

# Review and Assessment of Primary Arguments



As we work towards compliance with the Employment Equity Act and await the judgment in the Democratic Alliance’s application challenging the introduction of sectoral numerical targets, the following is a summary of the arguments presented by the respective parties.

## APPLICANT (DA) ARGUMENTS



1

### CONSTITUTIONAL CHALLENGE TO THE EMPLOYMENT EQUITY AMENDMENT ACT

**Violation of Section 9 of the Constitution**  
**Argument:** Section 15A of the Amendment Act scheme is now blunt and rigid. Constitutes a quota system. Quotas are unconstitutional.

**Affirmative Action Measures**  
Measures introduced by the Amendment Act violate section 9(2) of the Constitution as they are not nuanced or flexible. Section 9(2) states that to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

**Impact on Non-Designated Groups**  
Measures infringe the dignity of persons not preferred, violates constitutional rights of equality and non-discrimination.

**The scheme violates the rights to freedom of residence and of trade, occupation and profession.**

2

### IMPROPER TAGGING OF THE BILL

**Argument deals with attack to legislative process used to enact the Amendment Act**

- Incorrect Classification
- Substantial Measure Test (impacting the Provinces)

3

### WIDE DISCRETION OF MINISTER

**Broad and Vague Discretion**  
The Minister’s power to set general targets is too broad and vague.

## RESPONDENTS’ (THE DoEL) ARGUMENTS



1

### PURPOSE AND INTERPRETATION OF THE EMPLOYMENT EQUITY ACT

**Achieving Equity in the Workplace**  
The purpose of the Amendment Act is to (i) promote equal opportunity and fair treatment by eliminating unfair discrimination and to (ii) implement affirmative action measures.

**Amendment Act is Constitutional**  
The Amendment Act is to be interpreted in compliance with both the Constitution and international law obligations.

**Broad Representation**  
The Amendment Act aims to achieve a workforce that is broadly representative of the people of South Africa, inclusive of all racial groups.

### CORRECT CLASSIFICATION OF THE AMENDMENT ACT



2

### NECESSARY MEASURES TO ENFORCE COMPLIANCE

3

**Affirmative Action Measures**  
The respondents highlight the necessity of measures ensuring suitably qualified individuals from designated groups have equal employment opportunities and are equitably represented.

**Flexibility and Nuance**  
Dispute that the Amendment Act imposes quotas (and indicates that flexibility is allowed).