



# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update

### Volume 17 Issue 1, 17 January 2022

#### This Update

This newsletter overviews new relevant National laws up to **14<sup>th</sup> January 2022**.

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### General

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## General

### 1. NOTABLE ONE LINERS

#### Administrative Adjudication of Road Traffic Offences Act: Invalidation

Multiple news media report that the Gauteng High Court (Pretoria) has declared [the Act](#) and the Amendment Act 2019 inconsistent, in its entirety, with the Constitution.

*Note: Related laws reported to be referenced in the judgment include [section 41](#) (principles of co-operative government and intergovernmental relations); [section 44](#) (national legislative authority); and [schedule 5](#) (functional areas of exclusive provincial legislative competence) of the Constitution.*

*Final note: The judgment is subject to confirmation in the Constitutional Court, and may be subject to appeal.*

#### Auditing Profession Act: Code of professional conduct

The amendments made to the code (non-assurance fees; and fee-related provisions) are available from IRBA.

#### Banks Act: Draft Financial Sector and Deposit Insurance Levies Administration and Deposit Insurance Premiums Bill

The Draft Bill proposes amending [sections 35](#) (annual licence) and [90](#) (regulations).

#### Carbon Tax Act: Amount calculation

[Renewable energy premium](#), and timing, in terms of symbol B in the section 6(2) formula has been updated.

#### Child Justice Act: Cybercrimes

The Cybercrimes Act added certain cybercrimes to the [Child Justice Act](#) mid-/most serious categories.

#### Commissions Act: State capture

[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 2 months from 1 January 2022.

### Companies Act: Practice note

[Practice note 1 of 2022](#) (requirements for company and close corporation re-instatement in terms of regulation 40) gazetted.

### Compensation for Occupational Injuries and Diseases Act: Reminder

[Reminder](#) gazetted for employers to submit outstanding return of earnings, failing which the Compensation Fund will estimate all outstanding returns before 31 January 2022 and issue a notice of assessment and duty to pay; impose a 10% penalty; and charge interest on overdue accounts.

### Competition Act: Competition Commission and Information Regulator

[Memorandum](#), amongst others, to promote co-operation in standards or conditions, joint investigations, market inquiries, and studies; and to consult on anti-competitive practices, mergers and acquisitions, and POPIA and PAIA non-compliance.

### Conservation of Agricultural Resources Act: Policy

The 'capability, potential, state and use of the natural agricultural resources of South Africa' document is available from the Department. Comments may be made but no comment deadline was provided in the gazetted notice.

### Constitution of the Republic of South Africa: Right to property

The Constitution Eighteenth Amendment Bill, that proposed [limiting the Constitutional right to property](#), has not been passed.

### Consumer Protection Act: Accreditation

[Draft guidelines for consumer protection group accreditation](#) gazetted. Comment deadline 31 January 2022.

### Consumer Protection Act: Industry code

Amendments proposed to [automotive industry code](#). Comment deadline was 30 days from 10 December 2021.

## Correctional Services Act: Cybercrimes

The Cybercrimes Act repealed the section 128 offence of unauthorised access to or modification of computer material.

## Criminal Law (S Offences and Related Matters Amendment Act): Cybercrimes

The Cybercrimes Act introduced, [amongst others](#), a ‘[harmful disclosure of certain material](#)’ offence; an [offence to fail to report](#); an [offence relating to certain material depicting a child](#); and increased [sentences](#) for certain offences.

*Note: Cybercrimes Act amendments to sections 11B to 11D and section 56A(3)(c), (d) and (e) have not commenced.*

## Criminal Procedure Act: Cybercrimes

The Cybercrimes Act introduced [stricter bail considerations](#) for certain cybercrimes.

*Note: The Cybercrimes Act also introduced Criminal Law Amendment Act 1997 [minimum sentencing](#) for certain cybercrimes.*

## Criminal Procedure Act: Forensics

[Section 36D\(1\)](#) (powers in respect of buccal samples and bodily samples) commences 31 January 2022.

*Note: The Criminal Law (Forensic Procedures) Amendment Bill proposes amendments to the [transitional arrangements](#).*

## Cybercrimes Act: Commencement

[The Act](#) generally commenced 1 December 2021.

*Note: Chapter 2 part 6 (orders to protect complainant from the harmful effects of malicious communications); and section 38(1)(d), (e) and (f) (offence to give false information resulting in expedited preservation of data direction; preservation of evidence direction; or disclosure of data direction) have not commenced.*

*Further note: Section 40(3) and (4) (aspects relating to indirect and real-time interceptions); sections 41 (expedited preservation of data direction); 42 (preservation of evidence direction); 43 (oral application for preservation of evidence direction); and 44 (disclosure of data direction) have not commenced.*

*Final note: Chapters 5 and 6 (mutual assistance and point of contact); section 54 (electronic communications service providers and financial institutions obligations have not commenced).*

### **Deeds Registries Act: Reminder**

[Regulation 68](#) amended 1 month from 10 December 2021.

### **Disaster Management Act (COVID-19)**

[COVID-19 regulations](#) amended (removal of curfew and of closing time for specific establishments; indoor gatherings maximum increased to 1000; sale of liquor permitted during licensed trading hours; and reopening of Gemsbok and Telle Bridge port of entries).

*Note: [COVID-19 declaration](#) 19th extension to 15 February 2022 "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".*

### **Electoral Act: Amendment Bill 2022**

The Bill proposes regulating, [amongst others](#), nomination of independent candidates to contest elections; requirements and qualifications for independent candidates; objections to independent candidates; and application of code of conduct to independent candidates entitled to contest elections.

### **Electronic Communications Act: Electromagnetic compatibility**

Notice on the issuance of certificates of compliance for electromagnetic compatibility for manufacturers, in terms of memorandum between ICASA and SABS, available from ICASA.

### **Electronic Communications Act: Inquiry**

Inquiry into long-term spectrum outlook available from ICASA. Comment deadline 4 March 2022.

### **Electronic Communications Act: Number portability**

The 7 March 2022 amendments, to the ordering system specification for geographic, non-geographic and mobile number portability, is available from ICASA.

*Note: The [number portability regulations](#) will commence on 7 March 2022.*

#### **Electronic Communications Act: Radio frequency**

Annexure B (radio apparatus exempt from radio frequency spectrum licenses) of the [radio frequency spectrum regulations](#) amended 24 December 2021, and available from ICASA with a reasons document.

#### **Electronic Communications and Transactions Act: Cybercrimes**

The Cybercrimes Act repealed [cybercrime](#) sections (access definition; unauthorised access to, interception of or interference with data; computer-related extortion, fraud and forgery; attempt, and aiding and abetting; and certain penalties).

#### **Employment of Educators Act: Basic Education Laws Amendment Bill**

The Bill proposes amending the [Employment of Educators Act](#), including the serious misconduct provision.

#### **Estate Agency Affairs Act: Repeal**

The Property Practitioners Act [will repeal this Act](#) on 1 February 2022.

#### **Films and Publications Act: Cybercrimes**

The Cybercrimes Act repealed the [prohibition, offences and penalties on possession of films, publications and games](#) section.

#### **Financial Advisory and Intermediary Services Act: Compliance officers**

FAIS notice 142 of 2021 (extension of paragraph 2(4) date in notice on exemption of compliance officers from section 4(4) on the notice on compliance officers to 31 December 2023) available from the FSCA.

#### **Financial Advisory and Intermediary Services Act: Draft Financial Sector and Deposit Insurance Levies Administration and Deposit Insurance Premiums Bill**

The Draft Bill proposes amending [section 22](#) (funding of ombud).

### Financial Intelligence Centre Act: Cybercrimes

The Cybercrimes Act repealed sections 65 to 67 (unauthorised access to computer system or application or data; unauthorised modification of contents of computer system; and related definitions).

### Financial Markets Act: Transitional arrangements

FSCA FM notice 4 of 2021 extended the [section 110\(6\)](#) transitional periods.

### Draft Financial Sector and Deposit Insurance Levies Bill

The [draft bill](#) proposes regulating the imposition of financial sector levies on supervised entities; the imposition of a deposit insurance levy; the exemption from levies; and the allocation of amounts levied to financial sector bodies. Comment deadline 7 February 2022.

### Draft Financial Sector and Deposit Insurance Levies Administration and Deposit Insurance Premiums Bill

The [draft bill](#) proposes regulating the collection and administration of levies imposed under the planned financial sector and deposit insurance levies law; as well as the imposition, collection and administration of deposit insurance premiums; Comment deadline 7 February 2022.

### Financial Sector Regulation Act: Cybersecurity

Joint communication 6 of 2021 (notification regarding [draft joint standard on cybersecurity and cyber resilience requirements](#) to be implemented in accordance with the risk appetite, nature, size and complexity of a financial institution as defined in the standard) available from the FSCA. Comment deadline 15 February 2022.

*Note: The ultimate responsibility of the governing body is confirmed; and elaborated on with governing body responsibilities regarding cybersecurity strategy and resilience, and regarding providing clear definition of security roles and responsibilities.*

*Further note: The cybersecurity framework will be expected, amongst others, to be reviewed regularly, but at least annually, for adequacy and effectiveness through independent compliance programmes and audits carried out by qualified individuals; and clearly articulate how a financial institution will identify cyber risks and determine the controls required to keep those risks within acceptable limits.*



*Final note: The item 8 fundamentals and item 9 hygiene practices may contain useful, practical, simple but effective, considerations (even for business entities that are not financial institutions) - eg identify and prioritise critical operations and supporting information assets; assess; and review, review, review.*

#### **Financial Sector Regulation Act: Draft Financial Sector and Deposit Insurance Levies Administration and Deposit Insurance Premiums Bill**

The Draft Bill proposes, **amongst others**, redefining deposit insurance premium, levy and special levy; revising the planned deposit insurance premium section and introducing a deposit insurance premium schedule; and revising fee, levies and finances provisions.

*Note: The draft bill proposes that a determination of fees in terms of a financial sector law (Existing Determination) remains in force for the purposes of this Act, and that financial sector law, despite the repeal of the empowering provision in the financial sector law.*

*Final note: The draft bill also proposes that an Existing Determination referred to in may be amended or revoked in terms of a new determination of fees made by the financial sector body in terms of section 237(2).*

#### **Immigration Act: Exemption**

The Minister's immigration directive 1 of 2021 (extension to 31 December 2022 of Zimbabwean nationals' exemption) is available from the Department of Home Affairs.

#### **Independent Communications Authority of South Africa Act: Complaints**

The draft amendments to the **Complaints and Compliance Committee procedures** include, amongst others, clarifying that a vexatious complaint or dispute can either be a complaint that is persistently filed and/or without any reasonable grounds; and clarifying that the CCC is not empowered to award costs. Comment deadline extended to 20 January 2022.

#### **Insurance Act: Personal lines claims**

Information request 1 of 2022 (licensed non-life insurers that are members of Ombudsman for Short-term Insurance to give information on the number of personal lines claims reported in 2021 calendar), available from the FSCA.

### Interim Protection of Informal Land Rights Act: Extension

This interim measure, now extended (for the 25th year since the original proposed end-date) to 31 December 2022, [provides that](#) informal rights to land cannot be taken away without the consent of the person holding that right; and any sale or other disposition of any land is subject to any existing informal rights to that land.

### Intestate Succession Act: Constitutional Court

The Constitutional Court has made an order, suspended for 18 months, regarding [adding](#) "or partner in a permanent life partnership in which the partners have undertaken reciprocal duties of support" after the word spouse wherever it appears.

### Magistrates Courts Act: Rules

The [rules](#) (relating to definitions; further particulars; set-down of trial; meetings to prepare for pre-trial conference or trial; discovery of documents; medical examinations, inspection of things, expert testimony and tendering in evidence; judicial case management and pre-trial conference; subpoenae, interrogatories and commissions *de bene esse*; trial; adjournment and postponement; and applications) will be amended 1 February 2022.

*Note: With regards to execution amendments will be made to security by execution creditor; general execution; and movable property execution.*

*Further note: Amendments will be made to proceedings against non-juristic persons as a matter of procedural convenience.*

*Final note: Amendments will also be made to non-appearance of a party; and non-compliance with rules and court orders.*

### Maintenance of Surviving Spouses Act: Constitutional Court

The Constitutional Court has made an order, suspended for 18 months, regarding the [definition of marriage, spouse and survivor](#), for the purposes of this Act.

### Marine Living Resources Act: Policy

General policy, and sector specific policies, on allocation and management of commercial fishing rights available from the Department. Closing date was extended to 10 December 2021.

### Medicines and Related Substances Act: Schedule 0

2 year [exclusion, from bonusing and pricing committee requirements](#), for all schedule 0 medicines.

### Mutual Banks Act: Draft Financial Sector and Deposit Insurance Levies Administration and Deposit Insurance Premiums Bill

The Draft Bill proposes amending [sections 31](#) (annual licence) and [91](#) (regulations).

### National Environmental Management Act: Environmental Laws Amendment Bill 2017

The Bill proposes, [amongst others](#), municipal managers remediation and delegation powers; environmental practitioners consultation with relevant organs of state; defining and referencing and registering environmental management instruments; overhauling mining activity provisions; and updating schedule 3 offences.

*Note: The Bill proposes making the promotion of previously disadvantaged professionals a national environmental management principle.*

*Further note: The Bill proposes property access and inspection powers, and a code of conduct, for designated environmental management inspectors and environmental mineral and petroleum inspectors (and qualification criteria and training for the latter group).*

*Final note: The Bill proposes clarifying admission of guilt fines will apply despite the magistrate and threshold amount references of the Criminal Procedure Act.*

### National Environmental Management Air Quality Act: Environmental Laws Amendment Bill 2017

The Bill proposes, amongst others, overhauling the [consequences for engaging in an unlawful activity that causes atmospheric emission](#); and making a provincial organ of state the licensing authority if the [activity falls across multiple metropolitan or district municipality boundaries](#) and agreement thereon is reached.

### National Environmental Management Biodiversity Act:Environmental Laws Amendment Bill 2017

The Bill proposes, amongst others, redefining [control](#) (of invasive species); defining [eradicate](#); making ecological sustainable use of indigenous biological resources an [objective](#); and allowing gazetting of species and situations where the [State remains the custodian of escaped faunal biological resources](#) from land owned or controlled by it.

*Note: The Bill also proposes [owners of land where listed invasive species occur](#) to take steps to control or eradicate as prescribed.*

*Final note: The Bill also allows proposes circumstances that require that the [presence of listed invasive species be notified](#) to the competent authority.*

### National Environmental Management Integrated Coastal Management Act: Environmental Laws Amendment Bill 2017

The [Environmental Laws Amendment Bill 2017](#) proposes amending provisions relating to the repair or removal of structures within the coastal zone, and repealing the chapter on appeals.

### National Environmental Management Protected Areas Act:Environmental Laws Amendment Bill 2017

The Bill proposes amending [section 48](#) and the [penalties and offences](#) section of [the Act](#), including making non-compliance with SANParks rules an offence.

### National Environmental Management Waste Act:Environmental Laws Amendment Bill 2017

The Bill proposes, [amongst others](#), redefining waste and categories of waste; fees for a waste management license variations; excluding residue deposits and stockpiles from the Act; and overhauling contaminated land, licensing authority, exemption and waste management bureau provisions.

### National Environmental Management Waste Act:Producer responsibility

Draft amendments to the [extended producer responsibility regulations](#) gazetted. Comment deadline 30 or 50 days from 2 December 2021 - notice states both 'thirty' and '50' - 30 days may be assumed.

### National Gambling Act: Reminder

Reminder that the Amendment Bill 2018 was rejected.

### National Heritage Resources Act: Heritage resources

[Draft standards](#) for conservation and maintenance of heritage resources that are in control of branches of the State and state supported bodies gazetted. Comment deadline 18 February 2022.

*Note: The Act states that it falls within the department of arts and culture, but there are also close links to the department of environment.*

### National Land Transport Act: COVID-19

[COVID-19 taxi relief fund directions](#), managed by the National Empowerment Fund and meant for qualifying taxi operators, gazetted, with cut-off date 28 February 2022.

### National Minimum Wage Act: Review

Report and recommendations on the annual review of the national minimum wage available from the Commission. Comment deadline was 14 January 2022.

### National Prosecuting Authority Act: Cybercrimes

The Cybercrimes Act [repealed](#) unauthorised access to or modification of computer material provisions.

### National Veld and Forest Fire Act: Amendment Bill 2021

The Bill proposes, [amongst others](#), that a forest, police, peace, or [Fire Brigade Services Act](#) officer, or traditional leader, may enforce the Act if trained by an accredited institution to exercise the powers to enter, search, arrest and seize.

*Note: The reference in the Bill to the Traditional Leadership and Governance Framework Act should be understood as a reference to the [Traditional and Khoi-San Leadership Act](#).*

### Pension Funds Act: Draft Financial Sector and Deposit Insurance Levies Administration and Deposit Insurance Premiums Bill

The Draft Bill proposes amending [section 30R](#) (funds of adjudicator).

## Property Practitioners Act: Commencement

The Act commences 1 February 2022.

*Note: You may wish to revisit the [past overviews](#).*

*Final note: All regulations made in terms of the Estate Agency Affairs Act will remain in full force and effect as if they had been made under this Act.*

## Property Practitioners Act: Regulations

[Regulations](#), including transformation, undesirable business practices, mandatory disclosures, code of conduct, standard of training, auditor requirements, and industry specific fidelity fund certificate regulations, gazetted that will apply when the Act commences.

*Note: Also consider related laws such as the Consumer Protection Act [presumed unfair terms](#).*

## Protection of Personal Information Act: Code of conduct

The Banking Association South Africa code of conduct, to promote appropriate practices by BASA members governing the processing of personal information in terms of POPIA, is available from the Information Regulator. Comment deadline was 14 days from 31 December 2021.

## Public Audit Act: Directive

December 2021 public audit directive available from the Auditor-General.

## Public Finance Management Act: Interest rate

The [standard interest rate](#), to loans granted by the State out of a Revenue Fund and/or to all other debts which must be paid into a Revenue Fund, is 7,25% per annum as from 1 January 2022.

## Regulation of Interception of Communications and Communication-related Information Act: Cybercrimes

The Cybercrimes Act amended [interception by party to communication](#) to allow certain persons to record certain matters they observe or hear; and add [schedule 2](#) as offences that [warrant](#) an interception or real-time or archived communication direction.

## South African Police Services Act: Cybercrimes

The Cybercrimes Act repealed [the offence related to unauthorised access to or modification of computer material](#).

## South African Schools Act: Basic Education Laws Amendment Bill 2022

The Bill proposes, [amongst many others](#), defining benefit in kind, competent assessor, corporal punishment, drug, home education, other financial benefit, and required documents for learners; offence to unlawfully and intentionally interrupt a school activity; monitoring learner attendance; and committees to assist with required documents.

*Note: The Bill proposes giving control of public school admission and language policies and changes, specialised focus on talent, and procurement of identified learning and teaching support material to the head of the department who must, among others, consider the best interests of the child (but in those interests give preference to the right of equality potentially contrary to the Constitution, common law and Children's Act).*

*Further note: The Bill proposes giving the Minister control over membership of public school governing body requirements; and revising public school mergers, funding, and governing body code of conducts, recusals and reimbursement.*

*Further note: The Bill proposes application for exemption from a public school code of conduct; revising random search and seizure and drug testing; and defining, at times in general uncertain terms, serious misconduct that may trigger suspension.*

*Final note: The Bill proposes [increased registration and administration requirements for home education](#) (with details to be left to the discretion of the Minister); reports in phases signed by an assessor; pre-registration sites visits and consults; and the potential at any time for the head of department to decide home education is no longer in the best interests of the child - parents in home education or considering home education may wish to consider legal advice in this regard where possible, if these proposals progress further.*

## South African Schools Act: COVID-19

COVID-19 schools directions revised (health, safety and hygiene protocols for marking and assessments, , and number of spectators at the venue of a sport event to reflect the regulations).

## Special Investigating Units and Special Tribunals Act: Investigations

Special investigations launched into [Alexkor](#) (marketing, valuation, sale and beneficiation of diamonds) and into the [Road Accident Fund](#) (compensation payments to claimants and their agents; and payments to service providers).

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

## Special Investigating Units and Special Tribunals Act: Investigations

Special investigation launched into [Overstrand municipality](#) (housing subsidies and allocations of sites or constructed houses).

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

## Standards Act

New, proposed, amended, and withdrawn [standards](#) gazetted for 17 and 31 December 2021.

## Superior Courts Act: Rules

The [uniform rules](#) (relating to summons; to pre-trial conference; to procuring evidence for a trial; to appointment of curators in respect of persons under disability; and to summons and combined summons forms) will be amended 1 February 2022.

*Note: The [Supreme Court of Appeal rules](#) (relating to record and to heads of argument) will be amended 1 February 2022.*

## Tourism Act: Norms and standards

[Norms and standards for the safe operation of the tourism sector](#) (accommodations; short-term rentals; tourism establishments; places of attractions; food services; tour operators; curio shops; casinos; and events, weddings, meetings and convention centres) gazetted.



*Note: The standards are to be read with the fluid COVID-19 directions regime, including the [COVID-19 tourism directions](#) (such as direction 6 for hotels, lodges, bed and breakfast, time-share, resorts and guest houses), unless repealed in due course. To add to the confusion the standards are not a Disaster Management Act COVID-19 direction, which may mean that, despite the conflicts of laws statement, relevant COVID-19 directions should get preference.*

*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). The standards seem to assume 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.*

*Further note: It seems the standards assumed the Draft Tourism Amendment Bill will be passed as is, and applied it when it created norms and standards for short-term rentals - Also see the proposed Draft Bill amendments to [sections 1](#) (definitions) and [7](#) (norms and standards) of the Act.*

*Final note: The standards make a number of unfortunate assumptions, including that those affected, many of whom are very 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'.*

## **Value-added Tax Act: Electronic services supplier**

[Particulars that a tax invoice must contain](#), if the vendor supply is covered in paragraph (b)(vi) or (vii) of the definition of “enterprise”, gazetted.



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