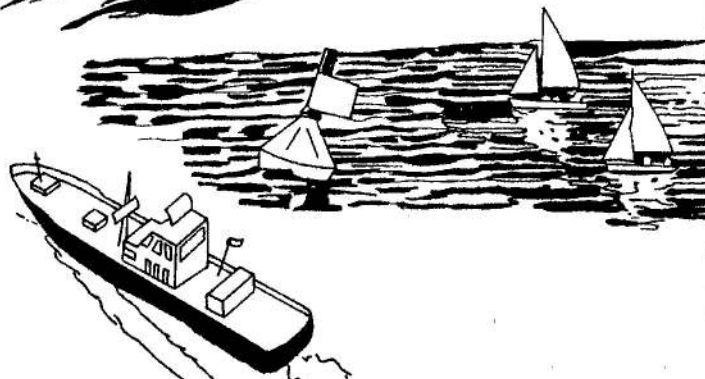
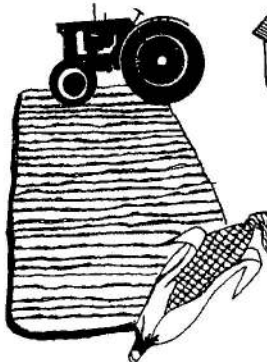
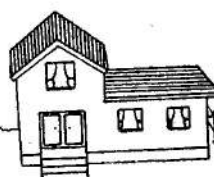
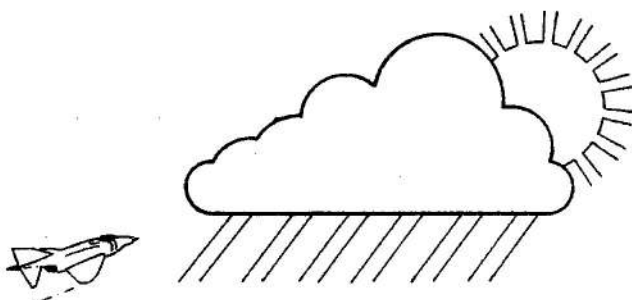


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