

## **ORAL PRESENTATION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE FOR LABOUR REGARDING PROPOSED AMENDMENTS TO SECTION 8 OF THE EMPLOYMENT EQUITY ACT, 1998**

**8 August 2013**

Thanks for the opportunity to discuss the proposed EEA amendments with you.

The Association of test Publishers of South Africa (ATP) would like to make some recommendations to achieve the desired effect with the proposed amendments.

### **1) Introducing the Association of Test Publishers South Africa (ATP)**

The Association of Test Publishers South Africa (ATP SA) is a non-profit association representing 22 organisations that are providers and developers of tests and assessment tools that are used in employment, education and clinical people assessment and testing practices in South Africa.

Similar to ATP International, ATP SA is committed to promoting the benefits of best practice in testing and the value of these benefits to society, and is dedicated to achieving the highest levels of professionalism and business ethics within the test publishing community.

### **2) ATP SA's Vision and Mission**

The association has adopted the mission statement of the Association of Test Publishers International, which reads: "It is the mission of this Association to promote the ethical and effective use of testing of people and the use of people assessment instruments."

ATP SA strives to promote the dissemination of information to interested parties within South Africa, informing best practice principles in line with international practices and contributing to the public's right to be informed about testing and good testing practice.

### **3) The Proposed Changes to the EEA**

The ATP would like to focus on the proposed amendment of Section 8 of the Employment Equity Act, 1998 in the Employment Equity Amendment Bill and the addition of subparagraph (d) thereto as follows:-  
*"(d) has been certified by the Health Professions Council of South Africa established by section 2 of the*

*Health Professions Act, 1974 (Act no. 56 of 1974), or any other body which may be authorised by law to certify those tests or assessments.”*

In the Discussion of the Bill point 3.4, the amendment is described as: *“Amendment of section 8 of EEA Only psychometric tests that have been certified by the Health Professions Council of South Africa, or another body which is authorised to certify such tests, may be used in tests on employees.”*

#### **4) Concerns related to the proposed changes and definitions**

The ATP is concerned about the broad definitions used for testing and other similar assessments but then to qualify the need for the HPCSA to certify all these possible assessments or tests. Currently the introduction paragraph refers to: *“Psychological testing and other similar assessments”*. In the proposed addition d) no mention is made to the type of assessments that needs to be certified by the HPCSA.

In the discussion of the Bill the following is mentioned: *“that only psychometric tests certified by the HPCSA may be used”*. This is however not part of the text in the proposed additional paragraph (d). ATP understands the intention behind this addition and supports this change, but feels that the *“other similar assessments”* in Section 8, should be further qualified as psychological tests. Psychological test needs to be certified by the HPCSA and not all similar assessments.

The HPCSA is not qualified to certify all assessments and tests, for example, competence testing as described in the NQF should not be certified by the HPCSA.

#### **Proposed solution**

It is proposed that, in order to clear up the potential confusion in the terminology, the type of assessments that must be certified by the HPCSA should be qualified. By adding the qualifier that *“Psychological tests”* be certified by the HPCSA, the problem can be solved.

The proposed additional subparagraph (d) could read as follows: *“(d) and that Psychological tests be certified by the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act no. 56 of 1974), or any other body which may be authorised by law to certify those tests or assessments.”*

The full section 8 could then read as follows:

#### **CHAPTER II - PROHIBITION OF UNFAIR DISCRIMINATION**

##### **Psychological testing and other similar assessments**

8. Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used:

- (a) has been scientifically shown to be valid and reliable;
- (b) can be applied fairly to all employees; and

- (c) is not biased against any employee or group; and
- (d) *that Psychological tests be certified by the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act no. 56 of 1974), or any other body which may be authorised by law to certify those tests or assessments.*

**Motivation for the suggested change to sub-paragraph (d)**

Line managers, priests, teachers, sales people, are all using tests and psychometric assessments on a daily basis. The so-called “Similar Assessments” as described in Section 8. Not all test or assessments should be certified or controlled by the HPCSA. In line with the International Test Commission’s guidelines on test use, the terms ‘test’ and ‘testing’ should be interpreted broadly. However, all tests are not necessarily ‘psychological tests’ and their use does not necessarily constitute a psychological act or a psychological test. They should however still be used fairly, but that is not a Health or Psychological issue. Paragraph (a) (b) and (C) ensure best practice for other assessments based on good science and use of people data and information.

Psychometric means the measurement of people. Marketing people, performance management systems, and opinion surveys, organizational opinion surveys are all psychometric evaluations and they can and should not all be regulated by the HPCSA.

Psychometrics is the field of study concerned with the theory and technique of psychological measurement, which includes the measurement of knowledge, abilities, attitudes, personality traits, and educational measurement. The field is primarily concerned with the construction and validation of measurement instruments such as questionnaires, tests, and assessments. Again, this is not only the domain of the Health Professions or the HPCSA.

Psychometrics involves two major research tasks, namely: (i) the construction of instruments and procedures for measurement; and (ii) the development and refinement of theoretical approaches to measurement. It is therefore possible for any measure to have ‘psychometric qualities’ – validity, reliability, etc. – for example, skills tests, knowledge tests, interviews, 360-degree questionnaires, simulation exercises and questionnaires used in marketing.

As a field of study, psychometrics is concerned with method and science. It relates to the qualities of a test or assessment and does not define the nature of the construct or what is been measured. Unless used in the context of a ‘psychological test’, the term ‘psychometric’ cannot define acts that are limited to the profession of psychology.

As mentioned, these definitions and any attempts to define and classify psychological tests should be defined in the proposed Psychological test classification system the HPCSA is currently working on. These definitions should also adhere to, and be in line with well-accepted definitions and theory documented in the Work Psychology literature of a Psychological test. In order to determine if a ‘test’ involves a

psychological act one needs to examine the test process and constructs it intends to measure. Typically this would then determine the control (ensuring ethical use, governance, policy development), application (Selecting appropriate measures, determining modes of administration and areas of application, administering projective techniques), and interpretation (writing or developing computerised reports, feedback) of tests. Looking at available international test classification systems, it is possible to create taxonomies of test process and construct complexity under consideration and this can then inform the level of control and protection needed. These taxonomies are similar to the classification taxonomy of medicine that regulates medicine. Some herbal medicine will not be certified by the HPCSA. Psychological test, just as with potentially harmful medicine, should be regulated and certified by the HPCSA. The HPCSA should however not certify competency or skills assessments. This falls under, and is controlled by the National Qualifications Framework (NQF).

Without the defined list of prescribed test or psychological tests any construct or tests could come into question. Teachers, Corporate Training Practitioners, marketing researchers and line managers, all use tests and questionnaires, qualitative and quantitative techniques on a daily basis to measure people characteristics such as knowledge, skills, abilities and attitudes. These activities and measurements of some of these constructs are not psychological tests. The Health Professions Council of South Africa (HPCSA) should not control these assessments and tests but should only certify Psychological tests.

As the proposal stands, all Interview questions by line managers, typing tests, artisan skills test, and chef cooking tests will, need to be classified by the HPCSA in order to be used by employers. This is not only impractical but also against all current global labour practice.

## **5) Conclusion**

The proposed definitions used in Section 8 (d) is confusing and not in line with current practice and science. There are still outstanding issues regarding the definition of Psychological Assessment and Psychometric Assessment that currently still under discussion by the HPCSA. The HPCSA is currently 5 years in arrears with submitted Psychological tests waiting or pending certification. These practical problem are already a major stumbling block to the practical implication of the proposed changes.

Without reconsidering the current terminology used in the proposed additions to section 8, major confusion will be caused in the current assessment practices in organisations and certification bodies. Some of these organisations are currently functioning under department of labour regulations.

The current Section 8 is very powerful to ensure fair assessment practices. Every employee can use this clause to ensure fair treatment by employers. By asking only one regulatory body to control all assessments in the South African economy, might actually act as a distraction to the real underlining ethos of this paragraph. Psychological test certified by the HPCSA can still be used unfairly. How



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organizations use assessments should be the focus of legislation, and not the certification of a test or assessment.

Thank you very much for this opportunity.

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