

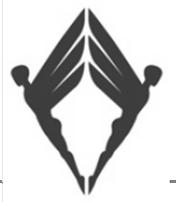
For attention:
Portfolio Committee on Labour
Public submission concerning:
Employment Equity Amendment Bill [B31 – 2012]

Submitted by the **Society of Industrial &
Organisational Psychology of South Africa (SIOPSA)**

Compiled, on behalf of the Society for Industrial and Organisational Psychology of South Africa (SIOPSA), by
People Assessment in Industry (PAI), an interest group of SIOPSA.

Contact details:

191 Bekker Street, Midrand
0860 746 772



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1. Introduction and Background

This submission, concerning the Employment Equity Amendment Bill, has been compiled by People Assessment in Industry (PAI), an interest group of the Society for Industrial and Organisational Psychology of South Africa (SIOPSA), on behalf of our members.

This document deals specifically with the proposed amendment to Section 8 of the original Act, relating to psychological and other similar assessments.

The opportunity to speak before the Portfolio Committee on Labour, concerning SIOPSA's viewpoints, would be greatly appreciated. Should the opportunity to address the committee be granted, the representatives from SIOPSA would be:

Prof. Karel Stanz, President of SIOPSA

Ms. Kim Dowdeswell, Chair of PAI

The comments expressed in this document are based on inputs received from SIOPSA members, who responded to an electronic communiqué circulated on 4 February 2011 (requesting comments on the proposed amendments as published in the Government Gazette No. 33873), as well as to an electronic communiqué circulated on 10 December 2012 (requesting comments on the Employment Equity Amendment Bill as per the Portfolio Committee on Labour's invitation for public comment).

1.1 *About People Assessment in Industry (PAI)*

People Assessment in Industry (PAI) was established in 1998 to proactively engage various stakeholders interested in psychological assessment in South African industry.

Functioning as an interest group of the Society for Industrial and Organisational Psychology in South Africa (SIOPSA), the purpose of PAI is to ensure testing exists in the South African context as a value adding and ethical practice. The group's activities include promoting fair assessments in the workplace, with the primary aim being to be generally recognised as the leading organisation in the continuing promotion of fair assessment in the workplace to which people will automatically refer for assessment expertise and knowledge.

Prior to the promulgation of the 1998 Employment Equity Act, PAI gave input to government on the wording as relating to psychological assessment. A specific contribution made at that stage concerning section 8 was the inclusion of the wording "Psychological testing and other similar assessments", which was done with the intention of raising the standards of assessment practices—for both psychological and non-psychological assessments—in South Africa in general.

PAI has also brought out a number of publications dedicated to providing guidance to practitioners in terms of ethical test use, including:

- Guidelines for the Validation and Use of Assessment Procedures for the Workplace (2005)
- Code of Practice for Psychological and Other Similar Assessment in the Workplace (2006)
- Issues Facing Organisations Using Assessments in the Workplace (2007).

2. General Comments Regarding the Employment Equity Amendment Bill

The general consensus received from members was that the proposed amendments to the Employment Equity Act, specifically pertaining to the proposed amendments to Section 8 of the current Act, should be opposed, for various reasons as are laid out in the subsequent sections of this document.

At the same time, individual members and SIOPSA as a professional body acknowledge the need for control to be exercised over certain types of assessments. This control can be achieved through the establishment of a considered and comprehensive test classification framework that differentiates appropriately between testing that is of a clinical nature based on a medical model, and testing in industry.

PAI acknowledges that the inclusion of the certification of psychometric tests as prerequisite for use has been done with good intentions, as the classification of psychometric assessment material should, in principle, ensure that the specific psychometric test used has been scrutinised by an independent community of experts and meets the scientific requirements in terms of presenting sufficient evidence regarding validity, reliability and culture-fairness. The inclusion of certification should also ensure that appropriately qualified test users utilise psychometric testing instruments and techniques. The proposed amendment however presupposes that the current classification process is acceptable to all stakeholders and meets best practice standards.

Furthermore, a classified psychometric test is not the only requirement for fair selection methodology. Fairness in testing depends on the complete test application, as well as the way in which information obtained through testing is used in the decision-making processes. In addition, it is unfounded to treat 'psychological tests' and 'other similar assessments' as one and the same, as they are in many ways quite different. This point is taken further in the more detailed sections that follow.

3. Specific Areas of Concern Raised Regarding the Employment Equity Amendment Bill

3.1 Section 8 of the current Act has a broader definition of assessment than the current test classification framework of the HPCSA

Section 8 of the Employment Equity Act currently refers to psychological tests **and other similar assessments**. Other similar assessments refer to instruments such as assessment centres, in-baskets, interviews, competency-based instruments, performance measures, etc. The current wording [correctly] points to the fact that employees can experience unfair disadvantage through decisions based on information derived from tools other than psychological tests. The current wording furthermore implies that sound psychometric properties is as important in the case of these other measuring devices as it is in the case of psychological tests.

Adding the proposed sub-paragraph (d) to section 8 as formulated below [(d) *has been certified by the Health Professions Council of South Africa established in terms of the Health Professions Act, 1974 (Act No. 56 of 1974)*] imposes a requirement that practically will be impossible to implement and execute. It will not be possible for the HPCSA – or any other body, for that matter – to inspect the psychometric credentials of every interview, competency measure and performance appraisal that is currently being used in South Africa.

Furthermore, many of the tests and techniques that could fall within the blanket term ‘other similar assessments’ are not psychological in nature, which is then outside of the scope of the mandate provided by the Health Professions Act. As an example, assessment centres and simulation exercises are behavioural assessments. The current classification system only makes provision for the classification of an instrument as either psychological or not – refer to discussion under 3.2 and 3.3. Therefore, these should not be certified by the HPCSA, since they are developed on the basis of competency models. The scope of the HPCSA does not extend to the certification of competency models, so it follows that it cannot be expected of the HPCSA to determine which assessment centre can or cannot be used.

Beyond this, it must be recognised that the Health Professions (i.e. psychologists, occupational therapists and others) are not the only professions that use assessment tools (tests) and procedures. Marketing research, opinion polling, social anthropology, political science, organisational diagnosis by means of culture surveys, and many more, make use of instruments and assessment procedures.

3.2 ‘Certification’ as per the proposed amendments as opposed to ‘Classification’ as per the HPCSA’s current test classification system

It must be highlighted that the wording of the proposed amendments would bring into effect a requirement that tests be “certified by the Health Professions Council of South Africa”. Certification implies that certain standards and criteria are adhered to. Currently, however, the HPCSA only classifies tests, as per Form 208 “Policy on the Classification of Measuring Devices, Instruments, Methods and Techniques” to ensure that appropriately qualified, skilled and experienced professionals use the test, to prevent that persons are adversely affected by the test outcomes and to prevent harm to the client.

The classification of a psychometric test is done through a thorough scrutiny by experts of the capabilities and properties of the test as well as the scientific research supporting claims regarding the test. The current classification process therefore provides minimum standards to which psychological tests must adhere to, however the HPCSA has not published criteria to be used to identify and certify workplace assessment tools. In addition, the classification, description and evaluation of instruments submitted are not in the public domain. PAI and SIOPSA strongly recommend that ratings should be built into the classification system to inform stakeholders of the quality of test(s). The test descriptions and evaluations done by the Psychometrics Committee should also serve a broader educational purpose by making them available in the public domain and open to debate.

3.3 The classification system used by the HPCSA needs to be revised to account for the complexities of the modern testing environment

It is acknowledged that the use of any type of assessment—psychological or non-psychological—can have a major impact on individuals, teams and organisations. However, it has been raised before that the root of the debates in South Africa regarding the fair and ethical use of tests—including who may use tests—stems not from the nature of the user or the instrument but rather from the shortcomings of the current classification framework.

A variety of procedures, tools, techniques and guidance documents have been developed to assist Industrial and Organisational Psychologists (IOP) in effectively assessing the three primary elements in a work system – the worker, the work itself, and the work context. With regard to the assessment of worker characteristics, these procedures would include tests and other means for evaluating more stable individual differences such as cognitive abilities, personality characteristics, values, and physical abilities. In addition, numerous procedures have been developed for analysing the content and human requirements of work, collectively referred to as job analysis procedures. With respect to the evaluation of work context variables, procedures have been developed to assess and effectively manage organisational culture and climate, organisational reward systems, and the design of organisations. These assessments will fall within the category of occupational assessments and the level of the assessments will determine the category of user.

However, the current classification system of psychological tests in South Africa is inadequate as it does not make provision for differing levels of complexity and does not cater sufficiently for all types and applications of assessment measures (e.g. simulation exercises, 360 questionnaires, assessment centres, etc.). Some psychological tests, such as projective techniques, are more complex to use while other psychological tests are highly structured and can for example be administered online without supervision. Furthermore, it must be noted that section 8 of the Employment Equity Act refers to ‘Psychological **and other similar assessments**’ and not only to psychological assessments, as has already been discussed earlier in this document.

SIOPSA has previously submitted comprehensive comments to the HPCSA, concerning identified shortcomings in the current classification system as well as proposed amendments and recommendations for improvements in the criteria for classification. It is strongly recommended that the current classification system be revisited by the HPCSA in collaboration with relevant stakeholders (e.g. SIOPSA, ATP SA, Universities and industry representatives) to arrive at a solution that provides a more robust approach to test classification and evaluation.

Feedback from members during the compilation of this document highlighted the importance that the test classification system should focus not only on the category of testers (as is currently the case), but more broadly in terms the purpose of the assessment, the administration and scoring of the assessment, the interpretation and feedback as well as the application of results. This is in line with previous recommendations made by SIOPSA, and other bodies, that the current test classification framework in place in South Africa should be revised to bring it more in line with international standards as used by the British Psychological Society (BPS) and the European Federation of Psychologists’ Associations (EFPA). Aspects of this point—specifically that the *application* of tests as part of the definition of their use—should be taken into account in the revised test classification system is elaborated on further in Section 3.4.

3.4 The application of a test must be taken into account within the greater test classification framework

When considering the certification—or classification—of tests and assessment devices, the different aims of using instruments to gather information about people must be distinguished between. To say that only certified tests may be used is a global statement which will undermine information gathering, diagnosis and interventions by psychologists. Since information gathering and diagnosis are essential before one can offer interventions or solutions, there must be a clear distinction between instruments used for different purposes. There are instruments which provide:

1. Information and diagnosis of a person's personality or behaviour which is aimed at classifying defined personality or behaviour against established population norms for the purposes of selection for a job where criteria for successful selection have been defined.
2. Information and diagnosis of a person's personality or behaviour which is aimed at providing feedback to them for the purposes of raising self awareness aimed to behaviour, performance and attitude change.
3. Information and diagnosis of group or organization behaviour, climate/culture which is aimed at providing feedback to the group or organization to raise awareness aimed at behaviour, performance and attitude change.
4. Information and diagnosis of behaviour problems to help discern appropriate interventions for change and improvement.

Against this background a strong point was made by members that the classification framework should emphasise professional judgment as the key to legal compliance. It is however not the purpose of this document to provide detailed comments on what should be included in a suitable classification system. Earlier this year, in response to a request for input from the Professional Board for Psychology, SIOPSA submitted recommendations concerning test regulation in South Africa.

3.5 The capacity of the HPCSA

Aside from the complexities regarding catering for both psychological and other similar assessments as well as the purpose of the application, several members raised concerns regarding the capacity and resources of the HPCSA to carry out the certification of all instruments and to maintain the list of certified instruments.

It is noted that this concern may be addressed through the proposed amendment now reading "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."

However, a question that remains is how practical and implementable the proposed amendment is, for the reasons given in earlier sections.

3.6 The proposed changes will not ensure that the anti-discrimination clause of the Employment Equity Act will be satisfied

It is further argued that the inspection of the psychometric credentials of every psychological and other similar assessment device used in South Africa will not ensure that the anti-discrimination clause of the Employment Equity Act is satisfied.

The Employment Equity Act (Republic of South Africa, 1998, p.14) prohibits unfair discrimination by stating that:

No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

It is impossible to give an assurance that the use of any assessment tool will serve the objective of the Act of “promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination” (Republic of South Africa, 1998, p. 12).

Psychological tests but also other similar assessments render information that is used in employment practices to inform decisions about employees. The manner in which this information is used to inform the decision determines whether the decision discriminates fairly or unfairly between employees. Although it is true that the use of [construct] invalid, unreliable and biased measures probably will result in decisions that unfairly discriminate against employees, the opposite is not true. Decisions based on valid, reliable unbiased information on/measures of constructs relevant to the decision can still unfairly disadvantage employees from constitutionally protected groups.

4. Conclusion & Proposal for the Way Forward

This document lays out the position of SIOPSA, as compiled by its interest group PAI, in terms of the Employment Equity Amendment Bill, and specifically pertaining to proposed amendments of Section 8 of the current Act.

SIOPSA opposes the proposed amendments to section 8 of the Employment Equity Act as the promulgation of the proposed amendments is anticipated to result in an unsustainable situation as the current classification systems is not supported by all stakeholders and is insufficient to cater appropriately for psychological testing and “other similar assessments”.

SIOPSA acknowledges the need for control to be exercised over certain types of assessments. Similar to previous engagements with the HPCSA and Professional Board for Psychology on this topic, SIOPSA believes that this control can be achieved through the establishment of a considered and comprehensive test classification framework that differentiates appropriately between the different types of assessments, their uses, and subsequent users, administrators and the like.

SIOPSA proposes that the amendments to section 8 of the Employment Equity Act be discarded, and that the Professional Board for Psychology, on behalf of the HPCSA, engages with all relevant stakeholders to arrive at a rationale and considered test classification framework that not only meets the Board’s objective of guiding the profession while protecting the public, but

that is also practical and sustainable from an implementation perspective, and that is in line with similar international standards.