

THE EMPLOYMENT EQUITY ACT (EEA) AMENDMENT BILL, 2020 AND DEMOGRAPHIC REPRESENTIVITY

By Dave Steward, Chairman of the FW de Klerk Foundation

Few people would disagree with the Employment Equity Act's goals of "eliminating unfair discrimination in employment" and ensuring equitable access to the economy for all South Africans. We need an open, equitable and non-discriminatory economy.

However, in its pursuit of these goals the EEA has now become a core tool in the ANC's project to reshape society and the economy according to demographic representivity (DR). The ANC's objective has long been to ensure that DR is achieved in the private sector to the same degree that it is already a reality in the public sector. As Rob Davis put it in 2012 "We need to make sure that in the country's economy, control, ownership and leadership are reflective of the demographics of the society in the same way that the political space does."

The Employment Equity Amendment Bill, which was published last month is intended to promote this outcome. It will empower the Minister of Labour "to determine sectoral numerical targets for the purpose of ensuring the equitable representation of suitably qualified people from designated groups (blacks, women and persons with disabilities) at all occupational levels in the workforce".

It will for the first time also implement section 53 of the Act which will require any company wanting to qualify for state contracts to be issued with a certificate by the Minister confirming its compliance with the relevant Chapters II and III of the Act - which deal respectively with non-discrimination and affirmative action. The Minister may issue such a certificate only if the employer has complied with the new numerical targets that the Minister can now set - or has raised a reasonable ground for his failure to do so.

On the positive side, and in a move to reduce the regulatory burden on small businesses, employers with fewer than 50 employees - who were previously regarded as "designated employers" because of their turnover, will no longer be so regarded - and will not be affected by the affirmative action provisions of the Act.

However, the true significance of the Amendment Bill lies in the manner in which it is intended to advance the ANC's core agenda of radical economic transformation based on DR.

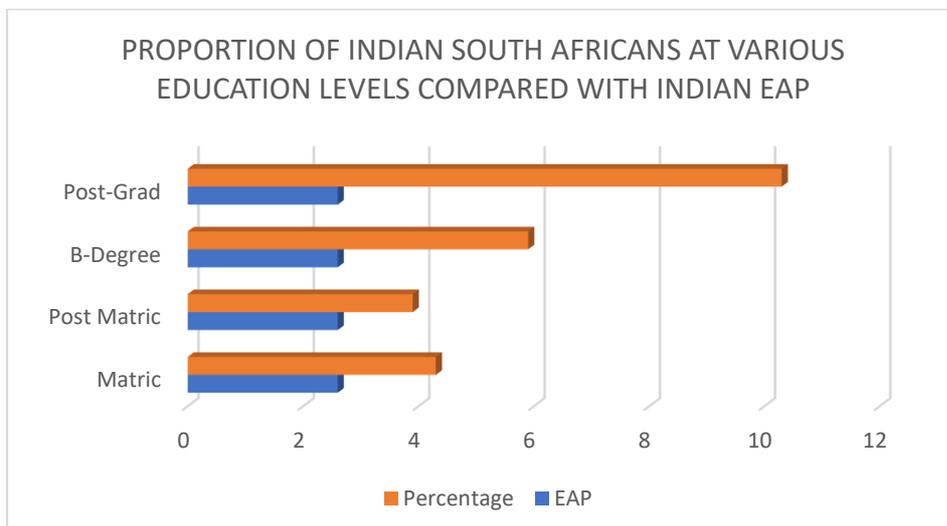
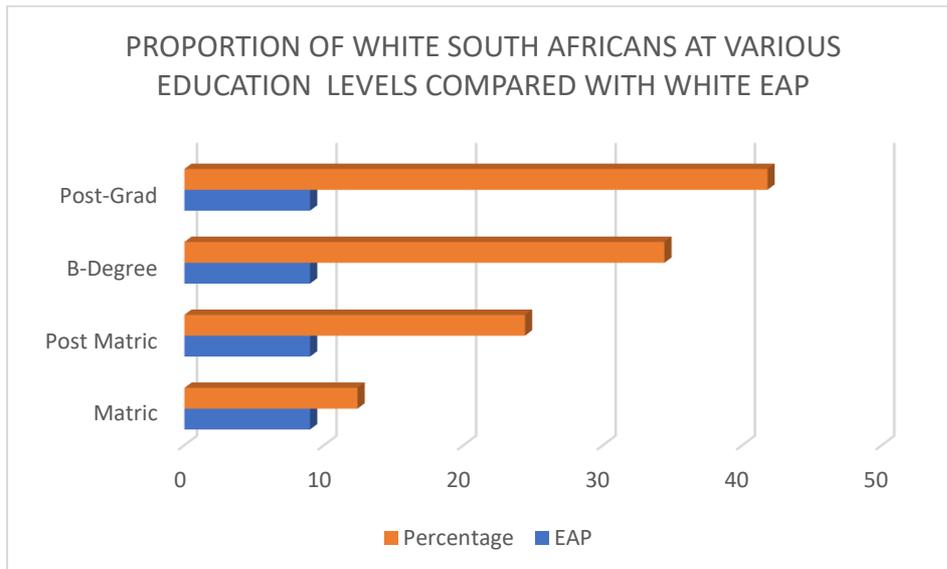
Secondly, it illustrates the government's progressive ratcheting up of restrictions on minority economic activity. Section 15(3) of the EEA explicitly excludes 'quotas' - but the difference between "quotas" and obligatory "numerical targets" is now increasingly fuzzy. The 2013 Amendment to the Act excised or diluted a number of factors that employers could cite for not complying with employment equity targets. These included the availability of suitably qualified people from designated groups; economic and financial factors relevant to the employer's business sector; and the employer's economic and financial circumstances.

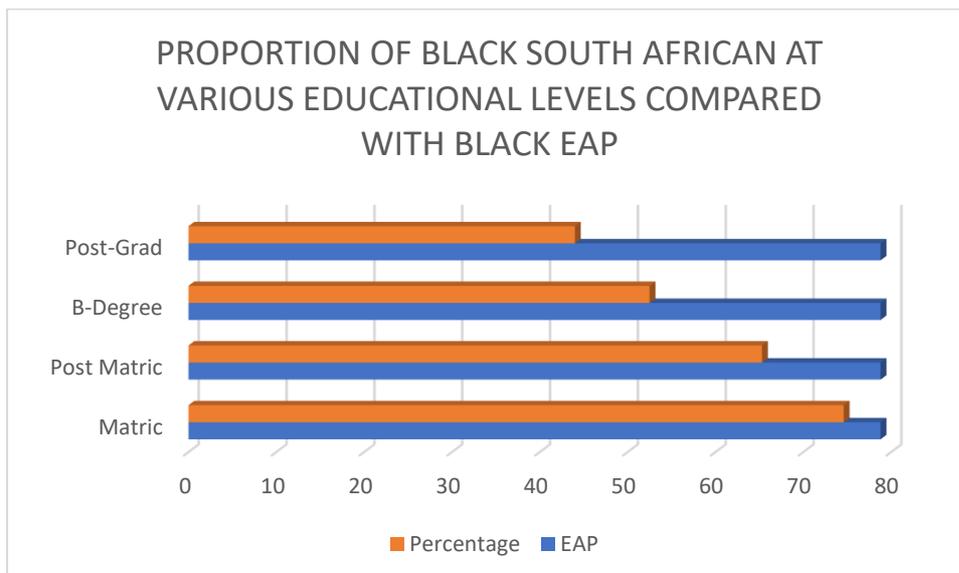
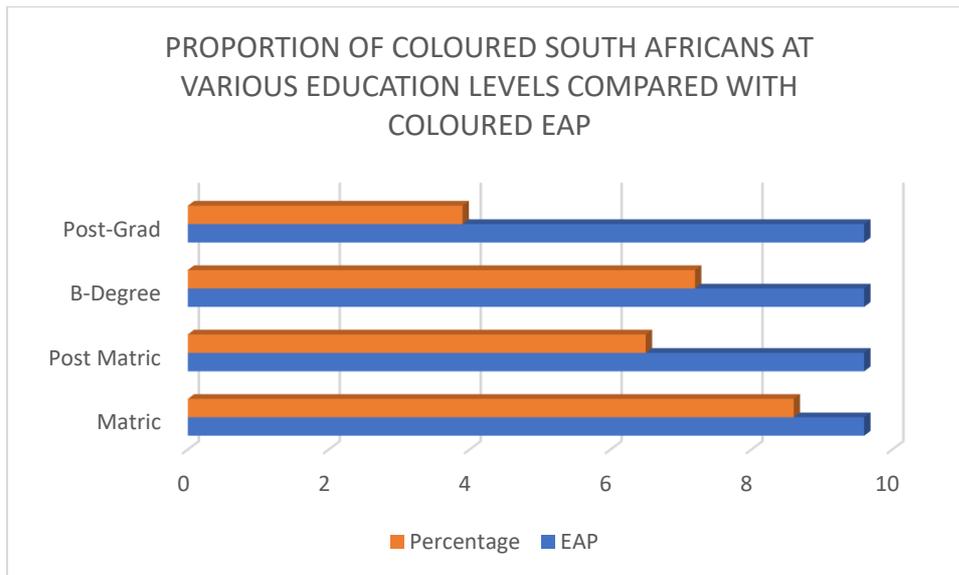
Now, the new amendment will give the Minister the power to prescribe to employers numerical targets for the number of black, women and disabled employees who should be employed at all levels of their companies.

The ANC seeks ultimately to establish a "National Democratic Society" in which jobs, land and wealth will be redistributed in line with the racial percentages of the economically active population (EAP).

According to the Commission for Employment Equity (CEE) these percentages now stand at 78,8% for blacks; 9,6% for coloureds; 2,6% for Indians and 9% for whites.

In this strange DR world, race - and not merit, competitiveness or contribution to the economy - will be the principal determinant of economic outcomes. The trouble is that the racial shares of the EAP bear no relationship whatsoever to the country's pool of qualified people - nor to the contribution that individuals of whatever race make to the economy.





Source: StatsSA, General Household Survey, 2018

What is to become of educationally qualified whites and Indians who exceed what are, in effect, their racial quotas? Can the country afford to dispense with the contribution of so many highly qualified people simply on the basis of their race? What are employers supposed to do with such employees when they receive the proposed racial targets for their sectors? Will they have to fire or retrench them - or refuse to promote them - to comply with the Department of Labour’s master plan? How will they be able to do this without eviscerating their management structures and without contravening labour law?

The Commission for Employment Equity is deeply unhappy with the private sector’s failure to transform: it points out that although 76% of top management in the public sector is black, 69,6% of top management in the private sector is still white. In senior management the figures are 71% and 60% respectively.

However, white South Africans comprise 18% of the population - and at least 60% of the graduates and post-graduates - in the 50-65 age group from whom top management could be expected to be drawn. Also, many of them established and developed the companies in which they hold top positions. So their over-representation is hardly surprising.

Black South Africans represent 63,3% of the 'skilled, technical and academically qualified/junior management/supervisors/foremen/superintendents' group. Inevitably, as this group progresses through the ranks the percentage of black South Africans in senior and top management posts will inevitably and naturally increase. The best way to promote employment equity will be to improve the education and training levels of previously disadvantaged groups and to ensure rapid and sustained economic growth.

There are very good reasons why DR should not be applied to the private sector in the same manner in which it has been imposed on the public sector.

Firstly, there is no constitutional requirement for DR outside the public sector. Had the Constitution's authors intended DR to be applicable to the private sector they would certainly have included a specific provision to this effect.

Secondly, the imposition of DR in the public sector has been one of the main causes of dysfunctionality in government departments. The public sector can continue to function regardless of its performance because it does not have to satisfy customers or produce a profit.

However, if companies are inefficient and unprofitable, they go out of business. To succeed they must appoint and promote key personnel on the basis of merit alone. They must also procure supplies and services according to price, quality and time of delivery - and not race.

DR constitutes social engineering on a scale that would have made Hendrik Verwoerd gasp in admiration. Where apartheid sought to confine people in bantustans, DR wants to confine them in demographic pens in virtually every area of their lives.

ANC ideologists believe sincerely that DR is necessary, just and in the long-term interest of all South Africans. However, like all such exercises that fail to take account of human nature, individual rights and economic reality, it will lead to the most unhappy consequences. It will make it increasingly difficult for the private sector to produce the wealth, tax and jobs on which the future of the country depends.

It is also very bad news for minorities. Whites and Indians below the age of 5 constitute only 4% and 1,6% respectively of their age group. In a society where everything is distributed according to racial percentages, prospects are very bleak for those who belong to diminishing minorities.