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## THE ASSOCIATION OF TEST PUBLISHERS

By email : [info@atp.org.za](mailto:info@atp.org.za)

YOUR REF: **DR H KRIEK**

OUR REF: **G K HAY/ah  
1033407**

DATE: **9 September 2016**

Dear Sirs

**RE : COURT APPLICATION: THE ASSOCIATION OF TEST PUBLISHERS ("ATP"), THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, THE MINISTER OF LABOUR AND THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA ("HPCSA") CASE NUMBER 89564/14**

1. We act on behalf of ATP.
2. The ATP has previously informed its members that the court application brought by ATP in the High Court, Pretoria is to be heard on the 29<sup>th</sup> and 30<sup>th</sup> November 2016.
3. The launching of the application followed the amendment to section 8 of the Employment Equity Act ("EEA") no. 55 of 1998 and the unsuccessful attempts by ATP to arrange for a moratorium or amnesty period until such time as the HPCSA had the capacity to classify tests, as planned, according to proposed EFPA standards.
4. In the court application ATP will seek an order that the Proclamation that brought into operation the amendment of section 8 of the EEA be declared null and void and of no force and effect and that section 8 of the EEA as it was on 31 July 2014 will continue un-amended.
5. The application has been opposed by the President, the Minister of Labour and the HPCSA.



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6. It will be argued on behalf of the ATP that the regulatory infrastructure consisting of regulations, being publicly accessible documents and guidelines with a rational basis, relating to the development, control, classification and certification of psychological tests and "*similar assessments*", which should include appropriate application forms, timelines, objective criteria, and costs of the test classification and certification process are essential if effect is to be given to the requirement in the amended section 8 of the EEA.
7. The amended section 8 of the EEA requires that psychological tests and other similar assessments be certified by the HPCSA.
8. The ATP has recorded that this regulatory infrastructure was not available at the time when the amended section 8 of the EEA came into operation and is still not available.
9. The processes that were in place, and still are in place do not meet the constitutional requirements for such regulatory infrastructure.
10. The absence of the necessary regulatory infrastructure has caused confusion in the market place. It is important to note that at present, and even if the ATP application is not successful (which we believe it should be) the relevant legislation impacts only psychological tests. Clear guidelines are required in this regard in view of the fact that tests such as competency assessments should not be impacted.
11. The ATP will keep its members informed of further developments in this regard.

Yours faithfully

(Dictated by GK Hay and dispatched in his absence)

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