



# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 16 Issue 13, 26 July 2021

### This Update

This newsletter overviews new relevant National laws up to **26<sup>th</sup> July 2021**.

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## General

### 1. NOTABLE ONE LINERS

#### Broadcasting Act (Draft South African Broadcasting Corporation Soc Ltd Bill 2021)

The draft bill proposes repealing [this Act](#).

#### Businesses Act (COVID-19)

The [COVID-19 directions \(small business licences and permits\)](#) allows for the extension until 31 December 2022 of licenses or permits required under [schedule 1](#) of the Businesses Act, and for temporary licenses and permits for new applications, whereafter the requirements of the Businesses Act must be met.

*Note: The directives do not exempt compliance from the [Businesses Act](#) unless otherwise specified.*

*Further note: Schedule 1 refers to certain sales or supply of meals or perishable foodstuffs; certain types of health facilities or entertainment; and hawking in meals or perishable foodstuffs.*

*Final note: The directives would also not exempt compliance from other relevant laws, such as any applicable requirements relating to foodstuffs and covered by the [Foodstuffs, Cosmetics and Disinfectants Act](#).*

#### Commissions Act (State capture inquiry)

[Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector](#), including organs of State, due date for report and recommendations now 3 months from 1 July 2021.

#### Competition Act (Exemption of essential goods)

[Block exemption from prohibited horizontal and vertical communication and coordination practices for supplying essential goods](#), until 15 August 2021 (solely to prevent critical shortages of essential goods, and to promote equitable distribution of scarce essential goods across the country to consumers).

*Note: Defines essential goods as basic food and consumer items, emergency products, medical and hygiene supplies (including pharmaceuticals products), refined petroleum products and emergency clean-up products - includes the final good and supply chain inputs required for production, distribution and retail.*

*Further note: The exemption does not extend to price-fixing and collusive tendering relating to essential goods or production inputs used; does not authorise discussion of the pricing of essential goods or production inputs used; and is subject to the [disaster management consumer protection competition regulations](#).*

*Final note: The regulations apply where the essential goods suppliers have notified the Department and the Commission of anticipated shortages, and the need to engage in communication and coordination practices (as set out in the regulations) to address such shortages prior to engaging in such conduct.*

### **Competition Act (Governing Body Foundation)**

[Memorandum of agreement between Governing Body Foundation and Competition Commission](#) meant to coordinate promote schools compliance with competition law, specifically the Competition Act and/or any Commission guidelines; and where feasible, collaborate on the resolution of complaints.

### **Competition Act (Guidelines on local procurement)**

[Guidelines](#) on local procurement in the implementation of the South African value chain sugarcane master plan to 2030 gazetted, to give guidance on how the industry can collaborate in implementing the local procurement commitments without raising competition concerns.

*Note: No competitively sensitive-information (as defined) or disaggregated information (as defined) must be shared or discussed among users in the collective discussions on industry local procurement targets.*

*Further note: The guidelines also state that should market participants be uncertain whether any other collaboration on increasing local procurement of sugar may contravene the Act, they may approach the commission for further guidance.*

*Final note: Also keep in mind the [special approach taken to confidential information](#) by this Act.*

### **Correctional Services Act (COVID-19)**

The [COVID-19 directions \(correctional centres and remand detention facilities\)](#) set out measures for general safety; placement, movement and release of inmates, parolees and probationers; amenities, consultations and visits; and remand detainee, for the duration of the disaster.

## Deeds Registries Act

The Draft Deeds Registries Amendment Bill 2021 proposes, [amongst other](#), waivers of preference for registered real rights in favour of a lease; registrar liability for not taking reasonable care in bad faith; and criminal offence relating to unauthorized execution or attestation of a deed. Comment deadline 30 calendar days from 9 July 2021.

*Notes: The Draft Bill also proposes provision for regulations on collecting land owners personal information (race, gender, citizenship and nationality) for statistical and land audit purposes only, and only for capturing into a register for official use by any department of state or administration in the national or provincial sphere.*

## Disaster Management Act (COVID-19)

[COVID-19 regulations](#) amended (revised adjusted alert level 3 implemented);

*Note: An owner or operator of any indoor or outdoor facility where gatherings are held and who fails to display the prescribed certificate of occupancy, and an owner owner or manager of a nightclub who fails to ensure the night club is closed to the public, commits an offence. Non-compliant initiation schools will be closed.*

*Further note: Gatherings at community engagements allowed, where hosted by members of Parliament, members of Provincial Legislatures, councilors, leaders of political parties, religious leaders and traditional leaders to deal with emergency matters that impact on COVID-19 management, treatment and prevention.*

*Further note: A convener of a faith based, religious, social, political or cultural gathering who fails to ensure compliance with the limitation on the number of persons attending, and a person attending who knows or ought reasonably to have known or suspect that the number of persons exceeds the prescribed limitation, commits an offence.*

*Final note: An owner or manager of a restaurant, bar, shebeen, tavern, conferencing, exhibition, dining, entertainment facility, or sporting facility who fails to ensure compliance with the prescribed limitation of the number of persons attending, and a person attending who knows or ought reasonably to have known or suspect that the number of persons exceeds the prescribed limitation, commits an offence.*

## Electronic Communications Act (Draft South African Broadcasting Corporation Soc Ltd Bill 2021)

The draft bill proposes a [South African Broadcast Production Advisory Body](#).

### Electronic Deeds Registration Systems Act

The Draft Deeds Registries proposes making [recordal references](#) within the Act.

*Note: Once a commencement date has been gazetted, the Act will provide that the registration, recordal execution and filling of deeds and documents prescribed by the Deeds Registries Act and the Sectional Titles Act will continue under those laws until the Electronic Deeds Registration system is in place.*

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

The [COVID-19 directions \(courts\)](#) restrict services and access to a court room, court house or justice service point, and adds safety, sanitisation, disinfection and minimum disruption measures for such places; and allow for the use of audiovisual links and for resolution of disputes.

*Note: These directions must be read with any [Superior Courts Act](#) or Special Tribunal directives.*

*Final note: A judicial officer who presides over any matter in court may, where the interests of justice so require and on good grounds, order that the application of any provision of these directions be deviated from.*

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

2021 British and Irish Lions Rugby Tour [prohibition of words and emblems](#).

### National Environmental Management Air Quality Act (Draft policy)

Draft SA atmospheric emission licence and inventory portal data management policy available from the Department. Comment deadline 30 days from 16 July 2021.

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

[COVID-19 biodiversity directions](#) amended to suspend the directions for live biodiversity auctions for the duration of adjusted level 4, and provides for allowed activities under level 4.

### National Environmental Management Integrated Coastal Management Act (Vehicles in coastal areas)

Delegation of power, that include the power to sub-delegate, provided for in the [control of use of vehicles in the coastal area regulations](#) (issuing of permits to use vehicles in coastal area; assessment of impact of use of vehicles in coastal area; and consideration, suspension, amendment, and cancellation of permits).

### National Health Act (Certificates of need)

Requirements proposed for [certificates of need for health establishments and agencies](#) (relating to application, renewal, rooms, accommodation, furniture, equipment, facilities, operating theatres, maternity units, modifications, and inspections). Comment deadline extended to 15 August 2021.

*Note: Health establishment is defined as a public or private institution, facility, building or place, for profit or not, operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health services.*

*Further note: Health agency is defined as a person that is not a health establishment and whose business involves supplying health care personnel (Personnel) to users or health establishments; who employs Personnel for providing health services; or who procures Personnel or services for the benefit of a user.*

*Final note: It is not immediately clear within the draft regulations whether a proposed regulation applies generally or to specific entities/areas. Headings used in the draft regulations should be approached with some circumspection.*

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

[COVID-19 sports, recreation, cultural and arts directions](#) (bio-safe environment proposal by a compliance officer of a sport and recreational body amended; and reference updated to current regulation gathering prohibitions).

*Note: Bio-safe environment is defined as a safe and secure environment that can only be accessed by a certain set of people who have tested negative for COVID-19 to minimise the risk of transmission of the coronavirus from one person to another during the course of the event.*

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

Comment deadline extended for [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 detrimental incidental activity. Comment deadline extended 1 month plus 60 working days from 7 May 2021.

*Note: Refers to 9 year water use licences; to expansion beyond the licensed area; and to the possibility of suspension or withdrawal of a licence obtained by fraud, non-disclosure of material information or misrepresentation of a material fact.*

*Further note: Prohibits, subject to the responsible authority amending distances, a controlled activity within 5km from an existing or proposed municipal wellfield; a town without a wellfield as future water source areas; government waterworks including dams with a safety risk; or the edge of an identified strategic water source area or thermal or cold spring.*

*Final note: Proposes a possibility of an unspecified fine or up to 5 years for any non-compliance, including, amongst others, using hazardous substances in drilling fluids or as additives to fracturing fluid or conducting **prohibited activities** (such as drilling of a well to enter an area outside the authorised area, storing process water containing radioactive substances, for reuse or disposal in pits or pollution control dams).*

### **Petroleum Products Act (Prohibition)**

A person **may not** retail and dispense petrol or diesel into a container.

*Note: container is defined as an object for holding or transporting petroleum products, other than a vehicle.*

*Final note: The prohibition applies to the retailing of petrol and diesel only.*

### **Sheriffs Act (COVID-19)**

The **COVID-19 directions (courts)** state that the **COVID-19 directions (auctions and sales in execution by sheriffs of the court)** apply only where such auctions are authorised by the **regulations**.

### **Draft South African Broadcasting Corporation Soc Ltd Bill**

The Draft Bill proposes, **amongst others**, defining use as the use or possession of a tv set or permitting another to use or possess a tv set; and providing for **public services** (paid by mandatory **tv licences**, grants, advertising, sponsorships, grants and donations) and **commercial services** by the SABC. Comment deadline 31 August 2021.



*Note: Defines business, for the purposes of record and television licences, as a person who uses a tv set in the course of conducting his or her business; in the course of engaging in commercial transactions; as part of his or her activities for gain; or on premises which are occupied for business purposes.*

*Further note: Excludes a dealer (person who engages in the business of selling television sets) and lessor (A person who engages in the business of renting out television sets) from the definition of business.*

*Final note: Defines record as the information to be prescribed which must be provided by a business or dealer, or such information as is reasonably required by an authorised inspector to determine if a business or dealer complied with this Act.*

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

[COVID-19 schools directions](#) revised for return of learners; and for return of learners to primary schools and schools for learners with special education needs.

### **State Liability Act (COVID-19)**

The [COVID-19 directions \(courts\)](#) state that [regulation 13](#) of the COVID-19 regulations apply to disputes involving the State or an organ of State, in so far as those provisions are applicable.

### **Unemployment Insurance Act (COVID-19)**

[COVID-19 directions \(employment - temporary employee/employer relief scheme 2021\)](#) deemed commenced 16 March 2021 to 25 July 2021, and applies to industries listed in the annexures.

*Note: The benefits, delinked from normal unemployment benefits and requirements, apply only to listed employees who are contributors to Unemployment Insurance Fund.*

*Further note: Annexure A lists venues hosting auctions; professional sports; social events; and concerts and live performance; and any industries that form part of the value chain of the above as per the discretion of the UIF.*

*Final note: Annexure B lists cinemas; theatres; casinos; museums, galleries, libraries and archives; gyms and fitness centres; restaurants; night clubs; swimming pools; bars, taverns and shebeens; public parks; domestic and international air travel; rail, bus services and taxi services; e-hailing services; sale, dispensing and distributions and transportation of liquor; beaches, dams, rivers and lake; passengers ships; hotels, lodges, bed and breakfast, time share facilities, resorts and guest houses; conferencing, dining, entertainment and bar*

*facilities; and international sports, arts and cultural events; and any industries and business establishment that form part of the value chain of the above or standalone establishment as per the discretion of the UIF.*



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## Safety

### 2. DISASTER MANAGEMENT ACT: COVID-19 COURTS DIRECTIONS



The COVID-19 courts directions state, [amongst others](#), that:

- (i) Cases in the districts and sub-districts affected by incidents of public violence or unrest, which include cases relating to arson, destruction of business premises and public amenities, and looting, may be postponed in absentia, or through the use of any virtual platform authorised by the presiding officer;

*Note: Related [Criminal Procedure Act](#) offences that may potentially be triggered include, amongst others, treason; sedition; public violence; murder; culpable homicide; attempted murder involving the infliction of grievous bodily harm; robbery; assault; arson; malicious injury to property; breaking or entering any premises; theft; receiving stolen property knowing it to have been stolen; fraud; forgery; and conspiracy, incitement or attempt to commit such an offence; as well as illicit possession, conveyance or supply of dependence-producing drugs or intoxicating liquor.*

*Further note: Related criminal offence laws that may potentially be triggered include, amongst others, the [Protection of Constitutional Democracy against Terrorist and Related Activities Act](#); the [Prevention of Organised Crime Act](#); the [Intimidation Act](#); the [Criminal Matters Amendment Act 2015](#) (essential infrastructure related offences); the [Criminal Law Amendment Act 1997](#) (minimum sentences); the [Trespass Act](#); the [Animals Protection Act](#); the [Dangerous Weapons Act](#); the [Prevention of Public Violence and Intimidation Act](#); the [Fire Brigade Services Act](#) (obstruction of exercise of powers); the [Regulation of Gatherings Act](#); and the [Riotous Assemblies Act](#).*

*Final note: Related business laws that may apply include, amongst others, the [Second-hand Goods Act](#); the [Occupational Health and Safety Act](#) (duty not to damage or misuse things provided in the interest of safety); the common law right to self-defence; and the [Private Security Industry Regulation Act](#).*

- (ii) A roll of criminal cases prioritised for each court (Priority Roll) must be compiled for each court;
- (iii) Trials involving children who are detained; trial-ready cases; partly-heard cases; cases to be enrolled for sentence following conviction; certain cases considered suitable for alternative dispute resolution; and certain cases involving Legal Aid South Africa must be placed on the Priority Roll;

(iv) Charges relating to contravention of COVID-19 regulations; serious contact crimes or serious violent crimes; s offences; gender-based violence and femicide; and corruption must also be placed on the Priority Roll;

*Note: COVID-19 regulations offences include, amongst others, inciting, instigating, commanding or procuring another to commit any offence under the regulations (such as [convening](#) or participating in illegal [gatherings](#), not wearing a face mask [in a public place](#), etc).*

(v) Cases involving accused persons charged with an offence arising from the incidents of public violence or public disorder which started in KwaZulu Natal on 8 July 2021, and spread to other parts of the country may be placed on a Priority Roll, or on a separate roll;

*Note: Separate roll is defined as a roll of criminal cases compiled in respect of cases where the accused persons are charged with offences arising from public violence and unrest which may include arson, destruction of business premises and public amenities or looting.*

(vi) A court dedicated for the trial of cases on a separate roll may be established where this is necessary and expedient;

(vii) Cases on a separate roll may, for reasons of safety or practicality, be tried at a place of sitting outside the district or sub-district in which the offence is alleged to have been committed; and

(viii) Appropriate measures must be considered for the expeditious hearing of cases on a separate roll including the allocation of dedicated judicial officers and court personnel with the requisite qualifications and skills.

*Note: The National Prosecuting Authority may, where the accused is charged with a less serious offence in respect of which an admission of guilt is permissible and justified, fix an appropriate amount as an admission of guilt in respect of the accused person concerned.*



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## Safety

### 3. OCCUPATIONAL HEALTH AND SAFETY ACT: DRAFT PRESSURE EQUIPMENT REGULATIONS

The [draft pressure equipment regulations](#) (comment deadline 90 days from 9 July 2021) propose replacing the [current pressure equipment regulations](#) and placing the following general duties on all persons:

- (i) No person may remove a marking or data plate referred to in these regulations or wilfully damage or alter the particulars marked thereon, except as provided in these regulations;
- (ii) A person who intends to modify or repair pressure equipment must do so as per regulation 13 and in line with the original or applicable in-service health and safety standard; and as per SANS 347 conformity assessment requirements, unless full involvement of the approved inspection authority is required;
- (iii) Gas reticulation requirements such as not using an appliance or pressure equipment related to the gas system other than as per the relevant incorporated safety standard; or handling gas in any manner other than as per the relevant incorporated health and safety standard; and
- (iv) Fire extinguisher requirements such as not filling or repairing or testing a fire extinguisher unless an authorised person employed by a SANS 1475 permit holder; or handling, operating, storing or transmitting a fire suppression agent in a manner other than as per relevant incorporated health and safety standards.

The draft pressure equipment regulations also propose, [amongst others](#), and:

- (i) [Defining](#) pressure equipment as a steam generator, mobile steam generator, pressure vessel, piping, pressure accessory, safety accessory, transportable gas container, and fire extinguisher (all as further defined in the draft regulations).

*Note: The draft regulations also state that pressure equipment include, but are not limited to, a hot-water geyser, hyperbaric chamber, road tanker, rail tanker, intermediate bulk container and ISO container.*

(ii) **Applying** to the design, manufacture, importation, operation, repair, modification, re-instatement of conformance, re-rating, replacement, maintenance, inspection and testing of pressure equipment with a design pressure greater than 50kPa, in terms of the relevant **incorporated health and safety standard**;

*Note: Reference is also made to application of tank vehicles/containers, demountable tanks, tank swap bodies, dry and liquid bulk tankers (applicable to design pressure greater than 50 kPa) and multi-element gas containers (MEGCs) as set out further in **regulation 20**.*

*Further note: Regulations 3, 4,5, 6(2)(e), 9(1), 9(3) and 17 will not apply to pressure equipment in use or on order before the regulations - their design and construction must be as per the requirements and health and safety standards applicable at the time of order (date the contract is placed for basic engineering design).*

*Final note: 16 examples of pressure equipment that is not to be regulated by the draft regulations are also listed (such as tyres; aerosol dispensers; engines; refrigeration and air conditioning compressors of the semi-hermetic and open drive type; open metal-making pots and blast furnaces; and more).*

(iii) **General compliance** with the draft regulations for any person who operates, manufactures, repairs, modifies, re-rates, and re-instates conformance, imports, sells, offers or supplies any pressure equipment covered in the draft regulations;

*Note: Any person who erects or installs any pressure equipment for use in SA must ensure, as far as is reasonably practicable, that it is erected or installed in a safe manner and without risk to health and safety when properly used.*

*Final note: Provision is made for instances of specific categorisation, marking, and certification requirements.*

(iv) **Manufacturer duties**, including that a manufacturer who determines that pressure equipment in use has a latent defect shall take immediate appropriate action and advise the user and the chief inspector in writing forthwith thereof and of measures being taken to correct the defect;

*Note: Provision is also made for duties regarding **markings** and **records**.*

(v) **Importer and supplier duties**, including ensuring pressure equipment sold comply with listed approval, conformity, and verification requirements;

*Note: Provision is also made for duties regarding **markings** and **records**.*

*Final note: The importer shall assume liability of the manufacturer for imported pressure equipment in terms of this regulation.*

(vi) A person may **not remove a marking or data plate** referred to in the regulations or wilfully damage or alter the particulars marked thereon, except as provided in the regulations.

(vii) Specific [gas reticulation equipment and system](#); [transportable gas containers](#); and [fire extinguisher](#) requirements; specific [certification](#) requirements for NDT companies, gas filling stations and gas filling operators; and specific [registration](#) requirements for steam generators;

(viii) Allowing only an organisation or person approved by the chief inspector to provide training on the regulations and the related standards; and

(ix) Placing [duties on users](#) such as, amongst others, ensuring pressure equipment is operated and maintained within design and operating parameters; written appointment of an in-service approved inspection authority; and certificates of repair or modification or importer declarations as required.

*Note: User is defined, in relation to plant or machinery, as the person who used plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of, or any person employed relating to, that plant or machinery.*

*Further note: For pressure equipment which is rented out by the owner, the owner is responsible to ensure compliance and retain all relevant records as required by these regulations.*

*Final note: Users will also have [marking, pressure and safety accessories, inspection and test](#) (or the [risk-based inspection alternative](#)), [record, access, repairs or modifications, door interlocks, transportable gas containers, and fire extinguisher](#) duties.*



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