

# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 17 Issue 6, 28 March 2022

### This Update

This newsletter overviews new relevant National laws up to **25<sup>th</sup> March 2022**.

Log-in to [www.gazette.co.za](http://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](http://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



### Employees

2. Employment Equity Act: Code of good practice on the prevention and elimination of harassment in the workplace 🇷🇷



### Property

3. Rental Housing Act: Draft rental housing tribunal regulations 🇷🇷



### Safety

4. International Health Regulations Act: Draft health measures at points of entry 🇷🇷
5. National Health Act: Draft regulations for environmental health 🇷🇷
6. National Health Act: Draft amendments to notifiable medical conditions 🇷🇷
7. Occupational Health and Safety Act: Code of practice managing SARS-Cov-2 🇷🇷
8. Occupational Health and Safety Act: Hazardous biological agents 🇷🇷
9. Older Persons Act: Draft Older Persons Amendment Bill 🇷🇷



## General

### 1. NOTABLE ONE LINERS

#### Auditing Profession Act: Disciplinary rules

The disciplinary rules are available from IRBA.

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

Draft amendments to the code are available from IRBA. Comment by 10 May 2022.

#### Competition Act: Fresh produce market

The market inquiry into the fresh produce market, based on the Commission's belief that there may be features that impede, distort or restrict competitiveness, is available from the Commission. Comment by 25 April 2022.

*Note: For the inquiry, fresh produce includes unprocessed products such as fruit mainly produced and consumed in SA (such as apples, bananas, citrus, pears, avo, grapes) and vegetables (mainly potatoes, onions, tomatoes, carrots and cabbage).*

*Further note: The inquiry notes SA is a net exporter of agricultural products, but it imports a large share of the inputs required to produce the surplus of products making it vulnerable 'in terms of its input costs'...and...'exposed to exchange rates'.*

*Final note: The inquiry does not seem to directly mention electricity, fuel or labour input at this stage.*

#### Competition Act: Localisation initiative guideline

The guideline proposes, amongst others, that the Commission believes firms participating in localisation initiative (Localisation) discussions within the provisions of the guidelines will not trigger prohibited restrictive horizontal practices.

*Note: The guidelines state collaboration around Localisation to increase local procurement may involve identifying Localisation opportunities; industry and individual firm local procurement targets; and demand forecasting.*

*Further note: Competitively sensitive info may not be shared or discussed among collaborating firms (Firms) - only aggregated info needed for Localisation on the percentage and volumes of industry data may be shared and discussed among Firms.*

*Final note: The guidelines contain some regulatory uncertainty as not binding on the Commission, Tribunal or Appeal Court but a person interpreting or applying the Act must take them into account; preamble and definitions contain slightly different definitions for localisation initiative; specific guidance may be sought from the Commission on a case by-case basis; and seems to indicate the authorities will subjectively decide when they believe actions are competitive or not.*

### **Disaster Management Act: COVID-19**

**COVID-19 regulations** relating to public places; funerals and cremations; gatherings; opening of borders; and compliance officers amended.

*Note: **COVID-19 state of disaster declaration** 21st extension to 15 April 2022 "taking into account the need to continue augmenting existing legislation and contingency arrangements undertaken by organs of state to address the impact of the disaster".*

### **Electronic Communications Act: Individual licences**

Amendments proposed to the prescribed **standards terms and conditions for individual licences**. Comment by 5 May 2022.

*Note: Reminder that individual licences relate to certain electronic communications network/services or broadcasting services with a provincial and national scope, or if prescribed as having significant socio-economic impact.*

### **Electronic Communications Act: Individual licences (Changes)**

Amendments proposed to **process to** amend, transfer, surrender or renew individual licences; and for applications of special temporary authorisations, such as transfer of control and changes in shareholding provisions. Comment by 15 May 2022.

*Note: Includes rephrasing renewal or transfer refusal to relate to ownership and control by historically disadvantaged persons (as redefined) falling below a prescribed percentage.*

*Final note: Transfer will be defined as assign, cede or transfer a licence from one person to another.*

### Electronic Communications Act: National radio frequency plan 2021

The plan is available from ICASA.

### Electronic Communications Act: Numbering plan regulations

Draft amendments to the regulations include, [amongst others](#), service codes 103, 104, 105, 106, 111, 113, 118, 132 and 139 for special national emergency service, such as COVID-19 emergency service. Comment by 11 May 2022.

*Note: Also proposes where a caller chose another number for their calling line identification presentation, such number must be allocated or ported to the originating licensee; be valid and dialable; uniquely identify the caller; and not connect to a premium rate service.*

*Further note: Specific provision proposed for activation, deactivation and re-assignment or recycling of numbers.*

### Income Tax Act: Learnerships

Reminder that the amendment to [section 12H](#) (additional deduction in respect of learnership agreements) commences 1 April 2022.

### Liquor Products Act: Fees

The [fees payable in terms of the Act](#) have been amended.

### National Environmental Management Act: COVID-19

[COVID-19 environmental processes directions](#) ; [COVID-19 national forests directions](#); and [COVID-19 environmental permitting directions](#) repealed.

### National Environmental Management Act: Draft national biodiversity offset guideline

Draft guideline available from the Department. Comment within 30 days from 25 March 2022.

*Note: The draft guideline describes biodiversity offset as 'the measurable outcome of compliance with a formal requirement contained in an environmental authorisation to implement an intervention that has the purpose of counterbalancing the residual negative impacts of an activity, or activities, on biodiversity, through increased protection and appropriate management, after every effort has been made to avoid and minimise impacts, and rehabilitate affected areas'.*

#### **National Forests Act: List of protected tree species**

List of trees and their product that require a licence or exemption before they may be cut, disturbed, damaged, destroyed, possessed, collected, removed, transported, exported, purchased, sold, donated, acquired or disposed of, updated.

#### **National Health Act: Draft management of human remains regulations**

The draft regulations propose, amongst others, alternative energy sources for power failures; multiple burials; certificate for road conveyance; appropriate personal protective equipment for workers; and transitional measure for certificates, permits and authorisations. Comment within 30 days from 15 March 2022.

*Note: Special provision is made for conveyance of infectious human remains; where a person dies of an infectious disease outside a health establishment; and burial at sea of infectious human remains.*

*Further note: Proposes burial services during a disaster (not defined) or a state of public health emergency (not defined) must be as short as possible and may not exceed two hours.*

*Final note: A large proportion of proposals focus on radioactive remains.*

#### **Non-proliferation of Weapons of Mass Destruction: Code of conduct**

The code for persons involved in controlled non-proliferation activities (registration, permit application/conditions, declarations, inspections, inquiries, Council info) is available from the SA Council for non-proliferation of weapons of mass destruction.

*Note: The code reminds registered persons they must ensure, amongst others, employee training; immediate reporting of violations and mitigation measures taken; and must not contract with entities listed in UN Security Council sanctions.*

*Further note: All appointed local subcontractors, brokers, freight forwarders, clearing agents, buyers and/or end-users must first have a council registration certificate and/or permit; and foreign suppliers or importers must first have the requisite permit.*

*Further note: [The Act](#) defines goods as any tech, data, tech assistance, services, software, processes, activities, facilities, substances, materials, items, equipment, components, assemblies or systems, produced in SA or imported into SA.*

*Final note: The Act defines controlled goods as goods declared by gazette notice to be controlled goods (that may contribute to the design, development, production, deployment, maintenance or use of weapons of mass destruction as defined).*

### **Occupational Diseases in Mines and Works Act: Pension and other benefits**

Increase in [section 80](#) benefits and [section 105A](#) pension benefits available from Department of Health.

### **Postal Services Act: Price cap regulations for reserved postal services**

Reminder that the [price cap regulations](#) definition of price control period, and the general price control formula, will be amended on 1 April 2022.

### **Short-term Insurance Act: Independent intermediaries**

Communication 9 of 2022 regarding draft exemption of independent intermediaries from [regulation 5.4](#) (reversal of commission) in certain instances, available from the FSCA. Comment by 22 April 2022

### **Special Investigating Units and Special Tribunals Act: Limpopo Health**

Second special investigation launched into the affairs of the [Limpopo Department of Health](#) with attention given to healthcare risk waste management services arrangements.

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

### **Standards Act**

New, proposed, amended, and withdrawn [standards](#) gazetted for 25 March 2022.



[Back to index](#)



## Employees

# 2. EMPLOYMENT EQUITY ACT: CODE OF GOOD PRACTICE ON HARASSMENT

The Code suggests, [amongst others](#):

- (i) Forms of harassment in general, with the reminder that harassment of an employee is prohibited in terms of [section 6\(1\)](#) of the Act, if related to a prohibited ground mentioned there;

*Note: The Code mentions it may be possible for a person who has been harassed to establish that the conduct was a result of an arbitrary ground, as contemplated in section 6(1), but it is not clear how this would in practice be established.*

- (ii) Specific attention to s harassment;

*Note: Consider revisiting [considering codes of good practices in the correct context](#) and legal advice for dealing with serious matters as, for example, certain forms of s harassment may be serious offences and simply following Code suggestions may inadvertently make the employer an accessory to a crime.*

- (iii) Specific attention to racial, ethnic or social origin harassment;

*Note: The Code suggests that whether language or conduct amounts to harassment depends on the circumstances of the particular incidence, including whether the conduct was persistent or harmful; demeaning, impairing dignity, humiliating, or creating a hostile or intimidating environment; or was calculated to induce submission by actual or threatened adverse consequences; and whether the language and conduct is insulting, abuse and/or derogatory;*

- (iv) Also considering several other laws that place duties on employers to prevent violence and harassment in the workplace; and employee information and training;

- (v) Guiding principles including that employers are liable to take proactive and remedial steps to prevent all forms of harassment in the workplace, starting with an assessment as far as reasonably possible of the risk of harassment employees are exposed to in the workplace; and



*Note: An employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure the employee would not act in contravention of this Act.*

(vi) A harassment policy, harassment procedures (including disciplinary sanctions that provide that a complainant has the right to lay a criminal charge or institute civil proceedings against the alleged perpetrator), confidentiality, and additional sick leave in certain instances.



[Back to index](#)



### 3. RENTAL HOUSING ACT: DRAFT RENTAL HOUSING TRIBUNAL REGULATIONS

The draft regulations propose, [amongst others](#):

- (i) Introducing concepts such as deemed tenants, deemed landowners, hijacked buildings and premises, hijackers, tenancy of residential premises implied or created by any legislation, and total destruction of premises;

*Note: The draft regulations defines residential premises as any premises used or intended for occupation by any person as a place of residence, whether or not the occupation or intended occupation is or would be unlawful.*

*Further note: The draft regulations defines premises as including any part of any premises; any land and movables thereon; and any mobile home, shack, caravan, or other means of shelter placed or erected upon any land and intended for occupation of that land.*

- (ii) The form, cost, content and Consumer Protection Act considerations of lease agreements; and requirements for variations, renewals, extensions, sub-leases, receipts, and termination;

*Note: Reference is made to lease agreements being enforceable even if not in writing despite anything contrary in other law, but a regulation cannot override an Act such as, for example, the [Formalities in respect of Leases of Land Act](#).*

*Further note: Provision is also made for change in ownership requirements, such as a landowner offering residential premises as available for letting must inform prospective tenants if the premises are on the market for sale or other disposition.*

*Final note: Proposal made that subject to the lease agreement, the tenant may at any time assign, sublet, or otherwise part with possession of the premises with the prior written consent of the landowner (which consent may not unreasonably be withheld) in line with any reasonable conditions attached to that consent.*

- (iii) Termination due to non-payment, damage, unlawful residential premises, unlawful acts or unfair practices is limited to Tribunal permission to do so;

*Note: Proposal made that Tribunal permission is needed to dispose of any goods left behind by a tenant.*

- (iv) Extraordinary Tribunal powers such as:

- changing rent amounts it feels may be excessive (also see the norms and standards regarding affordability expectations);
- ending or reducing fixed-term tenancies;
- nullifying termination notices by landowners;
- deciding that a landowner - tenant relationship exists;
- forcing landowners into assignments and subletting; and
- deciding house rules;

*Note: These intrusive measures do not on the face of it seem to support regulatory certainty or [justifiable limitation](#) of the [right to trade](#), the [right to property](#), or the [right to access to courts](#) (regulation 61 speaks of Tribunal appeal finality and 74 limits high court access to a review).*

*Further note: Despite the above the draft regulations suggest that the Tribunal shall 'determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities as Tribunal proceedings are quasi-judicial in nature'.*

*Final note: In addition the draft regulations state every order made by the Tribunal shall be deemed to be an order of the Magistrates Court, and, subject to the relevant deeming section, may be enforced accordingly.*

(v) An order for costs may be made where, in the opinion of the members, the proceedings are frivolous or vexatious or ought not to have been brought;

(vi) Where any party to a lease agreement breaches the agreement, the regulations or the Act, the other party must take all reasonable steps to limit the damage or loss from that breach, as per the law relating to mitigation of loss or damage upon breach of contract;

(vii) Every summons must include a statement informing the person summoned of the right to apply to the Tribunal to have the summons set aside on the ground that it relates to privileged documents or that compliance with it would be oppressive;

(viii) Tenant (eg tenant responsible for anything done or not done by any person present at the premises at the presumed invitation of the tenant) and landowner (no obligation on the landowner to repair any damage, or compensate the tenant for repairing any damage caused by the tenant) rights and duties; and

*Note: There seems to be a subjective, partial view against landowners as any failure by a landowner to comply with regulation 77 is specifically stated an unfair practice, but no such statements are made with regard to tenant failures to comply with regulation 75.*

(ix) Unless otherwise agreed to between the parties, a landowner may not require payment of a rental deposit greater than 2 months rent, in addition to a reasonable deposit for utilities, keys, remote controls and the like.



[Back to index](#)



## Safety

### 4. INTERNATIONAL HEALTH REGULATIONS: DRAFT HEALTH MEASURES AT POINTS OF ENTRY

The draft regulations propose, [amongst others](#):

- (i) An owner or person in charge of a point of entry facility; master of a ship, agent, pilot in command or person in charge of conveyance may not permit to be caused a [health nuisance or condition that is a danger to health](#) at the point or conveyance;
- (ii) [Travellers to be subjected to health measures](#) such as medical examination, vaccination or prophylaxis or proof of vaccination or prophylaxis as a condition of entry when necessary to determine whether a public health risk exists; [and/or] as a condition of entry for travellers;

*Note: The draft regulations do not use and /or - it simply leaves the space open.*

*Further note: The regulations mention consideration of full respect for the dignity, human rights and fundamental freedom of persons as enshrined in the [Constitution](#).*

*Further note: Specific provision is also made for [yellow fever](#).*

*Final note: [Charges for health measures](#) will be raised.*

- (iii) [During a public health emergency of international concern or pandemic](#), directives may be issued on any additional health measures required to prevent or contain the spread of the event; and the competent authority may:

- Require travellers to undergo medical examination and complete and submit a travel health questionnaire;
- Keep in isolation an infected or suspected traveller for such period as he or she considers necessary to contain;
- Place travellers and goods exposed to infection, in isolation or quarantine or surveillance for a period not exceeding the incubation period of such disease;

- Require arriving passengers and crew to produce a test result for a timeframe stipulated by the Director-General; or
- Subject travellers to quarantine.

*Note: Public health emergency of international concern is **defined** as an extraordinary event which is determined, as provided in the **International Health Regulations** to constitute a public health risk to other states through the international spread of disease; and to potentially require a coordinated international response.*

*Further note: Public health risk will be defined as a likelihood of an event that may affect adversely the health of human populations, with an emphasis on one which may spread internationally or may present a serious and direct danger.*

- (iv) Subject to these regulations, an arriving ship or aircraft may **not be refused free pratique** for public health reasons;

*Note: A conveyance **considered affected** must cease to be regarded as such when prescribed measures have been effectively carried out, and there are no conditions on board that could constitute a public health risk.*

*Further note: Some provision is made for an authority to explain their intrusive actions when any measures have been applied for the removal or eradication of any communicable disease or public health risk, through a requested **certificate**.*

*Final note: **Charges** will be raised for vessels.*

- (v) Regulating **ground and air** and **sea** medical evacuations; certain **conveyances in transit**; **ship sanitation certificates**; and **conveyances, point of entry** and **container loading** vector control;

*Note: **Maritime safety precautions** (medical log of daily temperature screening and general hygiene and precautionary measures when disembarking and embarking vessels) are also proposed.*

- (vi) If the competent authority has reason to believe goods are contaminated by a communicable disease or may serve as a vehicle for the spread of any disease, such **goods must be subjected** to the regulations' health measures; and

*Note: This will not apply to laboratory samples, blood and blood products.*

*Further note: **Charges** will be raised for baggage, cargo, containers, conveyances, goods and postal parcels.*

*Final note: Provision will be made for **reapplication of health measures**.*

(vii) Medical examination and prohibited departure for certain [departing travellers wishing to leave](#) pending proven recovery or not infected and disinfected, disinfected or decontaminated items.

*Note: [Quarantine and isolation](#) conditions will include that owners or persons in charge of point of entry facilities or passenger vessels must designate a specific area/facility for the temporary isolation of suspect travellers.*

Comment only within 30 days from 15 March 2022.



[Back to index](#)



## Safety

### 5. NATIONAL HEALTH ACT: DRAFT REGULATIONS FOR ENVIRONMENTAL HEALTH

The draft regulations for environmental health propose, [amongst others](#) and subject to [municipality exemptions](#):

- (i) [Every owner or occupier of any premises](#) must take all reasonable measures to prevent a condition that constitutes a public health hazard or environmental health nuisance arising on the premises; and to reduce or eliminate a nuisance or danger;

*Note: Environmental health nuisance will refer to a use of premises or a place that creates conditions that significantly increase the risk of a public health hazard or that compromises an aspect of public health to an extent more than trivial or insignificant - 9 examples are given in the [definition](#).*

*Further note: More than trivial or insignificant seems to be wide open to interpretation.*

*Final note: Public health hazard will be [defined](#) as any actual threat to public health, and includes conditions that are unsanitary; make it easier for a communicable disease to spread; make food or drink unhygienic or unsafe; or allows pests or parasites to infest where they may affect public health.*

- (ii) Specific requirements for owners and occupiers relating to [dumping and littering](#); [removal of waste](#); and [noise](#), [air](#) and [water](#) pollution;
- (iii) Specific requirements for owners and occupiers relating to [vermin and vector](#); [overcrowding](#); [health certificate](#) for [schedule 1](#) activities; and [private sewage works](#);

*Note: Schedule 1 lists accommodation establishments (not defined); beauty salons; child care centres; crematoriums; dry cleaning and laundry establishments; food premises; funeral undertaker's premises; homes for the aged; initiation schools; maternity homes; mortuaries; nursing homes; premises used for keeping of animals and poultry; and swimming pools and spa baths.*

- (iv) Specific requirements for owners and occupiers relating to [maintaining private sewage works](#); [waste](#), [grey and harvested rain water](#); [non-waterborne sanitation facilities](#); [septic tanks](#); [toilet facilities](#) and [drainage systems](#); and [public gathering toilets and wash basins](#);



(v) The [use of premises](#) must be in line with the requirements set out in norms and standards Schedule 1 and other applicable legislation, for prevention of a public health hazard or environmental health nuisance;

*Note: It is not clear what norms and standards schedule 1 refers to - it may refer to the [premises norms and standards](#) that contain both general standards for all premises, and specific standards for schools, accommodations, construction sites, health establishments, vacant land, office accommodations and many more.*

*Further note: For examples of other applicable legislation you may wish to see the related laws found on the right side of the [draft regulations](#) once you follow that link.*

*Final note: The reference to schedule 1 may have meant 'as set out in the requirements for activities contained in [schedule 1](#) to these regulations - the intention is not clear.*

(vi) A person may not conduct a listed [offensive trade](#) activity on any premises without a municipality permit; and

*Note: There are 48 offensive trades currently listed such as panel beating; scrap yards; food-processing factories; storing fertilizers; breweries; slaughter houses; candle works; paper mills; sawmills; landfill sites; dry cleaning; and general handling or storage of any substance or material which can lead to a public health hazard.*

(vii) [Inspections](#) including examining anything suspected likely to cause environmental health nuisance or to be detrimental to health; [investigations](#); [compliance notices](#); [immediate remedy](#), [confiscation](#), and [seizure](#) at times; and [reports](#) to owners or occupiers.

*Note: Provision is made for [appeal](#) and though not stated there should be a further opportunity to go to court in terms of the Constitutional Right to [access to courts](#).*



[Back to index](#)



## Safety

# 6. NATIONAL HEALTH ACT: DRAFT AMENDMENTS TO NOTIFIABLE MEDICAL CONDITIONS

The draft amendments propose, [amongst others](#):

- (i) [Medical treatment](#), health establishment, quarantine or isolation site admission, and/or prophylaxis, treatment, isolation or quarantine, for confirmation, suspicion or contact relating to certain serious notifiable diseases; read with [representation](#);

*Note: It would be preferable if the self-isolation and self-quarantine referred to in [isolation and quarantine](#); [isolation of symptomatic person](#); and [criteria for self-isolation or self-quarantine](#) were also clearly reflected in the above actions, [voluntary actions](#), [mandatory actions](#), and [isolation of a asymptomatic person](#).*

*Further note: Repeat testing will not be required for a person to come out of isolation and to re-integrate into society.*

*Final note: Provision is also made for [designation of quarantine facilities](#) that mention some medical expectations but is currently silent on matters relating to making effort to assist the general wellness of persons taken there.*

- (ii) A Notifiable Medical Conditions Contact Tracing Database to take all information 'considered necessary' for the [contact tracing process](#) to be effective from contacts, and from laboratory and NICD information taken about persons.

*Note: This form of contact tracing seems similar to the ongoing [COVID-19 contact tracing](#), and seems to override the [confidentiality](#) and [protection of record](#) mentions.*

*Further note: It is not immediately clear how information will actually be protected; and it would have been preferable if serious measures for abuse of the information taken were stated and highlighted.*

*Final note: There is a reference to de-identification 6 weeks after the national state of disaster finally ends - it is not certain how this must be understood.*

- (iii) Containing the spread of Annexure A tables 1 to 3 notifiable medical conditions (such as respiratory disease caused by a novel respiratory pathogen) with:

- [Face masking, social distances etc](#);
- [Exiting SA provisions](#);
- [Entering SA provisions](#) (including reference to full vaccination certificate or PCR test during COVID-19 pandemic);
- [Public places provisions](#);
- [Gathering provisions](#) (including reference to an epidemic or pandemic and to restrictions during COVID-19);
- [Controlled visits](#) to health establishments and facilities; and
- [Compliance officers](#) plans for such notifiable medical conditions; and

*Note: Consideration is also given to [aircraft crew on international flights](#); [vessel crew](#); [local air travel](#); [cross border freight operators](#); and [funerals](#) (including reference to 100 persons and prohibitions during the COVID-19 pandemic).*

*Further note: The wording currently seems to suggest these measures must be followed endlessly, even if the actual events do not exist, 'in order to contain the spread' - more clarity on potentially highly intrusive actions are needed.*

*Final note: Reminder that [failure to comply](#) with any of the provisions in any situation may, according to the current text, be punishable with up to 10 years imprisonment and a fine.*

(iv) [Advice may be shared](#) amongst Cabinet members with regard to curfew; sport; economic sector operations; national or local lockdowns; public transport; religious and cultural practices; and alcohol sale, dispensing and consumption of alcohol.

*Note: Reminder that regulation 2 confirms that some thought should be taken of the [Constitution](#); the [International Health Regulations](#); and 'full respect' for the dignity, confidentiality, human rights and fundamental freedoms of persons.*

*Further note: Reminder that health care providers, medical schemes, health establishments, laboratories, pathologists and laboratory personnel have existing [responsibilities](#) and [duties to notify](#) regarding notifiable medical conditions.*

*Final note: Reminder that there are [reporting of notifiable medical conditions duties](#) on any member of the community or a head of an institution.*

Comment deadline 30 days from 15 March 2022.

[Back to index](#)



## Safety

# 7. OCCUPATIONAL HEALTH AND SAFETY ACT: CODE OF PRACTICE

## MANAGING SARS-COV-2

The code will commence when the disaster declaration ends and, [amongst others](#), states that:

- (i) The [regulations for hazardous biological agents](#) list coronavirus as a Group 3 HBA, and places legal responsibilities on employers to limit the exposure and mitigate the risks of infection by SARS-CoV-2;

*Note: Mines, mining areas and works are excluded, except for [section 18](#).*

- (ii) In addition to employee duties under the Occupational Health and Safety Act and the hazardous biological regulations, every worker must comply with the employer's section 5(1)(b) plan;

*Note: The code defines a worker as a person who works in an employer's workplace, including an employee or contractor, self-employed person or volunteer.*

- (iii) Subject to the duty under the Act to conduct a risk assessment, employers with 20 or less employees need only apply [section 13](#) measures namely:

- Risk assess workplace and take any reasonably practicable measure that may mitigate the risk of infection and transmission of the virus or the risk to employees of serious illness or death contemplated in section 6(2) and (3);
- Comply with section 12 if a vaccination measure contemplated in section 5(1)(b)(i) is introduced;
- Refuse entry to the workplace if an employee has COVID-19 related symptoms, and comply with section 9; and
- Ventilate occupied closed spaces in the workplace as per section 10(1), to the extent reasonably practicable;

*Note: Employers with more than 20 employees will be expected to apply all other sections of the code, including section 5 to 7, 12 and 15 (risk assessment, plan and notices, incorporating vaccination and refusal to work considerations).*

(iv) Every employer with more than 20 employees must determine workers vaccination status (not just employees); and require workers to inform if they experience a COVID-19 associated symptom as described from time to time;

*Note: If an employee (code may have meant worker) informs they experience COVID-19-related symptoms, such employee (code may have meant worker) may be tested for COVID-19 before allowed entry to the workplace or reporting for work.*

*Final note: The testing referred to above will not apply to workers who report the presence of COVID-19 symptoms between 1 to 3 days after vaccination.*

(v) If an employer employs more than 20 employees, workers diagnosed with COVID-19 and symptomatic must inform and isolate for the time recommended by the Department of Health, unless a medical practitioner recommends longer;

*Note: The code reiterates sick leave, avoidance of discrimination, and compensation for occupational diseases considerations, for workers who are employees.*

*Further note: Non-discrimination considerations would in any event also apply for non-employees.*

(vi) If an employer employs more than 20 employees the environmental regulations ventilation requirements must be considered; and several websites regularly checked for the latest suggested PPE gear for workers (not just employees); and

(vii) Departures from the non-obligatory provisions of the code may be justified in appropriate circumstances as long as any employer or employee who departs from them can demonstrate justifiable reasons for doing so.

*Note: The code also states that to the extent that it advances an interpretation of the law, that interpretation is the policy of the Department and should be applied unless that interpretation is reversed by a decision of the courts.*



[Back to index](#)



## Safety

# 8. OCCUPATIONAL HEALTH AND SAFETY ACT: HAZARDOUS BIOLOGICAL AGENTS

The regulations for hazardous biological agents, [amongst others](#):

- (i) Apply to every employer and self-employed person at a workplace (Workplace) where an exposure to a hazardous biological agent ([HBA](#)) may occur;

*Note: The regulations also apply where a HBA is produced, processed, used, handled, stored or transported.*

*Further note: [Medical surveillance](#); [labelling](#), [packaging](#), [transporting](#), [storage](#); [disposal](#); [committee](#); and [penalty](#) do not apply to a Workplace where exposure is restricted to a [Group 1 HBA](#).*

- (ii) Require that an employer ensures any employee at risk of being exposed or exposing others to HBA is comprehensively [informed, instructed and trained](#);
- (iii) State that any person who is or might be exposed to HBAs must obey any [lawful instruction](#) given by or on behalf of the employer or a self-employed person;
- (iv) State that any person must immediately report to the employer, the health and safety representative or self-employed person any possible exposure to a HBA at the workplace;
- (v) Require that an employer or a self-employed person must conduct a [risk assessment](#) on the basis of all available information;

*Note: In addition an employer must establish and maintain an exposure [monitoring programme](#) at the workplace representative of the employees' exposure to HBAs.*

- (vi) Require that an employer must keep records [as prescribed](#) of all training, exposure assessments, exposure monitoring reports, medical surveillance reports, tests and examinations and any repairs; and

*Note: A self-employed person must keep records of all risk assessments for 40 years, and if the self-employed person ceases activities, all those records must be handed over to the relevant chief director provincial operations.*

- (vii) Require that an employer or self-employed person must take biological containment measures and ensure that the [standard precautions](#) are implemented to reduce the risk of transmission of HBAs in a workplace.

*Note: If not reasonably practicable to ensure exposure of an employee is controlled then prescribed [personal protective equipment and facilities](#) must be provided.*

*Further note: Control measures, plant machinery and facilities must be [maintained in good working order](#) and in accordance with documented risk-based protocols.*

*Final note: Signs must indicate that a person may not use compressed air to remove HBAs from a surface or person; not eat, drink, smoke, keep food or beverages or apply cosmetics where an HBA is handled or allow it; and not leave a controlled area without first removing potentially contaminated protective clothing and safety equipment.*



[Back to index](#)



## Safety

# 9. OLDER PERSONS ACT: DRAFT OLDER PERSONS AMENDMENT BILL

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

- (i) Requiring that any person who provides [home-based care and frail care](#) must ensure caregivers receive the prescribed training;

*Note: Caregiver will be [defined](#) as a person who provides care and support services at a community-based care, residential or similar facility, and accredited with a NQF training qualification appropriate for the care of older persons (ie persons over 60).*

- (ii) Including in [services at residential facilities](#) assisted-living (accommodation, care and support services for older persons who need specialised care); and independent-living (safe and accessible accommodation for active older persons);
- (iii) Requiring and limiting [registration of a residential facility](#), including a private residential, assisted living or similar facility, to a juristic person or trust; and allowing forced [deregistration, closing and revocation](#) of residential or community-facilities;

*Note: The Bill also proposes that only a juristic person or trust may [register](#) to provide community-based care and support services to older persons.*

- (iv) Requiring a social worker, health care provider or police official to place an older person in [temporary safe care without a court order](#) in certain instances where they believe there is a need of care and protection and immediate emergency protection;

*Note: In [need of care and protection](#) will also include being abused, maltreated, neglected or degraded by a caregiver, family member or other person; being accused of witchcraft; or being blamed by the community for inexplicable events.*

- (v) Spelling out that an [older person with a disability or chronic illness](#) has the right not to be subjected to medical, social, cultural or religious practices that are detrimental to his or her health, well-being or dignity;



(vi) Expanding on the [duty to report](#) so that any person who suspects an older person has been abused or suffers from an [abuse](#)-related injury must immediately notify the Director-General, a social worker or a police official or the manager; and

*Note: The Bill proposes [redefining physical abuse](#) to refer to an act or threat of physical violence towards an older person, including unlawful detention, medical sedation, shackling, deprivation of nutrition or medical care, neglect or exploitation.*

(vii) Allowing an older person in every [investigative or court proceedings](#) relating to alleged abuse of an older person to, in addition to legal assistance, be assisted by a social worker, an intermediary or any suitable person.

*Note: Such an older person will also be allowed to testify or cross-examine through an intermediary or in-camera, in the language the older person understands.*



[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.*