

# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 16 Issue 8, 10 May 2021

### This Update

This newsletter overviews new relevant National laws up to **7<sup>th</sup> May 2021**.

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## General

### 1. NOTABLE ONE LINERS

#### Collective Investment Schemes Control Act (Guidance notices)

CIS Communication 10 of 2021 (guidance notice on net asset value calculation and pricing best practice guidelines for CIS portfolios), available from the FSCA.

#### Competition Act (Economic development fund)

Memorandum of agreement between the Competition Commissioner and the Media Development and Diversity Agency gazetted.

*Note: The Agency, as administrator and manager, shall use 30% of the economic development fund for bursaries to study media or advertising qualifications at tertiary institutions, and the rest for the development of black people (as defined) who are qualifying beneficiaries (as stipulated in clause 3).*

*Further note: In terms of the Media Development and Diversity Agency Act the Agency is not allowed to interfere in the editorial content of the media.*

#### Competition Act (Small merger notification)

Draft guidelines for small merger notification gazetted. Comment deadline 30 days from 7 May 2021.

#### Electronic Communications Act (COVID-19)

Review gazetted for the COVID-19 communications minimum standards directions (Standards placed on licensees during declared disaster for service continuation and to facilitate dissemination of information; national response; and measures to minimise the effects of the disaster). Comment deadline limited to 7 May 2021.

*Note: ICASA mentions that it does not intend to further extend the expiry date of the temporary radio frequency spectrum licences beyond 31 May 2021 due to the issues raised in the pending litigation and the interim interdict.*

*Further note: The review also covered considerations related to zero-rating access to educational sites; spectrum pooling arrangements; IMT radio frequency spectrum support to virtual classrooms; temporary type approval;*

*complaint resolution; filing of tariffs and fees; notification of new installations of electronic communications facilities; broadcasting performance periods; programme syndication; programming logs; TV broadcasting service coverage to persons with disabilities; application submissions; local content; and community broadcasting services.*

*Final note: Related laws include the [COVID-19 database](#) regulation, that is not being reviewed.*

### Financial Sector Regulation Act (Levies)

[Levies and levy due dates proposed](#) for financial institutions. Comment deadline 17 June 2021.

### Income Tax Act (General fuel levy revenue)

The Minister of Finance has determined the next [equitable allocation to be made to each metropolitan municipality](#) from the direct charge amount (equal to a fixed percentage of revenue raised from the collection of the general fuel levy) for the credit of the metropolitan municipalities.

### Insurance Act (Conduct of business returns)

INS communication 8 of 2021 (notice 3 and 4 of 2021 returns replace notice 10 and 11 of 2020), available from the FSCA.

### Legal Practice Act (Code of conduct)

Draft amendments to the [code of conduct](#) propose that legal practitioners, candidate legal practitioners and juristic entities must reply to Council communications as mandated; give the Council written notice of their contact details (with the physical and email address becoming their *appointed domicilium citandi et executandi*); and give written notice of any contact detail changes (within 30 days). Comment deadline 30 days from 7 May 2021.

### Marriage Act (Green paper on marriages in South Africa)

The green paper is available from the Department of Home Affairs, and aims to enable citizens and residents of all orientations, religions and cultures to conclude legal marriages that accord with the Constitutional principles of equality, non-discrimination and human dignity. Comment deadline 30 June.

*Note: The paper expressly states that views that infringe the rights of others will not be incorporated into the eventual White Paper, and gives the reminder that the Constitution does not give hierarchical precedence to a particular right over any other rights in the [Bill of Rights](#).*

*Further note: The proposed timeline is a Marriage Bill for cabinet approval by 31 March 2023, and a Marriage Bill for Parliament approval by 31 March 2024.*

*Final note: Related laws include, but are not limited to, the [Bill of Rights](#), the [Matrimonial Property Act](#), the [Maintenance of Surviving Spouses Act](#), the [Childrens Act](#), the [Marriage Act](#), the [Recognition of Customary Marriages Act](#), the [Civil Union Act](#), the [Identification Act](#), the [Immigration Act](#), the [Intestate Succession Act](#), the [Wills Act](#), the [Divorce Act](#), the [Prevention and Combating of Trafficking in Persons Act](#), and common law fraud and perjury.*

#### **Medical Schemes Act (Levy)**

The [medical scheme levy](#) to be paid for the 2020/21 levy year has been adjusted and the adjusted levy is payable by 31 May 2021.

#### **Merchandise Marks Act (2021 British and Irish Lions Rugby Tour)**

Rugby Tour [protected event](#) designation, and [prohibition of words and emblems](#), gazetted.

#### **Mineral and Petroleum Resources Development Act (Artisanal and small-scale mining)**

The draft artisanal and small-scale mining (ASM) policy (to foster a formalised ASM industry that can operate in a sustainable manner while contributing to taxes and royalties and job creation; and to eliminate illegal ASM operations), is available from the Department. Comment deadline 17 June 2021.

#### **National Environmental Management Act (Environmental authorisations)**

Identification of areas of strategic importance for the development of electricity transmission and distribution infrastructure, and certain procedures to be followed, available from the Department.

## National Environmental Management Waste Act (Extended producer responsibility)

Extended producer responsibility; electrical and electronic equipment scheme; lighting scheme; and paper and packaging and some single products scheme, amended 5 May 2021, including stating that the regulations do not apply where identified products are exported only or produced for export purposes only.

*Note: Existing producers of identified products must register within 6 months from 5 May 2021, while producers of identified products established after 5 May 2021 have 3 months to register from establishment.*

*Further note: Producers of identified products are required to take numerous measures, such as paying fees to fund a scheme; assessing life cycles; collaborating on a transformation charter; and reporting to the SA waste information system.*

*Final note: Failure to comply is generally an offence punishable by a fine, imprisonment of up to 15 years, registration revocation and/or forced scheme participation - in some instances one may have to rely on the court to consider the principle that the punishment should be proportionate to the transgression.*

## National Water Act (Hydraulic fracturing and underground gasification)

Draft regulations for use of water for exploration and production of onshore naturally occurring hydrocarbons that require stimulation (including hydraulic fracturing and underground gasification) to extract, and any incidental activity that may impact detrimentally the water resource gazetted. Comment deadline 1 month from 7 May 2021.

## Nuclear Energy Act (Protective measures)

The draft regulations regarding physical protective measures for nuclear material propose physical protective measures relating to nuclear material in possession, use, handling or processing, to guard against unauthorised removal. Comment deadline 60 days from 7 May 2021.

## Pension Funds Act (COVID-19)

Communication 9 of 2021 (FSCA finalising endorsement of urgent amendments to rules of funds received in 2020 and brought about by Covid-19 pandemic and the lockdown), available from the FSCA.

*Note: RF Communication 11 of 2020 explained to boards of funds the legislative requirement to submit urgent amendments to effect changes to registered rules in respect of employers and/or employees in financial distress as a result of the declared disaster.*

## Postal Services Act (COVID-19)

[Review](#) gazetted for the [COVID-19 communications minimum standards directions](#) (South African Post Office required to make available its national address system to law enforcement agency or any other organ of state to track and trace people infected with Covid-19). Comment deadline limited to 7 May 2021.

*Note: ICASA asked for written representations on other considerations that ICASA should consider with respect to postal services (both reserved and unreserved postal services).*

## Promotion of Access to Information Act (Reminders)

Reminder that the Protection of Personal Information Act [amendments](#) commence 30 June 2021, predominantly focusing on increased information manual requirements and complaints to the Information Regulator (also see the [past overview](#)).

*Note: The current [exemption of small entities from compiling a PAIA manual](#) ends 30 June.*

*Further note: Whereas [POPI](#) focuses on measures to protect and access personal information specifically, PAIA focuses on measures to access and protect confidential information not limited to personal information - see [private bodies rights to refuse](#) and [public bodies rights to refuse](#).*

*Further note: The head of a private body considering a request for access to a [record](#) that might be a [section 63\(1\)](#) (privacy), [64\(1\)](#) (commercial info), [65](#) (duty of confidence), or [69\(1\)](#) (research info) record must take all reasonable steps to inform the third party.*

*Final note: The information officer of a public body considering a request for access to a [record](#) that might be a [section 34\(1\)](#) (privacy), [35\(1\)](#) (SARS), [36\(1\)](#) (commercial info), [37\(1\)](#) (duty of confidence) or [43\(1\)](#) (research info) record must take all reasonable steps to inform the third party.*

## Special Investigating Units and Special Tribunals Act (KwaZulu-Natal Department of Transport)

Investigation launched into the [activities of the KwaZulu-Natal Department of Transport](#) relating to the procurement of and contracting for the construction of a concrete barrier wall between uMkhanyakude and the Mozambique border.

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

## Standards Act

New, proposed, amended, and withdrawn [standards](#) have been gazetted for 7 May 2021.



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## Financial

### 2. AUDITING PROFESSION ACT: AMENDMENT ACT

The Amendment Act 2021 amended the Act so that, [amongst others](#):

(i) Membership: An individual may only be [registered](#) if a member of an accredited professional body;

(ii) Reportable irregularities: An individual registered auditor that [reported an irregularity](#) may not be removed until [section 45\(3\)](#) report discussions and follow-up reporting are complied with;

*Note: Where such an auditor resigns from the firm before [section 45\(3\)](#) is complied with, that auditor must do the necessary handover to the incoming auditor regardless of when the resignation takes effect.*

(iii) Discipline referrals: The [enforcement committee](#) may [refer a non-audit matter](#) brought against a registered auditor to the relevant accredited professional body for investigation and disciplinary steps;

*Note: The subject-matter of such a referral must fall within the constitution and rules of the body.*

(iv) Investigation information: The [section 48\(5\)](#) obligation to produce any information may not be excused by reason of any alleged confidential information of a client contained therein - however:

- A person issued with a subpoena may not, without just cause, fail to provide specified information, working paper, statement, correspondence, book or other document in possession, custody or control; and
- The law relating to privilege for a witness subpoenaed to provide a book, document or object in a civil trial applies, with the necessary changes, to providing an object or information to the investigating committee;

(v) Search: The investigating committee has [powers to enter and search premises](#) - also see the [warrants](#) section - both sections also [apply to candidate registered auditors](#);

*Note: The law relating to privilege for a witness subpoenaed to provide a book, document or object in a civil trial applies, with the necessary changes, to searches by the investigating committee*

*Further note: A person who is questioned, or required to produce a document or information during a search, may object to answering or producing on the grounds that the answer or the contents may tend to incriminate the person.*

- (vi) Disciplinary hearings: [Disciplinary hearings](#) are revised, including that if the charged improper conduct amounts to an offence of which the registered auditor was convicted by a court of law, a certified copy of the trial and conviction record is, on the identification of the registered auditor as the person referenced, sufficient proof, unless the conviction was set aside by a superior court - also see [offences](#);
- (vii) Sanctions: [Admissions of guilt sanctions](#) revised, and [sanctions in disciplinary hearing](#) added;
- (viii) Information protection: [Protection of information](#) added; and
- (ix) Past actions: [Transitional measures](#) in place for a charge of improper conduct before 26 April 2021, or for an act of improper conduct not charged before 26 April 2021.



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## Information

### 3. PROMOTION OF ACCESS TO INFORMATION ACT: DRAFT REGULATIONS

The draft regulations (with comment deadline 17 May 2021) propose, [amongst others](#), forms, fees, fee offences and transitional measures, and:

- (i) **Definitions:** For purposes of the envisioned regulations, the definition of an information officer will include the head of, or in relation to a private body, as defined in section 1 of the Act;
- (ii) **Guide:** An information officer must cause the guide (as requested from the Information Regulator) to be made available in each of the official languages on its website; and in at least 2 of the official languages, at each of its offices, for public inspection during normal office hours;
- (iii) **Access:** The head of a private body (specifically not saying the information officer), or information officer of a public body, must update the automatically available records description monthly, and upload the description to the Information Regulator;
- (iv) **Assessment:** If the Information Regulator has made a finding, based on a request to assess, that a body is not complying with the Act, the Information Regulator must deal with the matter as if a complaint is lodged with it; and
- (v) **Complaints:** An information officer must, within 10 working days after receipt of a complaint from the Information Regulator, respond in writing to the complaint and submit any item or document to the Information Regulator, in the manner the Information Regulator requests.

*Note: For the purposes of the investigation of a complaint the Information Regulator will have powers similar to those of the High Court in terms of section 80 relating to the disclosure of records to it and non-disclosure of records by it.*

*Further note: For the purposes of the investigation of a complaint the Regulator may summon; administer oaths; receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Regulator sees fit, whether or not it is or would be admissible in a court of law; enter and search premises; conduct a private interview; and otherwise carry out in those premises any inquiries that the Regulator sees fit.*

*Final note: The Information Regulator may consolidate separate complaints, which are alleged to relate to the same matter by the same information officer, in order to deal with the complaints in the same conciliation proceedings.*



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