



**GOVERNMENT GAZETTE**  
**OF THE**  
**REPUBLIC OF NAMIBIA**

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**Government Notice**

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**OFFICE OF THE PRIME MINISTER**

No. 242

1998

**PROMULGATION OF ACT  
OF PARLIAMENT**

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 29 of 1998: Affirmative Action (Employment) Act, 1998.

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## ACT

To achieve equal opportunity in employment in accordance with Article 10 and Article 23 of the Namibian Constitution; to provide for the establishment of the Employment Equity Commission; to redress through appropriate affirmative action plans the conditions of disadvantage in employment experienced by persons in designated groups arising from past discriminatory laws and practices; to institute procedures to contribute towards the elimination of discrimination in employment; and to provide for matters incidental thereto.

*(Signed by the President on 3 September 1998)*

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**BE IT ENACTED** by the Parliament of the Republic of Namibia as follows:-

### **Definitions**

1. In this Act, unless the context otherwise indicates -

“affirmative action” means affirmative action as defined in section 17;

“affirmative action compliance certificate “ means an affirmative action compliance certificate referred to in section 41;

“affirmative action measures” means the affirmative action measures contemplated in section 17;

“affirmative action plan” means an affirmative action plan referred to in section 23;

“affirmative action report” means an affirmative action report referred to in section 27;

“Commission” means the Employment Equity Commission established by section 2, and includes, for the purposes of section 17(3), a review officer and a review panel;

“Commissioner” means the Commissioner appointed under section 6(1)(a);

“designated group” means any one of the groups of persons referred to in section 18(1);

“employed” means employed as defined in section 1 of the Labour Act, 1992;

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“employee” means an employee as defined in section 1 of the Labour Act, 1992;

“employer” means an employer as defined in section 1 of the Labour Act, 1992;

“employers’ organisation” means an employers’ organisation as defined in section 1 of the Labour Act, 1992;

“employment barrier” means any rule, practice or condition, other than a legitimate job requirement, which adversely affects persons who are members of a designated group more than it affects persons who are not members of such designated group;

“employment decision” includes decisions on matters concerning employment and occupation relating to -

- (a) access to vocational guidance, training and placement services;
- (b) access to employment and to a particular occupation or work, including -
  - (i) any advertisement relating thereto;
  - (ii) recruitment procedures;
  - (iii) selection procedures; and
  - (iv) appointments and the appointment process;
- (c) the promotion, demotion and transfer of employees;
- (d) security of tenure of employment;
- (e) remuneration and other terms and conditions of employment;
- (f) discipline, suspension or termination of employment or any other decision which adversely affects the employee concerned; and
- (g) access to any other benefits, facilities or services; and

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(h) collective termination as contemplated in section 50 of the Labour Act, 1992;

“Labour Act, 1992,” means the Labour Act, 1992 (Act No. 6 of 1992);

“Labour Advisory Council” means the Labour Advisory Council established by section 7 of the Labour Act, 1992;

“Minister” means the Minister of Labour;

“Ministry” means the Ministry of Labour;

“Permanent Secretary” means the Permanent Secretary: Labour;

“prescribe” means prescribe by regulation;

“registered employers’ organisation” means an employers’ organisation registered as such under the provisions of Part VII of the Labour Act, 1992;

“registered trade union” means a trade union registered as such under the provisions of Part VII of the Labour Act, 1992;

“relevant employer” means an employer identified as a relevant employer under section 20;

“review officer” means the person appointed by the Commission under section 30

“review panel” means the review panel appointed under section 35;

“scale of salary” means a minimum and a maximum salary, with determined rates of progression in between, attached to a position of employment and includes a salary at a fixed rate;

“suitably qualified person” means a person who has the abilities, formal qualifications or relevant experience for a position of employment;

“this Act” includes the regulations made thereunder;

“trade union” means a trade union as defined in section 1 of the Labour Act, 1992.

### **Application of Act**

2. This Act shall apply to every employer who has under section 20 been identified as a relevant employer.

## **PART I ADMINISTRATION OF ACT**

### **Establishment of the Employment Equity Commission**

3. There is hereby established a body to be known as the Employment Equity Commission.

### **Objects of Commission**

4. The objects of the Commission are -
- (a) to inquire into whether a relevant employer has adopted and is implementing an affirmative action plan and whether any particular affirmative action plan or affirmative action measure meets the objects of this Act, and to take the actions prescribed by or under this Act in regard thereto;
  - (b) to collect and compile information for the purposes of the administration of the provisions of this Act;
  - (c) to advise any person, body, institution, organisation, or interest group on matters pertaining to the objects of this Act, including whether an existing or proposed affirmative action measure or employment practice is consistent with the objects of this Act;
  - (d) to advise the Minister on making regulations in order to achieve the objects of this Act and on any other matter which the Minister may refer to the Commission;

- (e) to undertake or sponsor research and publications relating to the objects of this Act and the Commission's functions; and
- (f) to exercise such other powers or perform such other duties and functions as may or is required to be performed or exercised by the Commission under this Act.

### **Powers, duties and functions of Commission**

5. For the purposes of achieving its objects the Commission may -
- (a) establish awards recognising achievements in furthering the objects of this Act;
  - (b) in consultation with the Permanent Secretary -
    - (i) obtain the services of such persons to advise it in connection with the performance of its functions, on such conditions as may be mutually agreed upon between the Commission and any such person; and
    - (ii) acquire such operational equipment,as it may consider necessary;
  - (c) establish committees;
  - (d) facilitate training programmes, technical or other assistance, expert or specialised advice and information and guidance on implementing affirmative action in the work place;
  - (e) issue guidelines in relation to the application of any provision of this Act -
    - (i) to assist relevant employers in fulfilling their obligations under this Act; and



- (ii) in order to effect the proper administration of the provisions of this Act; and
- (f) perform such other functions in furtherance of the objects of this Act as the Minister may assign to it.

### **Constitution of Commission**

**6.** (1) The Commission shall comprise the following members, appointed by the Minister with the approval of the National Assembly:

- (a) The Commissioner, who shall be the chairperson;
- (b) four persons who shall represent the interests of the State;
- (c) two persons selected by the Minister from persons nominated by registered trade unions in accordance with the provisions of subsection (2);
- (d) two person selected by the Minister from persons nominated by registered employers' organisations in accordance with the provisions of subsection (2);
- (e) two persons who, in the opinion of the Minister, represent the interest of the designated group referred to in section 18(1)(a) and who are suitably qualified having regard to the functions of the Commission;
- (f) two persons, of whom one shall be a woman, who, in the opinion of the Minister, represent the interest of the designated group referred to in section 18(1)(b) and who are suitably qualified having regard to the functions of the Commission; and
- (g) two persons who, in the opinion of the Minister, represent the interest of the designated group referred to in section 18(1)(c) and who are suitably qualified having regard to the functions of the Commission.

(2) For the purposes of the nomination of the person referred to in subsection (1)(c) or (d), the Minister shall in writing request such -

- (a) registered trade unions; or
- (b) registered employers' organisations,

as he or she may consider necessary, to nominate for appointment as members of the Commission such number of persons as may be specified in such request and to submit such nominations to the Minister within such period as may be so specified.

(3) If no nomination for a member of the Commission referred to in subsection (1)(c) or (d) is submitted to the Minister within the period specified by the relevant requests made in terms of subsection (2), he or she may appoint, with the approval of the National Assembly, such person as he or she may deem fit, and a person so appointed shall be deemed to have been appointed in terms of the provisions of the said subsection (1)(c) or (d), as the case may be.

(4) For the purposes of the appointment of persons referred to in subsections (1)(e), (f) and (g), the Minister shall consult with such organisations representing the interests of the designated group concerned or any other person as he or she may consider necessary.

- (5) (a) The Minister shall with due regard to the provisions of subsections (2), (3) and (4) appoint for each member of the Commission, other than the Commissioner, an alternate member, and may terminate the appointment at any time.
- (b) Any alternate member appointed under paragraph (a) may -
  - (i) during the absence of the member with respect to whom he or she has been appointed, or such member's inability to act as member, act as member of the Commission in the place of that member;

- (ii) resign from his or her office as alternate member by written notice to the Minister.

### **Terms of office of members of Commission**

7. (1) The Commissioner shall hold office for a period of five years, but shall at the expiration of such period of office be eligible for re-appointment as member of the Commission

(2) Subject to subsection (3), a member of the Commission referred to in section 6(1)(b), (c), (d), (e), (f) and (g) shall hold office for a period of three years, but shall at the expiration of such period of office be eligible for re-appointment as member of the Commission.

(3) Where the period of office of a member referred to in subsection (2) expires during a period when the National Assembly is not in session, the Minister may extend the period of office of such member until such time as a member is appointed for that office in terms of the relevant provisions of section 6, but in no case longer than the end of the next ensuing session of the National Assembly.

### **Disqualifications for appointment as Commissioner or member of Commission**

8. (1) No person shall be appointed as Commissioner or as a member of the Commission, if that person -

- (a) has at any time been found guilty, whether in Namibia or elsewhere, of an offence of racial discrimination or sexual harassment or involving dishonesty; or
- (b) has been convicted of an offence, other than a political offence committed before the date of Namibia's Independence, for which he or she has been sentenced to imprisonment without the option of a fine, unless the period of such imprisonment has expired at least ten years before the date of his or her appointment as a member of the Commission;

- (c) is an unrehabilitated insolvent;
- (d) is detained under law as a mentally ill person; or
- (e) is not a Namibian citizen.

(2) The Commissioner shall not be appointed from among persons representing registered trade unions' or registered employers' organisations' interests.

### **Vacation of office by members other than Commissioner**

**9.** (1) Notwithstanding the provisions of section 7(2), a member of the Commission referred to in section 6(1)(b), (c), (d), (e), (f), or (g) shall vacate his or her office, if he or she -

- (a) has, without sufficient reasons or the leave of the Commission, been absent from three consecutive meetings of the Commission;
- (b) resigns from office by written notice to the Minister;
- (c) becomes subject to a disqualification referred to in section 8; or
- (d) is removed from office by the Minister, with the approval of the National Assembly and after having had the opportunity to be heard, if the Minister is reasonably satisfied that such member -
  - (i) is physically or mentally incapable of performing his or her duties,
  - (ii) has conducted himself or herself dishonestly; or
  - (iii) has neglected his or her duty.

(2) A vacancy on the Commission arising from any circumstance referred to in subsection (1), or caused by death of any member of the Commission referred to in that subsection, shall be filled by appointment of another person in

the same manner in which the person who has vacated his or her office or has died was appointed, and such member shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died, as the case may be.

### **Functions of Commissioner and vacation of office**

**10.** (1) The Commissioner shall, in addition to such powers, duties and functions as this Act may confer upon or assign to him or her and such other functions as the Minister may impose upon him or her, be responsible for the efficient administration of the functions of the Commission.

(2) (a) The Commissioner may delegate or assign any of his or her powers, duties or functions under this Act to the Deputy Commissioner or any other member of the Commission, but shall not be divested of any power so delegated and may amend or withdraw any decision made by the Deputy Commissioner or such other member, as the case may be, in the exercise of any power so delegated.

(b) A delegation or assignment under paragraph (a) may be made subject to such conditions and restrictions as may be determined by the Commissioner, and any such condition or restriction may be withdrawn or amended by him or her.

(3) The Minister may, with the approval of the National Assembly and after having afforded the Commissioner an opportunity to be heard, remove the Commissioner from his or her office before the expiration of his or her term of office, if the Minister is of the opinion that there are reasonable grounds for doing so, including -

(a) continued ill health;

(b) misconduct;

(c) inability to efficiently carry out the functions of that office;

- (d) where the Commissioner becomes subject to a disqualification referred to in section 8; or
  - (e) if such removal is in the public interest.
- (4) The Commissioner may resign from his or her office by written notice to the Minister.
- (5) Where the office of the Commissioner has become vacant in terms of subsection (3) or (4), or where the Commissioner has died, and the National Assembly is not in session, the Minister may designate the Deputy Commissioner or any other member of the Commission to act as Commissioner until such time as a Commissioner is appointed under section 6(1), but in no case shall the period of such designation be longer than the end of the next ensuing session of the National Assembly.

### **Designation and functions of Deputy Commissioner**

11. (1) The Minister shall designate, for such period as he or she may determine, one of the members of the Commission as Deputy Commissioner.
- (2) The Deputy Commissioner shall not be designated from among persons representing registered trade unions' or registered employers' organisations' interests.
- (3) The Deputy Commissioner shall -
- (a) generally assist the Commissioner in the performance of his or her functions under this Act, subject to the Commissioner's direction and control;
  - (b) during the absence or incapacity of the Commissioner exercise or perform the Commissioner's powers, duties and functions; and
  - (c) exercise such powers or perform such duties and functions of the Commissioner as the Commissioner may delegate or assign to him or her.

## Meetings

12. (1) The Commission shall meet at such times and places as the Commissioner may determine, but in no case less than once every three months.

(2) The Commissioner shall -

(a) on request of the Minister; or

(b) on the written request of at least one-third of the members of the Commission,

convene a special meeting of the Commission.

(3) The Commissioner shall cause reasonable prior notice of every meeting of the Commission to be given to the members of the Commission.

(4) A majority of the members of the Commission shall constitute a quorum for a meeting of the Commission.

(5) The decision of the majority of the members of the Commission present and entitled to vote at a meeting thereof shall constitute a decision of the Commission, and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the Commission or an act performed under the authority of the Commission shall be invalid by reason only of a vacancy on the Commission, or by reason only of the fact that a person who is not entitled to sit as a member of the Commission sat as a member of the Commission when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Commission present at the time and entitled to sit as members.

(7) The Commission shall cause written records to be kept of the proceedings of its meetings.

(8) The Commission may make rules relating to the holding of, and procedure at, the meetings of the Commission.

### **Committees**

13. (1) The Commission may from time to time establish one or more committees to advise it on such matters as the Commission may refer to it, or to assist the Commission in the exercise of such of its powers or the performance of such of its duties and functions under this Act as the Commission may delegate or assign to it, and the Commission may give such directives in connection with such delegation or assignment as it may deem expedient.

(2) A committee referred to in subsection (1) may consist of two or more members of the Commission or so many members of the Commission and other persons as the Commission deems necessary, and the Commission may at any time dissolve or reconstitute a committee.

(3) The Commission may appoint as a temporary member of a committee, for such period as it may determine, any person who in its opinion has expert knowledge of any matter for which such committee has been appointed, and any such member shall hold office during the period for which he or she has been appointed as if he or she were a member of the committee in question, but may not vote in respect of any decision of such committee.

(4) The Commission may designate one of the members of a committee as the chairperson of that committee.

(5) If consensus cannot be reached on any matter by a committee the matter shall be referred to the Commission.

(6) The Commissioner may attend any meeting of a committee and shall be entitled to take part in the proceedings and vote on any matter.

### **Remuneration and expenditure**

14. (1) The Commissioner shall be paid such remuneration, allowances, benefits and privileges as the Minister may determine, with the concurrence of the Minister of Finance.



(2) A member of the Commission referred to in section 6(1)(b), (c), (d), (e), (f) or (g), or a member of a committee referred to in section 13, who is not in the full-time employment of the Public Service shall be paid such remuneration, allowances, benefits or privileges as the Minister may determine, with the concurrence of the Minister of Finance.

(3) The remuneration, allowances, benefits or privileges of members referred to in subsection (2) may differ according to -

- (a) the different offices held by such members in the Commission; or
- (b) the different functions performed, whether in a part-time or full-time capacity, by such members from time to time.

(4) The expenditure in connection with the application and administration of this Act and the exercise and performance of the powers, duties and functions of the Commission shall be paid out of moneys appropriated by Parliament for such purpose.

#### **Administrative functions**

**15.** The administrative and clerical work involved in the performance of the functions of the Commission shall be performed by staff members in the Ministry, made available for that purpose by the Permanent Secretary.

#### **Reports by Commission**

**16.** (1) The Commission shall compile and submit annually not later than 31 March a report to the Minister on its activities for the past year.

- (2) The report referred to in subsection (1) shall comprise -
  - (a) a full description of the work performed and achievements made towards fulfilling the objects of this Act; and
  - (b) recommendations for legislation or other form of action which, in the view of the Commission, will further the objects of this Act.

(3) The report referred to in subsection (2) shall be laid upon the Table of the National Assembly by the Minister within 14 days after receiving it, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

(4) The Commission may, in addition to the report referred to in subsection (1), submit to the Speaker of the National Assembly a report on any matter which the Commission is desirous to bring to the attention of the National Assembly.

(5) The Permanent Secretary may make available for sale to the public, for a fee determined by him or her in consultation with the Commission, copies of a report referred to in subsection (1).

## PART II AFFIRMATIVE ACTION

### **Definition of “affirmative action” and determination of equitable representation**

**17.** (1) For the purposes of this Act “affirmative action” means a set of affirmative action measures designed to ensure that persons in designated groups enjoy equal employment opportunities at all levels of employment and are equitably represented in the workforce of a relevant employer.

(2) Without limiting the generality of the definition in subsection (1), an affirmative action measure referred to in that subsection includes, but is not limited to -

- (a) identification and elimination of employment barriers against persons in designated groups;
- (b) making reasonable efforts in the workplace to accommodate, physically or otherwise, persons with disabilities; and

- (c) instituting positive measures to further the employment opportunities for persons in designated groups, which may include measures such as -
  - (i) ensuring that existing training programmes contribute to furthering the objects of this Act;
  - (ii) establishing new training programmes aimed at furthering the objects of this Act; and
  - (iii) giving preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce of a relevant employer.

(3) To determine whether a designated group is equitably represented in the various positions of employment offered by a relevant employer, the Commission shall take into account, in addition to such other factors as it may determine -

- (a) the availability of suitably qualified persons in that designated group for such positions of employment; and
- (b) the availability of persons in designated groups who are able and willing, through appropriate training programmes, to acquire the necessary skills and qualifications for such positions of employment.

### **Designated groups**

**18.** (1) For the purposes of this Act there shall be three designated groups, namely -

- (a) racially disadvantaged persons;
- (b) women; and

- (c) persons with disabilities.
- (2) For the purposes of subsection (1) -
  - (a) “racially disadvantaged persons” mean all persons who belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged in the labour field as a consequence of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the Independence of Namibia; and
  - (b) “disabilities,” in relation to a person, includes any persistent physical or mental limitation which restricts such person’s preparation for, entry into or participation or advancement in, employment or occupation.

#### **Preferential treatment of designated group**

19. (1) In filling positions of employment a relevant employer shall give preferential treatment to suitably qualified persons of designated groups.

(2) Where two or more suitably qualified candidates from designated groups qualify for a position of employment, the employer shall give priority -

- (a) to a candidate who is a Namibian citizen; or
- (b) if all such candidates are Namibian citizens, to the candidate who belongs to more than one designated group.

(3) Subject to subsection (4), a relevant employer shall, with due regard to the purposes of this Act, train a Namibian citizen as the under study of every non-Namibian citizen employed by him or her or it.

(4) The Minister may, upon application in writing by a relevant employer referred to in subsection (3), and after consultation with the Minister of Higher Education, Vocational Training, Science and Technology and the Labour

Advisory Council, exempt such relevant employer in writing from the provisions of that subsection -

- (a) upon proof by that relevant employer that the trade or profession of the non-Namibian citizen contemplated in that subsection is of such a specialised nature that it is not reasonably possible for the relevant employer to train in the workplace a Namibian citizen as the under study of such non-Namibian citizen; or
- (b) where the Minister is for any other reason satisfied that it is impractical for such relevant employer to train in the workplace a Namibian citizen as the under study of such non-Namibian citizen.

### **Relevant employers**

**20.** (1) The Minister shall by notice in the *Gazette* identify the employers who, as relevant employers, shall comply with this Act.

(2) The Minister shall in the notice referred to in subsection (1) identify an employer as relevant employer -

- (a) by naming -
  - (i) such employer either individually or by category as relevant employer; or
  - (ii) in the case of the Public Service, any Office, Ministry, or Agency as set out in Schedule 1, 2 or 3 of the Public Service Act, 1995 (Act No. 13 of 1995) as relevant employer; or
- (b) by setting out in such notice -
  - (i) the criteria; or
  - (ii) the numerical base for calculating the number of employees employed by an employer,

by which such employer shall be so identified.

(2) Different criteria and numerical bases may be set out under subsection (1)(b) for different industries or sectors of the economy.

### **Employers treated as single employer**

21. (1) The Commission may of its own accord or on application made to it by a relevant employer or a registered trade union representing the interest of the employees of such employer or any other representative of such employees, make an order that such relevant employer and any or all of its subsidiaries, branches or any other subdivision, as the case may be, constitute a single relevant employer for the purposes of this Act.

(2)(a) A relevant employer may in writing apply to the Commission, in such form as the Commission may determine, to make an order that such employer and any other relevant employer named in such application constitute a single relevant employer for the purposes of this Act.

(b) A registered trade union representing the interest of the employees of a relevant employer or any other representative of such employer's employees, may in writing apply to the Commission, in such form as the Commission may determine, to make an order that such employer and any other relevant employer named in such application constitute a single relevant employer for purposes of this Act.

(3) The Commission shall in writing inform the relevant employer and the registered trade union or other representative, as the case may be, of any order made under subsection (1) or (2).

(4) A relevant employer, registered trade union or other representative referred to in subsection (1) or (2), or an employee who is aggrieved by an order of the Commission made under any of those subsections may, within a period of 30 days from the date upon which he or she has received the notice referred to in subsection (3), in writing appeal against such order to the Labour Court.

(5) The Labour Court may, on good cause shown, allow an appeal to be noted in terms of subsection (3), notwithstanding the expiry of the period of 30 days referred to in that subsection.

(6) An appeal to the Labour Court in terms of this section shall be subject to the provisions of the Labour Act, 1992, and its regulations, and such appeal shall, for the purposes of that Act, be deemed to be an appeal from a district labour court established by section 15(1)(b) of that Act.

(7) The Labour Court may in respect of an appeal lodged in terms of subsection (3) -

- (a) confirm the order appealed against;
- (b) set aside such order; or
- (c) make such order as it deems fit.

### **Voluntary affirmative action**

**22.** Any employer who is not a relevant employer may adopt and implement an affirmative action plan consistent with this Act.

### **Affirmative action plans**

**23.** (1) Subject to section 24, every relevant employer shall prepare and implement a three year affirmative action plan -

- (a) specifying the affirmative action measures to be instituted in order to -
  - (i) eliminate employment barriers against persons in designated groups;
  - (ii) make available positions of employment to such persons, provided that it is reasonably possible; and

- (iii) ensure that such persons are equitably represented in the various positions of employment;
- (b) setting out the affirmative action objectives which he or she or it expects to achieve, by setting out, where appropriate, numerical goals for increasing the representation of persons in designated groups in each job category and grade or equivalent thereof in his or her or its employment;
- (c) establishing a timetable for the achievement of the objectives referred to in paragraph (b);
- (d) setting out an internal procedure to monitor and evaluate the affirmative action plan,

and identify a senior employee in his or her or its employ who will have overall responsibilities for the implementation of such affirmative action plan.

(2) For the purposes of subsection (1), the Office of the Prime Minister shall, on the recommendation of the Public Service Commission established by section 2 of the Public Service Commission Act, 1990 (Act No. 2 of 1990), and after consultation with the relevant Permanent Secretary, prepare an affirmative action plan for every Office, Ministry or Agency in the Public Service identified as a relevant employer.

### **Consultation and assistance of employees**

24. (1) For the purposes of developing and implementing an affirmative action plan, a relevant employer shall carry out consultations with the representatives of his or her or its employees and, where there is a trade union representing the interest of such employees, also with such trade union, concerning -

- (a) the preparation, implementation and revision of that employer's affirmative action plan;
- (b) the assistance of such representatives or trade union in



communicating matters relating to the affirmative action plan to such employer's employees; and

- (c) the participation of such representatives or trade union in monitoring the affirmative action plan.

(2) Representatives consulted in terms of subsection (1) shall reflect the interests of employees from across all occupational categories and levels of the employer's workforce, employees from designated groups and employees who are not from designated groups.

#### **Analysis, review and statistical report**

**25.** (1) For the purpose of developing and implementing an affirmative action plan, a relevant employer shall -

- (a) analyse his or her or its workforce to determine whether persons in designated groups are equitably represented therein as contemplated in paragraphs (a) and (b) of subsection (3) of section 17;
- (b) review and evaluate his or her or its employment practices; and
- (c) prepare a statistical report, revised yearly, to correctly reflect the information required by subsection (2).

(2) The statistical report referred to in subsection (1)(c) shall set out with regard to a relevant employer's workforce -

- (a) the job categories and grades or equivalents thereof of employment offered, and the representation of persons in designated groups in each such category and grade or equivalents thereof;
- (b) the number of employees hired, promoted and whose services have been terminated in the preceding twelve months, and the representation of persons in designated groups among those employees;

- (c) the scales of salary, the number of persons in designated groups in each such scale and the actual remuneration and other benefits of his or her or its employees; and
- (d) such other information as may be required by the Commission.

### **Records**

**26.** Every relevant employer shall keep a record of -

- (a) the affirmative action plan prepared in terms of section 23;
- (b) the minutes of the consultations carried out in terms of section 24; and
- (c) the analysis, review and statistical report prepared in terms of section 25.

### **Submission of affirmative action reports**

**27.** (1) Every relevant employer shall submit to the Commission, in such form as the Commission may determine and subject to section 28(1), a first affirmative action report -

- (a) not later than 18 months from the date on which such employer has been identified as a relevant employer; or
- (b) on such other date as the Minister may by notice in the *Gazette* determine, either specifically for such relevant employer or generally for a category of relevant employers,

whichever date is the later date.

- (2) (a) A relevant employer shall submit to the Commission, in such form as the Commission may determine and subject to section 28(2), a further affirmative action report not later than twelve months from the date of the submission of the first affirmative action report referred to in subsection (1), and thereafter once

every twelve months from the date of submission of the immediately preceding affirmative action report.

- (b) Notwithstanding paragraph (a), the Commission may, on application made to it in writing prior to the expiration of a period referred to in that paragraph, by notice in writing to the relevant employer concerned extend such period for such further period as it may determine.

(3) An affirmative action report required in terms of this section for an Office, Ministry or Agency in the Public Service identified as a relevant employer shall be prepared and submitted to the Commission by the Office of the Prime Minister.

#### **Contents of affirmative action reports**

**28.** (1) Subject to subsection (3), a first affirmative action report referred to in section 27(1) shall contain -

- (a) the statistical report referred to in section 25(1)(c);
- (b) the affirmative action plan prepared in terms of section 23;
- (c) a summary of the affirmative action measures, including the numerical goals for the employment of persons in designated groups in the various job categories and grades or equivalents thereof in the employment offered by such employer, and any other objectives, if any, which that relevant employer intends to implement during the ensuing reporting period;
- (d) the names of every non-Namibian citizen employed by such relevant employer and Namibian citizen trained as required by section 19(3);
- (e) the records and documents used in the preparation of the report in question; and

