

The Contemporary Gazette

relevant new legislation for your business



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This Update

This newsletter overviews new relevant National laws up to **22nd July 2022**.

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General

1. NOTABLE ONE LINERS

Auditing Profession Act: IRBA Rules

[Draft rule on enhanced auditor reporting for the audit of financial statements](#) gazetted. Comment by 5 October 2022.

Broad-based Black Economic Empowerment Act: Draft Legal Sector Code

Draft Legal Sector Code available from the Department. Comment within 60 days from 22 July 2022.

Note: Proposes special limitations on start up legal sector measured entities; and on small practicing attorneys and advocates qualifying as exempted legal entities (eg R3 million annual revenue threshold, only first 3 years of practice, and 3 or less partners/directors or be junior advocates).

Final note: Limits ownership, management control, and enterprise and supplier development expectations to attorneys.

Childrens Act: Amendment Bill

Version B of the Amendment Bill 2020 proposes, [amongst others](#), adding to the determination of a 'child in need of care and protection' a child abandoned or orphaned with no family member who is able and suitable to care for that child; an unaccompanied migrant child from another country; a victim of trafficking; or a child sold by a parent, care-giver or guardian.

Note: A child who has, if applicable, no knowledge as to the whereabouts of the parent, guardian, or caregiver and such information cannot be ascertained by the relevant authorities, will be included in the definition of abandoned child.

Further note: The Bill proposes making every district court a childrens court and allowing a childrens court to also hear an application for an order granting guardianship and matters relating to an unaccompanied or separated migrant child or a child who is an asylum seeker, or refugee.

Further note: The Bill proposes that a childrens court must refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in [section 305](#) to a criminal court having jurisdiction.

Final note: The Bill also proposes quality assurance processes conducted for the evaluation of child protection services and organisations; revising foster care provisions and the social service practitioner definition; and revising need of care and protection determinations, orders and stability provisions.

Collective Investment Schemes Control Act: Amalgamation of business of schemes or portfolios and cession, transfer or take over of rights of investors

CIS notice of 2022 read with FSCA communication 21 of 2022 CIS (draft amendment of managers from certain requirements contained in [section 99\(1\)](#)), available from the FSCA. Comment by 8 August 2022.

Constitution of the Republic of South Africa: Draft Constitution Eighteenth Amendment Bill

The Draft Bill proposes recognising SA sign language as an [official language](#). Comment within 30 working days from 19 July 2022.

Criminal Procedure Act: Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill

The Amendment Bill proposes amending [section 18](#) (prescription of right to prosecute); [21](#) (articles to be seized); [25](#) (entering premises in connection with State security or any offence); and [43](#) (warrant of arrest); and [schedules 1, 2, 5 and 6](#).

Disaster Management Act: National state of disaster (severe weather events)

[Severe weather event declaration](#) extended to 18 August 2022.

Extradition Act: Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill

The Amendment Bill proposes amending [section 22](#) (extradition in respect of terrorist and related activities).

Films and Publications Act: Classification guidelines

Reminder that new [classification guidelines for films, games and certain publications](#) commence 1 month from 1 July 2022.

Note: Related laws to consider may include, amongst others, the Basic Conditions of Employment Act ([sectoral determination 10](#) children in the performance of advertising, artistic and cultural activities, and [regulations on hazardous work by children](#)); the [Childrens Act](#); the [Criminal Laws \(S Offences and Related Matters\) Amendment Act](#); the [Criminal Procedure Act](#); the [Cybercrimes Act](#); the [Electronic Communications Act](#) ([regulations on code of conduct for premium rated services](#)); the [Prevention and Combatting of Trafficking in Persons Act](#); and the [S Offences Act](#).

Financial Intelligence Centre Act: Directive

[Directive 1 of 2022](#) (Directive for conduct within the national payment system in respect of the Financial Action Task Force recommendations for electronic funds transfers) commences 30 business days from 15 July 2022.

Financial Intelligence Centre Act: Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill

The Amendment Bill proposes amending [section 26A](#) (notification of persons and entities identified by Security Council of the United Nations) and [28A](#) (property associated with terrorist and related activities and financial sanctions pursuant to resolutions of United Nations Security Council).

Intimidation Act: Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill

The Amendment Bill proposes repealing [sections 1\(1\)\(b\), 1\(2\)](#) (prohibition) and [1A](#) (intimidation of general public, particular section of population or inhabitants of particular area).

Justices of the Peace and Commissioners of Oaths Act

Certain employees of Medihelp Medical Scheme have been added to the list of [designations](#).

Note: A revised and rechecked list of designated commissioners, with updated references, may be needed at this stage.

Labour Relations Act: Code of good practice

Notice gazetted that the previous version of the code of good practice ([Managing exposure to Sars-Cov-2 in the workplace](#)) is in fact withdrawn and replaced by the current June 2022 code.

Magistrates Courts Act: Rules

[Rules](#) (Annexure 2 Part A costs) to be amended 24 August 2022.

Medicines and Related Substances Act: Regulations

Further time-limit and anticipatory conditions for compounding medicine for sale proposed to the [general regulations](#). Comment deadline 1 month from 21 July 2022.

Note: The definition of compound will be revised to refer to the preparation, mixing, combining, packaging and labelling of a medicine by a pharmacist, intern or assistant practising as per the [Pharmacy Act](#); a vet practising as per the [Veterinary and Para-Veterinary Professions Act](#); or a [section 22C\(1\)\(a\)](#) licensee practising as per their scope of practice.

National Environmental Management Act: Hydraulic fracturing

The [draft regulations for the exploration and production of onshore oil and gas requiring hydraulic fracturing](#) propose, amongst others, that hydraulic fracturing be prohibited within heritage sites; protected areas; 2 kilometres of any government waterworks, including dams with a safety risk; 2 kilometres from the edge of an existing or proposed municipal wellfield; 2 kilometres from the edge of any strategic water source area; and 2 kilometres from the edge of a thermal or cold spring, including seismically active springs. Comment within 45 days from 11 July 2022.

Note: Reminder that the draft minimum requirements for submission of applications onshore exploration of oil and gas intending to utilise hydraulic fracturing is available from the Department. Comment within 45 days from 8 July 2022.

National Environmental Management Act: Identified environmental themes

Amendments proposed to [procedures for the assessment and minimum criteria for reporting of identified environmental themes \(terrestrial animal species\)](#), namely changing all references to terrestrial animal species to animal species. Comment within 30 days from 11 July 2022.

National Environmental Management Act: Financial provisioning regulations

[Draft financial provisioning regulations](#), for the mitigation and rehabilitation of environmental damage caused by reconnaissance, prospecting, exploration, mining or production operations, gazetted. Comment within 45 days from 11 July 2022.

National Environmental Management Biodiversity Act: African Penguin

Draft African Penguin biodiversity management plan available from the Department.

Comment within 30 days from 22 July 2022.

National Environmental Management Biodiversity Act: Draft game meat strategy

Draft game meat strategy available from the Department. Comment within 30 days from 18 July 2022.

Note: Related laws to consider may include, amongst others, the [Agriculture Products Standards Act](#); the [Animal Diseases Act](#); the [Animals Protection Act](#); the [Consumer Protection Act](#); the [Foodstuffs, Cosmetics and Disinfectants Act](#); the [Game Theft Act](#); the [Meat Safety Act](#); the [National Regulator for Compulsory Specifications Act](#); and the [Tourism Act](#).

National Environmental Management Integrated Coastal Management Act: General discharge authorisation

A general discharge authorisation has been granted to any person discharging effluent into coastal waters from a land-based source where the effluent meets all of the [prescribed requirements](#).

Note: In addition to other legal duties under other laws, the notice includes a reminder that there is a [duty of care](#) on an operator of a pipeline which ends in the coastal zone.

Further note: The notice includes a reminder that there is a [duty of care](#) on a producer or discharger of a substance which caused, is causing or is likely to cause, an adverse effect on the coastal environment.

Final note: The notice includes a reminder that there is a [duty of care](#) on an owner, occupier, person in control of or user of land or premises where there is an activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned.

Nuclear Energy Act: Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill

The Amendment Bill proposes amending [section 34A](#) (prohibitions relating to nuclear material).

Petroleum Products Act: Petrol 93 octane

Intention to introduce a [price cap or a maximum price for petrol 93 octane](#) gazetted. Comment within 30 days from 22 July 2022.

Protection of Constitutional Democracy against Terrorist and Related Activities Act: Amendment Bill

The [Amendment Bill](#), amongst others, proposes the prohibition of publication with unlawful terrorism related content; an offence relating to attempt to leave SA to commit an act that would be an offence under this Act if committed in SA; and including any digital representation of perceived value in the definition of property.

Note: The Bill also proposes expanding the definition of terrorist activity, for example to reference serious disruption of essential services, substantial damage to information infrastructure, cybercrimes with the intention to facilitate listed terrorist activities, and actions calculated to overthrow the government of SA or any other government.

Further note: The Bill also proposes expanding the offences relating to explosive or other lethal devices to include private places; the fixed platform, aircraft and ship offences; and the offences relating to harbouring or concealment of persons, and to hoaxes.

Further note: The Bill also proposes amending consent to prosecute and freezing orders; and to introduce decryption directions and orders to disable access to internet or social media site.

Final note: The Act should be considered by business as general as, amongst others, it contains or may in future contain duties affecting everyone (duty to report), information duties for financial institutions, and access duties for electronic communications providers.

Refugees Act: Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill

The Amendment Bill proposes amending [section 4](#) (exclusion from refugee status).

Skills Development Act: National apprenticeship and artisan development strategy 2030

The strategy is available from the Department.

Special Investigating Units and Special Tribunals Act: Department of Health

Special investigation launched into the [affairs of the National Department of Health and Provincial Departments of Health](#) relating to unlawful or improper conduct by claimants or their agents in the institution of civil action or civil application proceedings for relief against the institutions in respect of medical negligence claims.

Note: Also see [past investigated national departments](#) and [past investigated provincial departments](#).

Special Investigating Units and Special Tribunals Act: KZN Department of Transport

Fifth special investigation launched into the [affairs of the KwaZulu-Natal Department of Transport](#), relating to serious maladministration identified by the Auditor-General, and a fibre data link to the Department's information technology server room.

Note: Also see [past investigated provincial departments](#).

Special Investigating Units and Special Tribunals Act: SACE

Special investigation launched into the [activities of the South African Council for Educators](#), relating to commercial property.

Note: Also see [past investigated entities](#).

Special Investigating Units and Special Tribunals Act: SASSA

Cleaning tender added to [second special investigation into the South African Social Security Agency](#), and period under investigation extended to 22 July 2022.

Note: Also see [past investigated entities](#).

Standards Act

New, proposed, amended, and withdrawn [standards](#) gazetted for 22 July 2022.



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2. COPYRIGHT ACT: AMENDMENT BILL

Version D of the Amendment Bill 2017 proposes, [amongst others](#):

- (i) Revisiting the nature of the specific copyright, matters relating to royalties and related exceptions relating to: literary and musical works (see [sections 6, 6A, 12, and 22](#)); sound recordings (see [sections 9, 9A, 17, and 21](#)); artistic works (see [sections 7 to 7F, and 15](#)); and audiovisual works (see [sections 1, 8, 8A, 16, and 21](#));
- (ii) Introducing or revising [12C](#) (temporary reproduction and adaptation); [12D](#) (educational and academic reproduction); [19B](#) (computer program exceptions); [19C](#) (libraries, archives, museums and galleries exceptions); [19D](#) (general exceptions for persons with disability); [20](#) (moral rights); [22A](#) (licences for orphan works); and [schedule 2](#) (translation and reproduction licences);
- (iii) A [general exception for fair use](#) in respect of a work or the performance of that work, with examples and factors given in the section, and a requirement that the source and author name must be mentioned;
- (iv) [Specific exceptions from copyright protection applicable to all works](#), such as justified personal copy by individual for own personal use with no commercial ends;
- (v) Making it an [offence](#) to: make, import, sell, distribute, let or offer, expose or advertise for sale or hire, a [technological protection measure circumvention device](#) in [section 27 instances](#); publish information enabling/assisting any other to circumvent a [technological protection measure](#) with intent to incite unlawful circumvention in the RSA; or circumvent a technological protection measure when not authorized to do so;

Note: Also consider the proposed [section 28P](#) exceptions, and the [section 39](#) provision for regulations, when considering these offences.

Further Note: The Bill proposes basing [penalties for section 27 offences](#) by juristic persons on a minimum percentage of annual turnover, for each article to which the offence relates. Courts may impose lesser sentences.

- (vi) Prohibited conduct in respect of technological protection measures;

Note: Also consider the proposed [section 28P](#) exceptions, and the [section 39](#) provision for regulations, when considering these prohibitions.

(vii) [No person may](#) in respect of a copy of a work, remove or modify any [copyright management information](#); or in the course of business make, import, sell, let, offer or advertise for sale or hire a copy of a work if any copyright management information has been removed or modified without the authority of the copyright owner.

Note: Also consider the proposed [section 28S exceptions](#) (eg copyright owner or performer authorisation), when considering these prohibitions.



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3. CYBERCRIMES ACT: DRAFT PROCEDURES

The [draft standard operating procedures for the investigation, search, access or seizure of articles](#), for the SAPS, assisting investigators, or other person authorised under other law to investigate an offence in terms of any law, propose, amongst others:

- (i) An article will be relevant when it is concerned with, connected with or is, on reasonable grounds, believed to be concerned with or connected with the commission or suspected commission of an offence;

Note: Article refers to data; a computer program; a computer data storage medium; or a computer system (1 or more computers).

- (ii) An article will be relevant when it may afford evidence of the commission or suspected commission of an offence; or

- (iii) An article will be relevant when it is intended to be used or is, on reasonable grounds believed to be intended to be used in the commission or intended commission of an offence;

Note: The draft procedures suggest that an individual's right to privacy, as well as other fundamental rights, must always be respected and any infringement of these rights may only be justified in terms of the law.

- (iv) Digital forensic activities must be aimed at ensuring the integrity, reliability, authenticity and eventual admissibility of evidence in a court, of processes and procedures relating to the data and programs on systems and storage mediums;

Note: The draft procedures suggest that the analysis of or any opinion based on the evidence must tell the whole story and not be tailored to match a more favourable or desired perspective.

- (v) The draft procedures suggest that methods to gather evidence must be fair and proportionate to the interests of justice - the level of intrusion or coercion caused to the rights of any party should not outweigh the probative value of the evidence.

Note: The draft procedures includes reminders that, amongst other, [section 15](#) of the Electronic Communications and Transactions Act requires that data messages must be given due evidential weight.

Further note: Chapter 2 of the [Criminal Procedure Act](#) deals with (general) search warrants, entering of premises, seizure, forfeiture and disposal of property connected with offences; and [chapter 4](#) of the Cybercrimes Act also provides for the powers to investigate, search, access or seize an article

Final note: When a search is conducted for anything else but an article, such search and seizure must be conducted using the [Criminal Procedure Act](#) and other laws such as the [Counterfeit Goods Act](#) or [Precious Metals Act](#), where applicable.

- (vi) [Section 29](#) search warrants will apply unless sections 31, 32, 33 and 40(1) and (2) of the [Cybercrimes Act](#), [section 4\(3\)](#) of the Customs and Excise Act, 1964, [sections 69\(2\)\(b\)](#) and [71](#) of the Tax Administration Act, 2011, or [section 21\(e\)](#) and (f) of the Customs Control Act, 2014 (not commenced) applies; and

Note: The draft procedures clarify that they will apply in addition to [Chapter 2](#) of the International Cooperation in Criminal Matters Act, and that sections 48 to 51 of the Cybercrimes Act apply pending a request in terms of [section 2](#) or [7](#) of the International Cooperation in Criminal Matters Act

- (vii) A well-considered round-up of the matters to be considered in every step (preparation, permitted persons, tools used, publicly available data, where consent is given, where warrant in place, where warrant not required, preservation, disclosure, securing, packaging, transporting, storage, data held by third parties and independent data holders, evidence, disposal, etc).

Note: Related laws and principles, such as the [Criminal Law \(S Offences and Related Matters\) Amendment Act](#); the [Criminal Procedure Act compensation orders](#); the [Critical Infrastructure Protection Act](#); the [Electronic Communications Act](#); the [Electronic Communications and Transactions Act](#); the [Financial Sector Regulation Act](#); the [Prevention of Organised Crime Act](#); the [Regulation of Interception of Communications and Provision of Communication-related Information Act](#); and principles for digital evidence, are also given due consideration in the draft procedures.

Further note: Additional related laws that may apply in certain instances include the [Copyright Act](#); the [Prevention and Combatting of Corrupt Activities Act](#); the [Promotion of Access to Information Act](#) (rights of refusals - examples of confidential information); and the [Protection of Information Act](#).

Further note: The draft procedures include a reminder that, subject to listed exceptions, section 39 of the Cybercrimes Act states that no person, investigator, police official, electronic communications service provider, financial institution or its employees may disclose any information which they have obtained in the exercise of their powers or the performance of their duties in terms of [Chapter 4](#) or [5](#) of the Cybercrimes Act.

Final note: The draft procedures suggest serving as a common standard for exchanging electronic evidence in local and international investigations.

Comment by 15 August 2022.



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