

The Contemporary Gazette

relevant new legislation for your business



Legal Update Volume 16 Issue 2, 8 February 2021

This Update

This newsletter overviews new relevant National laws up to **5th February 2021**.

Log-in to www.gazette.co.za, peruse the list and follow the hyperlinks to laws that interest you.

Please note that you can keep up to date, in-between newsletters, by visiting latest updates.

Log-in details for SAICA members

To access www.gazette.co.za please use the following details:

- log-in name **in small letters**: saica + your SAICA membership number (e.g. saica01234567); and
- password : Your SAICA membership number (e.g. 01234567).

Please do not hesitate to contact us should you have any queries or comments.

Index



General

[1. Notable one liners](#)



General

[2. Tourism Act: Draft safety norms and standards](#)



General

1. NOTABLE ONE LINERS

Animals Protection Act (Amendment Bill 2021)

The Bill proposes, as a general rule, [making it an offence to test a cosmetic on an animal](#).

Note: The Bill also proposes that testing on an animal of an ingredient that may be included in a cosmetic, will not be an offence if that testing is for a purpose unrelated to the use of that ingredient in a cosmetic.

Further note: The Bill proposes defining cosmetic as any article, preparation or substance, except a medicine as defined in the Medicines and Related Substances Act, intended to be rubbed, poured, sprinkled, injected or sprayed on or otherwise applied to the human body...for purposes of cleansing, perfuming, correcting body odours, conditioning, beautifying, protecting, promoting attractiveness or improving or altering the appearance, and includes any part or ingredient of any such article, preparation or substance.

Final note: The Act defines animal as any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile in captivity or under the control of a person.

Carbon Tax Act (Rates and Monetary Amounts and Amendment of Revenue Laws Act 2020)

The Amendment Act increased the [rate of tax](#).

Carbon Tax Act (Taxation Laws Amendment Act 2020)

The amendment Act [amendments](#), amongst others, allow for the automatic adjustment to the carbon fuel levy, and for a carbon tax pass-through for the regulated liquid fuels sector.

Civil Aviation Act (COVID-19)

The [COVID-19 air services directions](#) level 3 add requirements relating to hygiene, disinfection and PPE; conditions for international and domestic flights, and for airports and airlines; general and recreational aviation and aerial work and certain air cargo permissions; and a duty on operators to provide information.

Competition Act (Guidelines for competition in the automotive aftermarket industry)

Guidelines gazetted for the after-sale market, that includes maintenance and repair services and related value added products; mechanical, structural and non-structural repairs to motor vehicles; sale of motor vehicle spare parts, tools and components; and the sale and administration of motor vehicle insurance.

*Further note: There is a measure of uncertainty to these guidelines as **section 79** states that a guideline is not binding, but any person interpreting or applying the Competition Act must take it into account.*

Cross-border Road Transport Act (COVID-19)

The **COVID-19 cross-border travel directions** adjusted level 3 limit cross-border road transport passenger services; permit cross-border freight transport and logistics for specified cargo and retail goods; and adds safety requirements for cross-border operators and owners of cross-border public transport facilities.

Customs and Excise Act (Tax Administration Laws Amendment Act 2020)

Sections 4 (officers); 18 (removal of goods in bond); 40 (validity of entries); 43 (disposal of goods); 44 (liability for duty); 72 (clarify free on board); 76B (2 year limitation); and 113 (broaden ambit to exported goods for which an authority is required) **amended**.

Note: The Act also made corrections and reference updates to sections 1, 3, and 120.

Customs and Excise Act (Taxation Laws Amendment Act 2020)

The Amendment Act **amended** continuation measures; section 48 (amendment of schedule 1); section 76 (general refunds); and the schedules.

Disaster Management Act (COVID-19)

The **COVID-19 regulations** now, amongst others, regulates **cargo transport**; covers **hotspots under level 3** (if levels improve hotspots remain at level 3); allows faith-based **gatherings** and **liquor** business activities; considers flights in **border closure** and **curfew**; and returns **beaches and other areas** and 10pm closing.

*Note: It is not certain if and to what extent **past level 3 directions** (such as communications strategy; biodiversity; fishing; national forests; and environmental permits) have been reactivated with the move to the current adjusted level 3.*

Electronic Communications Act (Child Helpline)

ICASA has extended the termination date for 080 005 5555 for Child Helpline services to 15 March 2021.

Note: ICASA encourages licencees to provide a voice message advising the public of the [imminent changeover to the code 116](#), to be played on calls to the current tollfree number, and to the 116 number.

Employment Tax Incentive Act (Taxation Laws Amendment Act 2020)

The Amendment Act [amendment](#) is meant to avoid roll over of excess employment tax incentive amounts of non-tax compliant employers at the end of the PAYE reconciliation period.

Estate Duty Act (Tax Administration Laws Amendment Act 2020)

The Amendment Act amended [section 10](#) (payment of interest) to correct a cross-reference.

Estate Duty Act (Taxation Laws Amendment Act 2020)

The Amendment Act made a correction to [section 3](#) (what constitutes an estate).

Foodstuffs, Cosmetics and Disinfectants Act (Animals Protection Amendment Bill)

The Animals Protection Amendment Bill proposes, as a general rule, making it an offence to sell or manufacture any [cosmetic which has been tested on an animal](#) in SA, and excluding the application of [special defences](#) for such an offense.

Note: The Bill also proposes that this offence shall not apply to an ingredient that may be included in a cosmetic, but which was tested on an animal for a purpose not related to the use of that ingredient in a cosmetic.

Further note: The Act defines cosmetic as any article, preparation or substance, except a medicine as defined in the Medicines and Related Substances Act, intended to be rubbed, poured, sprinkled or sprayed on or otherwise applied to the human body...for purposes of cleansing, perfuming, correcting body odours, conditioning, beautifying, protecting, promoting attractiveness or improving or altering the appearance, and includes any part or ingredient of any such article or substance.

Gas Act (Draft rules)

The [draft rules](#) propose revised rules for licence applications, for investigations and inspections, and for uncommitted capacity information. Comment deadline 8 March 2021.

Note: The draft rules do not propose transitional measures.

Genetically Modified Organisms Act (Public notification of proposed release or commodity clearance)

[Regulation 9](#) amended so that those requirements do not apply to applications made in respect of genetically modified organisms aimed at addressing, preventing and combating the spread of a pandemic in an instance where a national state of disaster has been declared.

Income Tax Act (Rates and Monetary Amounts and Amendment of Revenue Laws Act 2020)

The Amendment Act amended [section 6](#) (normal tax rebates); [section 6A](#) (medical scheme fees tax credit); [section 8](#) (certain amounts to be included in income); [section 10](#); [section 12T](#) (exemption of tax free investments amounts); and the Seventh Schedule [paragraph 9](#) (residential accommodation benefits).

Income Tax Act (Tax Administration Laws Amendment Act 2020)

Section [3](#) (section 18A approval discretion subject to objection and appeal); [18A](#) (donations to certain organisations); and [49G](#) (refund of withholding tax on royalties alignment with withholding tax on interest) amended.

Note: [Fourth Schedule](#) paragraphs 1 (provisional taxpayer) and 30 (differentiating between intent required and negligence sufficient in offences) amended.

Final note: [Section 1](#) (representative taxpayer), and the [Fourth Schedule](#) paragraph 13, references amended.

Income Tax Act (Taxation Laws Amendment Act 2020 - current)

The Amendment Act [amended](#) sections [1](#) (definitions); [7C](#) (loan, advance or credit granted to trust by connected person); [8](#) (amounts to be included); [9](#) (source of income); [9D](#) (net income of controlled foreign companies); [9H](#) (change of residence, ceasing to be controlled foreign company or becoming headquarter company); [9J](#) (interest of non-resident persons in immovable property); [10](#) (exemptions); [10B](#) (exemption for headquarter companies); [11](#) (general deductions).

Note: The Act also amended sections 12C; 12DA (deduction of rolling stock); 12F (airport and port assets); 12R and 12S (SEZ); 13quat (UDZ); 13sept (sale of low cost residential units); 18A (deduction of donations); 20A (ring-fencing); 23 (deductions not allowed); 23A (lessor allowances); 23L (short-term insurance policies); 24JB (certain financial assets and liabilities); 25B (trusts); 25BB (REITS); 29A (long-term insurers); and 31 (international transactions).

Further note: The Act also amended section 40CA (assets for shares), 45 (intra-group transactions), 46 (unbundling transactions), 64 (donations tax), 64D (dividends tax definitions), and 64EB (deemed beneficial owners of dividends).

Final note: The Act also amended the Second (lump sum benefits); Seventh (employment or office benefits); Eighth (capital gains tax); Ninth (public benefit activities); Tenth (oil and gas); and Eleventh (government grants) Schedules.

Income Tax Act (Taxation Laws Amendment Act 2020 - future)

The Amendment Act will amend sections 1 (definitions); 8 (amounts to be included); 8F (interest in hybrid instruments); 8FA (hybrid interest); 9K (listing of security on exchange outside Republic); 10 (exemptions); 10C (exemption of non-deductible element of qualifying annuities); 12J (venture capital company shares); 23M (interest deductions on certain debts); and 31 (international transactions).

Note: The Act will also amend the Second Schedule (lump sum benefits); and the Fourth Schedule (employees tax).

Magistrates Courts Act and Superior Courts Act (COVID-19)

The COVID-19 courts directions restrict services and access to a court room, court house or justice service point, and adds safety and disinfection measures for such places; and adds requirements for resolution of disputes, for criminal cases and for the use of interpreters.

Medical Schemes Act (COVID-19)

Screening, clinically appropriate, medication, medical management including hospitalisation and treatment of complications, and rehabilitation of Covid-19, has been [updated](#) in the list of prescribed minimum benefits (for the duration of the COVID-19 pandemic) to also include the terms prevention and vaccination.

Merchant Shipping Act (COVID-19)

The [COVID-19 sea ports directions](#) level 3 adds ship, sea port and port operation hygiene, sterilisation, PPE, crew change and medical evacuation measures; limits passenger ship activity; adds small craft duties including compliance with immigration and port health protocols; and adds reporting and tracking.

National Environmental Management Waste Act (National waste management strategy)

The strategy is available from the Department.

National Land Transport Act (COVID-19)

The [COVID-19 public transport directions](#) level 3 prescribe public transport facility and service hygiene and disinfection measures; passenger capacity; and the validity period for certain public transport operating licences and accreditation certificates for tourist transport services.

Note: The 1 February 2021 amendments to the COVID-19 regulations supersede the 29 January 2021 direction regarding transportation and storage of liquor.

National Railway Safety Regulator Act (COVID-19)

The [COVID-19 railway directions](#) level 3 prohibits overloading or overcrowding of trains; declares essential services; and requires management plans, awareness campaigns, additional procedures (at stations, hand-over points, loading points and terminals depots), and reporting of suspected cases of COVID-19.

National Youth Development Agency Act (Draft Amendment Bill)

The Bill proposes, [amongst others](#), removing Parliament and Finance Department oversight; changing the Agency objects, functions and control, including expecting preventative measures to eradicate corruption and fraud and wasteful expenditure; removing development principles; and changing board committees.

Note: No comment deadline gazetted.

Further note: The Agency is [referred](#) to be a national public entity, but it is not listed in the [PFMA schedule](#).

Political Funding Act (Commencement)

The [Act](#) (including prohibited donations, disclosure of donations and information, accounting, payment suspension, recovery of irregular amounts, and schedule 2 regulations) and the [regulations](#) (including request not to disclose, accounting officer duties and offence amounts) commence 1 April 2021.

Note: The first [quarterly disclosure report by the Commission](#) will only be required 6 months after the commencement date.

Further note: Prohibited donations provisions will also spell out that a political party may not accept a donation that it knows or ought reasonably to have known, or suspected, originates from the proceeds of crime and must report that knowledge or suspicion to the Commission, even though the prohibition is already an expectation in terms of several common law and statutory laws.

Final note: Regulation 3 will expect that the Commission will refuse a contribution that is derived from the proceeds of any unlawful activity (ie any conduct which constitutes a crime or which contravenes any law whether such conduct occurred in SA or elsewhere).

Rates and Monetary Amounts and Amendment of Revenue Laws Act 2020

The [Amendment Act 2020](#) confirmed rate amendments made in the annual budget 2020.

Regulation of Interception of Communications and Provision of Communication-related Information Act

CCT 279/19 confirmed a declaration of unconstitutionality, as from 4 February 2021, to the extent that the Act fails to provide several safeguards, including safeguards to address the fact that interception directions are sought

and obtained *ex parte*, and procedures to ensure data obtained is managed lawfully and not used or interfered with unlawfully.

Note: The declaration is suspended for 36 months to give Parliament an opportunity to cure the defect causing the invalidity.

Further note: During the period of suspension the Act is deemed to include [sections 23A](#) (disclosure that the person in respect of whom a direction, extension of a direction or entry warrant is sought is a journalist or practising lawyer), and [25A](#) (post-surveillance notification).

Securities Transfer Tax Act (Taxation Laws Amendment Act 2020)

The Amendment Act [made](#) corrections, and aligned immunity from taxation of international organisations.

Skills Development Act (Construction Education and Training Authority)

The appointment of the administrator has been [extended](#).

Skills Development Levies Act (Tax Administration Laws Amendment Act 2020)

The Commissioner may now refuse to authorise a refund under [section 190](#) of the Tax Administration Act, until an employer has furnished the [return](#) required under the Skills Development Levies Act.

South African Schools Act (COVID-19)

[COVID-19 schools directions](#) amended to set dates for reopening of schools for 2021 academic year.

Note: The previous amendment gave direction to officials, markers, internal moderators and administration staff involved in the marking process, and to officials involved in the resulting and processing of the National Senior Certificate and Senior Certificate examination.

South African Schools Act (COVID-19)

The COVID-19 regulations now [allow the Minister for basic education to determine](#) the dates on which schools may be opened or closed, as defined in the South African Schools Act, and any matter related to the management of schools in the basic education sector, to address, prevent and combat the spread of COVID-19 in all schools.

Tax Administration Act (Provisional taxpayers)

The date on which an income tax return of a provisional taxpayer must be submitted on the SARS eFiling platform, in terms of the [notice to submit](#), has been extended to 15 February 2021.

Tax Administration Act (Tax Administration Laws Amendment Act 2020)

[Section 86](#) (advance rulings); [section 95](#) (estimation); [chapter 12](#) (interest); [section 190](#) (withholding refunds until any criminal investigation of the refund finalised); and [section 234](#) (differentiating between intent required and negligence sufficient in non-compliance offences) amended.

Note: 11 [criminal offences](#) now only require negligence, including certain instances of negligently failing to register or notify changes; retain records; submit a return, document, information or material facts disclosure; notify representative taxpayer appointment or changes; register as a tax practitioner; etc.

Further note: It is hoped the nuances in our law will still be considered when dealing with negligent actions, such as reasonable differentiation between grossly negligent actions and minor negligent actions, and hearing the other party if there were real mitigating factors for non-compliance (such as being distracted by a hospitalisation).

Final note: The Act also made corrections and updates to [sections 12, 70, 91 and 93](#), and [100](#).

Transfer Duty Act (Rates and Monetary Amounts and Amendment of Revenue Laws Act 2020)

The Amendment Act confirmed the [amended thresholds](#) that apply from 1 March 2020 in respect of property acquired or interest or restriction in any property renounced on or after that date.

Unemployment Insurance Contributions Act (Tax Administration Laws Amendment Act 2020)

The Commissioner may now refuse to authorise a refund under [section 190](#) of the Tax Administration Act, if the employer has failed to furnish a [required return](#), until the employer has furnished such return.

Value-added Tax Act (Tax Administration Laws Amendment Act 2020)

[Sections 14](#) (imported services - reference update); [20](#) (tax invoices - reference update); and [58](#) (differentiating between intent required and negligence sufficient in offences) amended.

Value-added Tax Act (Taxation Laws Amendment Act 2020)

The Amendment Act will amend [section 1](#) (enterprise); [8](#) and [11](#) (transactions under corporate reorganisation rules); [10](#) (superannuation schemes); [11](#) (telecommunications services, certain cross-border leases); [15](#) (allow deemed suppliers for foreign electronic services to register on payments basis); and [22](#) (clarify VAT treatment of irrecoverable debts) on 1 April 2021.



[Back to index](#)



General

2. TOURISM ACT: DRAFT SAFETY NORMS AND STANDARDS

The [draft norms and standards](#) (Draft) propose minimum practices to prevent COVID-19 spreading for:

(i) [Accommodations](#)

Train staff on protocols; outline and adopt enhanced cleaning, infection control and disinfection processes; action plan COVID-19 case handling; encourage electronic payment; and communicate to guests protocols pre-arrival, and rules on physical distancing, masks, sanitising and health forms.

Note: To be read with the fluid COVID-19 directions regime, including the [COVID-19 tourism directions](#) (such as the direction 6 for hotels, lodges, bnb, time-share, resorts and guest houses).

Further note: Consider relevant related regulatory requirements or practical guidance in mind, including [National Health Act standards for premises](#) (for example standard 10 for accommodations).

(ii) [Attractions](#)

Prevention plan; COVID-19 contingency plan; staff protocols and guidelines training, wellbeing monitoring and application; automation and medical service points if possible; reduced capacity for appropriate social distancing; revise customer processes to minimise physical contact; communicate protocols; and more)

Note: The Draft defines places of attractions as not limited to (so small measure of uncertainty remains) theme, amusement and water parks, family entertainment centres, nature and game reserves, national parks, botanical gardens, zoos, aquaria, sanctuaries and other entertainment and cultural attractions.

Further note: To be read with the fluid COVID-19 directions regime, including the [COVID-19 tourism directions](#) (such as the direction 12 places of attraction).

Final note: Consider relevant related regulatory requirements or practical guidance in mind, including the [Occupational Health and Safety Act](#) (for example hazardous biological regulations).

(iii) [Casinos](#)

Prevention plan; consider medical service points and technology eg digital invitations; staff training and guideline application; reduced capacity for appropriate social distancing; revise customer processes eg participant information; clear signage; promote contact tracing apps if necessary and permitted; and more.

Note: To be read with the fluid COVID-19 directions regime, including [COVID-19 regulations](#) (for example regulation 36 gatherings).

Further note: Consider relevant related regulatory requirements or practical guidance in mind, including [National Health Act standards for premises](#) (for example regulation 12 waste management).

(iv) [Curio shops](#)

Contingency plan; automation if possible; staff training, wellbeing monitoring and protocol action; reduced capacity for appropriate social distancing; revise customer processes eg extra time to enter; communicate guidelines to customers ahead of a possible trip, and if possible, upon arrival at the shop; and more.

Note: To be read with the fluid COVID-19 directions regime, including [COVID-19 workplace safety directions](#) (for example direction 12 small businesses).

Further note: Consider relevant related regulatory requirements or practical guidance in mind, [National Health Act standards for premises](#) (for example standard 26 environmental pollution control measures).

(v) [Events, weddings, meetings and convention centres](#)

Prevention plan; staff training and guidelines application; enhanced cleaning; consider medical service points and technology eg digital invites; reduce capacity; food safety; revise customer processes eg participant info; clear signage; promote contact tracing apps if necessary and permitted by law; and more.

Note: The word wedding is only used in the title.

Further note: To be read with the fluid COVID-19 directions regime, including the [COVID-19 tourism directions](#) (for example direction 7 conferences and meeting venues).

Final note: Consider relevant related regulatory requirements or practical guidance in mind, including [National Health Act standards for premises](#) (for example standard 1 premises).

(vi) **Food services**

Prevention and contingency plan; enhanced cleaning; staff training, wellbeing monitoring and guidelines application; automation eg contactless touchpoints where possible; reduced capacity for appropriate social distancing; revise customer processes eg participant info; and food safety and hygiene measures.

Note: To be read with the fluid COVID-19 directions regime, including the [COVID-19 tourism directions](#) (such as the direction 5 restaurants, fast food outlets, and coffee shops).

Further note: Consider relevant related regulatory requirements or practical guidance in mind, including the [Foodstuffs, Cosmetics and Disinfectants Act](#) (for example general hygiene requirements for food premises and the transport of food regulations).

(vii) **Short-term rental establishments**

Action plan; staff training in line with latest local and international health guidelines; encourage electronic payment methods where possible; enhanced frequent cleaning, sanitisation and disinfecting; and communicate to guests protocols pre-arrival, and rules on distancing, masks, sanitising and health forms.

Note: The draft bill proposed [defining](#) short-term rental as the renting or leasing on a temporary basis, for reward, of a dwelling or apart thereof, to a visitor.

Further note: To be read with the fluid COVID-19 directions regime, including [COVID-19 regulations](#) (eg regulation 37 evictions and regulation 38 rental housing).

Final note: Consider relevant related regulatory requirements or practical guidance in mind, including the [Occupational Health and Safety Act](#) (for example safety regulations admittance of persons).

(viii) **Tour operations**

Prevention plan; required staff levels to restart; automation where possible; staff training, wellbeing monitoring and protocols application; enhanced disinfection and cleaning; clear signage; develop [POPI](#) compliant staff and guest medical declaration and travel status form; clear communication; and more.

Note: To be read with the fluid COVID-19 directions regime, including the [COVID-19 tourism directions](#) (such as the direction 10 guided tour operators).

Further note: Consider relevant related regulatory requirements or practical guidance in mind, including the [Occupational Health and Safety Act](#) (for example safety regulations personal safety equipment).

(ix) [Tourism establishments](#)

Prevention plan; required staff levels; integrating technologies to enable automation eg contactless payment; develop [POPI](#) compliant staff and guest medical declaration and travel status form; staff training, wellbeing monitoring and guidelines application; enhanced food safety; clear signage; and more.

Note: To be read with the fluid COVID-19 directions regime, including including [COVID-19 health directions](#) (eg directions 21A symptomatic person and 21B asymptomatic person)

Further note: Consider relevant related regulatory requirements or practical guidance in mind, including the [Occupational Health and Safety Act](#) (for example facilities regulations).

[Regulatory assumptions](#)

The Draft makes a number of assumptions, including that those affected, many of whom are small businesses, will have the same understanding as the drafters as to what is meant with 'beyond', 'in charge', 'tourism establishments' (and 'required staff levels for operations' for such establishments), 'unique guidance' for 'special' attractions; events and meetings; and 'enhanced'.

The Draft seems to further assume:

(i) The Draft Tourism Amendment Bill will be passed as is, when the Draft proposes norms and standards for short-term rentals;

Note: Also see proposed Draft Bill amendments to [sections 1](#) (definitions) and [7](#) (norms and standards).

(ii) A blanket application to accommodations, events, food services, meetings, short-term rentals and the like, where some of these actions may not be considered tourism related at all; and

(iii) A [need](#) for an additional layer of regulatory requirements even though written in general terms and with a considerable amount of overlap with COVID-19 directions and other relevant regulatory requirements.

Note: Perhaps the standards should make reference to relevant requirements as applicable, only adding additional standards that may be tourism-specific and more uniform across groups where possible.

Further note: The Draft is not a Disaster Management Act COVID-19 direction, which may mean that, despite the [conflicts of laws section](#), that relevant [COVID-19 directions](#) should get preference.

[Comment](#) deadline 60 days from 21 January 2021



[Back to index](#)

This SAICA Legal Update is not intended as legal or professional advice and has been prepared as a summary and opinion on general principles of law or other common practice and is published for general information purposes only. Only specific professional advice should be relied upon as what is herein contained may not be appropriate in particular circumstances. This is not a substitute for legal or other professional advice. Note also that the views expressed by the editor of SAICA Legal update might not necessarily be the views of SAICA.