Citizen Submission: Employment Services Amendment Bill [B16-2026]

Submission details

To	Portfolio Committee on Employment and Labour, attention Mr Zolani Sakasa
Email	employmentservicesbill@parliament.gov.za
Deadline	Friday, 6 November 2026, 16:00
From	[Full name], South African citizen
Town or area	[Where you live]
Contact	[Phone] · [Email]
Oral presentation	I wish to make an oral presentation at the public hearings. [Yes / No]

Summary of position

I support the Bill's aim of putting South African work seekers first, and its framework of quotas, labour-market testing and fines. I object to **Clause 1(d)**, which amends the definition of "foreign national" in section 1 to exclude refugees and asylum seekers.

That change would take refugees and asylum seekers outside the whole of the new Chapter 3A. Employers would not need to check whether a South African is available before hiring them, prepare a skills transfer plan, or count them against a quota. For South Africans looking for work, this would weaken the very protections the Bill is meant to create.

I ask the Committee to:

1. keep the current definition of "foreign national";
2. write into the Act a clear rule that South African citizens are considered first for employment; and
3. retain and enforce the Bill's protections for local work seekers.

Who I am

I am a South African citizen who has been both employed and unemployed. I make this submission in my personal capacity, as an ordinary work seeker, and not on behalf of any business or organisation. I know first-hand what it means to look for work in this country, and what a single income means to a household.

My experience of employment and unemployment

Periods without work. [Optional - How long you were unemployed, and how many times. What kind of work you were looking for, and your qualifications or experience at the time.]

Looking for work. [Optional - How you searched: job boards, labour centres, the Department's ESSA system, walking in to businesses, word of mouth. Roughly how many applications you made, and how many led to interviews.]

What it cost my household. [Optional - Who depends on your income. What your family went without, and how you got by: grants, family support, piece jobs, debt.]

Getting work. [Optional - How you found work in the end. What the job is or was, and what changed for your household once you were earning.]

What I saw first-hand. [MOST IMPORTANT SECTION. Anything you experienced yourself, for example a vacancy you were qualified for that was filled without being advertised locally, or being told no suitable South Africans had applied. Only include what you saw or experienced directly.]

What I learned. [Optional. For example, training or a learnership that helped you get work, which shows that skills gaps can be closed locally.]

My experience is not unusual. Many people in my community are in the same position. A job is often the only income in a household, and every vacancy matters.

Objection to Clause 1(d)

1. It works against the Bill's own purpose. Section 2(1)(h)(iii), as amended, says foreign employment must promote work opportunities for and training of South African citizens and permanent residents. Exempting a large group of non-citizens from the labour-market test and from quotas weakens that protection at a time of very high unemployment.

2. It weakens the quota test. Proposed section 12B(7)(c) requires the Minister to consider the availability of skills "among South Africans, refugees and asylum seekers" when setting a quota. A quota could therefore be set higher because skills exist among refugees and asylum seekers, even where South Africans with those skills are still looking for work.

3. Asylum seekers have no determined status. An asylum seeker is someone whose application has not yet been decided. Applications can remain pending for long periods, and not all are approved. Giving undecided applicants the same hiring status as citizens is premature.

4. The Bill is internally inconsistent. Paragraph 1.3 of the Memorandum states that the definition of foreign national *includes* asylum seekers and refugees. Paragraph 2.1(g) says the change excludes refugees only. Clause 1(d) itself excludes both. Parliament should not pass a definition whose intended effect the Department has described in three different ways.

5. Access to work is not in question; the order of consideration is. I acknowledge that the Refugees Act gives recognised refugees the right to seek employment, and this submission does not ask that this right be removed. Refugees and asylum seekers who are lawfully permitted to work may still apply for and hold employment. This submission concerns only the order in which applicants are considered: South African citizens first, and

foreign nationals, including refugees and asylum seekers, only where no suitably skilled South African is available.

6. It affects people like me directly. As described above, I have experienced long periods of looking for work. Every exemption from the labour-market test means fewer vacancies where South African applicants must be considered first. For a work seeker, that difference is the difference between an income and none.

Proposed amendments

Retain the current definition of foreign national.

> "'foreign national' means an individual who is not a South African citizen or a permanent resident;"

Consequential changes:

- Section 12B(7)(c): delete ", refugees and asylum seekers", so the test reads "among South Africans".
- Section 12C(1)(b): replace "South Africans or refugees" with "South African citizens or permanent residents".

Refugees and asylum seekers. Under this definition, refugees and asylum seekers remain foreign nationals. They are not South African citizens and may not be considered on the same level as South African citizens when applying for employment. Like all other foreign nationals, they rank behind South African citizens and permanent residents, and the labour-market test, skills transfer plans and quotas apply to their employment.

I also ask that the Memorandum be corrected so that it matches the clause.

Guiding principle: South African citizens first

South African citizens must always be given first consideration for employment in South Africa. A foreign national, including a refugee or asylum seeker, may not be considered on the same level as a suitably skilled South African citizen.

The Act's purpose, set out in section 2(1)(h)(iii), already refers to promoting work opportunities for South Africans. That purpose is stated only as a general aim. As a work seeker, a general aim does not help me when I apply for a job. I ask the Committee to make citizen priority an explicit, enforceable rule.

I propose the following amendments:

1. **Section 2(1)(h)(iii)** to read: "that ensures South African citizens are given first consideration for employment, followed by permanent residents, and promotes work opportunities for and the training of South African citizens and permanent residents."
2. **Section 12A(2)(b)** to set out a clear order of priority. An employer must satisfy themselves, in the prescribed manner, that:

    1. no suitably skilled South African citizen is available to fill the vacancy; and
    2. no suitably skilled permanent resident is available to fill the vacancy,

    before recruiting a foreign national.
3. **A new section 12A(2A)**: "Before appointing a foreign national, an employer must be able to show, with documented evidence, that every South African citizen applicant who met the inherent requirements of the position was considered first, and the reasons each was not appointed."
4. **Section 12C(1)(a)**: the regulations must require employers to keep records proving that citizen applicants were considered first, available to labour inspectors on request.

This principle should guide how Chapter 3A is interpreted, how quotas are set under section 12B, and how exemptions are granted under section 49A.

Critical skills. In this submission, "critical skills" has the meaning given in the Bill's proposed definition in section 1: skills or qualifications determined to be critical for the Republic under section 19(4) of the Immigration Act. The citizens-first rule applies to all vacancies, including critical skills positions. A position's inclusion on the critical skills list should not exempt an employer from first showing that no suitably qualified South African citizen is available.

Alternative position. The Constitutional Court has held that excluding permanent residents from employment can amount to unfair discrimination (*Larbi-Odam v MEC for Education*, 1997). Should the Committee or the Chief State Law Adviser find that ranking citizens above permanent residents is unconstitutional, I ask that South African citizens and permanent residents be placed together in the first tier, ahead of all foreign nationals. Proposed sections 12A(2)(b) and 12A(2A) should then apply to "South African citizens and permanent residents" jointly. In either case, foreign nationals may not be considered on the same level as South Africans.

Support for the rest of the Bill

I support the following provisions and urge the Committee to retain them:

- **Section 12A**: the duty on employers to confirm work authorisation, test the local labour market, prepare a skills transfer plan and offer equal terms. Equal terms matter to work seekers too: they stop employers from undercutting local wages.
- **Section 12B**: Ministerial quotas by sector, occupation and region.
- **Section 49(2A)**: escalating fines for repeat contraventions, which give the rules real deterrent effect.
- **Section 51**: the rule that the quota power may not be delegated.

I further recommend that the Committee:

1. Require the Minister to publish clear, measurable criteria for setting quotas.
2. Ask the Department to report on the inspectorate capacity needed to enforce Chapter 3A, because rules that are not checked do not help work seekers.

3. Require that vacancies be advertised through public employment services, such as the Department's ESSA system, so that South African work seekers can see and apply for them before a foreign national is recruited.

Conclusion

The Bill rightly aims to put South African work seekers first. Clause 1(d), as drafted, works against that aim. I respectfully request that the Committee write an explicit citizens-first rule into the Act, keep refugees and asylum seekers within the definition of foreign national, and ensure the Bill's protections are enforced.

Thank you for the opportunity to share my experience and views.

[Full name]

[Date]

Signature