

FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

(Incorporating Fish Hoek, Clovelly and Sun Valley)

~~Central Circle, Fish Hoek 7975~~

Web: <https://www.fhvrra.org.za/> Facebook: www.facebook.com/FHVRRRA/

Heritage Western Cape: Conservation Body

**TO: THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
MS F BHAYAT: fbhayat@justice.gov.za ¹**

**SUBJECT: COMMENTS ON PROMOTION OF EQUALITY AND PREVENTION OF
UNFAIR DISCRIMINATION AMENDMENT BILL [B – 2021] ²**

DUE: 7 MAY 2021

It is the hope of the Fish Hoek Valley Ratepayers and Residents Association's (FHVRRA) that all discrimination will be relegated to history and special legislation will not be required as we will all live in a non-prejudicial society with equal opportunities for all. However, for as long as equality and discrimination legislation is required, it must also mean that until the general society has grasped sufficiently neutral wording that doesn't give the impression of "intention" must also be accommodated. That is, we are opposed to the inclusion of the bill's clause 1 (a) description of "discrimination" to include "whether intentionally or not". Therefore, by omission, intention must be proven until such a time as the general populace is sufficiently educated and experienced in non-prejudicial language such that they do not unwittingly commit acts of discrimination, which were not their intention. Almost every action can be perceived by someone to discriminate. The last thing we need is the legal system having to rule whether perceptions of discrimination are valid. Omitting "whether intentionally or not" will help in preventing spurious attacks by complainants.

The preamble and clause 6. (3) state "joint and several liability". This is a bit harsh. Workers and employees often interject their personal views that are against company policy. It is unfair to join the worker, employee and agent when such a libellous view is patently against their wishes.

Similarly, we oppose the inclusion in the bill's clause 1 (a) (d) of "undermines the dignity" as in certain sections of our society it is acceptable practice to use terms of casual banter that appear to be hurtful, demeaning or discriminatory to other sections of our society. Again, it is not the intention of the former to cause harm. Rather, further education is required.

We are concerned about expanding the scope of "equality" in the bill's clause 1 (b) (b) to include "equal right and access to resources, opportunities, benefits and advantages" as this might mean that the owner of a private company cannot promote a family member without offering the same to all other employees. Equal opportunity is not a problem, but the automatic extension of privileges without merit is unjustified.

¹ <https://www.justice.gov.za/legislation/invitations/invites.htm>

² <https://pmg.org.za/bill/1012/>

The bill's clause 1 (b) (d) “substantive equality” is undefined and thus, its meaning unknown. One must avoid catch-all phrases, even in common usage by certain sections of our society as this puts the onus of defining such terms on our courts.

We humbly request that “age” and “aged”, as appropriate, be included when “race, gender and disability” are mentioned, such as in the bill's clause 24 (3) (a), 24 (3) (b), 26 (5) and 29A as the aged members of our society are not treated with the same respect as previously. That is, today, our aged are also being prejudiced and discriminated against. They do not have equal opportunities.

Our concern with the introduction of clause 9A Prohibition of retaliation is that then there would be threats against spurious claims of discrimination, especially 9A (b). Communication lines need to be kept open at this level, rather than escalating. The threat against escalating is contained in 9A (b) which should keep such arguments at the discussion level.

We approve the explicit insertion of State and provincial sphere of government for the provision of assistance, advice and training on issues of equality so that the omitted municipalities can focus on their main mandate, namely municipal service delivery to the people. Current procurement legislation should provide ample municipal reporting on Broad-Based Black Economic Empowerment Act 53 of 2003 in terms of the Local Government: Municipal Finance Management Act 56 of 2003. In general, we support any clauses eliminating unnecessary reporting by state bodies. Our system is overloaded with meaningless tick box scorecards.

SUMMARY

In conclusion, we recommend:

1. Removing “joint and several liability” in the preamble and in clause 6. (3);
2. Removing “whether intentionally or not” in clause 1 (a);
3. Removing “undermines the dignity” clause 1 (a) (d);
4. Removing ““equal right and access to resources, opportunities, benefits and advantages” in clause 1 (b) (b);
5. Defining “substantive equality” as used in clause 1 (b) (d);
6. Adding “age” and “aged”, as appropriate, to “race, gender and disability” in clauses 24 (3) (a), 24 (3) (b), 26 (5) and 29A; and
7. Removal of 9A Prohibition of retaliation in its entirety.

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DATE	11 April 2021