



# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update

### Volume 15 Issue 18, 26 October 2020

#### This Update

This newsletter overviews new relevant National laws up to **26<sup>th</sup> October 2020**.

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## General

### 1. NOTABLE ONE LINERS

#### Allied Health Professions Act (Accupuncture)

The Safety guidelines: Chinese medicine and acupuncture: Practice of acupuncture have been [made applicable](#) to all practitioners registered in the profession of Chinese Medicine and Acupuncture.

#### Allied Health Professions Act (Ayurveda)

The Safety guidelines: Ayurveda: Ayurvedic therapies have been [made applicable](#) to all practitioners registered in the profession of Ayurveda.

#### Allied Health Professions Act (Cupping)

The Safety guidelines: Unani-Tibb: Cupping therapy have been [made applicable](#) to all practitioners registered in the profession of Unani-Tibb.

#### Children's Act (COVID-19)

The [COVID-19 social development directions](#) will allow inter-country adoptions during alert level 1.

#### Civil Union Act (Amendment Act 2020)

The section relating to [civil servants who are marriage officers not compelled to solemnise civil union](#) has been repealed, as such marriage officers do not have a similar right to decline solemnising marriages under the Marriage Act.

#### Collective Investment Schemes Control Act (Draft conduct standard)

CIS communication 50 of 2020 (notification of draft conduct standard for advertising, marketing and information disclosure requirements for collective investment schemes) available from the FSCA.

### Companies Act (BBBEE Commission)

Memorandum of understanding between [B-BBEE Commission and CIPC](#) to 5 June 2025 gazetted.

*Note: This could, eg, give the B-BBEE commission access to CIPC business registration information.*

### Disaster Management Act (COVID-19)

[Declaration of COVID-19 as a national disaster](#) 5th extension to 15 November 2020 "taking into account the need to continue augmenting the existing legislation and contingency arrangements undertaken by organs of state to address the impact of the disaster".

### Disaster Management Act (COVID-19)

The [COVID-19 regulations](#) have been amended to allow the Sani Pass border post to reopen on 22 October 2020, while the [COVID-19 directions \(travel - entry into SA and exit from SA\)](#) have been amended to revise the list of closed land ports, and to remove the declaration of undesirability direction.

### Divorce Act (Judicial Matters Amendment Act 2020)

Provision has been made for further regulating the division of assets and maintenance of parties in divorce proceedings [in accordance with a judgment of the Constitutional Court](#).

### Electricity Regulation Act

The [new generation capacity regulations](#) have been amended to, amongst others, set criteria for when a municipality, as an organ of state, wishes to apply to the Minister to procure or buy new generation capacity in accordance with the Integrated Resource Plan.

### Expropriation Act (Draft Expropriation Bill)

The Expropriation Bill 2020 proposes repealing and replacing [this Act](#).

### Fund-raising Act (Draft Fund-raising Amendment Bill)

The Draft Bill [proposes](#) dissolving the State President's Fund, Refugee Relief fund, and Social Relief Fund and boards, and replacing the Disaster Relief Fund with a Disaster Relief and National Social Development Fund.

*Note: The funds in the dissolved funds will go to the Disaster Relief and National Social Development Fund, whose objects will include identifying disaster damage or loss, and social development activities or empowerment projects, for assistance.*

*Further note: Reminder that section 26 allows the President to declare a disaster for the purposes of this Act.*

*Final note: A board must ensure the disbursement of funds or provision of assistance is done in accordance with any written directions of the Minister for social development (and in certain instances Minister for defence), and with due adherence to ethical principles.*

### Higher Education Act (COVID-19)

The [COVID-19 higher education tuition and accommodation fees directions](#) apply to public higher education institutions, private student accommodation providers of such institutions, and NSFAS students.

*Note: The directions gives guidance and consideration to the various parties involved, and recognises there will be exceptions to the common national approach.*

### Insurance Act

The INS information request 4 of 2020 (request for information on add-on insurance policies sold at point of sale through motor dealerships or as part of vehicle financing arrangements), available from the FSCA, requires that relevant insurers must submit the required information by 30 November 2020.

### Labour Relations Act (Forms)

LRA Forms 3 1 (conscientious objector requests agency fee to be paid to Department) and 3 2 (list of deductions from conscientious objectors' wages) have been revised, and are available from the Department.

*Note: See [sections 25](#) and [26](#) regarding the meaning of conscientious objector within this law.*

### Legal Practice Act (Accounting rules)

[Draft amendment to accounting records](#), and all files and documents relating to matters dealt with by the firm on behalf of clients, gazetted, to confirm duty to keep confidential, and to state access to all persons entitled to access thereto by the law.

*Note: The draft amendment also proposes that where a firm engages a service provider to provide offsite storage facilities for the records and files of the firm, the firm must procure that the contractual arrangements with the service provider shall bind the service provider to ensure compliance with rule 54.9.2.1.*

### Legal Practice Act (Rules)

Draft amendment to [Provincial Council](#) nominations gazetted. Comment deadline 9 November 2020.

### Local Government Municipal Finance Management Act (Supply chain management)

The municipal supply chain management regulations [draft amendments](#) propose amending the regulations that cover range of procurement processes, competitive bidding, and appointment of consultants. Comment deadline 30 November 2020.

### Marine Living Resources Act (Traditional Linefish, Squid and Abalone)

The proposed resource split between local commercial and [small-scale fishing](#) in the Traditional Linefish, Squid and Abalone fishing sectors from 1 January 2021 unless otherwise notified, is not reproduced by CG and is available from the Department. Comment deadline 30 calendar days from 23 October 2020.

### Marine Living Resources Act (White Mussel, Oyster and Hake Handline)

The proposed classification of the White Mussel, Oyster and Hake Handline fishing sectors as [small-scale fishing](#) species from 1 January 2021, unless affected stakeholders are informed otherwise, is not reproduced by CG and is available from the Department. Comment deadline 30 calendar days from 23 October 2020.

### National Environmental Management Act (Hazardous chemicals and pesticides)

The [draft regulations for the prior informed consent procedure for the import and export of certain hazardous chemicals and pesticides](#) proposes that no person may import or export any listed chemicals from or to a country,

without obtaining consent prior to importing or exporting the chemicals. Comment deadline 30 days from 13 October 2020.

*Note: The draft regulations also propose that no person may transit any listed chemicals through South Africa, without complying with the notification requirements.*

### **National Environmental Management Air Quality Act (National pollution prevention plans regulations)**

Clarification [gazetted](#) regarding the date for the submission of the subsequent pollution prevention plans, with a proposed process to manage the carbon budgets for 1 January 2021 to 31 December 2022.

### **National Environmental Management Biodiversity Act (COVID-19)**

The COVID-19 directions ([for live biodiversity auctions](#)) require that hosts, venue owners and managers, and employees and representatives must ensure compliance with the specific safety requirements.

*Note: Only the auction host, venue owner or manager, owners of biodiversity specimens to be sold at the auction, their employees, and persons who intend to bid at the auction, may attend the auction.*

*Final note: Also see the COVID-19 directions ([for livestock auctions](#)).*

### **National Environmental Management Biodiversity Act (Alien and invasive species)**

New [alien and invasive species regulations](#) and [lists](#) will apply from 1 March 2021.

### **National Prosecuting Authority Act (Judicial Matters Amendment Act 2020)**

The Judicial Matters Amendment Act 2020 amended [section 12](#) to deal with the term of office of the National and Deputy National Directors of Public Prosecutions in line with a Constitutional Court judgment.

### **National Road Traffic Act (Draft South African Police Service Amendment Bill 2020)**

The Draft Bill proposes [consultation](#) with the National Commissioner of the South African Police Service and the national policing co-ordinating committee on regulations regarding curricula for traffic officers.

### National Sport and Recreation (COVID-19)

COVID-19 sports, recreation, cultural and arts directions amended to, amongst others, confirm sanitation of venues before a sporting activity; allow gatherings at cinemas, theatres, fitness centres, gyms and swimming pools limited to 50% of the capacity per cinema or venue; and add venue requirements such as displaying the municipal certified capacity of the venue at the entrance stating the number of people allowed to enter the place or building.

*Note: International sport, arts and culture events involving countries with a low or medium COVID-19 infection and transmission rate are allowed, subject to the resumption requirements being taken.*

*Further note: Gatherings at sports grounds and fields, beaches and public parks, and museums, galleries, libraries and archives, are allowed subject to strict compliance with health protocols and social distancing.*

*Final note: Concerts and live performances are limited to 250 persons or less in case of an indoor gathering and 500 persons or less in case of an outdoor gathering, provided no more than 50% of the capacity of the venue is used, with persons observing a distance of least 1,5m from each other.*

### National Student Financial Aid Scheme Act (COVID-19)

The COVID-19 higher education fees directions state, amongst others, NSFAS payments for tuition fees will be made as per the original agreed tuition fee; NSFAS payments for university-owned accommodation remain at the same original level; and the NSFAS will continue to disburse the accommodation allowances to beneficiaries, up to the agreed costs for the 10 months of the academic year.

*Note: Employers may wish to note that if they received a NSFAS board notice, they must make deductions from remuneration payable to the borrower according to the scales prescribed by regulation.*

### Non-profit Organisations Act (COVID-19)

The COVID-19 social development directions prescribe screening, distancing, protection, and register requirements for visits by beneficiaries to drop-in centres, including that where physical contact with an object is required, such object must be sanitised before contact by another person.



### **Occupational Health and Safety Act (Driven machinery regulations)**

The draft incorporation of the revised national code of practice for the training providers of lifting machine operators into the [driven machinery regulations](#) has been gazetted. Comment deadline for public comments for a period of 60 days.

### **Pension Funds Act (Conduct standard)**

Funds must comply with the FSCA conduct standard 5 of 2020 ([Conditions](#) for smoothed bonus policies to form part of default investment portfolios) within 9 months from the effective date (date of FSCA publication 9 October 2020).

### **Pension Funds Act (Draft conduct standard)**

RF communication 49 of 2020 (notification of draft conduct standard prescribing conditions for securities lending for pension funds), and RF communication 51 of 2020 (notification of draft conduct standard prescribing conditions for investments in hedge funds), available from the FSCA.

### **Prescribed Rate of Interest Act**

The [prescribed rate of interest](#) is 7,25% per annum as from 1 July 2020 - it was previously 7,75% as from 1 June 2020.

*Note: See the [past overview](#) on the importance of this interest rate to all entities.*

### **Public Audit Act (Memorandum of agreement)**

[Memorandum of agreement](#) between Auditor-General SA and National Treasury gazetted, that includes criteria to be applied to determine whether an auditee has financial difficulty.

### **Science and Technology Laws Amendment Act 2020**

The Amendment Act will, once a commencement date has been gazetted, make internal governance amendments to, the [Academy of Science of South Africa Act](#), the [Human Sciences Research Council Act](#), the [Scientific Research Council Act](#), the [South African National Space Agency Act](#), and the [Technology Innovation Agency Act](#).

### Skills Development Act (MQA)

[Re-establishment of Mining Qualifications Authority](#), for 1 April 2022 to 31 March 2030, gazetted.

### Social Assistance Act (COVID-19)

[COVID-19 social development directions](#) amendments have been made 7 October 2020 to the COVID-19 additional form of social relief of distress.

*Note: The amendments include that reasons given in an application for reassessment must be considered against latest available information, including checking with banks to determine if a person has no income.*

### South African Schools Act (COVID-19)

[COVID-19 schools directions](#) amended to state safety measures for non-contact sport training, inter-school non-contact sport matches, non-contact sport-related activities, arts and culture school-based activities in schools; contact sport training; co-curricular and enrichment programmes; and choir practice or rehearsals, that apply in addition to existing social distancing, hygiene and safety measures.

*Note: The amendment also refines practical considerations surrounding school hostels.*

### Standards Act

New, proposed, amended, and withdrawn [standards](#) have been gazetted for 9 and 16 October 2020.

### Tax Administration Act (International tax standards)

A new [OECD standard for automatic exchange of financial account information in tax matters](#) will apply from 1 June 2021, for purposes of paragraph (a) of the definition of “international tax standard”.

### Value-added Tax Act (VAT exemption)

[Exemption gazetted](#) for goods imported for the official use by an organisation or institution in terms of an agreement certified by the Director-General: International Relations and Cooperation or an official acting under his or her authority.



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## 2. SOCIAL ASSISTANCE ACT: AMENDMENT BILL 2018

The Amendment Bill 2018 version B proposes, [amongst others](#):

- (i) Recipients: Making a child who heads child-headed household eligible for a section 6 [child support grant](#), as primary care-giver is defined as a person over 16 years of age;
- (ii) Additional payments: That the Minister [may prescribe an additional payment](#) linked to a social grant, and may differentiate on the basis of need between beneficiaries of social grants; and
- (iii) Social relief of distress: That the Minister may prescribe who qualifies for [social relief of distress](#), but any [person](#) may qualify if his or her household is affected by a disaster [as defined in the Disaster Management Act](#).

*Note: [Child support grants](#), [care dependency grants](#), [foster child grants](#), [disability grants](#), [older persons grants](#), [war veterans grants](#), and [grants-in-aid](#)) are subject to provisions relating to [eligibility](#), [being absent from SA](#), [overpayment](#), [abuse of social grants](#), and [false representations](#);*

*Further note: A financial institution, when considering provisions relating to [information to be furnished to the agency by third parties](#) and [powers of inspectorate to request information and to subpoena](#), should consider all related laws;*

*Final note: Reminder that, in terms of the [Older Persons Act](#), a person who is of the opinion an [older person](#) is [in need of care and protection](#) (e.g. [income taken against their wish](#) or [abandoned without means of support](#)) may report this to a social worker ([certain professionals must report such a belief](#)); and any person who suspects an [older person](#) has been [abused](#), or suffers abuse-related injuries, [must immediately notify](#) the Director-General or a police official.*



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### 3. EXPROPRIATION BILL

#### Regulatory deprivation

The Bill proposes potential nil [compensation to be determined and paid](#) where land is expropriated in the public interest, having regard to all relevant circumstances, including **but not limited to**:

- Where the land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value;
- Where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration;
- Notwithstanding registration of ownership in terms of the [Deeds Registries Act](#), where an owner has abandoned the land by failing to exercise control over it;
- Where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land; and
- When the nature or condition of the property poses a health, safety or physical risk to persons or other property.

The Bill also adds regulatory deprivation potential, having regard to all relevant circumstances, when a court or arbitrator determines the amount of compensation in terms of [section 23](#) of the Land Reform (Labour Tenants) Act.

*Note: As with a number of other laws it may also be necessary to consider the possibility of regulatory creep, in other words systematic and ongoing amendments that were not present or considered at the start of a law, and change a law completely from what was presented at its inception.*

## General matters

The Bill proposes, amongst others:

(i) **Property and public:** An organ of state or a person empowered by this proposed law or any other legislation to acquire property through expropriation (Expropriating Authority) may not expropriate property arbitrarily, and **may only expropriate for a public purpose or in the public interest**;

*Note: The definitions used for the key concepts property, public purpose and public interest do not support regulatory certainty - they are written in open-ended and vague terms.*

(ii) **Multiplication factor:** An expropriating authority **may expropriate property** under a power given by a law of general application, provided the exercise of such power is in line with this proposed law;

*Note: See interpretation of other laws read with, for example, section 14 of the Agricultural Resources Act; section 9 of the Air Traffic and Navigation Services Company Act; section 16 of the Airports Company Act; section 7 of the Broadband Infraco Act; section 26 of the Electricity Regulation Act; section 21 of the Electronic Communications Act; section 32 of the Gas Act; section 9 of the Housing Act; section 6 of the Housing Development Agency Act; section 5 of the Infrastructure Development Act; section 55 of the Mineral and Petroleum Resources Development Act; section 49 of the National Forests Act; section 42E of the restitution of Land Rights Act; section 41 of the SANRAL and National Roads Act; or the Expropriation Act 1975 (and transitional arrangements).*

(iii) **Exceptions to reason:** A **power to expropriate property** may only be exercised if the expropriating authority has without success attempted to reach an agreement with the **owner or holder of a right** on reasonable terms - exception is made for urgent expropriation (see urgent expropriation further below);

*Note: Throughout this proposed law there is a sense that accounting, legal and related assurance providers can perform an important role in assisting people understand what rights they have left, the complex laws involved, the minute detail required in short time-spans, and the loss imposed on them.*

(iv) **Minister mandate:** A **specific power to expropriate** that applies to property connected to providing and managing accommodation, land and infrastructure needs of an organ of state, in terms of the Minister's mandate - one of the powers that cannot be **delegated or assigned**;

*Note: There are many organs of state.*

(v) **Information:** Steps to **investigate and gather information** for purposes of expropriation, and **consultation with municipality during investigation** regarding the potential effect of the taking of property on municipal planning;

*Note: A person authorised to perform a [section 3\(2\)](#) act must use an official identification document for identification, and must give a copy of the authorisation to the [owner](#) or occupier - the Institution of Legal Proceedings Against Certain Organs of State Act will limit claims for damage of property by such acts.*

(vi) **Intention:** A [notice of intention to expropriate](#), with only 30 days to lodge any objections or submissions, only 30 days to give a written statement stipulating the amount claimed by him or her as just and equitable compensation, and only 30 days to give a comprehensive written statement;

*Note: The statement must include, amongst others, full particulars of how the amount is made up and all improvements made.*

(vii) **Expropriation:** An expropriating authority that decides to expropriate a property must serve a [notice of expropriation](#) on the owner and known holders of unregistered rights, and publish and deliver a copy;

*Note: The [effect of an expropriation of property](#) will include that the property remains subject to all registered rights in favour of third parties, with the exception of a mortgage, with which the property was burdened prior to expropriation, unless or until such registered rights are expropriated from the holder;*

(viii) **Maintenance:** The [expropriated owner or holder still having possession must](#), from expropriation date to vesting date, take all reasonable steps to maintain the property, pay applicable municipal property rates, taxes and other charges, and pay normal operating costs (to be reimbursed by the expropriating authority);

*Note: If he or she wilfully or negligently fails to maintain the property and this results in a depreciation in value, the expropriating authority may recover the amount of depreciation from him or her - it is not certain whether market value, municipal value, or expropriation value will then be used to determine value.*

*Final note: It will be possible, and often advisable, to take the prescribed steps allowed to get the expropriating authority in possession of the expropriated property prior to the date it passes.*

(ix) **Unregistered rights:** [Verification of unregistered rights in expropriated property](#), and [consequences of expropriation of unregistered rights](#) (including liability for compensation paid after date of compensation due authority not being informed of a known unregistered right); and

(x) **Interest:** When [interest](#) may accrue on any outstanding portion of the amount of compensation payable, and when not (apart from circumstances when a person is simply deprived of their property).

The Bill also proposes:

(i) **20 days:** 20 days to make a [comprehensive written statement](#) covering compensation views, land particulars and information 'to be prescribed', from the date on which an expropriation notice was served on that owner or holder - In addition only 20 days is given to deliver a title deed;

*Note: Failure to respond adequately within the 20 days will result in further value reduction such as interest being delayed, may allow the expropriating authority to deposit the compensation payable with the Master (after which that authority ceases to be liable for that amount), and may trigger [fines and fraud](#) offences.*

*Further note: Any consideration of an [extension of time](#) is left to the will of the expropriating authority.*

(ii) **'Counter offer':** If the expropriating authority does not accept the amount claimed in the 20 days written statement, it must, within 20 days of delivery of that statement, make an offer of just and equitable compensation in writing, with full particulars of how such amount is made up and calculated;

*Note: The offer must include copies of reports detailing how the offer was determined if the amount is different from the amount offered by the expropriating authority under the notice of expropriation.*

*Further note: The reasonableness of only 20 days to generally give due consideration to intrusive and far-reaching matters like these is questionable.*

(iii) **More detail:** The expropriating authority and the person who lodged a claim for compensation may, from time to time in writing, deliver a [request for reasonable particulars](#) regarding the claim or offer for just and equitable compensation;

*Note: Particulars so requested must be furnished within 20 days of the request, but if the authority fails to comply a complainant must go to court to get an order, if he or she can afford it.*

(iv) **Status of claims and offers:** A claim and offer of just and equitable compensation [remain in force](#) until the compensation is revised by the claimant or expropriating authority; the amount is agreed by the expropriating authority and the claimant; or the compensation has been decided or approved by a court.

(v) **Payment details:** [Payment details](#), including that information and documentation to be delivered by a person to whom compensation or interest is payable will be 'to be prescribed';

(vi) **Mortgages and deeds of sale:** Compensation must be paid on such terms as agreed upon between the expropriated owner or holder and the mortgagee or buyer, where property was [encumbered by a registered mortgage or subject to a deed of sale](#), immediately prior to the date of expropriation, after the claimant has notified the expropriating authority of the agreement.

*Note: The expropriated owner or holder, or the bond holder or buyer, must notify the expropriating authority within 30 days from the date contemplated for possession, of their agreement and its terms, failing which the expropriating authority may [deposit the money with the Master](#).*

*Further note: In the event of a dispute arising out of the above, the expropriating authority may [deposit the money with the Master](#), and any of the disputing parties may apply to a court of competent jurisdiction for an order directing the Master to pay out the money on such terms as the court may determine.*

(vii) **Tax: Payment of charges**, including that the expropriating authority must notify the expropriated owner or holder of any outstanding charges, and if not disputed within 20 days of the notification, it may use the compensation to pay outstanding charges on behalf of the expropriated owner or holder;

*Note: Charges refer to municipal property rates, taxes or other charges that must be paid in order for ownership of land to be transferred by the registrar of deeds to the expropriating authority through registration in the deeds office.*

(viii) **Payments to Master**: The expropriating authority must [deposit the compensation payable with the Master](#) after which it ceases to be liable in respect of that amount:

- If a property expropriated was left in terms of a will or testament to undetermined beneficiaries;
- If compensation is payable to a person whose address is not readily ascertainable or who, unless otherwise agreed, fails to supply the prescribed information and documentation for electronic payment within 20 days of being given written notice to do so; or
- If compensation is payable and the expropriating authority, after reasonable endeavours, is unable to determine to whom it must be paid.

*Note: Related law may include [special investigation into the Guardian's Fund](#), [special investigation into the Masters Office](#), and special investigations into [national departments](#), [provincial departments](#), [municipalities](#), and [government entities](#).*

(ix) **Urgent expropriation**: An expropriating authority may, if a property is required on an urgent basis, take a right to use property temporarily for so long as it is urgently required for up to 12 months, if suitable property held by the national, provincial or local government is not available but only:

- In the case of a disaster as defined in the Disaster Management Act; or
- Where a court grants an order that an expropriating authority may use [urgent expropriation](#);

*Note: The authority can ask a court for extension, and can at any time during the temporary use of the property, commence with the process of expropriation of the property.*



(x) **Fines and offences:** [Offences](#), including offence to willfully furnish false or misleading information in any written instrument delivered or caused to be delivered to an expropriating authority due to the operation of this law, to be punished as if he or she had been convicted of fraud.

Finally, the Bill proposes [mediation and determination by court](#); [withdrawal of expropriation](#) from a date mentioned by notice, if the withdrawal is in the public interest or the reason for expropriation no longer applies; [service and publication of documents and language used](#); and an [expropriation register](#).

*Note: A dispute on the amount of compensation alone does not preclude the vesting and possession of expropriated property.*

*Further note: Every addressee who has received a written communication from the expropriating authority may request, in writing, a translation into the official language indicated in the request.*

*Final note: An expropriation register will contain highly sensitive personal, confidential and commercially sensitive information, and the security of the register and its protection against abuse will be left to the Department of Public Works and Infrastructure.*



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## Safety

# 4. CIVILIAN SECRETARIAT FOR POLICE SERVICE ACT: DRAFT SAPS AMENDMENT BILL 2020

The Draft Bill proposes, [amongst others](#):

- (i) Neighbourhood control: [Oversight of voluntary neighbourhood patrolling and neighbourhood watch associations](#) and community policing forums, including provincial secretariats to ensure compliance of these non-governmental entities with [prescribed standards, regulations, registration and codes of conduct](#);

*Note: Neighbourhood patrols or watch associations will be told to appoint a co-ordinator to provide personal details of persons and vehicles used in attempting to protect neighbourhoods, and record any observations or patrols performed by members of the voluntary entity.*

*Further note: Specifics regarding recording observations are not provided, and ongoing training to volunteers in related laws such as the [Promotion of Equality and Prevention of Unfair Discrimination Act](#), requirements and enforcement of that Act through equity courts, is recommended, where feasible.*

- (ii) Neighbourhood monitoring: Limiting functions of a neighbourhood patrolling or watch association to monitor through observation and patrols, and report to the nearest police station any activity raising a reasonable suspicion that the person involved in such activity committed or intends to commit an offence;

*Note: Citizen arrests are not covered, and ongoing training to volunteers in related laws such as the common law right to proportionate self-defence reasonable in the circumstances, is suggested, where feasible.*

- (iii) Prohibitions: Prohibiting a member of a neighbourhood patrolling or watch association from performing a security service as contemplated in the [Private Security Industry Regulation Act](#), or any policing function assigned to a member of the SAPS by any Act; or giving remuneration for functions they perform in terms of this Act; and

*Note: The draft bill further proposes that [section 6A](#) must not be interpreted so as to assign any policing function to any member of a neighbourhood patrolling or watch association, or derogate from any right which a member of a neighbourhood patrolling or watch association may have in law.*

*Further note: If this law is enacted in its current form then it is suggested that a notice should be gazetted that spells out what are policing functions under what laws, to avoid unnecessary regulatory uncertainty, and allow meaningful consideration and input.*

(iv) Police forums: Prohibiting a person with a criminal record from serving as a member of a community policing forum, district, Provincial or National Community Policing Board - the functions of such entities will include matters such evaluating the provision of policing services.

*Note: Ongoing training is suggested, where feasible, for volunteers who may interact with members of the SAPS in relevant related laws, such as understanding the various offences under the [Prevention and Combating of Corrupt Activities Act](#), and where to safely report any reasonably suggested transgressions.*

Comment deadline 45 days from 1 October 2020.



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## Safety

# 5. REGULATION OF GATHERINGS ACT: DRAFT SAPS AMENDMENT BILL 2020

The Draft Bill proposes, [amongst others](#):

(i) **Notice of gathering:** The convener of the following types of gathering must give [written signed notice](#):

- 15 or more persons in or on a public road as defined in the [National Road Traffic Act](#);
- 50 persons in or at or any other public place or premises wholly or partly open to the air; or
- Where the presence of the police or traffic officers is needed to maintain public order or to regulate traffic;

*Note: Such section 3 notice is not required in respect of a spontaneous gathering.*

(ii) **Limited powers:** Amending [powers of police](#) including requiring that a police member must, subject to the situation, use a gradual response in law enforcement in respect of a gathering and use force only if non-violent means are ineffective or without any prospect of achieving protecting the public or police members;

(iii) **Defences:** A [defence](#) to a claim against joint and several riot damage if a person or organization proves:

- He or it did not permit or connive at the act or omission which caused the damage in question;
- The act or omission in question did not fall within the scope of the objectives of the gathering or demonstration in question and was not reasonably foreseeable; and
- He or it took all reasonable steps within his, her or its power, including the giving of notice of the gathering, or demonstration where required by the Act, to prevent the act or omission in question; and

*Note: Reminder that proof that he, she or it forbade an act of the kind in question shall not by itself be regarded as sufficient proof that he, she or it took all reasonable steps to prevent the act in question.*

(iv) **Offences:** Removing the [offence](#) of convening a gathering insufficient section 3 notice was given.



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## Safety

# 6. SOUTH AFRICAN POLICE SERVICES ACT: DRAFT SAPS AMENDMENT BILL 2020

The Draft Bill proposes, [amongst others](#):

- (i) Lifestyle audit: Defining lifestyle audit as a comparison of known income of a person with his or her standard of living to determine whether there are gaps and indicators that a person is living above his or her means; or the person is abusing power or influence for personal gain at that time or a later stage;
- (ii) Dignity: Underlining that members of the Service, in the execution of their duties and in the performance of their functions, will be expected to deal with the public with dignity and to respect the rights of the public, especially the rights of women, children and persons with disabilities;
- (iii) Policing policy: A national policing policy that provides for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces;
- (iv) Proportional force: Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonably necessary and proportional in the circumstances;

*Note: The Bill further proposes that such a member may only use deadly force, subject to such force being reasonably necessary and proportional in the circumstances, if there is a threat of serious bodily harm to a member or any other person.*

*Final note: The Bill further proposes that such a member may not use deadly force to protect property only.*

- (v) Reporting use of force: Whenever a member makes an official report to the Service on the use of force by another member or members of the Service during the execution of their duties, no self-incriminating answer given or statement made by the reporter will be admissible as evidence against that member in criminal proceedings instituted against that member in any court, except in criminal proceedings for perjury;
- (vi) Firearms: Firearms that are fully automatic, as defined in the [Firearms Control Act](#), may not be used for purposes of law enforcement during a gathering or demonstration;

(vii) Private home searches: [Sections 21 and 22](#) of the Criminal Procedure Act shall apply to a section 13(7) search of any private home and/or any person inside such private home within the cordoned off area, and the seizure of any article found in any such private home or in the possession of any person inside such private home;

(viii) Search and seizure: [Chapter 2](#) of the Criminal Procedure Act may be used whenever a member considers it necessary to perform a search and seizure in order to prevent or investigate a crime;

(ix) Prints: Including a [section 2A](#) National Strategic Intelligence Act vetting investigation and [section 28A](#) integrity testing and lifestyle audits under [section 15A](#) fingerprints, body-prints or photographic images uses;

(x) Elimination Index: Municipal police service must be required to submit a buccal sample for purposes of forensic DNA profiles derived there from to be included in the Elimination Index;

(xi) Intelligence Division: The Intelligence Division to, subject to the [National Strategic Intelligence Act](#), gather, correlate, evaluate and use:

- Crime intelligence and departmental intelligence for purposes of ensuring national security; and assisting in the execution of policing policy; and
- Operational intelligence for purposes of the prevention, combating and investigation of crime; the maintenance of public order; protecting and ensuring the inhabitants of the Republic and their property; upholding and enforcing the law; collating and verifying crime information; generating the kind of information needed to better understand the type of crime, violence, threats and vulnerabilities that disparate communities face supported by a community-centred approach to policing; and ensuring the security of National Key Points and critical infrastructure;

(xii) In the course of duty: Potential regulations regarding injuries and diseases sustained or contracted by members in the course of their employment, or death as a result of such injury or disease, to supplement, where required the [Compensation for Occupational Injuries and Diseases Act](#);

(xiii) Recruitment and appointments: Deviations must be based on a justifiable reason which must be recorded in writing; all posts must be filled following a transparent, competitive and merit-based process to ensure the best-suited person is appointed; and only citizens may be appointed as members;

*Note: The filling of any post in the Service must be in a manner that promotes the basic values and principles governing public administration (not defined).*

(xiv) Integrity measures: [Integrity testing \(for new recruits or new persons considered for appointment and lifestyle audits; taking and use of fingerprints of members; and security measures on integrity of information;](#)

(xv) **Municipal police service:** [Amendments](#) include adding certain enforcement of the [Regulation of Gatherings Act](#) to functions, and to exclude the investigation of crime; and applying section 13(3); and

(xvi) **Penalties:** [New and higher penalties](#) for having or disposing of certain property; wearing of badges and uniforms (including private security emblems etc confusingly similar to SAPS); interference with members; false representations (including use of blue lights); and unauthorised disclosures and access;

(xvii) Fake news: [Offence](#) to make false reports to the Service; spread untruthful information; or publish or convey information or hoaxes in any form, including in electronic form, knowing such report or information to be false and which causes the unnecessary and wasteful use of resources of the Service;

and

*Note: The Draft Bill proposes that a court that convicted a person for the above may in addition to any fine or sentence of imprisonment also order the accused to remunerate the Service for any unnecessary and wasteful use of resources proven during a trial.*

*Further note: This offence should apply in addition to other offences and civilian actions that may be triggered by such actions.*

(xviii) Conflicts of interest: [Offence](#) for a member to conduct or assist with an investigation, in respect of a matter in which he or she has a financial or any other interest which may preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner.



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