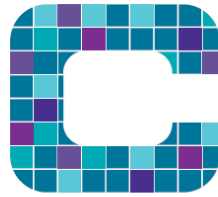


The Contemporary Gazette

relevant new legislation for your business



COMPLIANCE
INSTITUTE
SOUTHERN AFRICA

Pro-active Compliance Volume 18 Issue 20, 27 November 2023

This Update

This update overviews new relevant National laws up to **24th November 2023**.

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Index



General

1. Notable one-liners



Financial

2. Financial Sector Regulation Act: Joint standard on IT governance and risk management 



Property

3. National Water Act: Draft Amendment Bill 



General

1. NOTABLE ONE LINERS

Administration of Estates Act: Judicial Matters Amendment Bill

The Bill proposes, **amongst others**, payments from a **prescribed banking account** must identify the payee; the amount paid; cause of payment; account of the payee in respect of an electronic transfer of payment; the estate; and additional information directed by the Master.

*Note: The Bill also proposes that the Chief Master may **review any appointment** of an executor, curator or interim curator, and every decision, ruling, order, direction or taxation made by the Master, after taking into consideration representations from any person the Chief Master considers relevant.*

*Further note: The Bill also proposes that the Chief Master, acting on request of a Master or a person designated, may **institute civil proceedings**; and proposes executor affidavit of creditor payment or share given to heir in sections **34** (insolvent deceased estates) and **35** (liquidation and distribution accounts).*

*Final note: Related laws to consider may include, amongst others, the **Constitutional right to access courts**; the **Consumer Protection Act**; the **Intestate Succession Act**; the **Maintenance of Surviving Spouses Act**; the **Special Investigating Units and Special Tribunals Act** (**Guardian's Fund and masters and chief master investigations**); the **Trust Property Control Act**; and the **Wills Act**.*

Draft Aquaculture Development Bill

The Draft Bill proposes, **amongst many others**, 1 year and 2 year transitions; BBBEE transformation; making any non-compliance with any programme or condition under the Act an offence; and creating and/or repurposing inspectors, honorary officers, committees, several forums, officers, specialists, associations, laboratories, information systems, and state vets. Comment within 60 calendar days from 17 November 2023.

*Note: The **supremacy of the Constitution** would apply above the proposed section 4 (conflict with Acts).*

*Further note: Referenced laws include the **Animal Diseases Act**; the **Broad-Based Black Economic Empowerment Act**; the **Criminal Procedure Act**; the **Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act**; the **Local Government: Municipal Systems Act**; the **Marine Living Resources Act**; the **Maritime Zones Act**; the **Medicines and Related Substances Act**; the **National Environmental Management Biodiversity***

Act; the National Environmental Management Integrated Coastal Management Act; the Prince Edward Islands Act; the Public Service Act; and the Veterinary and Para-Veterinary Professions Act.

Final note: Further related laws include, amongst others, the common law (right to legal privilege and the punishment should be proportionate to the crime); the Constitution (Constitutional Right to access courts); the Consumer Protection Act; the Customs and Excise Act; the Foodstuffs, Cosmetics and Disinfectants Act; the Hazardous Substances Act; the National Environmental Management Act; the National Health Act; the National Regulator for Compulsory Specifications Act; the National Water Act; the Prevention and Combating of Corrupt Activities Act; the Promotion of Administrative Justice Act; the Protection of Personal Information Act; the Sea Fishery Act; the Societies for the Prevention of Cruelty to Animals Act; and the State Liability Act.

Auditing Profession Act: Code of conduct

Revisions are available from IRBA.

Basic Conditions of Employment Act: General Intelligence Laws Amendment Bill

The Bill proposes replacing a [reference](#) to the State Security Agency with Civilian Intelligence Services.

Cannabis for Private Purposes Bill

The Bill proposes, [amongst others](#), specific offences and penalties for an adult person who knowingly permits a child to use or possess cannabis; who has cannabis at any place and fails to store it in a secure space that is inaccessible to a child; or provides or administers cannabis to a child (unless prescribed).

Note: Specific offences and penalties are also planned for any person who uses cannabis in a private place in the immediate presence of a child or non-consenting adult person; who uses cannabis in a public place; or who smokes cannabis in a private place in a manner affecting another place set out in [section 2](#).

Further note: Specific offences and penalties are also planned for any person using cannabis in a vehicle on a public road; dealing in cannabis or engaging a child to deal in cannabis; possessing, cultivating or transporting cannabis above a prescribed amount; and not meeting a cannabis transport condition.

Final note: Related laws may include amongst others, the Children's Act ([best interests of child paramount](#)); the Criminal Procedure Act ([attempt](#) and [accessory after the fact](#)); the Mental Health Care Act (potential trigger for underlying conditions); and the Occupational Health and Safety Act ([intoxication](#)).

Compensation for Occupational Injuries and Diseases Act: List of occupational diseases

Notice and correction notice available from the fund that the schedule 3 has been updated as per annexure A/B of the notice - annexures could not immediately be found in the notices.

Criminal Law (S Offences and Related Matters) Amendment Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 29](#) (health establishments for PEP and testing); [40](#) (national register definitions); [55A](#) (s offences courts) and [66](#) (national instructions and directives for medical practitioners, police officials, prosecutors, social services, and related services).

Criminal Procedure Act: Judicial Matters Amendment Bill

The Bill proposes inserting [sections 57B](#) (payment of admission of guilt fine without appearance in court and previous conviction); [57C](#) (expungement of records in Criminal Record Centre of SAPS admission of guilt fine paid); and [57D](#) (admission of guilt fines relating to Disaster Management Act regulation offences).

Note: The Bill also proposes amending [section 342A](#) (unreasonable delays in trials).

Final note: The Bill also proposes repealing the common law relating to the crime of defamation, stating that this will not affect civil liability in terms of the common law based on defamation.

Debt Collectors Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 3](#) (composition of council).

Domestic Violence Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 17](#) (declaration offences).

Drugs and Drug Trafficking Act: Cannabis for Private Purposes Bill

The Bill proposes removing certain substances from the [schedule of dependence-producing substances](#).

Electronic Communications Act: Advertising, infomercials and programme sponsorships regulations

Reminder that the [regulations](#), for broadcasting service licensees, will commence 6 months from 29 June 2023, and will apply in addition and above the ASASA code of advertising.

Note: The primary purpose of a programme competition, branded promotional spot, branded filler material, self-promotion promo or sponsorship element broadcast must be to promote the licensee or programme, rather than the commercial interests of the person, product or service mentioned in the transmission.

Further note: Further regulates requirements for infomercial and programme sponsorships (direct or indirect partial or total financing of the production or transmission of broadcast programme material by a person with a view to promoting its own or another name, trademark, image, activities or product).

Final note: Related laws may include, ia, the [Consumer Protection Act](#), [individual](#) and [class](#) licensee terms, [party election broadcasts](#), [elections broadcasting](#), [municipal party elections](#), [code for broadcasters](#), [subscription broadcasting services](#), [sports broadcasting](#), and [code for people with disabilities](#).

Financial Intelligence Centre Act: General Intelligence Laws Amendment Bill

The Bill proposes updating [references](#) to the South African Intelligence Agency.

Government Employees Pension Law: General Intelligence Laws Amendment Bill

The Bill proposes replacing [references](#) to State Security Agency with Intelligence Agency and Intelligence Services.

Immigration Act: Deportation and detention of illegal foreigners

A supplemental Constitutional Court order was given to the Constitutional Court order that addressed aspects of the constitutionality of [section 34](#).

Immigration Act: Places of entry and exit

Notice given that the designation of Zanzibar as a port of entry from SA and Botswana will be withdrawn from 1 December 2023.

Institution of Legal Proceedings against certain Organs of State Act: General Intelligence Laws Amendment Bill

The Bill proposes updating [references](#) to the Minister for Intelligence.

Intelligence Services Act: General Intelligence Laws Amendment Bill

The Bill proposes [revising](#) the Act.

Intelligence Services Oversight Act: General Intelligence Laws Amendment Bill

The General Intelligence Laws Amendment Bill proposes [revising](#) the Act.

International Arbitration Act: Judicial Matters Amendment Bill

The Bill proposes making a reference correction to [schedule 1](#) article 17A.

Intestate Succession Act: Judicial Matters Amendment Bill

The Bill proposes giving effect to the Constitutional Court order that [spouse](#) in for the purposes of the Act includes a partner in a permanent life partnership in which the partners have undertaken reciprocal duties of support.

Note: 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.

Judges Remuneration and Conditions of Employment Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 13](#) (regulations).

Labour Relations Act: Essential services

Provision of food to public primary school services; care of children in schools for special needs; service of consideration and approval of ex gratia ratifications in the medical aid scheme industry; and the services of coordination and oversight of all maritime search and rescue missions, as well as the prevention and combating of marine pollution from ships have been added to the [list of essential services](#) .

Note: Disputes in such services are to be settled in mediation in terms of the Act, and not by strikes and lock-outs.

Labour Relations Act: General Intelligence Laws Amendment Bill

The Bill proposes replacing the [exclusion](#) of State Security with an exclusion of the Intelligence Agency, Intelligence Service, the Academy of Intelligence, and the National Communications Centre.

Legal Aid South Africa Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 6](#) (board) and [17](#) (employees and agents).

Magistrates Courts Act: Judicial Matters Amendment Bill

The Bill proposes amending [sections 51](#) (procuring attendance of witnesses) and [93ter](#) (assessors).

Maintenance of Surviving Spouses Act: Judicial Matters Amendment Bill

The Bill proposes amending the [definition of marriage, spouse and survivor](#), to comply with a Constitutional Court order.

Note: 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: Draft Aquaculture Development Bill

The Bill proposes [removing mariculture](#) from the ambit of this Act.

Matrimonial Property Act: Judicial Matters Amendment Bill

The Bill proposes deleting [section 21\(2\)\(a\)](#) (change of matrimonial property system).

Note: The Constitutional Court (CCT23/20) held that section 21(2)(a) is unconstitutional and invalid to the extent it perpetuates the discrimination created by section 22(6) of the Black Administration Act 38 of 1927, thereby maintain the default position of marriages of black couples under the Black Administration Act before the 1988 amendment as automatically out of community of property.

Final note: Subject to the [conditions of the order](#) all marriages of black persons that are out of community of property and were concluded under section 22(6) of the Black Administration Act before the 1988 amendment are, save for those couples who opt for a marriage out of community of property, declared marriages in community of property.

Medical Schemes Act: General Intelligence Laws Amendment Bill

The Bill proposes [defining](#) Academy, Agency, and Service; and updating [references](#) to the Civil Intelligence Service.

National Prosecuting Authority Act: Judicial Matters Amendment Bill

The Bill proposes minor technical amendments to [sections 34](#) (reports by Directors) and [35](#) (accountability to Parliament).

National Road Traffic Act: Cannabis for Private Purposes Bill

The Bill proposes amending [section 1](#) (drug having a narcotic effect, and THC); [15](#) (disqualification from licence); [61](#) (duty of driver in event of accident); [65](#) (occupying driver's seat while under the influence); and [75](#) (Minister regulations).

National Strategic Intelligence Act: General Intelligence Laws Amendment Bill

The Bill proposes [revising](#) the Act including, amongst others, adding theft or siphoning of state financial resources and its related corrupt activities to the definition of threat to national security; and adding the potential of regulations for cybersecurity operations, securing infrastructures, and a code of conduct.

Note: Related laws may include, amongst others, the [Criminal Procedure Act](#) (theft and fraud); the [Cybercrimes Act](#) (aggravated offences); the [Local Government Municipal Finance Management Act](#) (fruitless and wasteful expenditure); the [Prevention and Combating of Corrupt Activities Act](#) (public officers); the [Public Finance Management Act](#) (irregular and unauthorised expenditure); and the [Special Investigating Units and Special Tribunals Act](#) ([investigated](#) state entities, national departments, provincial departments and municipalities).

Prescribed Rate of Interest Act

The [prescribed rate of interest](#) is 11,75% per annum as from 1 1 July 2023.

Note: The notice also contains prescribed interest rates for the periods starting from 1 July 2022; from 1 September 2022; from 1 November 2022; from 1 January 2023; from 1 March 2023; and from 1 May 2023.

Final note: See the [past overview](#) on the importance of this interest rate to all entities.

Prevention and Combating of Corrupt Activities Act: Judicial Matters Amendment Bill

The Bill proposes inserting [section 34A](#) failure by members of private sector or incorporated state-owned entities (Member) to prevent corrupt activities by associated persons.

Note: Further proposes no offence committed where such Member had in place adequate procedures designed to prevent persons associated with that member from giving, agreeing or offering to give any prohibited gratification.

Final note: Proposes defining associated as, disregarding any gratification under consideration, a person performing services for or on behalf of a Member, irrespective of the capacity in which such services are performed for or on behalf of that Member.

Prevention of and Treatment for Substance Abuse Act: Prevention of and treatment of substance use disorders policy

The policy is available from the relevant department. Comment within 30 days from 17 November 2023.

Private Security Industry Regulation Act: General Intelligence Laws Amendment Bill

The Bill proposes updating [references](#) to the South African Intelligence Agency.

Promotion of Equality and Prevention of Unfair Discrimination Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 10](#) (prohibition of hate speech) in line with a Constitutional Court order.

Note: CCT13/20 held that [section 10\(1\)](#) (prohibition of hate speech) is unconstitutional to the extent that it includes “hurtful”.

Protected Disclosures Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 10](#) to allow for regulations for the purposes of section 8 (protected disclosures to certain persons or bodies) regarding matters which, in addition to the legislative provisions pertaining to such functionaries, may in the ordinary course be referred to any of the persons or bodies referred to in section 8(1).

Note: The [regulations relating to protected disclosures](#), that introduce 34 entities to which specific protected disclosures may be made, must be read together with section 8 and the proposed amendment.

Protection of Information Act: General Intelligence Laws Amendment Bill

The General Intelligence Laws Amendment Bill proposes replacing [references](#) to Agency in the definition of security matter with Intelligence Services, Civilian Intelligence Services and the Academy.

Public Service Act: General Intelligence Laws Amendment Bill

The Bill proposes replacing [references](#) to State Security Agency for Civilian Intelligence Services. Agency or the Service.

Regulation of Interception of Communications and Provision of Communication-related Information Act: Amendment Bill

The Amendment Bill 2023 proposes amending [sections 1](#) (designated and review judge; prescribed; this Act definitions); [15A to 15D](#) (designated and review judge functions, including automatic reviews of decisions by designated judges); [35, 37](#) and [37A](#) (management of data); [62D](#) (regulations) and [transitional measures](#) (for *existing orders, judgments etc*).

Note: The Bill also proposes affirming the introduction of [sections 23A](#) (directions under [sections 16 to 23](#) involving practising lawyers or journalists); and [25A](#) (post surveillance notifications 90 days after expiry of a direction under [section 7, 8, or 16 to 23](#) unless potential to jeopardise the purpose of the surveillance or potential to impact national security).

Further note: CCT 279/19 confirmed a declaration of unconstitutionality, from 4 February 2021, to the extent that several safeguards were lacking, including safeguards relating to interceptions obtained ex parte, and procedures to ensure data is managed lawfully and not used or interfered with unlawfully.

Final note: The declaration is suspended for 36 months to allow Parliament to cure the defects, during which time the Act is deemed to include [sections 23A](#) (disclosure that person against whom certain directions, extensions or entry warrants are sought is a journalist or practising lawyer), and [25A](#) (post-notification).

Regulation of Interception of Communications and Provision of Communication-related Information Act: General Intelligence Laws Amendment Bill

The Bill proposes updating [references](#) to the Service; and adding the Service to the definition of applicant and law enforcement agency.

Second-Hand Goods Act: Dealers and recyclers regulations

Draft amendments propose, [amongst others](#), that an application to register as a second-hand goods dealer must include a tax compliance certificate; and propose dealing, reporting, payment, additional premises and waste picker info conditions for scrap metal dealers. Comment by 8 December 2023.

Note: Also proposes that an application to be registered as a scrap metal dealer must include the list of types of scrap metal that will be dealt in.

Final note: Also proposes exclusions for waste pickers that do not collect and sell copper scrap metal.

Security Services Special Account Act: General Intelligence Laws Amendment Bill

The Bill proposes replacing [references](#) to Agency and State Security Agency with Intelligence Services and Civilian Intelligence Services.

Sheriffs Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 11](#) (term of members of Board).

South African Citizenship Act: White paper on citizenship, immigration and refugee protection

Paper available from the relevant department. Comment before 24 January 2024.

Note: Referenced laws include the [Immigration Act](#); the [Promotion of Administrative Justice Act](#); the [Refugees Act](#); and the [South African Citizenship Act](#).

Final note: Related laws may include, amongst others, the [Births and Deaths Registration Act](#); the Constitution (citizenship); the [Draft National Identification and Registration Bill](#); and the [South African Passports and Travel Documents Act](#).

South African Human Rights Commission Act: Judicial Matters Amendment Bill

The Bill proposes amending [section 15](#) (investigations).

Draft South African National Petroleum Company Bill

The draft bill proposes, [amongst others](#), a State energy champion and facilitator of energy infrastructure across the energy value chain where the Minister may, for the purpose of ensuring security of energy supply, determine

the company's rights over petroleum, upstream, midstream and downstream value chain. Comment within 30 days from 13 November 2023.

Note: The company's functions are to include, but not be limited to, management of the State's exploration and production rights, interests acquired and exercised in terms of the Upstream Petroleum Resources Development Act, and interests preceding this Act or the common law, on behalf of the State.

Further note: The draft bill also envisions that this entity will ensure that petroleum resources are developed in a sustainable manner to the best interest of the people of South Africa; facilitate and provide for an energy and petroleum infrastructure; provide for middle and downstream petroleum, petroleum products and gas supply.

Further note: The draft bill also envisions that this entity will provide for storage and distribution of petroleum products; undertake commercial aspects of petroleum in the upstream, midstream and downstream operations including but not limited to aggregation, marketing and trading; provide for renewable energy; and provide for the acquisition, generation, manufacture, marketing or distribution of any form of energy.

Final note: Related laws may include, amongst others, the [Competition Act](#); the [Constitution](#); the [Electricity Regulation Act](#); the [Gas Act](#); the [Mineral and Petroleum Resources Act](#); the [Petroleum Products Act](#); the [Prevention and Combating of Corrupt Activities Act](#); and the [Upstream Petroleum Resources Development Bill](#).

Standards Act

New, proposed, amended, and withdrawn [standards](#) gazetted for 17 November 2023.

Superior Courts Act: Judicial Matters Amendment Bill

The Bill proposes amending [sections 17](#) (leave to appeal) and [18](#) (suspension pending decision on appeal).

Water Services Act: Draft Amendment Bill

The Draft Bill proposes, [amongst others](#), licensing and heightened requirements for water service providers; redefining emergency situation and water supply services; standards for the quality of potable or drinking water and for sanitation regulation across the sanitation value chain; and water board functions and directives. Comment within 60 days from 17 November 2023.

Witness Protection Act: General Intelligence Laws Amendment Bill

The Bill proposes replacing [references](#) to the State Security Agency with Intelligence Services.



[Back to index](#)



Financial

2. FINANCIAL SECTOR REGULATION ACT: IT GOVERNANCE AND RISK MANAGEMENT

The [joint standard](#) commences 15 November 2024 and will, amongst other:

- (i) Apply to defined banks, branches of a bank or foreign institution, or bank controlling companies; mutual banks; insurers and insurer controlling companies; collective investment scheme managers; market infrastructures; and discretionary and administrative financial service providers;
- (ii) Include the reminder that it must be read with all relevant [financial sector laws](#); and that its minimum requirements and principles must be implemented to reflect the nature, size, complexity and risk profile of a financial institution;
- (iii) Require developing a method of assessing impact of the threat and vulnerability to the IT environment which should also assist in prioritising IT risks;
- (iv) Require an ability to manage risks in a manner that will maintain financial and operational viability and stability;
- (v) Require steps to ensure staff, service providers and contractors appointed for IT functions or services are fit and proper;
- (vi) Cover IT operations (eg up to date inventory); sensitive or confidential information (eg measures to protect against data theft, loss, and leakage); financial products and services (eg customer awareness of security measures to protect the customers); IT management (eg protect integrity of source codes); and
- (vii) Cover IT resilience (eg business impact assessments including physical security measures, and assessing the redundancy and fault tolerance in areas such as electrical power, air conditioning, fire suppression and data communications); IT assurance and notification and reporting.

Note: The standard suggests consideration of insurance cover for various IT risks.

Final note: Related laws may include, amongst others and in addition to the IT requirements contained directly or indirectly in financial sector laws, common law fiduciary expectations of agents; the [Companies Act](#) (reckless trading); the [Consumer Protection Act](#) (where that Act may apply); the [Criminal law \(S Offences and Related](#)

Matters) Amendment Act; the Cybercrimes Act; the Employment Equity Act (confidential HR records); the Promotion of Access to Information Act (grounds for refusal); the Protection of Personal Information Act; the Regulation of Interception of Communications and Provision of Communication-related Information Act; the Tax administration Act (third party returns); the Trespass Act; and the Witness Protection Act (certain bank accounts).



[Back to index](#)



3. NATIONAL WATER ACT: DRAFT AMENDMENT BILL

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

- (i) Repealing section 33 (declaration of water use as existing lawful water use);
- (ii) Allowing authorities to add undefined new conditions and obligations at any time, and to curtail a volume of water from existing lawful water use;
- (iii) That the relevant minister may allocate water between water sectors, provinces or catchments, prescribe criteria for redressing past discrimination and require water management institutions to redetermine water use charges;
- (iv) That authorities must focus on allocating resources according to discrimination criteria;
- (v) 10 year intervals for reviews; removing reference to sea outfall; and prohibition on water trading.
- (vi) Defining water source areas and providing provisions to protect such areas; and proposes including a dam, weir, canal, pipeline, siphon, pump station and reservoir in the definition of waterwork; and
- (vii) Adding the exploration or production of onshore naturally occurring hydrocarbons that require stimulation as a controlled activity.

Comment within 60 days from 17 November 2023.

Note: The Draft Bill also proposes [apportionment of liability](#) to a person who is or was a director of a business entity when that firm committed an offence under the Act or a person who is or was a municipal manager of a municipality when that municipality committed an offence under the Act.

Further note: Reminder that the Act defines pollution as the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it less fit for any beneficial purpose for which it may reasonably be expected to be used; or potentially harmful to the welfare, health or safety of human beings, to any aquatic or non-aquatic organisms, to the resource quality, or to property.

Final note: Related laws may include, amongst others, the [Agricultural Products Standards Act](#); the [Climate Change Bill](#); the [Expropriation Act](#); the [Mineral and Petroleum Resources Development Act](#); the [National Forests Act](#); the Occupational Health and Safety Act ([hazardous biological agents](#)); and the [Tourism Act](#).



[Back to index](#)

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