

REGULATIONS

GNR.764 of 13 June 2003: Regulations relating to the promotion of equality and prevention of unfair discrimination

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

as amended by

Notice	Government Gazette	Date
563	26316	30 April 2004

(Editorial Note: We have been advised by the Department of Justice and Constitutional Development that the amendments published under Notice No. 563 of 30 April 2007, GG 26316 were in fact meant to be published for comment. We are however still awaiting Gazetted withdrawal or amendment of the notice and the subsequent instructions to amend the regulations.)

The Minister for Justice and Constitutional Development has in consultation with the Minister of Finance, 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.

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[Arrangement of Regulations substituted by GN 563 of 2004.]

CHAPTER I GENERAL PROVISIONS

1. Definitions.—In these regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise indicates—

“**clerk**” means a clerk of an equality court;

“**Committee**” means the Equality Review Committee established in terms of section 32 of the Act;

“**court**” means an equality court;

“**day**” means any day of the week other than a Saturday, Sunday or public holiday;

“**directions hearing**” means a directions hearing contemplated in regulation 10 (5);

“**Director-General**” means the Director-General of the Department of Justice and Constitutional Development;

“**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;

[Definition of “entity” inserted by GN 563 of 2004.]

“**inquiry**” means an inquiry contemplated in section 21 (1) of the Act;

“**registrar**” means a registrar of a High Court appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959), or a registrar appointed under any law not yet repealed by a competent authority and which, immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), was in force in any area which forms part of the national territory; and

“**the Act**” means the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000).

CHAPTER II CLERKS OF EQUALITY COURTS

2. Application for appointment as clerk.—(1) An application for appointment as a clerk, contemplated in section 17 of the Act, must be in writing on a form which corresponds substantially with Form 1 of the Annexure and must be submitted to the Director-General.

(2) The application referred to in subregulation (1) must be accompanied by—

- (a) a certified copy of the identity document of the applicant;
- (b) certified copies of all educational qualifications of the applicant;
- (c) certificates of service or, if not available, an affidavit by the applicant in respect of previous periods of service rendered by him or her;
- (d) testimonials, if available, from previous employers of the applicant; and
- (e) the names, addresses and telephone numbers of two references.

3. Appointment requirements of clerk.—(1) A person may be appointed as a clerk by the Director-General if he or she complies with the appointment requirements as stipulated in the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the appointment policies for a post of administrative clerk in the Department.

(2) The appointment of a clerk is subject to the completion of a course approved by the Director-General.

4. Conditions of appointment of clerk.—(1) The Director-General may appoint a person as a clerk for the period agreed to between the Director-General and the applicant, who is entitled to an all inclusive remuneration equal to the total remuneration package of an administrative clerk in the Department.

(2) The conditions of service of a person appointed as a clerk in terms of subregulation (1) are the same as the conditions of service applicable in respect of a person appointed as clerk of the court in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

5. Additional functions of clerk.—In addition to the functions prescribed by the Act, a clerk must—

(a) upon receipt of the notification contemplated in regulation 6 (1), open a file and number the matter with a consecutive number of the year;

(b) keep a register in which he or she records—

(i) the particulars of the parties involved in each matter;

(ii) the number of the matter referred to in paragraph (a);

(iii) the relief requested;

(iv) the date and the outcome of the inquiry;

(v) the outcome of an appeal or review, if applicable; and

(vi) the particulars of the alternative forum to which the matter was referred, the date of referral and the outcome of the matter if applicable;

(c) mark every document received afterwards with such number as assigned to the specific matter;

(d) file any documentation received on the appropriate file;

(e) assist to the best of his or her ability a person who is illiterate or disabled with the completion of any document relating to the proceedings in the court;

(f) if a person instituting proceedings is not represented or assisted—

(i) inform the person of his or her right to representation;

(ii) inform the person of the assistance available to him or her by constitutional institutions or other non-governmental organisations;

(iii) inform and explain to that person his or her rights and remedies in terms of the Act to the best of his or her ability;

(iv) assist a person further by reading or explaining any documentation to him or her; and

(v) explain the process and procedures relating to the attendance of witnesses;

(g) perform the duties assigned to him or her in terms of these regulations;

(h) subpoena a witness to attend the inquiry at the request of a party or by direction of the court;

(i) inform a witness that he or she is entitled to witness fees and ensure that a witness is assisted in this regard where necessary; and

(j) perform the duties of the clerk of a civil court insofar as it is necessary to give effect to the provisions of the Act.

CHAPTER III EQUALITY COURT PROCEEDINGS

6. Institution of proceedings.—(1) A person, an association or a commission contemplated in section 20 of the Act, wishing to institute proceedings in terms of the Act, must notify the clerk of his or her intention to do so on a form which corresponds substantially with Form 2 of the Annexure.

(2) The clerk must within seven days after receipt of the notice referred to in subregulation (1)—

(a) notify the respondent on a form which corresponds substantially with Form 3 of the Annexure that proceedings have been instituted against him or her; and

(b) invite the respondent, if he or she so wishes, to submit the information contemplated in paragraph C of Form 3 of the Annexure in writing within 10 days of the receipt of such notice.

(3) The clerk must, within seven days after receipt of the response of the respondent contemplated in subregulation (2) (b), submit a copy thereof to the complainant.

(4) The clerk must, within three days after the expiry of the period contemplated in subregulation (2) (b), refer the matter to a presiding officer, who must, within seven days after receiving the documentation relating to the matter, decide whether the matter is to be heard in the court or whether it should be referred to an alternative forum.

(5) If the presiding officer decides that the matter is to be heard in the court, the presiding officer must refer the matter to the clerk who must, within three days after such referral, assign a date for the directions hearing.

(6) The clerk must, after a date of the directions hearing has been assigned, notify the complainant and the respondent on a form which corresponds substantially with Form 4 of the Annexure, of the date of the directions hearing.

(7) If the presiding officer decides that the matter must be referred to an alternative forum he or she—

(a) must make an order in a form which corresponds substantially with paragraph 1 of Part A of Form 5 of the Annexure; and

(b) may make remarks or comments he or she deems necessary for the attention of the alternative forum in writing on a form which corresponds substantially with paragraph 2 of Part A of Form 5 of the Annexure.

(8) On receipt of an order contemplated in subregulation (7), the clerk must, in the manner determined by the presiding officer—

(a) submit all relevant original documents relating to the matter, including the order, to the alternative forum mentioned in the order;

(b) retain certified copies of all the documentation relating to the matter;

(c) forward a copy of the order to the parties; and

(d) notify the parties of the documents submitted to the alternative forum referred to in paragraph (a).

(9) On receipt by the alternative forum of the documents referred to in subregulation (8) (a), the alternative forum must notify the parties and the clerk in writing of the receipt of the matter.

(10) The alternative forum to which the matter is referred, must within 60 days after receipt of the documents referred to in subregulation (8), submit a report on the progress made in respect of the matter to the clerk.

(11) When the matter is resolved by the alternative forum, the forum must immediately inform the clerk of the outcome of the matter.

(12) If the alternative forum refers the matter back to the court, such referral must be in writing on a form which corresponds substantially with Part B of Form 5 of the Annexure, stating the reasons why the matter was referred back.

(13) The court must, within seven days from the date on which the matter was returned to the court, give instructions in respect of the adjudication of the matter.

(14) The clerk must immediately inform the parties of the date of the directions hearing in the manner contemplated in subregulation (6).

(15) Upon written application to the presiding officer, and in the case of an urgent matter, the presiding officer may direct a deviation from the periods of time specified in the regulations.

7. Service and submission of documents.—(1) The notice referred to in regulation 6 (2) (a) must be—

(a) served personally on the respondent by a sheriff or a clerk; or

(b) submitted to the respondent by—

(i) registered post;

(ii) facsimile; or

(iii) e-mail, if proof of receipt thereof can be given by the person who sent the e-mail; or

(c) served or submitted in any other manner as directed by a presiding officer.

(2) If the notice is submitted to the respondent by—

(a) registered post, proof thereof must be kept; and

(b) facsimile or e-mail, proof thereof must be kept and the original form must be sent without delay to the respondent by registered post.

(3) The notice referred to in regulation 6 (6) must be served personally on the parties by a sheriff or a clerk.

8. Attendance of proceedings.—(1) (a) A party wishing to have a witness subpoenaed must, within 14 days before the date of the inquiry, request the clerk to issue a subpoena, and the clerk must forthwith issue the subpoena.

(b) The subpoena issued must correspond substantially with Form 6 of the Annexure.

(c) After a subpoena contemplated in paragraph (a) has been issued, the subpoena must be handed to the person who requested the subpoena who must serve the subpoena on the witness or cause the subpoena to be served on the witness—

(i) by a sheriff at own cost; or

(ii) by any person designated by the clerk on the recommendation of the presiding officer.

(d) The person who serves the subpoena must complete Part B of Form 6 of the Annexure.

(2) (a) The attendance of proceedings by a witness by direction of the court is secured by means of a subpoena, issued by a clerk, which corresponds substantially with Form 6 of the Annexure.

(b) The subpoena referred to paragraph (a) must be served on the witness at State expense by a sheriff.

(3) A person subpoenaed to attend the proceedings as a witness, may be required to produce any book, document or statement or object relating to the matter.

(4) (a) Any witness, excluding a person who is in the full-time employ of the State, attending the proceedings is, subject to paragraph (b), entitled to the allowance set out in paragraph (c).

(b) The presiding officer may order that no allowance or only part thereof be paid.

(c) The allowance payable to a witness is as follows:

(i) R100 for each day or part of a day during which the witness is required to be present at the proceedings; and

(ii) reasonable substantiated travel and subsistence expenses incurred by the witness in order to attend the proceedings.

(d) The expenses relating to the allowances referred to in paragraph (c) must be paid by—

(i) the State if the witness attends the proceedings by direction of the court; or

(ii) the party who requested the attendance of the witness, unless the presiding officer directs otherwise.

(5) The provisions of section 51 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), apply with the necessary changes in respect of any witness subpoenaed to attend proceedings under these regulations.

9. Confirmation of court order.—(1) If a magistrate’s court, sitting as a court, makes an order which exceeds the monetary jurisdiction of the said court, the clerk must within seven days after the order becomes available—

(a) inform the respondent that—

(i) the order is to be submitted to the High Court, for confirmation; and

(ii) he or she has the right to submit to the clerk any statement or argument within three days after receipt of the notification; and

(b) forward to the registrar of the High Court, the record of the proceedings or a copy thereof certified by the clerk, together with any statement or argument submitted by the respondent in terms of paragraph (a) (ii).

(2) The registrar must lay the record of the proceedings referred to in subregulation (1) before a judge of the High Court for confirmation.

10. Powers and functions of court.—(1) The inquiry must be conducted in an expeditious and informal manner which facilitates and promotes participation by the parties.

(2) The regulations regulating the proceedings of the inquiry must, as far as possible, be interpreted in a manner that gives effect to the guiding principles contemplated in section 4 of the Act.

(3) The proceedings should, where possible and appropriate, be conducted in an environment conducive to participation by the parties.

(4) The court is a court of record and—

(a) the proceedings at an inquiry must be recorded by the presiding officer or by a person appointed or designated thereto by the presiding officer;

(b) the proceedings at an inquiry must be taken down in shorthand or recorded by mechanical means and may be transcribed only if the presiding officer so directs or where required by the Act;

(c) the shorthand notes or any transcription thereof or any mechanical recording of the proceedings or transcription thereof must be certified as true notes, a true transcription, or a true record taken, as the case may be, whereafter they become part of the record of the proceedings and for purposes of disposal are regarded as records of the civil court.

(5) (a) On the date assigned by the clerk contemplated in regulation 6 (5), a directions hearing must be held by the presiding officer to resolve matters of an administrative or procedural nature in respect of the inquiry.

(b) At a directions hearing the presiding officer must give such directions in respect of the conduct of the proceedings as he or she deems fit.

(c) Without detracting from the generality of paragraph (b), the presiding officer may, after hearing the views of the parties to the proceedings, make an order in respect of—

- (i) discovery, inspection and exchange of documents;
- (ii) interrogatories;
- (iii) admission of facts or of documents;
- (iv) the limiting of disputes;
- (v) the joinder of parties;
- (vi) amicus curiae interventions;
- (vii) the manner of service of documents not provided for in the regulations;
- (viii) amendments;
- (ix) the filing of affidavits;
- (x) the giving of further particulars;
- (xi) the place and time of future hearings;
- (xii) procedures to be followed in respect of urgent matters; and
- (xiii) the giving of evidence at the hearing, including whether evidence of witnesses in chief is to be given orally or by affidavit, or both.

(d) In order to give effect to—

- (i) the guiding principles contemplated in section 4 of the Act; and
- (ii) sections 21 (1) and 30 (1) (a) of the Act and in exercising his or her discretion in terms of subparagraphs (b) and (c),

the presiding officer must, as far as possible, follow the legislation governing the procedures in the court in which the proceedings were instituted, with appropriate changes for the purpose of supplementing this regulation where necessary, but may, in the interests of justice and if no one is prejudiced, deviate from these procedures after hearing the views of the parties to the proceedings.

(e) At a directions hearing, the presiding officer must, if a party is unrepresented—

- (i) inform him or her of his or her right to be represented at his or her own expense by a legal representative of his or her own choice and if he or she cannot afford

legal representation, that he or she may apply for legal aid and of the institutions which he or she may approach for legal assistance; and

(ii) explain the contents and implications of any direction or order made in terms of subparagraphs (b) and (c).

(6) (a) An affidavit made by a witness to the proceedings, may be allowed as evidence to the same extent as oral evidence unless a party objects thereto and if such statement—

(i) (aa) is in writing;

(bb) is signed by the person who made it;

(cc) contains a declaration by such person that it is true to the best of his or her knowledge and belief; and

(dd) contains a declaration that he or she made the statement knowing that he or she may be guilty of an offence if he or she wilfully stated anything therein which he or she knew to be false; and

(ii) has come to the knowledge of the other party at least seven days before the inquiry.

(b) When an affidavit by a witness has been allowed as evidence in terms of paragraph (a) and if a party subsequently so requests, or the presiding officer is of the opinion that it is desirable, such witness must be subpoenaed to appear in court and such witness may be cross-examined.

(7) Save as is otherwise provided for in these regulations, the law of evidence, including the law relating to competency and compellability, as applicable in civil proceedings, applies in respect of an inquiry: Provided that in the application of the law of evidence, fairness, the right to equality and the interests of justice should, as far as possible, prevail over mere technicalities.

(8) The court must, before oral evidence is adduced, administer an oath to, or accept an affirmation from, any witness or party appearing before the court, as if the witness or party were a witness in a criminal case.

(9) (a) Any party to the proceedings may, during the proceedings in court, be represented by an attorney or advocate or any person of his or her choice.

(b) The presiding officer must, if a party is represented by a person other than an attorney or advocate and if the presiding officer is of the opinion that such person is not a suitable person to represent the party, inform the party accordingly.

(10) (a) A party may cross-examine any other party who elects to give evidence or who is called by the other party.

(b) The presiding officer must, where necessary and appropriate, ascertain the relevant facts about the complaint and to that end he or she may question any party who elects to give evidence or who is called as a witness at any stage of the proceedings.

(c) The presiding officer may on his or her own initiative call a person to appear before him or her as a witness in the proceedings.

(11) If a party, during the course of the proceedings, wishes the presiding officer to make an order contemplated in subregulation (5) (c), a motion application is brought to this effect, after notification to the parties and the court.

(12) The presiding officer may in compelling circumstances postpone an inquiry.

11. Withdrawal of complaints.—(1) The complainant may, if he or she so wishes, withdraw the complaint upon written notice to the respondent and the clerk.

(2) Upon the receipt of the notice by the court, the complaint is deemed to have been withdrawn if the presiding officer is, in the case of a complainant not being represented by an attorney or advocate, satisfied that the withdrawal is made freely and voluntarily.

12. Fees and costs.—(1) No court fees are payable in respect of the institution of proceedings in the court.

(2) Each party bears his or her own costs unless the presiding officer directs otherwise.

(3) (a) If a complainant, without reasonable excuse, does not attend a directions hearing or the inquiry and the presiding officer is satisfied that proper notice of the directions hearing or the inquiry has been given to the complainant, the presiding officer may—

(i) dismiss the complaint; and

(ii) order the complainant to pay the costs of the respondent.

(b) The clerk must in the event of a dismissal of the complaint or a cost order contemplated in paragraph (a) inform the complainant in writing accordingly.

(4) (a) If a respondent, without reasonable excuse, does not attend a directions hearing or the inquiry and the presiding officer is satisfied that proper notice of the directions hearing or the inquiry has been given to the respondent, the presiding officer may—

(i) order that the proceedings continue in the absence of the respondent; and

(ii) order the respondent to pay the costs of the complainant.

(b) The clerk must in the event of an order contemplated in paragraph (a) (i) or (ii) inform the respondent in writing accordingly.

CHAPTER IV ASSESSORS

13. Criteria in respect of assessors.—A person will be suitable to serve as an assessor in the court if he or she—

(a)

is at least 21 years of age, of sound mind and body and resident in the area in which he or she will serve as assessor;

(b)

is respected in the community and is preferably involved in community activities;

(c)

has knowledge of the cultural and social environment of a particular group of the community;

(d)

has not been convicted of an offence of which violence, dishonesty, extortion or intimidation is an element or of corruption, perjury, or obstructing the course of justice, arson or an offence under law relating to organised crime or the dealing in dependence-producing substances, unless amnesty has been granted to such a person in terms of national legislation, or such person has received a presidential pardon;

(e)

is not a political office bearer; and

(f)

does not hold a permanent post in the Public Service.

14. Factors relating to the summons of assessors.—In considering whether summoning an assessor would be in the interests of the administration of justice, the presiding officer must take into account—

(a)

the cultural and social environment of one or both of the parties;

(b)

the educational background of one or both of the parties;

(c)

the nature and seriousness of the complaint;

(d)

the nature of the relief sought by the complainant;

(e)

any particular interest which the community in general, or any specific community, may have in the adjudication of the matter concerned; or

(f)

any other matter or circumstances which he or she may deem to be indicative of the desirability of summoning an assessor or assessors.

15. Taking of oath.—Every assessor must in writing take an oath or make an affirmation subscribed by him or her before a presiding officer of an equality court, in the following form:

“I,

, (full name) do hereby swear/solemnly affirm that whenever I may be called upon to perform the functions of an assessor in terms of section 22 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), I shall to the best of my ability make a considered finding or decision, or give a considered opinion, as the case may be, according to the evidence tendered in the matter.”.

16. Role of presiding officer.—(1) An assessor must, when considering an appropriate order contemplated in section 21 (2) of the Act, assist the presiding officer in an advisory capacity only.

(2) The presiding officer must adjourn the proceedings regarding any matter or question contemplated in section 22 (3) of the Act and must sit alone for the hearing of such proceedings and the decision of such matter or question.

(3) Whenever the presiding officer makes a decision in terms of section 22 (3) of the Act, he or she must give reasons for the decision.

(4) The presiding officer must, before a determination of whether unfair discrimination, hate speech or harassment, as the case may be, has taken place is made, explain to an assessor any specific rule of evidence or any other matter that is relevant in respect of the evidence tendered to the court.

(5) The clerk must for the purposes of section 22 (6) (b) of the Act, in any manner he or she deems fit, forward the reasons of the presiding officer and the record of the proceedings to the appeal court concerned.

17. Recusal of assessor.—(1) A presiding officer who is assisted by an assessor may, on application by a party, order the recusal of an assessor from the proceedings if the presiding officer is satisfied that—

(a)

the assessor has a personal interest in the proceedings concerned;

(b)

there are reasonable grounds for believing that there is likely to be a conflict of interests as a result of the assessor's participation in the proceedings concerned; or

(c)

there are reasonable grounds for believing that there is a likelihood of bias or prejudice on the part of the assessor.

(2) An assessor may recuse himself or herself from the proceedings for the reasons contemplated in subregulation (1).

(3) (a) The other party must, before the recusal of an assessor is ordered in terms of subregulation (1), be given an opportunity to address arguments to the presiding officer.

(b) The parties must, in so far as it is practicable, before the recusal of an assessor in terms of subregulation (2), be given an opportunity to address arguments to the presiding officer on the desirability of such recusal.

(4) The assessor concerned must be given an opportunity to respond to any argument referred to in subregulation (3), and the presiding officer may put such questions regarding the matter to the assessor as he or she may deem fit.

(5) The presiding officer must give reasons for an order referred to in subregulation (1).

18. Honoraria.—(1) An assessor who is not employed by the State may, for purposes of his or her attendance as assessor at equality proceedings, be paid an honorarium of twenty rand per hour or every part of an hour in excess of fifteen minutes.

(2) The period for which an assessor may be paid an honorarium is calculated from the time the assessor is required to be at court or arrives at court, whichever is latest, up to the time that the assessor is excused from attendance or the court adjourns for the day, whichever is earliest.

CHAPTER V APPEALS AND REVIEW

19. Appeals.—(1) Any person wishing to appeal against any order made by the court as contemplated in section 23 (1) of the Act must, within 14 days of such order being made, deliver a notice of appeal to the clerk and the complainant or the respondent as the case may be.

(2) The notice of appeal to the High Court having jurisdiction or the Supreme Court of Appeal, must—

(a)

be in writing;

(b)

state whether the whole or only a specific part of the order is being appealed against;

(c)

set out fully the finding of fact or the ruling of law appealed against; and

(d)

where appropriate, set out the order or orders or part thereof against which the appeal is directed and the grounds on which the appeal is founded.

(3) A cross appeal must be noted by delivery within 15 days of the noting of an appeal to the clerk and the complainant or the respondent as the case may be.

(4) A cross appeal must meet the requirements referred to in subregulation (2).

(5) The presiding officer concerned must—

(a)

within 15 days of the noting of an appeal; or

(b)

if the proceedings at an inquiry were taken down or recorded in shorthand or by mechanical means, within 15 days after a transcription of the shorthand notes or mechanical record of the proceedings has been placed before such officer by the clerk concerned, but within a reasonable period after the noting of the appeal,

transmit to the clerk a statement in writing setting out—

(i)

the facts he or she found to be proved;

(ii)

his or her reasons for any finding of fact specified in the notice of appeal as appealed against; and

(iii)

his or her reasons for any ruling on any question of law or for the admission or rejection of any evidence so specified as appealed against.

(6) (a) The clerk concerned must, notwithstanding the provisions of subregulation (5) (b), if the proceedings at an inquiry were taken down or recorded in shorthand or by mechanical means and an appeal has been noted, forthwith cause the shorthand notes or the mechanical record of the proceedings to be transcribed.

(b) The person who noted an appeal bears the costs of the transcription contemplated in paragraph (a): Provided that if the presiding officer is satisfied that such person is unable to pay the costs, the costs or part thereof must be paid by the State.

(7) (a) After an appeal has been noted in terms of subregulation (1) the appeal must be prosecuted as if it was an appeal against the decision of a magistrate in a civil matter, and the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court in so far as they relate to civil appeals from the magistrates' courts apply, with the necessary changes, to any such appeal.

(b) The provisions of the relevant Uniform Rules of Court with regard to an appeal from a High Court to the Supreme Court of Appeal apply with the necessary changes.

20. Review.—(1) Within seven days after the finalisation of the proceedings in which a determination is made as contemplated in section 23 (5) (a) of the Act, the clerk must forward the following to the registrar of the High Court for purposes of review:

(a)

The record of the proceedings in the matter, or a certified copy thereof together with any remarks the presiding officer wishes to append thereto; and

(b)

any written statement or argument furnished to the clerk by the parties.

(2) The written statement or argument referred to in subregulation (1) must be submitted to the clerk by the parties within five days after the proceedings were finalised.

CHAPTER VI EQUALITY REVIEW COMMITTEE

21. Terms and conditions of appointment of members of Committee.—(1) The office of a member of the Committee referred to in section 32 (a), (d) and (e) of the Act becomes vacant—

(a)

when a member dies;

(b)

when the term of office of a member expires;

(c)

when, in the opinion of the Minister, a member becomes unable to act as a member; or

(d)

when a member resigns by giving the Minister three months' notice thereof in writing.

(2) A vacancy must be filled as soon as possible in accordance with the provisions of section 32 of the Act.

(3) A vacancy so filled is for the unexpired period of the term of office in respect of which the vacancy occurred.

22. Powers and functions of Committee.—In addition to the powers and functions referred to in the Act, the Committee must advise the Minister on further measures to give full effect to the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

CHAPTER VII
PROMOTION OF EQUALITY BY THE STATE

[Chapter VII inserted by GN 563 of 2004.]

23. Request for progress report.—(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.

24. Preparation of equality plan by State.—(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 coinciding 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.

25. Manner of dealing with equality plan.—(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.

26. Progress report.—(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.

27. Availability of Act in official languages.—(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

[Chapter VIII inserted by GN 563 of 2004.]

28. Application of Chapter.—This Chapter applies to entities that employ—

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

29. Promotion of equality by entity with 150 and more employees.—(1) An entity with 150 and more employees must within two years alter 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.

30. Promotion of equality by entity with more than 50 but less than 150 employees.—(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.

31. Promotion of equality by entity with less than 50 employees.—(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.

**CHAPTER IX
MISCELLANEOUS**

32. Offences and penalties.—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.

[Reg. 32 substituted by GN 563 of 2004.]

33. Tabling of report on training courses.—

(Editorial Note: Reg. 33 was erroneously excluded in the amendments under GN 563 of 2004.)

34. Short title and commencement.—These regulations are called the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination, 2003 and shall come into operation on 16 June 2003.

[Reg. 34 renumbered by GN 563 of 2004.]

Annexure A

[Annexure A renamed by GN 563 of 2004.]

(18/2001)

81/

J692

Form 1

APPLICATION FOR APPOINTMENT AS CLERK IN TERMS OF SECTION 17 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000 (ACT NO. 4 OF 2000)

[Regulation 2 (1)]

Please note:

1. This form must be completed in block letters.
2. You are not obliged to complete items 5 and 6 of Part A of this form. The information

will, however, be useful in giving effect to legislation and policies relating to equity.

3. The following documentation must accompany the application form—

- (a) a certified copy of your identity document;
- (b) certified copies of all educational qualifications;
- (c) certificates of service or, if not available, an affidavit by you in respect of previous periods of service;
- (d) testimonials, if available, from previous employers;
- (e) the names, addresses and telephone numbers of two references.

[If the space provided is inadequate, submit information as an Annexure to this form and sign each page.]

<p>PART A:</p> <p>APPLICATION [To be completed by applicant]</p>
--

Surname:				
Full names:				
ID. No./Date of birth:				
Race:	African	White	Coloured	Indian
Gender:	Female		Male	
Are you a South African Citizen? If no, please state nationality:	Yes	No		
Have you been convicted of a criminal offence or have been dismissed from employment? If yes, please give details of offence and sentence:	Yes	No		
Residential address:				

	Code ()		
Residential telephone number:			
Cellular telephone number:			
Occupation:			
Work address:			
	Code ()		
Work telephone number:			
Preferred method of correspondence:	Post	E-mail	Fax
Correspondence contact details (In terms of above):			
Postal address:			
	Code ()		
Preferred official language for correspondence?			
Do you a valid driver's license?	Yes	No	Code:

PART B:
CHOICE OF OFFICE

Centres where appointment is preferred, in order of preference:	1.
	2.

	3.
--	----

PART C:
LANGUAGE PROFICIENCY – state “good”, “fair” or “poor”

	Languages (Specify)					
Speak						
Read						
Write						

PART D:
QUALIFICATIONS

Name of School/Technical College	Highest qualification obtained	Year obtained
Tertiary education (complete for each qualification you obtained as well as seminar/courses attended relating to functions of Clerk of the Court.		
Name of Institution	Name of qualification	Year obtained

Current study (institution and qualification)		

PART E:
WORK EXPERIENCE

Employer (including current employer)	Post held	From		To		Reason for leaving	
		MM	YY	MM	YY		
If you were previously employed in the Public Service, indicate whether any condition exists that prevents your re-appointment:						Yes	No
If yes, provide the name of the previous employing department:							

PART F:
REFERENCES

Name	Relationship	Tel. No. (office hours)
------	--------------	-------------------------

Physical address (where documents can be served):					
	Code ()				
Preferred method in which the form is to be served:	Registered Post	E- mail	Fax	Sheriff	Clerk
Correspondence contact details (In terms of above):					
E-mail address:					
Other relevant information (such as financial position, availability of transport, socio-economic status, if an interpreter will be needed and if special requirements are needed e.g. wheelchair access) which may assist the presiding officer to make a decision regarding the forum which must deal with the complaint in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)					

<p>PART B:</p> <p>PARTICULARS OF PERSON ACTING IN TERMS OF SECTION 20 (1) (b) – (f) ON BEHALF OF ANOTHER PERSON/ASSOCIATION/BODY (Proof of capacity of person acting in terms of section 20 (1) (b) – (f) to be attached)</p>

Surname:					
Full names:					
ID. No./Date of birth:					/ /
Capacity of person acting in terms of section 20 (1) (b) – (f):					
Registration number if corporate body:					
Residential address:					
	Code ()				
Residential telephone number:					
Cellular telephone number:					
Work address:					
	Code ()				
Work telephone number:					
Fax number:					
Physical address (where documents can be served):					
	Code ()				
Preferred method in which the form is to be served:	Registered Post	E-mail	Fax	Sheriff	Clerk
Correspondence contact details (In terms of					

	Code ()					
Work telephone number:						
Fax number:						
Preferred method in which the form is to be served:	Registered Post	E-mail	Fax	Sheriff	Clerk	
Correspondence contact details (In terms of above):						
Physical address (where documents can be served):						
	Code ()					
E-mail address:						

PART D:
PARTICULARS OF PERSON APPEARING ON BEHALF OF COMPLAINANT

Full names and surname of person appearing on your behalf (representative):						
ID. No./Date of birth:						/ /
Postal address of representative:						
	Code ()					

following questions and wrote down his/her answers in his/her presence:

(1)

Do you know and understand the contents of the declaration?

Answer:

(2)

Do you have any objection to taking the prescribed oath?

Answer:

(3)

Do you consider the prescribed oath to be binding on your conscience?

Answer:

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent uttered the following words: "I swear that the contents of this declaration are true, so help me God."/"I truly affirm that the contents of the declaration are true." The signature/mark of the deponent was affixed to the declaration in my presence.

Commissioner of Oaths

Full first names and

surname

(Block letters)

Designation (rank)

Ex Officio Republic of South Africa

Business address

Code

(Street address must be stated)

Date:

PART C:

INVITATION TO RESPONDENT TO RESPOND TO ALLEGATIONS AND TO SUBMIT INFORMATION

(a)

You are hereby invited to—

(i)

respond to the complaint(s) mentioned in Part B; and

(ii)

submit any information you wish to bring to the attention of the presiding officer, relating to your personal circumstances (e.g. your financial and socio-economic position). You may also indicate whether the matter in your opinion should be heard by the court or any other forum, stating reasons for your preference.

(b)

The information must be in writing and in the form of an affidavit and must be submitted to the clerk of the above-mentioned court on or before

(c)

At the date referred to in paragraph (b) above, the matter will be referred to the presiding officer.

PART D:

GENERAL INFORMATION

Your attention is drawn to the fact that the presiding officer may decide to refer the

matter to an alternative forum (such as the Human Rights commission, the Gender Commission etc.) in terms of section 20 (5) (a) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), for a decision and that the alternative forum may refer the matter back to the equality court for finalisation. The clerk of the court will inform all the parties accordingly.

Signed at

this

day of

20

Clerk of the Equality Court

PART D:

RETURN OF SERVICE

I

, certify that I have delivered a copy of the notice to

personally

Signed at

this

day of

20

*Sheriff/

* Delete whichever is not applicable

(18/2001/4)

81/

J695

Form 4

NOTICE TO APPEAR IN COURT IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)

[Regulation 6 (6)]

File No:

[If the space provided is inadequate, submit information as an Annexure to this form.]

Centre of Equality Court (* Magistrates Court/High Court)	Court/Room No.	Date if inquiry	Complainant

PART A:

NOTICE TO APPEAR FOR *DIRECTIONS HEARING/INQUIRY

1:
TO ANY PERSON AUTHORISED TO SERVE PROCESS

You are hereby invited to—

(a)

give notice to the following persons:

Full names and surname of Complainant (including person acting in terms of section 20(1) (b) – (f) on behalf of another person/association/body):	

ID. No./Date of birth/Registration No.:	/ /
---	-----

Physical address:	
	Code ()

And

Full names and surname of Respondent(s) (including person acting in terms of section 20 (1) (b) – (f) on behalf of another person/association/body):	

ID. No./Date of birth/Registration No.:	/ /
Physical address:	
	Code ()

(i)
to appear in person before the above-mentioned court at on the date stated above;

(ii)
to remain present until excused by the court; and

(b)
Serve on each of the above-mentioned persons a copy of this notice and the report to this Court what you have done with regard to it.

2:
TO THE PERSONS WHO ARE HEEBY GIVEN NOTICE OF THE ABOVE PROCEEDINGS

(i)
You must ensure that all your witnesses are present at the proceedings of the inquiry. If you wish any witness to be subpoenaed by the court, you are requested to submit full particulars of the witnesses (i.e. full names, identity numbers and physical addresses) to the clerk of the court, within days before the date of inquiry.

(ii)
The costs of the service of the subpoena of witnesses will be borne by the person who

request the subpoena, unless, in exceptional cases, the court directs that the State bears such costs.

(iii)

the attention of the respondent is also drawn to the fact that should he or she fail to appear before the court as specified above, the presiding officer may order that the proceedings continue in the respondent's absence and that you pay the costs of the complainant.

(iv)

The attention of the complainant is also drawn to the fact that should he or she fail to appear before the court as specified above, the presiding officer may dismiss the complaint and order the complainant to pay the costs of the respondent.

PART B:

RETURN OF SERVICE (To be completed in respect of the complainant and the respondent)

I

, certify that I have—

*

delivered a copy of the notice to

personally;

or

*

offered a copy of the notice to

personally;

or

*

offered a copy of the notice to
a person
apparently not younger than the age of 16 years and apparently residing or employed
at the *residence/place of employment/place of business of
,
since he/she could not conveniently be found;
or
*
*affixed/placed a copy of the notice to/in the *outer/principal door/security gate/post
box of the *residence/place of employment/place of business of
,
Since he/she prevented the service by keeping his/her *residence of employment/
place of business closed.

PART C:

OTHER MANNER OF NOTIFICATION

Signed at
this
day of
20

Signed at

this

day of

20

Presiding officer

PART B:

REFERRAL OF MATTER TO EQUALITY COURT (SECTION 20 (8))

I,

, in my capacity as

of

the alternative forum to which the above-mentioned matter was referred, hereby refer the matter back to the equality court in terms of section *20 (8) (a)/20 (8) (b) of the Promotion of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) for the following reasons:

Signed at

this

day of

20

Signature

* Delete whichever is not applicable

(18/2001/5)

81/

J696

Form 6

SUBPOENA TO WITNESSES TO APPEAR BEFORE THE EQUALITY COURT IN TERMS OF SECTION 18 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)

[Regulation 8 (1) (b) and (2) (a)]

File No:

IN THE EQUALITY COURT AT THE MAGISTRATE'S/HIGH COURT

HELD AT

In the matter between:

day of

20

Clerk of the Equality Court

Note: Should you fail without reasonable excuse to obey this subpoena, you could be found guilty and liable on conviction a fine or to imprisonment for a period not exceeding one year.

PART B:

RETURN OF SERVICE

I

, certify that I have—

*

delivered a copy of the subpoena to

personally;

or

*

offered a copy of the subpoena to

personally;

or

*

offered a copy of the subpoena to

a person

apparently not younger than the age of 16 years and apparently residing or employed at

the *residence/place of employment/place of business of

,

since he/she could not conveniently be found;

or

*

*affixed/placed a copy of the notice to/in the *outer/principal door/security gate/post

box of the *residence/place of employment/place of business of

,

since he/she prevented the service by keeping his/her *residence of employment/

place of business closed.

Signed at

this

day of

20

Signature of person who served the subpoena

Full first names and surname

(Block letters)

Designation (rank)

Ex Officio Republic of South Africa

Business address

Code

(Street address must be stated)

Telephone number:

Fax number

Date:

Place

* Delete whichever is not applicable

Annexure B
Letter to Director-General

[Regulation 23]

Part A of Annexure B

(Address of constitutional institution)

The Director-General

Department of Justice and Constitutional Development

Private Bag X81

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 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	
-------------------------------	--

<input type="checkbox"/>	Full names:
<input type="checkbox"/>	Age:
<input type="checkbox"/>	Gender:
<input type="checkbox"/>	Race:
<input type="checkbox"/>	Disability:

B. Particulars of Respondent	
------------------------------	--

<input type="checkbox"/>	Full names:
<input type="checkbox"/>	Gender:
<input type="checkbox"/>	Race:

C. Nature of Case	
-------------------	--

<input type="checkbox"/>	Grounds:
<input type="checkbox"/>	Category:

Area from which case emanates:

D. Outcome of Case

Equality Court

Finding:

Order:

Alternative Forum

Name of forum:

Outcome:

Method of ADR use:

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

Instituted in Equality Court:

Referred to in alternative forum:

Finalised by alternative forum:	
Where complainant was legally represented:	
Finalised by equality court:	

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)	
	S21 (2) (k)	
	S21 (2) (l)	
	S21 (2) (m)	
	S21 (2) (n)	
	S21 (2) (o)	
	S21 (2) (p)	

The Minister may, in terms of section 27 read with 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.