

IMPLEMENTING AFFIRMATIVE ACTION IN NAMIBIA

**A summarised guide to the Affirmative
Action (Employment) Act (Act 29 of 1998)**

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FOREWORD

The writers of the Namibian Constitution perceived a need for affirmative action as a necessary condition for bringing about change in a previously discriminatory society. Therefore Article 23(2) addresses the issue of affirmative action by stating that nothing contained in Article 10 of the Constitution shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices. It similarly provides for the implementation of policies and programmes aimed at redressing imbalances in the Namibian society arising out of this unfortunate historic situation.

The Government of Namibia has, since then, frequently expressed its concern about the high rate of unemployment of previously disadvantaged communities, skewed income distribution and other human resources related shortcomings. The implementation of the Labour Act (Act 6 of 1992), was an important attempt to remedy the situation. A further major step forward has been the promulgation of the Affirmative Action (Employment) Act (Act 29 of 1998) which outlines measures that relevant employers are required to adhere to in order to ensure that persons in designated groups enjoy equal opportunities and are fairly represented in the various positions of employment.

In order to ensure the successful implementation of these measures it is of the utmost importance that the main role players (i.e., employers, employees and trade unions) be orientated concerning the nature of the legislation. The Namibia Institute for Democracy is of the opinion that the process can be purposefully facilitated through providing appropriate education and training aids to the role players regarding the basic provisions of the Act.

This booklet, which has been compiled with the kind assistance and inputs of various organisations, including H&E Labour Consultants (the main compilers of the text), the Ministry of Labour and the Namibian Employers' Federation, is aimed at meaningfully assisting such orientation, education and training. The NID is convinced that the booklet will not only offer practical insight and guidance for the implementation of affirmative action in Namibia, but will also encourage informed participation in the tripartite industrial relations system. It will thereby assist in the promotion of equitable, stable labour practices in the interest of sustained development and optimum utilization of our valuable human resources.

Theunis Keulder
Executive Director
NAMIBIA INSTITUTE FOR DEMOCRACY
Windhoek, 1 March 1999

FOREWORD TO THE UPDATED THIRD EDITION

The updated third edition of this booklet has been occasioned by the fact that all copies of the previous two editions have been depleted. That is indicative of the popular demand for a publication of this nature as a reader-friendly aid for the effective implementation of affirmative action in Namibia. Feedback obtained from various quarters confirms the relevance of the booklet's contents not only to employers but, indeed, to all the role players involved, especially human resources practitioners, managers, supervisors, unionists, shop stewards, employees and officials of the public service.

The Namibia Institute for Democracy is grateful to have been instrumental in the booklet's publication, thus contributing towards the quest for a more equitably structured society. The NID regards pragmatic, balanced affirmative action as a vital process towards the strengthening of the democratic fabric of a developing nation.

The Institute has grasped the opportunity to update and revise the booklet to reflect recent developments in the area and to make the publication even more relevant to its purpose than before. In this regard the NID again wishes to acknowledge the kind assistance and inputs of various organisations and individuals. A special word of appreciation is due to the Employment Equity Commissioner, Mr V.T. Usiku; the Permanent Secretary of the Ministry of Labour, Mr C. Schlettwein; the Secretary-General of the Namibian Employers' Federation (NEF), Mr C. Truebody; the Chief Researcher of the National Union of Namibian Workers (NUNW), Mr H. Jauch; EEC employer representative, Mrs E. Fahl; and Namibia Chamber of Commerce and Industry (NCCI) spokesperson, Mr P.van Wyk. We also wish to acknowledge the kind financial assistance of the Konrad-Adenauer-Stiftung in support of the project.

This booklet is dedicated to all employers and employees engaged in productive pursuit to promote the economy and social development of this country. May it contribute, in whatever small yet meaningful manner, to assist the social partners in achieving lasting equity and harmony at the workplace.

Theunis Keulder
Executive Director
NAMIBIA INSTITUTE FOR DEMOCRACY
Windhoek, 2 April 2000.

PREFACE

The promulgation of the Affirmative Action (Employment) Act, 1998 (Act 29 of 1998) in September 1998 has brought a significant new dimension to Namibian employment relations. Culminating after a lengthy consultative process between the social partners, the Act provides clarity and certainty regarding appropriate measures to promote employment equity at the workplace.

The Act is being implemented in phases. Government Notice 278 of 1998, brought certain administrative provisions into operation including the establishment of the Employment Equity Commission. Government Notice 156 of 1999 brought the rest of the Act into operation. Government Notices 157 and 158 of 1999 determine that Affirmative Action Plans for the public and related sectors must be ready by August 2000, and those for the private sector by February 2001, respectively. Government Notice 159 of 1999 contains the first Regulations framed under the Act by the Minister of Labour, the Honourable A. Toivo Ya Toivo.

This booklet is made available free of charge as a service to the Namibian public, by courtesy of the Namibia Institute for Democracy and diverse donor funding. The booklet is intended as an aid to management, employees and union representatives in the implementation of the statutory requirements regarding affirmative action at undertakings and organisations identified as relevant employers. Whereas the formulation, putting into place and monitoring of affirmative action plans requires a team effort, the major responsibility for doing so rests with the relevant employer. Both staff and line management thus have an important role to play in this regard and should approach the task in a pro-active, positive manner.

The focus of the booklet is directed at highlighting the main provisions of the Act from a practical operational point of view. Its approach in this respect alternates from seeking broad comprehension of basic concepts and their inter-relatedness, to more detailed explanation of specific matters necessary for implementation. The text concentrates on important information which employers, employees and unions need to be aware of, rather than on official administrative aspects, and therefore does not represent a complete summary of the Act, nor a comprehensive treatise on affirmative action. Nevertheless, certain additional background material and practical guidelines are provided which it is felt will assist in promoting better understanding of the factors involved.

Whilst care has been taken to ensure the accuracy of its contents, the booklet should not be regarded or utilized as legal authority for any action taken or contemplated under the Affirmative Action (Employment) Act, 1998. Indeed, it is strongly recommended that every employer should obtain copies of the Act, relevant government notices and official guidelines which should be used in conjunction with this booklet and other literature on the subject. Especially where decisions on legal aspects have to be taken, it is important that the Act itself be fully consulted.

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CHAPTER I

INTRODUCTION TO AFFIRMATIVE ACTION

1. ORIGIN OF THE CONCEPT

Namibian independence a decade ago introduced many innovative ideas and concepts into our young society. One of these was the notion of affirmative action, to many a rather foreign sounding phrase at the time. This certainly is no longer the case, as today we stand at the threshold of the implementation of a comprehensive statutory affirmative action programme throughout the country. Before taking a closer look at what this programme entails, it would be useful to briefly consider the origin of the concept and thus obtain a better perspective of its nature and purpose.

As with to so many other global trends and new ideas in the latter half of the 20th century, the concept of affirmative action had its origin in the United States of America. It was essentially an outflow of the Civil Rights Movement, which had gained momentum through various forms of mass action against racial iniquities during the fifties and sixties.

Fuelled by the fiery rhetoric of charismatic leaders such as Dr. Martin Luther King Jr, Roy Wilkens and Stokely Carmichael, the Civil Rights Movement sought to enforce basic civil liberties enshrined in the American Constitution. These had often been largely ignored: especially in the South, historically a region of appalling racial tensions and malpractice.

Whereas the Civil Rights Movement concentrated on emotional, high visibility tactics such as mass demonstrations, civil disobedience and boycotts to rectify the imbalances of the past, the authorities sought to address the issues in a more sober fashion. Official programmes were developed aimed specifically at giving members of minority groups preferential treatment in employment and education. These initiatives eventually became widely known by the broad generic term "affirmative action".

First in a series of official measures to promote affirmative action was a directive issued by the Kennedy Administration in 1961, requiring firms holding Government contracts to increase the employment of minority groups in their workforce. The initiative gained momentum with the passage of the Civil Rights Act of 1964 and the Equal Employment Opportunities Act of 1972. However, probably the most influential measure underlying American affirmative action plans (so-called APPs), was the "Executive Order Number 11246", promulgated by President Lyndon Johnson in 1965, and amended several times subsequently.

The Executive Order had three key requirements: (a) Organisations (both government and private sector) to which it applied had to abide by an equal opportunities policy; (b) such entities were required to analyse their workforce to assess possible underutilisation of women and ethnic minorities (underutilisation being defined in terms of qualified applicants or potential applicants); and (c) if underutilisation was revealed, an organisation had to develop a plan of action to eliminate it and make a good faith effort to execute that plan.

Since those early beginnings, affirmative action policy has gained international acceptance as a legitimate vehicle to promote social justice whilst enhancing the more efficient use of human resources. Apart from the United States, it has been widely implemented in countries as diverse as Sri Lanka, Malaysia, Australia, Zimbabwe and South Africa. Even so, human nature being what it is, affirmative action has not existed without controversy and mixed results.

In the USA some of the issues involved gained heightened public attention in several Supreme Court rulings. Significantly, the Court upheld the legality of affirmative action programmes but put limitations on how and when they could be applied. Whilst in most cases disallowing the use of rigid quotas, the use of goals and timetables was ruled permissible. And, whereas affirmative action favouring the employment of previously disadvantaged groups was declared legal, programmes that entail the outright dismissal of employees in order to make place for members of privileged groups, were judged unlawful.

The International Labour Organisation (ILO) has also, historically, shown a special interest in affirmative action. Aside from undertaking numerous studies on the subject it has passed several affirmative action related instruments such as the Equal Remuneration Convention, 1951 and the Discrimination (Employment and Occupation) Convention, 1958.

The concept of affirmative action has thus undergone a certain amount of refinement and evolution over the years. Its main elements and rationale have, nevertheless, remained much the same throughout.

2. MAIN ELEMENTS AND RATIONALE

The three core elements contained in the American Executive Order of 1965 [workforce analysis, equal opportunity and equitable representation] continue to constitute the basic ingredients of affirmative action policies in most countries of the world.

Slightly more elaborated, this essentially means that -

- comprehensive human resources affirmative action audits need to be conducted employing transparent, objective methods;
- all discriminatory practices, both direct (obvious) and indirect (concealed) and both formal and informal must be identified and eliminated;
- employers need to embark on purposeful programmes of action to achieve set goals for balanced staffing over a realistic period of time;
- special training and other accommodating measures must be specifically targeted at disadvantaged or formerly disadvantaged groups; and
- in selecting amongst candidates of similar ability or potential, members of disadvantaged groups should enjoy preferential consideration.

At the same time it must be stressed that balanced affirmative action does not mean that -

- objective performance standards need to be lowered;
- people should be appointed to jobs which they are incapable of performing satisfactorily;
- employees can arbitrarily be fired at will in order to make place for others;
- all employers must follow identical and rigid programmes of advancement; and
- that such policies and programmes will necessarily have to be kept in place indefinitely.

It goes without saying, that the implementation of affirmative action measures restricts the opportunities of some persons. But this restriction of opportunities is a consequence of the removal of a privilege hitherto enjoyed by those who benefited from the previous status quo. Because bona fide affirmative action measures are temporary in nature designed to dismantle employment inequities - and not to exclude any persons per se, simply because they belong to a certain group - they cannot correctly be deemed unjust. Affirmative action does not stem from prejudice against a particular societal group, nor is it intended to stigmatise its members.

Affirmative action programmes are needed to raise the socio-economic level of groups subjected to long-standing patterns of discrimination. In this sense the policy helps to redress generations of lost opportunities for such groups. But quite apart from moral considerations, on a purely pragmatic level, affirmative action, through its methodical investment in under-utilized human resource potential, makes excellent business sense. It helps to unlock the latent capacity of enterprises which have heretofore been restricted through prejudicial policies and practices, whether intentional or not.

The challenge of affirmative action in developing countries is compounded by the lack of resources and societal structural impediments. For whereas the principles of affirmative action are universal, wealthy industrialized nations such as the USA and Australia need to concentrate on a relatively small proportion of the workforce only. Needy African and Asian countries, on the

other hand, are usually faced with the upliftment of a large majority of the population. In this sense they face a double challenge, and given the structural nature of the dilemma, affirmative action in employment constitutes only a part, albeit an important part, of the solution.

Lastly, it is important to be responsive to the fact that most innovative human resources related programmes contain sensitive elements, which require that ownership of their aims should, as far as possible, vest in all those affected. It is therefore good strategy to attempt to accomplish such objectives by persuasion and voluntarism, as far as practicable. This is especially the case with affirmative action where not only significant economic, but also fundamental moral and psychological dimensions are involved.

3. PSYCHOLOGICAL CONSIDERATIONS

Due cognizance of underlying psychological dimensions is essential for the successful implementation of affirmative action policy, no matter the country or enterprise. In this respect it may be observed that deliberations on affirmative action most frequently refer to people in a depersonalised group context, making demographic categories (race, gender) and abstract concepts (such as human rights, comparative deprivation and employment equity) the subject of debate. The underlying importance of individual personality as an important factor is inclined to be overlooked or insufficiently catered for. That is unfortunate, for affirmative action is all about change, intended, in practice, to impact on the socio-economic status of individuals. Through purposefully benefiting target group members, it may be seen to limit the chances of certain non-target group members to reach and sustain cherished life goals. On the other hand, unrealistic expectations of affirmative action gains by beneficiaries can eventually lead to disenchantment or impaired self-esteem.

It follows, that affirmative action has the potential to evoke strong, albeit usually suppressed, emotions. The specific nature of these will depend on the person's own subjective evaluation of affirmative action as an instrument of social engineering, and the type of treatment he or she could expect from it in a personal capacity. Sentiments can range from positively optimistic to

impatient expectancy; and from hostile rejection to anxious withdrawal. Depending on the circumstances, such feelings and related attitudes can easily constitute dimensions of strained relations amongst employees. And while the nature and reasons for experiencing negative emotions may differ, any type of negativism is damaging to the long-term success of affirmative action.

International research suggests that affirmative action will have harmful effects on relations between members of the two groups unless the affirmative action programme is positively evaluated by both the beneficiaries and non-beneficiaries. In other words, both must see the policy as fair: detrimental implications for non-beneficiaries should be minimised, whilst qualifications and ability of the beneficiaries are emphasised. Studies show that whereas a majority of people are positively inclined towards compensatory actions (e.g. accelerated training) and efforts to promote diversity (e.g. targeted recruitment) they otherwise feel that affirmative action should concentrate on the elimination of discrimination and creation of equal opportunities.

A very basic but important truth is borne out by the above: The difficult, in certain respects troublesome, psychological variables inherent in affirmative action should not be ignored. They require recognition and suitable response, underscored by sincerity and unabated clear communication in all spheres. That applies not only to official affirmative action policy, but also to any tailor-made programmes developed for individual organisations.

4. BACKGROUND TO THE NAMIBIAN SITUATION

Following the inclusion of diverse affirmative action principles in the Namibian Constitution, the Government immediately embarked on formulating more elaborate policy statements on the subject.

On 31 July 1990 Cabinet adopted a "National Policy on Labour and Manpower Development" in which various references are made to affirmative action related concerns. In November the same year a consultative document was circulated amongst the social partners to seek their views on

the form and content of proposed affirmative action legislation. The document outlined the Government's ideas at that stage on how it felt such legislation should be composed.

The consultative document, and reactions to it, formed an important input to a "Draft Bill on Affirmative Action in Employment" compiled by Professor Julio Faundez, engaged for the purpose by the ILO. The Draft Bill was presented in the form of an ILO technical document to a tripartite seminar which was hosted in Windhoek by the Ministry of Labour during April 1991.

The year 1992 witnessed the promulgation and implementation of the Labour Act (Act 6 of 1992), which, amongst its wide ranging provisions also included an enabling section on affirmative action (sec.106) and a section prohibiting unfair discrimination or harassment at the workplace (sec.107). These can be viewed as early precursors of the current affirmative action legislation.

By this time funding was found for a full fledged affirmative action programme based on the 1991 draft Bill. Unfortunately various delays caused by the need to assess the suitability of certain aspects contained in the draft, as well as other unforeseen problems, eventually led to a withdrawal of initial sponsorship in 1995. This in itself caused a further delay until a new donor could be found to finance the project.

From then on matters proceeded smoothly and an amended Draft Bill was circulated to the social partners by the Labour Commissioner in July 1997. Further tripartite workshops were held during August 1997 and January 1998 (hosted by the Ministry of Labour with specialist inputs from the ILO), during which employer and union representatives were able to debate and submit yet further suggestions on the proposed system. The openness and candour with which the whole drafting process has been pursued, is indeed most laudable and in full keeping with the tenets of Namibia's democratic culture.

The final, official Affirmative Action (Employment) Bill was introduced in the National Assembly by the Acting Minister of Labour, the Honourable John Shaetonhodi, in June 1998. After having passed virtually without amendment through both Houses of Parliament, it was signed by His Excellency President Sam Nujoma on 3 September 1998 and was promulgated in

Government Gazette No.1962 on the 24th of the same month. The Promulgation of the Act was followed by five Government Notices in the course of 1998 and 1999, putting the statute into operation and providing the first set of Regulations.

Thanks to the extensive efforts undertaken by the Ministry of Labour to consult the public right from the beginning, a large measure of consensus has been achieved on employment equity in Namibia. What is more, the vast majority of established businesses are in principle firmly committed to balanced, viable affirmative action, and recognize both the moral and economic virtues inherent therein. As a matter of fact, many leading enterprises are already well advanced in effecting the policy, although it may not always be immediately discernable as such from the outside.

It is important that the implementers of affirmative action recognise and capitalise on this goodwill as an essential prerequisite for success. If the new institutions and processes are perceived to be fair and reasonable by both employers and employees, further momentum towards balanced employment can be assured. If not, the programme may actually undermine what progress has already been achieved over the past few years in terms of improved perceptions, positive acquiescence and actual accomplishments.

Doubtless, we have come a long way since independence, although equally certain, much remains to be done. The Affirmative Action (Employment) Act, 1998, discussed in the next chapter, represents a major step towards the ultimate goal of attaining balanced personnel establishments in all sectors of employment.

CHAPTER II

AFFIRMATIVE ACTION (EMPLOYMENT) ACT, 1998 (ACT 29 OF 1998)

1. OVERVIEW AND STRUCTURE OF THE ACT

The Affirmative Action (Employment) Act, 1998 (Act 29 of 1998), was published in Government Gazette No.1962 of 24 September 1998. According to the long title of the Act, its purpose is:

"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."

The Act is comprised of 50 sections subdivided into an introductory component (Definitions (sec.1) and Application of Act (sec.2)), followed by three main Parts.

Part I contains stipulations relating to the administration of the Act and includes provisions for the establishment of the Employment Equity Commission, its objects, composition, powers, duties and functions. More particularly, Part 1 is comprised of the following sections:

Section

3. Establishment of Employment Equity Commission
4. Objects of Commission
5. Powers, duties and functions of Commission
6. Constitution of Commission

7. Terms of office of members of Commission
8. Disqualification for appointment as Commissioner or member of Commission
9. Vacation of office by members other than Commissioner
10. Functions of Commissioner and vacation of office
11. Designation and functions of Deputy Commissioner
12. Meetings
13. Committees
14. Remuneration and expenditure
15. Administrative functions
16. Reports by Commission.

Part II contains the actual body of the Statute and deals with the various affirmative action concepts not dealt with in the definitions section, as well as with affirmative action role players, processes and products. It is comprised of the following sections:

Section

17. Definition of "affirmative action" and determination of equitable representation
18. Designated groups
19. Preferential treatment of designated groups
20. Relevant employers
21. Employers treated as single employer
22. Voluntary affirmative action
23. Affirmative action plans
24. Consultation and assistance of employees
25. Analysis, review and statistical report
26. Records
27. Submission of affirmative action reports
28. Contents of affirmative action reports
29. Public inspection of affirmative action reports
30. Review officers

31. Powers, duties and functions of review officer
32. Functions of Commission with regard to recommendations by review officers
33. Amendments of affirmative action plans
34. Affirmative action reports deemed to be approved
35. Review panel and its functions
36. Procedures at hearings and powers of review panels
37. Joinder of parties at hearings
38. Hearings to be public
39. Mediation and final orders by review panel
40. Certified records of proceedings
41. Affirmative action compliance certificate
42. Restrictions on certain contracts, guarantees, loans, licences, permits, grants, or concessions
43. Further provisions regarding applications of Act.

Part III is reserved for miscellaneous matters and contains the following sections:

Section

44. Indemnity
45. Disputes brought to attention of Commission
46. Legal Assistance
47. Offences and penalties
48. Regulations
49. Amendments of laws
50. Short title and commencement.

The substantive content and processes of the Affirmative Action (Employment) Act can be **diagrammatically illustrated** and explained in simplified form as indicated in the procedural flow-chart appearing on page 17. The main institutions and role players are indicated in double frames, products in single frames, and processes or procedures by annotated arrows.

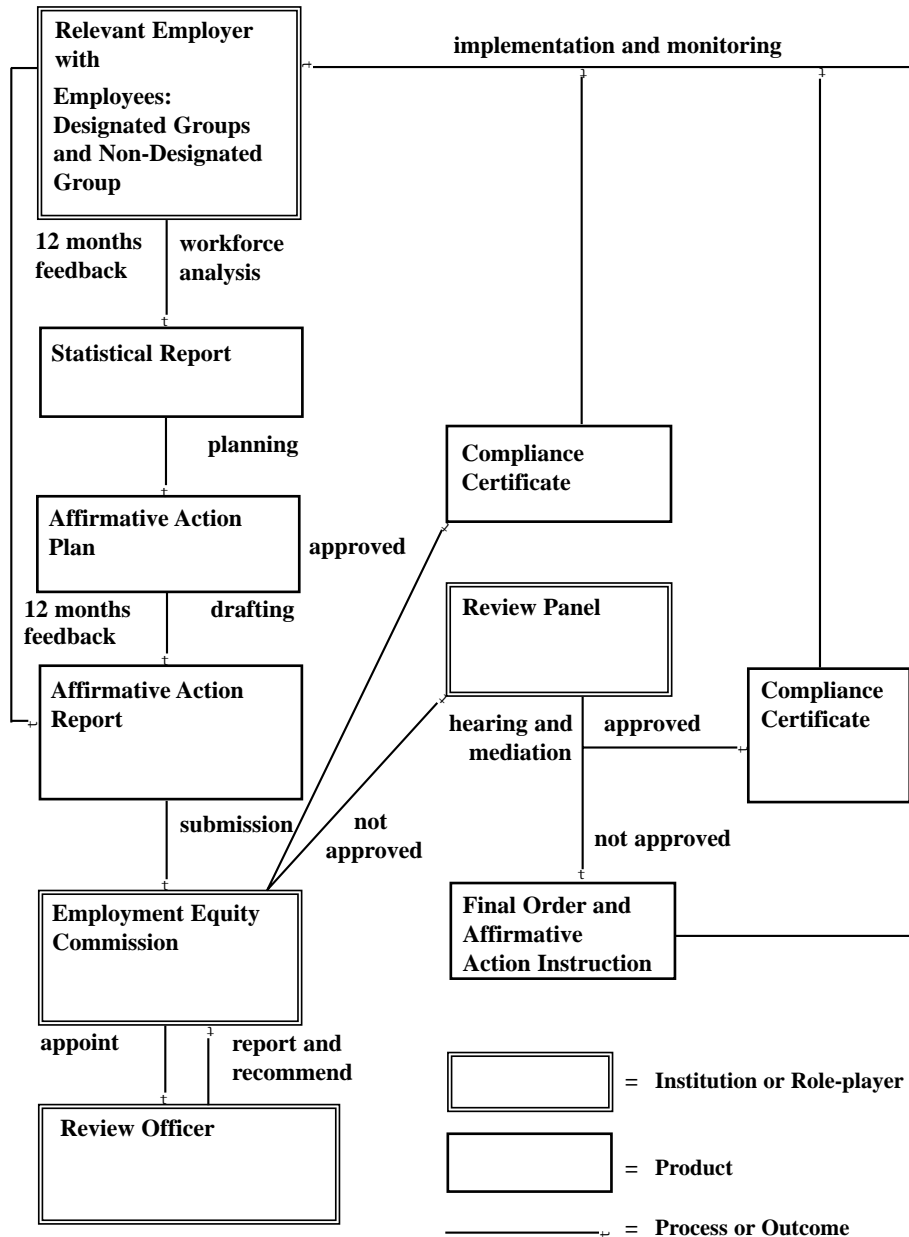
Very briefly, the **relevant employer** (top left) has a staff contingent comprised of **designated group** employees and **non-designated group** employees. The relevant employer is required to conduct a **workforce analysis** in **consultation with employees** and (if applicable) trade union representatives and to prepare a **statistical report**. Based, inter alia, on the statistical information the relevant employer, again with the necessary consultation, must then prepare a three year **affirmative action plan**, draft and prepare an **affirmative action report** (which includes the plan) and submit it to the **Employment Equity Commission**. The Commission appoints a **review officer** who examines the report and submits findings and makes a recommendation to the Commission whether the employer's report should be approved or rejected.

If the affirmative action report is approved by the Commission it issues a **compliance certificate** and the plan can be **implemented and monitored** by the relevant employer in consultation with the employees and trade union. If the report is not approved, the Commission refers it to a **review panel** which will conduct a formal public hearing to determine whether it should indeed be rejected or not. If the review panel finds that the report does have unacceptable shortcomings it will strive to mediate and persuade the employer to accept certain voluntary changes to redress the deficiencies. If mediation succeeds the report will be approved subject to such alteration being effected and the Commission then issues a compliance certificate. If mediation fails the panel will issue a **final order** containing **affirmative action instructions** regarding the compulsory amendments which have to be made to the report and no compliance certificate is issued.

The affirmative action plan must be implemented and monitored in consultation with the employees and trade union. After 12 months a **further report** must be submitted to the Employment Equity Commission in which **feedback** is given on implementation. The procedure repeats itself in an open-ended manner, the affirmative action implementation procedure thus following a cyclical pattern.

AFFIRMATIVE ACTION (EMPLOYMENT) ACT

(Simplified procedural flowchart)



2. IMPORTANT DEFINITIONS

2.1 DEFINITION OF "AFFIRMATIVE ACTION" (SEC. 17)

"Affirmative action" is succinctly defined in the Affirmative Action (Employment) Act as a set of "... **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.**"

The highlighted phrases in the definition (**bold print**) are indicative of the cornerstones of the Act, indicating the method (affirmative action measures); target groups (designated groups); objectives (equal employment opportunities and equitable representation); and actors (relevant employers).

The expression **'equal employment opportunities'** means that all direct or indirect discriminatory employment practices, rules or conditions must be eliminated. **'Equitable representation'** refers to the desired situation in which a relevant employer's staff contingent proportionally more or less reflects the country's demographic structure in terms of racial/ethnic composition, percentage of females and proportion of disabled persons.

'Affirmative action measures' are stated as including -

- elimination of employment barriers;
- efforts to accommodate persons with disabilities;
- furthering employment opportunities through training programmes; and
- giving preferential treatment in employment decisions to suitably qualified persons from designated groups.

2.2 DEFINITION OF "EMPLOYMENT BARRIER" (SEC. 1)

The expression **'employment barrier'** in the Act 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 a designated group. In other words, the Affirmative Action (Employment) Act, 1998, refers here to unfair discriminatory situations which would in most cases also be unlawful under sec. 107 of the Labour Act, 1992 (unfair discrimination or harassment in employment or occupation).

'Legitimate job requirements' refers to genuine and objectively verifiable qualities needed for the successful execution of duties. These could include matters such as extraordinary language requirements, specific school subjects, distinctive technical skills or particular managerial experience.

2.3 DEFINITION OF SUITABLY QUALIFIED PERSON (SEC. 1)

For the purpose of the Act **'suitably qualified person'** is defined as a person who has the abilities, formal qualifications or relevant experience for a position of employment. It is important to note here that any one of these three attributes would entitle an employee or prospective employee to preferential consideration.

2.4 DEFINITION OF EMPLOYMENT DECISION (SEC. 1)

In terms of the definition of affirmative action, preferential treatment must be given to employees in designated groups in all employment decisions.

'Employment decisions' in this sense means any decisions relating to:

- Access to vocational guidance, training and placement services;
- advertisements;
- recruitment, selection and appointment procedures;
- promotions, demotions and transfers;
- security of tenure and retrenchments;
- access to any other benefits, facilities or services;
- remuneration and other conditions of employment; and
- discipline, suspension or terminations of employment

In respect of the last two items - although the Act is not quite clear on this - the intention appears to be more a matter of eliminating any still existing discriminatory aspects, rather than a question of giving preferential treatment with regard to such concerns.

2.5 DEFINITION OF DESIGNATED GROUP (SEC. 18 & 19)

For the purposes of the Act there are three **designated groups** whose members are to benefit by the implementation of affirmative action measures:

- **Racially disadvantaged persons;**
- **women** (irrespective of race); and
- **persons with disabilities** (physical or mental limitations, irrespective of race or gender) .

The phrase '**racially disadvantaged persons**' means all persons who belong to a racial or ethnic group which formerly had been, or still is, directly or indirectly disadvantaged in the sphere of employment as a consequence of social, economic, or educational imbalances arising out of racially discriminating laws or practices before the independence of Namibia.

Where several suitably qualified candidates from designated groups qualify for a position of employment, an employer must give preference to Namibian citizens and to candidates who belong to more than one designated group. In other words it is the intention of the Act that relative priority be accorded to such individuals.

2.6 DEFINITION OF RELEVANT EMPLOYER (SEC. 20)

Section 20 of the Act stipulates that employers who have to comply with the Act are to be identified by the Minister of Labour in the Government Gazette. Such employers must be named individually or be identified by category. The formal **criteria** which may be used for identifying **relevant employers** include -

- numerical levels;
- industrial or economic sectors; and
- any other principles or standards deemed appropriate by the Minister.

3. THE EMPLOYMENT EQUITY COMMISSION

3.1 COMPOSITION (SEC. 6)

The **Employment Equity Commission** established by the Act is a high profile body, the members of which are appointed by the Minister of Labour with the approval of the National Assembly. Members are appointed for a period of 3 years, except the Chairperson who will be appointed for 5 years. The Minister is also empowered to designate a Deputy Chairperson from amongst the members. The 15 member Commission is constituted as follows:

- The chairperson (referred to in the Act as the Commissioner);
- 4 persons representing the State;
- 2 persons representing employers' organizations and 2 persons representing trade unions; and
- 2 persons for each designated group, i.e. for racially disadvantaged persons, woman, and the disabled, respectively.

The Act also provides for the appointment of alternative members to stand in for full members if the need therefore should arise.

3.2 POWERS AND FUNCTIONS (VARIOUS SECTIONS)

The Employment Equity Commission is accorded overall responsibility to achieve the objects of the Act. Included amongst its main powers and functions are to -

- issue guidelines to employers;
- facilitate training programmes and other technical assistance;

- appoint review officers;
- approve, disapprove or conditionally approve affirmative action reports;
- appoint review panels;
- issue affirmative action compliance certificates;
- refer disputes to the Labour Commissioner, and
- to establish awards recognizing affirmative action achievements.

4. STATISTICAL ANALYSIS, PLAN AND REPORT

4.1 ANALYSIS OF EQUITABLE REPRESENTATION (SEC. 25)

Relevant employers are required to conduct a statistical analysis of their workforce reflecting various parameters of the three designated groups as compared to the non-designated group (essentially white males). The aspects to be analyzed for the different groups include -

- **job categories and grades;**
- **employment practices;**
- **number of employees hired, promoted and terminated** in the previous 12 months;
- **salary scales, actual remuneration and benefits of employees;** and
- **citizenship status.**

Having compiled this information, relevant employers must prepare a statistical report and submit the data to the Employment Equity Commission as part of the affirmative action report to be discussed further below. The data must be revised on an annual basis.

4.2 CONSULTATION OF EMPLOYEES (SEC. 24)

An important requirement of the Act is that relevant employers must consult with the representatives of their employees, as well as with the trade union, if present, concerning the preparation, implementation, revision and

monitoring of affirmative action plans. Employee representatives shall reflect the interests of all occupational categories as well as of designated and non-designated groups.

It is apparent from the above that consultation comprises a virtually permanent feature of affirmative action. A suitable vehicle for this would be a standing management/employee committee commissioned with the task of implementing affirmative action for the enterprise. Whereas management is expected to be pro-active and take the initiative in this regard, it would have to guard against any tendency to become patronising in the process.

4.3 AFFIRMATIVE ACTION PLANS (SEC. 23)

Affirmative action plans constitute the centre- piece of the legislation. In terms of section 23 every relevant employer, upon having been identified as such, must prepare and implement a three year affirmative action plan. The chief requirements in this regard are as follows:

- A.** The plan must specify affirmative action measures to be instituted in order to -
- eliminate employment barriers against persons in designated groups;
 - make available positions of employment to such persons provided that it is reasonably possible (this qualification implies that outright removal of non-designated group employees is not intended); and
 - ensure that such persons are equitably represented in the various positions of employment (it should be noted in this regard that in terms of section 17(3) the Employment Equity Commission is required to take into account the availability of suitably qualified persons and of those who are able and willing to acquire the necessary skills).
- B.** The plan must set out the affirmative action objectives expected to be achieved and where appropriate numerical goals.

- C. The plan must establish a timetable indicating target dates for its various phases. (this requirement comes close to introducing a quota concept, although that is obviously not the intention of the Act.
- D. The plan must incorporate an internal monitoring procedure to be followed in consultation with employee representatives.
- E. The plan must identify a senior employee who has overall responsibility for its implementation.

4.4 RECORDS (SEC. 26)

It is required by the Act that a relevant employer must keep a record of -

- the affirmative action plan;
- the minutes of consultations with the representatives of employees and trade union; and
- the analysis, review and statistical report prepared in accordance with section 25.

4.5 AFFIRMATIVE ACTION REPORTS (SEC. 27 & 28)

Within a period of 18 months after having been classified as a relevant employer, such person or organisation must submit a first affirmative action report to the Employment Equity Commission. Further follow-up affirmative action reports must then be submitted every 12 months. Extensions of the period for such further reports may be granted upon application to the Commission.

The first affirmative action report is a comprehensive document comprising -

- the **statistical report** (sec. 25);
- the **affirmative action plan** (sec. 23);
- a **summary** of affirmative action measures, numerical goals and any other objectives;

- the **names** of non-Namibian citizens and names of under-studies (sec. 19);
- the **records and documents** used in preparation of the affirmative action report; and
- **any other information** required by the Commission.

The contents of the **further affirmative action reports** are similar to the initial report, but include an **evaluation of implementation** during the preceding period, and a **copy of the approved plan or amendments**. The Act provides that affirmative action reports shall lay open for public inspection at the Commission's head office (sec. 29). Records must be kept of all documentation submitted to the Employment Equity Commission.

5. ASSESSMENT OF AFFIRMATIVE ACTION REPORTS

5.1 REVIEW OFFICER (SEC. 30 & 31)

Upon receipt of a report the Commission appoints a **review officer** from amongst the staff of the Ministry of Labour who is required to evaluate the affirmative action report.

More specifically, the review officer will -

- analyse and review affirmative action reports to ascertain whether the relevant employer has adopted and is implementing an affirmative action plan and has complied with all the provisions of the Act in doing so; and
- submit his or her findings to the Employment Equity Commission and recommend whether the Commission should approve or reject the report (the employer also obtains a copy of the findings and recommendations from the review officer).

In making a recommendation the review officer must take into consideration -

- the **efforts in good faith** of the relevant employer to attain the objectives of the affirmative action plan and the objects of the Act; and
- the **prevailing economic conditions** for the employer and/or the relevant industrial sector, as well as the **availability of suitable designated group candidates**.

The review officer, whose name will be made known to the relevant employer concerned upon appointment, has the right, inter alia, to request additional data and documentation and may enter business premises at any reasonable time. In this regard the powers of a review officer are similar to those of a labour inspector appointed under the Labour Act, 1992.

5.2 COMMISSION'S DECISION ON REPORT (SEC. 32 & 33)

Upon receipt of the review officer's findings and recommendation, the Employment Equity Commission -

- **may approve** the affirmative action report and issue an affirmative action compliance certificate; or
- it **may conditionally approve** the report if the employer undertakes in writing to remedy the shortcomings; or
- it **may disapprove** an affirmative action plan, notifying the employer of the reasons for the rejection, and then referring the matter to a review panel.

Notwithstanding the approval of an affirmative action report, the affirmative action plan shall -

- be amended, if so directed, by the relevant employer subsequent to approval; and
- be revised every three years.

The relevant employer may also at own discretion make any bona fide amendments in consultation with employees and submit them to the Commission for approval.

5.3 REVIEW PANEL (SEC. 35 - 39)

When the Commission rejects an affirmative action report it will appoint a **review panel** comprising three commission members plus any other persons it may determine.

- * The panel will **conduct a formal public hearing** in order to review the affirmative action report (employers are entitled to legal or other representation at the hearing, and although the panel is not bound by the strict rules of the law of evidence, it must abide by the principles of natural justice and fairness).
- * Should the panel find any deficiencies it **will mediate** and endeavour to persuade the employer to undertake to correct the shortcomings.
- * If **mediation succeeds** the panel **will approve** the report and set out the undertaking made by the employer.
- * If **mediation fails** the panel will **disapprove** the report and **issue a final order** instructing the employer to take specific affirmative action measures and the time frame for such measures.

The Act explicitly states that there is **no appeal against a final order** issued by the review panel. Failure to comply renders the employer liable to criminal prosecution.

6. MISCELLANEOUS PROVISIONS

6.1 AFFIRMATIVE ACTION COMPLIANCE CERTIFICATE (SEC. 41 & 42)

When the Employment Equity Commission approves an affirmative action report it will issue an **affirmative action compliance certificate** which shall be valid from date of issue until the date that -

- the Commission issues another certificate for the next affirmative action report;
- the review panel makes a final order disapproving the next affirmative action report; or
- the relevant employer fails to submit a further affirmative action

report after the elapse of 12 months form the date of submission of a previous report.

The Commission will also issue a compliance certificate if it has only conditionally approved the affirmative action report and the employer undertakes in writing to remedy the specified shortcomings.

Significant for many employers from a business point of view, is the provision which stipulates that **unless a relevant employer is in possession of a valid affirmative action compliance certificate, no contract shall be entered into by or on behalf of the State and such employer; nor shall any guarantee, loan, licence, permit, grant or concession be given, made, issued, granted or awarded to any relevant employer by or on behalf of the State. (sec.42(1)).**

Whilst the Minister of Labour may grant an exemption from this requirement, that can occur only upon formal application and submission of proof that the absence of a compliance certificate is not due to any shortcoming or fault on the part the employer (sec. 42(2)).

6.2 REVIEW TIME LIMITS (SEC. 34)

In terms of section 34 a relevant employer's affirmative action report shall be deemed to have been approved, if -

- within 90 days after submission the Commission fails to appoint a review officer; or
- within 90 days after appointment of a review officer, the officer has failed to forward a copy of his findings and recommendation to the employer concerned or to the Commission.

The employer is however, required to inform the Commission not later than 60 days after appointment of the review officer, that a copy of the findings and recommendation has not been received.

- * The Commission may, prior to the lapsing of the 90 day review period, extend it for another period of 90 days.

- * The Commission is obliged to issue an affirmative action compliance certificate when an affirmative action report has been deemed to be approved.

6.3 NON-NAMIBIAN CITIZENS (SEC. 19)

Section 19(3) stipulates that a relevant employer must train a Namibian citizen as the under study of every non-Namibian citizen employed by the firm or organisation. Provision is made, however, in section 19(4) for the granting of exemptions from this requirement –

- where it is deemed that the trade or profession of the non-Namibian employee is of such specialised nature that it is not reasonably possible for the relevant employer to train a Namibian citizen as under study; or
- where it is for any other reason deemed impractical for the employer to train an under study.

Non-Namibian employees with permanent residence rights are included for the purpose of this provision. A relevant employer would have to apply for an exemption if desirous to retain the services of such an employee indefinitely and not to train an under study to eventually take over. In this regard it needs to be borne in mind that the Affirmative Action Act, 1998, has to be interpreted in context with other relevant laws such as the Labour Act, 1992, and the Immigration Act, 1993. The Affirmative Action Act does not supersede any law with regard to the rights of a person already in legitimate employment.

6.4 LIMITATION PARAMETERS (SEC. 43)

In seeking to maintain fairness and pragmatism in application, certain limitations or restrictions on affirmative action are provided for. Section 43 determines that, without derogating from the provisions of section 19(3) (training of Namibian under study) and section 39 (mediation and final order by review panel), **nothing in the Act shall require a relevant employer to:**

- create new employment positions in the workplace;
- hire or promote an arbitrary or fixed number of persons during a given period;
- hire or promote persons who are not suitably qualified; and
- take employment decisions that act as an absolute bar on the recruitment or promotion prospects of a person who does not belong to a designated group

Although the Act is silent on whether or not it will be permissible (or if it could be legally ordered) to terminate somebody's employment specifically to make place for another who belongs to a designated group, that would clearly not be in accordance with the spirit of the Act, nor, as already alluded to, would it be sanctioned by other existing legislation. Nevertheless, there probably could be conditions under which termination of employment may legitimately be influenced by affirmative action considerations, such as in certain retrenchment circumstances. In order to avoid confusion and uncertainty on these issues, it can be expected that the Employment Equity Commission will, as with various other aspects, be issuing further detailed guidelines on these matters in due course.

6.5 DISPUTES (SEC. 45)

In the event of any affirmative action related **dispute** arising between an employee or his/her representative on the one hand and a relevant employer on the other, the former may bring the matter to the attention of the Employment Equity Commission. If the Commission deems it necessary, it may then refer the matter to the Labour Commissioner to act in respect thereof in terms of the dispute provisions of Part IX the Labour Act, 1992.

6.6 PENALTIES (SEC. 36, 47 & 48)

The Affirmative Action (Employment) Act, 1998, contains different penalties for failure to comply with different provisions thereof. These vary from a fine or imprisonment not exceeding N\$4 000 or 12 months, respectively, for certain first offenses, to a fine or imprisonment not exceeding N\$100 000 or 5 years, respectively, for a second or subsequent offence.

CHAPTER III

SUPPLEMENTARY OFFICIAL DOCUMENTS

1. GOVERNMENT NOTICE NO.278 OF 1998

Government Notice No.278 of 1998 was published in Government Gazette No.1996 of 18 November 1998 and betokened the commencement of the Affirmative Action Act, 1998. In it the Acting Minister of Labour determined that the provisions of the Act, except section 2, sections 19 to 43, inclusive, and sections 45 to 48, inclusive, shall come into operation on the date of publication of the Notice. The measure put certain administrative provisions of the Act into operation and activated the Employment Equity Commission.

2. GOVERNMENT NOTICE NO.156 OF 1999

This Government Notice, as well as the three Notices referred to in the three sections following hereunder, were published in Government Gazette No.2161 of 6 August 1999. It brought the remaining provisions of the Affirmative Action Act, 1998, into operation. The Minister of Labour determined that section 2, sections 19 to 43, inclusive, and sections 45 to 48, inclusive shall become operative on the date of publication of the Notice.

3. GOVERNMENT NOTICE NO.157 OF 1999

Government Notice No.157 of 1999 determined that the first affirmative action report to be submitted in terms of section 27(1)(b) of the Act by an Office, Ministry or Agency in the Public Service, or by a parastatal, identified as a relevant employer, shall be submitted within a period of one year after the publication of the Notice. This means that **affirmative action plans of relevant employers in this category (state and parastatal) must be submitted by 4 August 2000 at the latest.**

4. GOVERNMENT NOTICE NO.158 OF 1999

This Government Notice, identifies as a relevant employer an employer who employs 50 or more employees, which number must be calculated as the average number of employees employed by the employer during the one year period immediately preceding the date on which the monthly calculations are made. The Notice furthermore determines that no relevant employer shall cease to exist to be a relevant employer as a result of the reduction in the number of employees in the employ of the employer to less than 50.

The effect of this Notice is that **private sector relevant employers** must submit their first affirmative action reports not later than 18 months from the date of its publication. In practice it means that the **deadline for the submission of the first reports is 6 February 2001.**

5. GOVERNMENT NOTICE NO.159 OF 1999 (REGULATIONS)

The last of the four Government Notices appearing in the Government Gazette of 6 August 1999, Government Notice No.159 of 1999, contains Regulations framed by the Minister of Labour under section 48 of the Act.

Regulation 1 provides for definitions and defines "the Act" as meaning the Affirmative Action (Employment) Act, 1998.

Part I of the Regulations (Administration) stipulates under regulation 2 (Keeping of records) that **documents, notices and forms** issued in terms of the Act to or by a relevant employer (e.g. an exemption, a compliance certificate, order by a review panel or a notice of change of employer status) **must be kept**, in addition to the records to be kept in terms of section 26, and must be made available to a review officer for the purpose of inspection.

Part II of the Regulations (Affirmative Action) stipulates under regulation 3(1) (Notice by relevant employer) that every employer who as the result of an **increase in the number of employees** employed, assumes the status of a relevant employer, must notify the Commission within 30 days of such change.

Regulation 3(2) specifies that the date on which the Commission receives the notice shall be deemed to be the **date of identification** as a relevant employer as contemplated in section 27(1)(a) of the Act. This means that such an employer must submit an affirmative action report within 18 months of that date.

Regulation 3(3) determines that if the number of employees employed by a relevant employer **is reduced** to such an extent that the number of such employees become less than the number of employees set out in a notice published under section 20 of the Act, (currently fixed at 50 or more employees) such **employer must notify the Commission** thereof within 30 days and furnish full particulars of the change.

Regulation 4 (Form of summons) provides that a summons referred to in section 36(3) of the Act (summons to appear before a Review Panel) must be in the form of form EEC 1 annexed to the Regulations.

Part III of the Regulations (Miscellaneous) stipulates under regulation 5 (Offences and penalties) that any person who contravenes the provisions of any regulation shall, upon conviction, be liable to a fine not exceeding N\$8 000 or to imprisonment not exceeding two years.

6. THE EMPLOYERS' GUIDELINES TO THE AFFIRMATIVE ACTION (EMPLOYMENT) ACT, ACT NO 29 OF 1998

The final official document supplementing the Affirmative Action (Employment) Act, 1998, at this stage, is "**The Employer's Guidelines to the Affirmative Action (Employment) Act, Act No 29 of 1998**" issued by the Employment Equity Commission in terms of section 5(e)(i) of the Act in November 1999. The Guidelines are comprised as follows:

Part I

1. Your representation on the Commission.
2. What is Affirmative Action and who must implement it?
3. What is preferential treatment?

4. The process of Affirmative Action.
5. Restrictions.
6. Restrictions on Affirmative Action.
7. Disputes.
8. Legal Assistance.
9. Government Notices.

Part II

1. Business Plan.
2. Affirmative Action awareness creation.
3. Affirmative Action audit.
4. Where we want to be : Strategy formulation.
5. Implementation.
6. Evaluation.
7. Feedback.

Part III

Flowchart Procedure.

Flowchart: Basic features of the Act.

Part IV

Forms EEC 2 - EEC 18.

The Guidelines are obtainable free of charge from the Office of the Employment Equity Commissioner in Borgward Street, Khomasdal, Windhoek. It is important that each relevant employer secures a copy thereof, since apart from the guideline discussions and graphic representation of the framework of the Act and procedures, the document contains 42 pages of forms. It is certified that - **"These forms are the forms that the Commission prescribe to be used to prepare and submit the Affirmative Action plan.** Should any of the forms lack space, please continue on a separate page. Please refer to the Form which is expanded on that page, as well as which paragraph of the Form." (p.19). A copy of **Form EEC 7** (First Affirmative Action Report and Statistical Report) appears as an annex to this booklet for ease of reference.

CHAPTER IV

PRACTICAL AFFIRMATIVE ACTION GUIDELINES

1. INTRODUCTION

The main purpose of this publication is to provide an explanatory overview of important features of the Affirmative Action (Employment) Act, 1998, as dealt with in Chapter II. This last Chapter is intended as an additional facilitating outline of practical implementation factors. It is aimed mainly at sensitising the role players to these different elements and should not be regarded as conclusive, nor necessarily as the only way to go about the task. Relevant employers are encouraged to use their own discretion in this respect, since employment circumstances can vary much from organisation to organisation.

2. ESTABLISHING A POSITIVE ORIENTATION

The introductory discussion on the psychological dimension of affirmative action stresses the importance of attitudes and perceptions. One of the earliest considerations in preparing for successful affirmative action programmes should therefore be the establishing of a positive orientation towards the concept amongst all staff.

Obviously attitudes cannot be changed overnight, but much can be done by clarifying the rationale behind the approach. In instilling acceptance of the legitimacy and logic of affirmative action, **underlying moral considerations of social justice should be augmented by reference to substantive advantages such as the broadening of the skills base, market penetration, productivity, and benefiting from diversity.** Possible misconceptions - such as anticipated lowering of standards, and fears, such as expectations of indiscriminate dismissals - must be identified and corrected.

Probably the most important goal in this regard is to get everybody in management and senior supervisory posts unequivocally on board. The

successful introduction of affirmative action in an organisation is highly dependent on the attitudes of those in leadership positions.

In fact the process should start at the very top: it is essential that the MD or CEO be positively disposed towards affirmative action and that he/she sees to it that managerial colleagues are, or become, of similar mind. In some instances this may require counselling, soul-searching, team building initiatives and lucid debate - all of which can contribute to achieving a new mind-set amongst the sceptics.

If such measures fail to convince a particular individual, the company may have to consider sterner alternatives to resolve the predicament. Simply turning a blind eye to the problem is not an option, the situation has to be addressed. If not, the entire process to get affirmative action on track could be undermined. That, in turn, could have numerous adverse consequences. These would include prospects of strained labour relations, difficulty in maintaining a competitive edge, and fall out linked to failure in complying with statutory obligations under the Act.

3. DESIGNING AN AFFIRMATIVE ACTION POLICY

Having, as far as possible, secured a positive orientation amongst management and staff, practical steps for the designing of an affirmative action policy can be embarked upon. This is an advisable preparatory step prior to drafting an affirmative action plan. A policy can be prepared in four stages.

First, a competent **affirmative action management team, advisory committee, or task force** should be appointed, including senior management (chairing) and elected representatives of the respective groups. It is this team which would be entrusted with the responsibility of analysing, brainstorming and advising on all matters related to employment equity suitable to the circumstances of the enterprise. Ideally, it would have a simplified constitution covering matters such as composition, office bearer qualifications, objectives, functions, procedural rules, and so forth.

Stage two would entail a **preliminary affirmative action audit** in order to compile a **corporate profile** including -

- the organisational structure indicating race, gender and disablement of incumbents in different occupational categories;
- statistical information in the same categories concerning remuneration, fringe benefits, recruitment, training, promotion, termination, length of service, and so forth;
- corporate history relating to organisational development, human resources systems, interpersonal relations, attitudes and perceptions; and
- external relations pertaining to clients/customers/suppliers, business associates, professional organisations, and general community involvement.

The audit will enable the employer to obtain insight into strengths and weaknesses regarding employment equity in the organisation. It will constitute the basis for policy formulation as a point of departure for an appropriate affirmative action plan as required by the Act.

Stage three consists of the delicate **consultation phase**. To a certain degree consultation will already have been catered for by including employee representatives in the affirmative action management team referred to above. In this phase, however, the process is extended to wider participation and becomes more pronouncedly informative and consultative. Structured along open and democratic lines, such consultation could include information sessions, circulars, group discussions, formal meetings with a trade union, surveys and written employee submissions.

Lastly, having gone through all these initial steps, actual **policy formulation** can proceed. The affirmative action policy ought to be well phrased for ease of interpretation and clarity of purpose. It should contain opening remarks on affirmative action principles and philosophy, followed by a statement of management's commitment to employment equity in all spheres of employment. Then come a formulation of the overall goal, realistic objectives derived from the goal, and broad strategies to attain the objectives.

The area of strategies is of particular importance and depending on the nature of the enterprise - its corporate culture, existing human resources composition and personnel policies - would variously refer to matters such as recruitment/selection, induction and training, aptitude testing and occupational interest surveys of existing employees, their skills development and upgrading of qualifications; team building; job descriptions; job evaluation and promotion; performance appraisal; promotion; professional standards; client relations; and out-sourcing.

The resulting draft document should be distributed for further comments and possible amendments before submission to the top policy making body for final approval.

4. DRAFTING AN AFFIRMATIVE ACTION PLAN

Having a well devised policy in place makes the responsibility of preparing an affirmative action plan, as contemplated in the Act, a much easier task. Where the relevant employer, nevertheless, has opted not to draft a separate policy beforehand, the plan will have to reflect policy features as part of its formulation.

The affirmative action plan is a concise, practice orientated, logical extension of the policy, intended to remedy identified employment equity shortcomings over a given period of time. Like the policy, the plan should be the product of ongoing painstaking consultations. In this respect it should be borne in mind that **the process of coming to grips with affirmative action is probably as important as the eventual outcome** - shortcuts to avoid 'unnecessary bother and stress' are not recommended. The plan itself must be written in simple unambiguous language, clearly spelling out what, how, when, where and by whom.

More particularly, the affirmative action plan should systematically -

- **give detail on strategies, procedures and methods;**
- **specify measurable targets, set standards and define anticipated outcomes;**

- **set up realistic time-frames;**
- **identify all the role-players and their specific duties;**
- **demarcate the resources to be utilized (existing infrastructure and equipment, administrative back-up, budgetary allocations, personnel, etc.); and**
- **spell out monitoring/review mechanisms.**

In bringing all these elements together into an integrated master plan, the aim should be to go about the task in a sincere, good faith manner, whilst simultaneously being realistic and methodical. In the long run, it will be to nobody's benefit for an organisation to be over-ambitious with regard to targets and time-frames. On the other hand, attempts at devising delaying tactics will soon reveal themselves as such with most unfortunate consequences for all involved.

It is necessary to constantly keep in mind the items specified in section 23 (a) to (d) of the Act, as well as the definition of "employment decision" in section 1, whilst drawing up the plan. That will ensure that no aspect has been overlooked or is insufficiently elaborated. In addition, it would be prudent to establish and maintain regular contact with the review officer for consultation purposes, once the name of such person has been made known by the Employment Equity Commission. It would also be helpful to acquire some supplementary literature on affirmative action as a source of more information and new ideas.

The plan, once completed and endorsed by top management, must be submitted to the Employment Equity Commission under cover of Form EEC 7 "First Affirmative Action Report" contained in the Commission's Employers' Guidelines. The Form (reproduced at the back of this booklet for ease of reference) includes the format of the statistical report which must be prepared and submitted along with the affirmative action plan. Relevant employers will find the annexures and tables forming part of Form EEC 7 most useful as an aid in preparing the plan.

5. IMPLEMENTING AFFIRMATIVE ACTION

The implementation of affirmative action is a **management responsibility to be carried out in consultation with employees**. Hence the stipulation in section 23 of the Act, which states that a senior employee must be identified "...who will have overall responsibilities for the implementation of such affirmative action plan." Obviously that individual will have been part of the orientation, policy and planning initiatives right from the beginning.

Effective communication is a vital aspect of implementation. It is best achieved through similar methods employed in consulting with employees during the policy and plan drafting phases, namely: discussion groups, workshops, newsletters or circulars.

Decisions on appropriate affirmative action implementation methods are usually determined by variables such as the size of an undertaking, its line of business, location, organisational structure, financial resources and the extent to which existing policies and practices already embody the basic ingredients of employment equity.

The situation with regard to these variables will differ from one enterprise to another and will dictate the level of effort and the time-span required to make affirmative action work. Where employers approach affirmative action correctly, such factors will, of course, already have been clearly reflected in the company's policy and affirmative action plan, discussed above.

During the practical implementation of affirmative action special attention must be given to aspects which could influence the process in either a positive or negative manner, and to ways in which these can be encouraged or deterred, as the case may be.

An important principle to observe when implementing employment orientated affirmative action is to avoid quick-fix solutions. Whilst discriminatory elements, whether direct or indirect must be eliminated forthwith, the pool of available skills in certain managerial, professional and technical spheres is still extremely limited. Competent designated group Namibians in these categories have virtually all been absorbed in gainful employment.

Trying to entice such persons by offering even higher benefits than they already enjoy ('poaching') is expensive, and often viewed as mere window-dressing tactics. It is also risky in more ways than one. Questions arise as to whether the person will adapt successfully to the new work environment, whether his/her qualifications will prove adequate, to what extent pecuniary considerations may continue to overshadow corporate allegiance, and how long before a new replacement will have to be found again.

It may be a better alternative to identify existing employees with potential and to prepare them for promotion to higher level positions in the undertaking. Not only would one be investing in people whose employee attributes such as basic integrity, work habits and relational maturity are known factors, but one would be rewarding their loyalty and motivate colleagues to follow their example.

New appointments would, nevertheless, comprise an important secondary strategy to supplement developing employees from within the organisation. Recruitment should then preferably focus on candidates with potential but who are still at a relatively junior stage of their careers or have only just entered the labour market. Such individuals can be systematically inducted, motivated, trained and advanced to satisfy the particular requirements of the enterprise. They will become true assets to the enterprise, while at the same time having been granted a fair opportunity to optimise their own positions in the organisation and society in general.

It is of paramount importance that affirmative action should not be implemented as if it were something unique and standing on its own, separated from the rest of the organisational processes. If that were to be the case, affirmative action would acquire an unwanted aura of artificial imposition, which would be in the interests of neither the employees nor the organisation.

Instead, **affirmative action should be viewed and practised as an integral component of the undertaking's overall response to the challenges of a changing business environment.** It should be closely intertwined with other elements of strategic management to enhance efficiency and competitiveness, whilst simultaneously promoting employment equity in its various guises.

Monitoring, updating and making necessary adjustments where needed, are ongoing processes in which the full affirmative action management team should participate on a regular basis. During the initial years of implementation the team should act as a permanent body and likewise keep employees abreast of developments on a constant basis.

Once implemented to its logical conclusion, the need to refer to affirmative action per se would eventually fall away, to be replaced instead, by the **tenets of equal opportunity, personal drive and positive work ethics.** But until then a pro active, balanced approach from all quarters, both public and private, is called for to make Namibia's national programme of affirmative action a lasting success.

ANNEX

NOTES