

PEPUDA OPPONERINGSTEMPLAAT

To:	The Department of Justice and Constitutional Development (DOJ) Ms Fathima Bhayat Per email: fbhayat@justice.gov.za
Re:	Invitation for Comments on <u>Promotion of Equality and the Prevention of Unfair Discrimination Amendment Bill</u>
From:	Name and Surname:
	Identity number:
	Physical Address:
	Tel:
	E-mail:

Date:

(Deadline: 30 June 2021)

Dear Ms Bhayat,

1. I (INSERT FULL NAME AND SURNAME) refer to the invitation for written submissions on the Department of Justice and Constitutional Development's (DOJ's) [Promotion of Equality and the Prevention of Unfair Discrimination Amendment Bill \("the Bill"\)](#).
2. **I have serious concerns about the way in which this Bill will override and trample on the constitutional rights to freedom of religion, belief and opinion (s 15), freedom of expression (s 16), and freedom of association (s 18) – and, read together, the autonomy of religious organisations to determine their own doctrine and beliefs, and to regulate their own internal affairs, free from interference by the State.**
3. If the Bill is adopted in its current form, the State will effectively tell people and institutions of faith what to believe (including what they may and may not say, and may and may not do, as an expression of their beliefs) and how to run their internal affairs. This is State regulation of religion, and flies in the face of the rights and freedoms guaranteed by our Constitution.
4. It is quite foreseeable that people and institutions of faith will be dragged before Court simply because somebody else does not like, does not agree with, or is offended by that person's or institution's religious convictions and beliefs – and the person or institution will have no defence in law. This will open a flood of litigation, and turn our legal system into complete chaos.
5. In particular, I am concerned that the Bill:
 - 5.1. Broadens the definition of "equality" to mean, amongst other things, "equal rights and access to resources, opportunities, benefits and advantages". This proposed definition of "equality" goes further than the Constitution, and is therefore overbroad and unconstitutional.
 - 5.2. Changes the definitions of "discrimination" to mean something completely different to what the ordinary person understands these words to mean. In particular, it changes "discrimination" to also mean causing prejudice or undermining someone's dignity, even where a person did not do so intentionally. This makes the test for "discrimination" completely subjective, as a result of which no one will know when they are breaking the law and when not. The law must be certain – and these subjective elements render the law completely uncertain.
 - 5.3. As stated above, this Bill makes it clear that it is not necessary for a person to act with intention before they can be found guilty of unfair discrimination. South African law generally requires that there must be fault in the form of intention, before someone can be found guilty or held liable in law for something they did or did not do. The "no fault" liability proposed by the Bill is at odds with the rest of our law, and will punish people for saying or doing things that they did not know to be wrong and where they had no intention to break the law!
 - 5.4. Fails to distinguish between discrimination (i.e. treating different people differently for a fair reason in law, which is legal) and unfair discrimination (for which there is no justification in law, and is illegal). The Bill repeatedly prohibits, seeks to eliminate, and imposes liability for mere discrimination, rather than unfair discrimination.
 - 5.5. Provides for employers to be jointly and severally liable for any discrimination,

harassment or “hate speech” by their employees – unless the employer can prove that it took reasonable steps to prevent this. However, it is virtually impossible for the employer to take preventative steps, in circumstances where the test for “*discrimination*” has now become completely subjective and an employee (and indeed his/her employer) would not even know when he/she is contravening the law by his/her speech or actions and can even contravene the law without having the intention to do so!

5.6. Will hold any person who “causes, encourages or requests” another person to discriminate against a third person, equally liable for discrimination – again, even where there was no intention to unfairly discriminate.

5.7. Prohibits a person from retaliating, or threatening to retaliate, against a person who objects to a discriminatory act or omission, but fails to define “retaliation”. Given the already (over-)broad meaning of “*discrimination*” as defined in the Bill, it is foreseeable – particularly in the absence of a definition of “*retaliation*” in the Bill - that a similar (over-)broad meaning may be given to “*retaliation*”.

5.8. Calls for a revolution of South Africa’s entire legal system, requiring all laws, policies, codes and practices to align with, and give effect to, the Bill’s ideological objectives and understanding of “equality”.

5.9. Places hefty obligations on all persons (which is defined in the Equality Act as including natural and juristic persons, and includes therefore businesses), non-governmental organisations (NGOs), community-based organisations and traditional institutions (including therefore religious institutions) to promote “equality” (as meant and prescribed by the Bill, and also in any Code of Practice that the Minister may issue) in their public activities.

5.10. Worse, Government ministers will be empowered to discriminate between people, companies, and organisations depending on their size, resources and influence. This opens the door wide open to abuse of power, and the State capturing people, companies and organisations to further its own ideological agenda and objectives - and sanctioning those who do not “comply” with the State’s agenda and objectives.

5.11. Imposes financial obligations on persons (presumably not individuals but businesses), NGOs, community-based organisations and traditional institutions (including therefore religious institutions), in as much as the Bill requires them to make money available in their budgets to implement measures that will promote “equality” and eliminate “*discrimination*” in the sense intended by the Bill. This is a financial impossibility for most small businesses, NGOs, community-based organisations and traditional institutions.

5.12. Imposes State regulation on persons, NGOs, community-based organisations and traditional institutions (including therefore religious institutions) to make sure that promote “equality” and eliminate “*discrimination*” as meant by the Bill. This is regulation of religion through the front door and the Bill’s understanding of discrimination and equality will clash with the core principles of many religious institutions.

For all of the above reasons, I strongly oppose this Bill which I believe to be unconstitutional and unnecessary, and I call for the scrapping of this draconian and potentially disastrous Bill.

Yours faithfully,

Name / Surname: