



Fraud Prevention Strategy

Regulatory Framework

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1. Introduction

This Regulatory Framework provides a quick reference to most of the Acts, Regulations and common law offences pertaining to both general and specific components. Rather than being an all encompassing document, it summarises much of the legislation and procedures in an easy reference format. Many of the older acts have not been summarised for this exercise.

Further information and the full acts can be referenced at <http://www.finance.gov.za>.

2. Transversal Acts, Regulations and common law offences of general application relating to ALL COMPONENTS

2.1 Constitution of the Republic of South Africa, 108 of 1996

The Constitution (hereafter referred to as "the act") starts by recording the **founding provisions** on which it is based. These founding provisions relate to the following:

- The fact that the Republic of South Africa is one, sovereign, democratic state founded on certain values such as human dignity, the achievement of equality and the advancement of human rights and freedoms.
- The supremacy of the Constitution;
- Citizenship;
- The national anthem and flag; and
- Languages.

The **Bill of Rights**, which is one of the cornerstones of the South African democracy, is contained in Chapter 2 of the act. The Bill of Rights stipulates the fundamental human rights of all South Africans, and applies to all laws. It binds the legislature, the executive, the judiciary, all organs of state, natural persons and juristic persons. The rights that are enshrined in the Bill of Rights are however not absolute, and may be limited in the circumstances mentioned in the act. The act regulates the manner in which the Bill of Rights must be interpreted.

The South African Government is constituted of national, provincial and local spheres, which are distinctive, interdependent and interrelated. The act sets out the principles of how these spheres must co-operate with each other.

In terms of the act, the **legislative authorities** for the three spheres of government are as follows:

- Parliament for the national sphere;
- Provincial legislatures for the provincial sphere; and
- Municipal Councils for the local sphere.

The act then deals with each of these authorities and sets out the main powers of each.



Parliament is constituted of the National Assembly and the National Council of Provinces, and its seat is in Cape Town. The composition, election, membership, duration, dissolution, sitting times, recess periods, and main functions of each of these bodies are regulated in the act.

The **National Assembly** must elect a Speaker and a Deputy Speaker from among its members, and the Chief Justice must preside over the election of such Speakers. The act sets out the procedure for the election of the Speaker and the Deputy Speaker, as well as the manner in which they may be removed from office.

The act sets out the powers of the National Assembly which includes the initiation, preparation, consideration, passing, amendment or rejection of legislation (except for money bills). Furthermore, the internal arrangements, proceedings and procedures of the National Assembly, as well as the manner and procedure in which decisions must be taken are also regulated by the act.

The act requires the National Assembly to facilitate public involvement in their legislative and other processes.

The following privileges are enjoyed by Cabinet members, Deputy Ministers and members of the National Assembly:

- Freedom of speech in the National Assembly and in its committees, subject to its rules and orders; and
- Immunity from liability in civil or criminal proceedings, arrest, imprisonment or damages for anything that they have said in, produced before or submitted to the National Assembly or any of its committees, or anything that was revealed as a result thereof.

With regard to the **National Council of Provinces** ("the NCOP"), the act provides for the following:

- Composition;
- The allocation of delegates;
- Sittings;
- Decisions;
- Powers of the NCOP
- Internal arrangements, proceedings and procedures; and
- Privileges of the members.

The act regulates the national legislative process, and makes special provision for Bills amending the Constitution and money bills.

The act sets out the powers, functions and responsibilities of the **President**, in whom the executive authority of the Republic is vested. The President exercises such executive authority, together with the other members of the **Cabinet**. The act regulates the manner and procedure through which the President must be elected, the grounds and circumstances on which he/she may be removed from office, and the terms of his/her office.

The act regulates the composition and conduct of Cabinet and Deputy ministers and stipulates their accountability and responsibilities.



The act provides for the circumstances under, and the procedure by means of which the national executive may intervene in provincial administration.

The Provinces of South Africa are mentioned and dealt with in detail.

With regard to **provincial legislatures** the act regulates the following matters:

- The legislative authority of provinces;
- The composition and election of members of provincial legislatures;
- Duration and dissolution of provincial legislatures;
- Internal arrangements, proceedings and procedures of provincial legislatures;
- Election of Speakers and Deputy Speakers;
- Privileges of members;
- Public access to and involvement in provincial legislatures;
- The manner of introduction of and assent to bills and money bills;
- Publication and safekeeping of provincial acts

The **Executive authority** of provinces is vested in the Premier of that province, and he/she must exercise such power together with the other members of the Executive Council. In this regard, the act inter alia regulates the following matters:

- Election, powers, functions, term of office and removal of Premiers and acting Premiers;
- Composition and conduct of Executive Councils, and the accountability and responsibilities of its members;
- Provincial intervention in local government; and
- The adoption, contents, certification, signing, publication and safekeeping of provincial constitutions.

The act deals with **local government**, and requires the establishment of three different categories of municipalities. National legislation must be enacted to define the different types of municipalities that may be established within each category.

With regard to such municipalities, the act regulates the following matters:

- Status, powers and functions of municipalities;
- Objects of local government;
- Developmental duties of municipalities;
- Role of Municipalities in co - operative government;
- Composition, election, membership and terms of Municipal Councils;
- Internal procedures of a Municipal Council;
- Privileges and immunities of Municipal Councils and their members.
- Procedure and requirements for the publication of municipal by-laws.

The act regulates the administration of justice, and the composition of the **judicial system** which consists of the following courts:

- the Constitutional Court;
- the Supreme Court of Appeal;
- the High Courts, including any High Court of Appeal;
- the Magistrates' Courts; and
- any other court established or recognised in terms of an Act of Parliament.

The act regulates the jurisdiction and composition of the above mentioned courts, and requires them to be independent and subject only to this act and the law. The act also provides for the establishment, composition and functioning of the National Prosecuting Authority.

The act provides for the establishment and functioning of the following state institutions which must support the constitutional democracy:

- The Public Protector;
- The South African Human Rights Commission;
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- The Commission for Gender Equality;
- The Auditor-General; and
- The Electoral Commission.

These institutions are independent, and subject only to this act and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

The act regulates the functions, tenure, composition, appointment of its members and their removal from office for each one of these institutions.

The act deals with the **Public Administration** within which the public service functions, and provides for the establishment, functioning, accountability, composition and powers of the **Public Service Commission**. The act requires the following basic values and principles to govern the public administration:

- A high standard of professional ethics must be promoted and maintained
- Efficient, economic and effective use of resources must be promoted.

The act regulates the functioning of the **Security Services** and specifically deals with the principles that govern national security in South Africa, and the establishment, structuring and conduct of such security services. The following services are specifically regulated:

- The Defence force;
- The Police service; and
- The Intelligence services.



For each of the above security services the act regulates their powers and functions, objects and control.

The act provides for the recognition of and the status and role of **Traditional Leaders**.

The act regulates Financial matters and requires that all money received by the national government must be paid into the National Revenue Fund ("the Fund"), except money reasonably excluded by an Act of Parliament. The circumstances under which money may be withdrawn from the Fund are stipulated.

The act requires the equitable sharing and allocation of revenue from the Fund among the national, provincial and local spheres of government. The act regulates the National, Provincial and Municipal budget processes and stipulates the contents of such budgets.

The act provides for the establishment of a National Treasury and requires the latter to introduce the principles of generally recognised accounting practice, uniform expenditure classifications, and uniform treasury norms and standards.

The National Treasury is responsible for the enforcement of compliance with the above mentioned measures and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

The act provides for circumstances under which the National, Provincial or a Local government may guarantee a loan.

The act provides for the establishment of the South African Reserve Bank, which is the central bank of South Africa and is regulated in terms of an Act of Parliament. The act sets out the bank's powers and functions, and its primary object, which is to protect the value of the currency in the interest of balanced and sustainable economic growth in South Africa.

Furthermore, the act provides for the following Provincial and Local financial matters:

- Provincial Revenue Funds;
- National sources of provincial and local government funding;
- Provincial taxes;
- Municipal fiscal powers and functions; and
- Circumstances under which Provincial and Municipal loans may be raised.

The act briefly deals with the principles on which procurement must be based, and stipulates that procurement must be done in accordance with a system which is fair, equitable, transparent, competitive and cost-effective, and that national legislation must prescribe a framework for a preferential procurement policy to be instituted.

With regard to International law, the act deals with the negotiation and signing of international agreements, customary international law, and the application of international law.



The act contains schedules which deal with the following matters:

- Schedule 1: National flag (colour, measurements, layout)
- Schedule 2: Oaths and solemn affirmations of the President and other office bearers
- Schedule 3: Election procedures for constitutional office-bearers and the formula to determine party participation in provincial delegations to the National Council of Provinces
- Schedule 4: Functional areas of concurrent national and provincial legislative competence
- Schedule 5: Functional areas of exclusive provincial legislative competence
- Schedule 6: Transitional arrangements
- Schedule 6a: Retention of membership of national assembly or provincial legislature, after a change of party membership, mergers between parties, subdivision of parties and subdivision and merger of parties
- Schedule 6b: Loss or retention of membership of municipal councils, after a change of party membership, mergers between parties, subdivision of parties and subdivision and merger of parties, and filling of vacancies
- Schedule 7: Repealed laws

2.2 Public Finance Management Act, 1 of 1999

The main purpose of this act is to:

- regulate financial management in the National and Provincial government spheres;
- to ensure that all revenue, expenditure, assets and liabilities of those government spheres are managed efficiently and effectively;
- to provide for the responsibilities of persons entrusted with financial management in those government spheres; and
- matters connected therewith.

The act applies to departments, public entities, constitutional institutions, Parliament and the Provincial legislatures.

The act provides for the establishment and composition of **National Treasury**, and determines that the Minister of Finance ("the Minister") will be the head thereof. The act sets out the functions and powers of National Treasury, which include the promotion of National government's fiscal policy framework and the co-ordination of macro-economic policy.



Amongst others, National Treasury has the responsibility and the power to prescribe uniform treasury norms and standards, and must enforce this act and any prescribed norms and standards, including any prescribed standards of generally recognised accounting practice ("GRAP") and uniform classification systems in national departments.

The act deals with banking, cash management and investment frameworks and requires National Treasury to prescribe a framework within which departments, certain public entities and constitutional institutions must conduct their cash management.

The act sets out the requirements for institutions when opening a bank account, and empowers the National Treasury to prescribe an investment policy for institutions which have been authorised to open a bank or other account.

National Treasury must prepare consolidated financial statements in accordance with GRAP for each financial year in respect of the institutions that are mentioned in the act, and must submit those statements for audit to the Auditor-General within a specific period.

With regard to the **National Revenue Fund** ("the Fund"), the act states that the control thereof is vested in National Treasury, and that the South African Revenue Services ("SARS") must promptly deposit all taxes, levies, duties, fees and other moneys collected by it into the Fund.

The act further deals with deposits into the Fund, and stipulates which money that are received by National government must be paid into the Fund and which money is excluded. The act provides for the manner in which withdrawals and investments may be made into and from the Fund, and the use of funds in emergency situations.

The act deals with **Provincial treasuries and Provincial revenue funds** and regulates the following:

- Establishment of Provincial treasuries;
- Functions and powers of Provincial treasuries;
- The annual consolidated financial statements by the Provincial treasury;
- Delegations by Provincial treasuries (by the Member of the Executive Council ("MEC") for finance in a province);
- Control of Provincial Revenue Funds (which is vested in the Provincial treasury of a province);
- Deposits into Provincial Revenue Funds;
- Withdrawal of exclusions from Provincial Revenue Funds;
- Withdrawals and investments from Provincial Revenue Funds; and
- Use of Provincial Revenue Funds in emergency situations.

The act regulates **National and Provincial budgets** and requires Parliament and each Provincial legislature to appropriate money for each financial year for the requirements of the state and the province, respectively. The annual budget for a financial year must be tabled by the Minister in the National Assembly before the start of that financial year. The provincial annual budget must be tabled by the MEC for finance in a province within two weeks after the tabling of the national annual budget.

The act prescribes the format and minimum content of annual budgets.



Multi-year budget projections must be done on a National and a Provincial level containing the estimated revenue expected to be raised during each year of the multi-year period and the estimated expenditure expected to be incurred per vote during each year of the multi-year period, differentiating between capital and current expenditure.

The act empowers the Minister to table an adjustments budget in the National Assembly, but stipulates the aspects for which such a national adjustments budget may provide for. Similarly the act empowers the MEC for finance in a province to table an adjustments budget in the Provincial legislature, and stipulates the content of such provincial adjustments.

The act sets out certain requirements which are specific to Departments and Constitutional institutions. In this regard the act regulates the appointment of Accounting Officers for entities and requires the appointment of an Accounting Officer for every department and constitutional institution. The act stipulates who such Accounting Officer must be and provides for exceptions, and acting accounting officers.

The **responsibilities of Accounting Officers** are stipulated in the act, and includes amongst others, the following:

- Ensuring that the institution has and maintains:
 - effective, efficient and transparent systems of financial and risk management and internal control;
 - a system of internal audit under the control and direction of an audit committee;
 - an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
 - a system for properly evaluating all major capital projects prior to a final decision on the project;
- The responsibility for the effective, efficient, economical and transparent use of the resources of the institution;
- Collection of all money due to the institution;
- Prevention and reporting of unauthorised, irregular and fruitless and wasteful expenditure; and losses resulting from criminal conduct;
- Efficient and economic management of available working capital;
- Management, safeguarding and maintenance of the assets;
- Management of the liabilities of the institution;
- Compliance with any tax, levy, duty, pension and audit commitments as may be required by legislation;
- Settlement of all contractual obligations and payment of all money owing, including intergovernmental claims, within the prescribed or agreed period;
- Taking of disciplinary steps against officials of the institution in certain circumstances;
- Complying with the provisions of the Division of Revenue Act;
- Transferring of funds to entities within or outside government; and
- Compliance by the institution with this act.



The act sets out the specific responsibilities of Accounting Officers with regard to budgetary control, and in addition requires them to:

- keep full and proper records of the financial affairs of the institution, in accordance with any prescribed norms and standards;
- prepare financial statements for each financial year in accordance with GRAP;
- submit those financial statements and an annual report to the prescribed entities/persons within the prescribed periods.

The act stipulates the format and content of the **annual report and financial statements**. The annual financial statements must be audited by the Auditor-General ("AG"), who must submit an audit report on those statements to the Accounting Officer within a prescribed period.

The act sets out the reporting requirements for Accounting Officers with regard to revenue and expenditure.

The act regulates the utilisation of a virement between main divisions within votes.

The act provides for Accounting Officers to delegate their powers and duties to other officials in the institution, but prescribes certain formalities for such delegation.

The act places an onus on each official in an institution to, within the area of responsibility of that official to:

- ensure that the system of financial management and internal control that have been established for that institution is carried out;
- ensure the effective, efficient, economical and transparent use of financial and other resources;
- take effective and appropriate steps to prevent, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;
- comply with the provisions of this act to the extent applicable to that official; and
- take responsibility for the management, including the safeguarding, of the assets and the management of the liabilities.

Certain sections of the act are only applicable to **Public Entities** whether they are listed in the schedules to the act or not. Public entities are classified in the following categories:

- national government business enterprises;
- provincial government business enterprises;
- national public entities; and
- provincial public entities.

Public entities have accounting authorities instead of accounting officers which are accountable for the purposes of this act. The act stipulates who the accounting authority of such Public Entity must be.



The fiduciary duties of accounting authorities are stipulated in the act, and include amongst others, the duty to:

- exercise utmost care to ensure reasonable protection of the assets and records of the Public Entity; and
- act with fidelity, honesty, integrity and in the best interests of the Public Entity in managing the financial affairs of the Public Entity.

The general responsibilities of accounting authorities for Public Entities are set out and correspond to a great extent with the responsibilities of accounting officers for Departments and Constitutional Institutions as set out above.

The act prescribes the budgetary procedures for Public Entities and the content of the documentation that must be submitted for the different categories of Public Entities.

The act prohibits the conclusion of certain transactions by public entities unless the relevant treasury has been notified in writing, and certain particulars of the transaction have been submitted to the relevant executive authority for approval of the transaction.

The content and format of the annual report and financial statements of Public Entities are prescribed, and the act also details the submission requirements.

The delegation of powers by Accounting Authorities of Public Entities and the responsibilities of other officials within the Public Entity resemble those of Departments and Constitutional institutions as described above.

With regard to Executive Authorities, the act regulates the following:

- Their financial responsibilities;
- Formalities and consequences of executive directives having financial implications; and
- Duties to table certain documentation in the legislature.

The act regulates loans, guarantees and other commitments entered into by institutions, and places certain restrictions and conditions on borrowing, and the issuing of guarantees and other commitments. The act also stipulates the requirements and conditions for the issuing of guarantees, indemnities and securities by Cabinet members.

The act restricts the making of loans by National Government, and limits and prescribes the purposes for which the Minister may borrow money. With regard to loans, the act regulates who may sign loan agreements, circumstances under which loans must be repaid, converted and consolidated, and states that interest and repayments of loans are direct charges to the National Revenue Fund.

The act prescribes the composition and functioning of **audit committees**.

The act deals with **financial misconduct** and describes what conduct will be regarded as such.

Charges of financial misconduct against an accounting officer or other officials must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to



that Accounting Officer or Authority, or member or official. Any regulations in this regard prescribed by the Minister must also be adhered to.

The following **offences and penalties** are created by this act:

- An Accounting Officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period of five years, if that Accounting Officer wilfully or in a grossly negligent way fails to comply with the provisions relating to the general responsibilities of Accounting Officers, the latter's responsibilities relating to budgetary control, and his/her reporting responsibilities.
- An Accounting Authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period of five years, if that Accounting Authority wilfully or in a grossly negligent way fails to comply with the provisions relating to its fiduciary duties, its general responsibilities, or the annual report and financial statements of the entity.
- Any person who purports to borrow money or to issue a guarantee, indemnity or security for or on behalf of a Department, Public Entity or Constitutional institution, or who enters into any other contract which purports to bind a such institution to any future financial commitment, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period of five years.

The act provides for the establishment, composition and powers and functions of the **Accounting Standards Board** ("ASB") which is a juristic person.

Schedule 1 to the act sets out the **Constitutional institutions** which include institutions such as:

- the Commission for Gender Equality
- the Human Rights Commission
- the Independent Electoral Commission

Schedule 2 sets out the **major Public Entities** which include entities such as:

- the Airports Company
- Alexkor Limited
- Central Energy Fund (Pty) Ltd
- DENEL
- ESKOM

Schedule 3 sets out **other Public Entities** and divides them into the following categories:

- Part A: National Public Entities, which includes entities such as the:
 - Agricultural Research Council
 - Competition Commission
 - Construction Industry Development Board
 - Council for Medical Schemes
 - Human Sciences Research Council



- Part B: National Government Business Enterprises which includes entities such as:
 - Aventura
 - Council for Scientific and Industrial Research
 - Onderstepoort Biological Products
 - Rand Water
 - Any subsidiary or entity under the ownership control of the above public entities
- Part C: Provincial Public Entities which includes entities such as:
 - Mmabana Arts, Culture and Sport Foundation
 - NW Gambling Board
 - NW Housing Corporation
 - NW Provincial Aids Council
 - Provincial Arts and Culture Council
 - NW Youth Development Trust
- Part D: Provincial Government Business Enterprises which includes entities such as:
 - Ithala Development Finance Corporation
 - Mpumalanga Agricultural Development Corporation
 - NW Development Corporation
- Any subsidiary or entity under the ownership control of the above public entities

Schedule 4 contains the exclusions from revenue funds

Schedule 5 contains the direct charges against the National Revenue Fund

Schedule 6 contains the repealed legislation

2.3 Treasury Regulations (issued in terms of the PFMA May 2002)

Not summarised in this document. For the full act please refer to <http://www.finance.gov.za>.

2.4 Municipal Finance Management Act, 56 of 2003

This act contains several references to the Municipal Structures Act, 1998, and the Municipal Systems Act, 2000, and should be read together with these acts.

The main object of this act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms, standards and other requirements for the following:

- ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;
- the management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings;
- budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government;



- borrowing;
- the handling of financial problems in municipalities;
- supply chain management; and
- other financial matters.

This act applies to all municipalities, all municipal entities, and national and provincial organs of state to the extent of their financial dealings with municipalities.

The act stipulates the general functions and powers of the National Treasury and provincial treasuries with regard to municipalities. Provision is made for powers and functions in terms of this act to be delegated, and the manner and form of such delegations.

The act regulates **municipal revenue**, and in this regard empowers municipalities to open bank accounts, and prescribes the manner and formalities with regard to the opening of such accounts. The act however prescribes the reporting requirements relating to such accounts and the control thereof.

The act stipulates the manner in which relief, charitable, trust or other funds may be set up and dealt with, and also stipulates the prohibitions relating thereto.

The act stipulates the manner in which municipalities must manage their cash, investment and assets. In this regard, the Minister of Finance ("the Minister") may prescribe a framework within which municipalities must conduct their cash management and investments and invest money that is not immediately required.

The act regulates the manner in which municipalities may dispose of their capital assets.

The act regulates **municipal budgets** and states that a municipality may only incur expenditure in terms of an approved budget and within the limits of the amounts appropriated for the different votes in an approved budget.

The act states that the council of a municipality must approve an annual budget for the municipality before the start of each financial year, and the mayor of the municipality must table such budget at a council meeting at least 90 days before the start of the budget year.

The act prescribes the contents of annual budgets and supporting documents, and stipulates the sources from which an annual budget may be funded. The act determines the circumstances under which a municipality may spend money on a capital project, the manner in which such spending must be dealt with, and factors that must be taken into account by the council before approving such capital projects.

The act regulates the budget preparation process of municipalities, and the publication of annual budgets. The act also prescribes a consultation and approval process with regard to such budgets, and determines the consequences of failure to approve budget before start of budget year.

The act requires the mayor of a municipality to inform the Member of Executive Council ("MEC") for finance in the province, in writing, if he becomes aware of any impending non-compliance and actual non-compliance by the municipality of any provisions of this act or any other legislation pertaining to the tabling or approval of an annual budget or compulsory consultation processes. Actual non compliance must also be reported to National Treasury.



The act stipulates the procedure through which a municipality may revise an approved annual budget by means of an adjustments budget. Furthermore, the act also stipulates the procedure through which a mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget. The act determines the procedure for the shifting of funds between multi-year appropriations.

The act deals with the occurrence of unauthorised, irregular or fruitless and wasteful expenditure (all these terms are defined in the act) and determines the circumstances under which certain officials within the municipality shall be liable for such expenditure. The act also prescribes the circumstances under which such expenditure must be recovered from the persons who are liable, and the reporting requirements connected therewith.

The act stipulates the circumstances under which contracts that have future budgetary implications may be entered into.

The act deals with **co-operative government**, and requires the national and provincial governments to assist municipalities in building the capacity of municipalities for efficient, effective and transparent financial management.

The act sets out the roles of national and provincial departments, public entities, and municipalities with regard to such co-operative government.

The act empowers National Treasury to stop the transfer of funds that are due to a municipality, if the municipality commits a serious or persistent breach of the measures contained in the Constitution. The act then sets out the procedure by means of which such funds may be stopped.

The act empowers National Treasury to monitor the pricing structure of organs of state for the supply of electricity, water or any other bulk resources to municipalities and municipal entities for the provision of municipal services; and payments made by municipalities and municipal entities for such bulk resources. The act regulates the procedure which must be followed for price increases of bulk resources for provision of municipal services.

The act stipulates the applicable principles when there are financial disputes between organs of state.

The act deals with **debt** of municipalities, and stipulates the circumstances under which, and procedures by means of which a municipality may incur and must pay off any short-term and long-term debt.

The act regulates the security that may be provided by municipalities for debt and contractual obligations of the municipality. The act prohibits the issuing of guarantees except under the conditions as stipulated by the act.

The act sets out the **responsibilities of mayors** with regard to the following:

- General responsibilities (which include the provision of general political guidance over the fiscal and financial affairs of the municipality).



- Budget processes and related matters (which include the provision of general political guidance over the budget process and the priorities that must guide the preparation of a budget).
- Budgetary control and early identification of financial problems. (If the municipality faces any serious financial problems, the mayor must promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer to deal with such problems.) The mayor must ensure that any revisions of the service delivery and budget implementation plan are made public promptly.
- Reporting to the provincial executive if conditions for provincial intervention exist (If a municipality has not approved an annual budget by the first day of the budget year or if the municipality encounters serious financial problems, the mayor must immediately report the matter to the MEC for local government in the province, and may recommend to the MEC an appropriate provincial intervention by the provincial executive.
- The mayor of a municipality which has sole or shared control over a municipal entity, must guide the municipality in exercising its rights and powers over the municipal entity in a way that would reasonably ensure that the municipal entity complies with this act and at all times remains accountable to the municipality, and would not impede the entity from performing its operational responsibilities.

The act provides for the following responsibilities of Accounting Officers (the municipal manager) of municipalities:

- Fiduciary responsibilities (the accounting officer of a municipality must act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs; and disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor);
- General financial management functions;
- Asset and liability management;
- Revenue management;
- Expenditure management;
- Expenditure on staff benefits;
- Transfer of funds to organisations and bodies outside government;
- Budget preparation and implementation;
- Reporting of impending shortfalls, overspending and overdrafts;
- Reporting by means of monthly budget statements;
- Assessment of mid-year budget and performance;
- Reporting on failure to adopt or implement budget-related and other policies;
- General reporting obligation to submit to the National Treasury, the Provincial Treasury, the Department for Local Government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or required, and the obligations to report any inability to comply with any of the responsibilities in terms of this act.

The act requires the accounting officer to place certain information on the website.



The act regulates the **financial administration** of municipalities and states that the top management of a municipality's administration consists of the following persons:

- the accounting officer;
- the chief financial officer;
- all senior managers who are responsible for managing the respective votes of the municipality; and
- any other senior officials designated by the accounting officer.

The act requires the top management to assist the accounting officer in managing and co-ordinating the financial administration of the municipality. The act then sets out the duties of the senior managers of municipalities and officials who exercise financial management responsibilities.

The act regulates which powers and duties may be delegated and the manner in which they may be delegated. The act however prohibits the accounting officer to delegate any powers or duties assigned to him/her in terms of this act, to any political structure or political office-bearer of the municipality.

The act regulates municipal budgets and treasury offices, and determines that every municipality must have a budget and treasury office. The act regulates the composition of such budget and treasury offices.

The act stipulates the role of the chief financial officer of a municipality, and determines the manner in which he/she may delegate certain powers and duties.

The act requires that the accounting officer, senior managers, the chief financial officer and other financial officials of a municipality must meet the prescribed financial management competency levels. In this regard, a municipality must provide resources or opportunities for the training of such officials to meet the prescribed competency levels. The National Treasury or a provincial treasury may also assist municipalities in such training.

The act provides for the establishment and **financial governance** of municipal entities, and sets out certain conditions for municipalities before they may establish or participate in a municipal entity.

The act deals with goods and services that are provided to municipalities, and in this regard regulates the Supply chain management environment of municipalities.

2.5 Statutory Offences relating to Dishonesty

2.5.1 Prevention and Combating of Corrupt Activities Act, 12 of 2004

The Prevention and Combating of Corrupt Activities Act (generally referred to as "PRECCA") is aimed at the strengthening of measures to prevent and combat corrupt activities.

The Act creates a wide range of offences relating to corrupt activities.



In addition to creating offences the Act also provides for the following:

- The provision of investigative resources;
- The establishment of a register relating to persons convicted of corrupt activities;
- The Act places a duty on persons in a “position of authority” to report certain corrupt transactions; and
- It provides for extraterritorial jurisdiction in respect of offences relating to corrupt activities.

As far as offences are concerned, the Act creates a general offence of corruption. In addition to the general offence, certain specific offences are created relating to specific persons or specific corrupt activities.

The offences created by the Act relate to the giving or receiving of a “gratification”. The term gratification is defined in the Act. It includes a wide variety of tangible and intangible benefits such as money, gifts, status, employment, release of obligations, granting of rights or privileges and the granting of any valuable consideration such as discounts etc.

The general offence of corruption is contained in Section 3 of the Act. This section provides that any person who gives or accepts or agrees or offers to accept/receive any gratification from another person in order to influence such other person in a manner that amounts to:

- The illegal or unauthorised performance of such other person’s powers, duties or functions;
- An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules;
- The achievement of an unjustified result; or
- Any other unauthorised or improper inducement to do or not to do anything

is guilty of the offence of Corruption.

The Act creates specific offences relating to the following categories of persons:

- Public Officers;
- Foreign Public Officials;
- Agents;
- Members of Legislative Authority;
- Judicial Officers; and
- Members of the Prosecuting Authority.

The Act furthermore creates specific offences in respect of corrupt activities relating to the following specific matters:

- Witnesses and evidential material in certain proceedings;
- Contracts;
- Procuring and withdrawal of tenders;
- Auctions;
- Sporting events; and
- Gambling games or games of chance.

The Act furthermore creates an offence (in Section 10 thereof) relating to the receiving or the offering of an unauthorised gratification by or to a party to an employment relationship.

Section 34 of the Act places a duty on any person in a position of authority to report a suspicion of certain corrupt or illegal activities to a police official. These include certain offences of corruption created under the Act as well as fraud, theft, extortion and forgery where the amount involved exceeds R100 000. Failure to report such suspicion constitutes an offence. "Position of authority" is defined in the Act and includes a wide range of persons in authority in both public and private entities.

Offences under the Act are subject to harsh penalties including imprisonment for life and fines of up to R250 000 plus, in addition, a fine amounting to five times the value of the gratification involved in the offence.

Section 35 of the Act provides that citizens or residents of the RSA can be convicted of the offences created in the Act even if such offences are committed outside the RSA.

Section 17 of the Act provides that a public officer who acquires or holds a private interest in any contract, agreement or investment connected with the public body in which he/she is employed is guilty of an offence unless:

- The interest consists of shareholding in a listed company;
- The public officer's conditions of employment do not prohibit him/her from acquiring such interests; or
- In the case of a tender process, the said officer's conditions of employment do not prohibit him/her from acquiring such interests and the interest is required through an independent tender process.

2.5.2 Prevention of Organised Crime Act, 121 of 1998 (POCA)

The Prevention of Organised Crime Act, as amended, (generally referred to as "POCA") contains provisions that are aimed at achieving the following objectives:

- The combating of organised crime, money laundering and criminal gang activities;
- The criminalisation of conduct referred to as "racketeering";
- The provision of mechanisms for the confiscation and forfeiture of the proceeds of crime;
- The creation of mechanisms for the National Director of Public Prosecutions to obtain certain information required for purposes of an investigation; and
- The creation of mechanisms for co-operation between investigators and the South African Revenue Services (SARS).

Regarding Money Laundering, the Act creates offences in Sections 4, 5 and 6.

Section 4 of the Act creates the "general" offence of money laundering and provides that a person who knows, or ought reasonably to have known, that property is, or forms part of the proceeds of unlawful activities, commits an offence if he commits an act in connection with that property which has the effect or is likely to have the effect of concealing the nature and source thereof.

Section 5 of the Act creates an offence if a person knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and provides assistance to such other person regarding the use or retention of such property.

Section 6 of the Act creates an offence if a person knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and acquires, uses or possesses such property.

The above offences are regarded as very serious and the Act contains exceptionally harsh penalties relating to these offences. A person convicted of one of the above offences is liable to a maximum fine of R100 million or to imprisonment for a period not exceeding 30 years.

POCA originally also contained certain requirements relating to the reporting of suspicious transactions. These provisions have subsequently (since February 2003) been replaced by the Financial Intelligence Centre Act, No. 38 of 2001 ("FICA").

As indicated above, the Act (POCA) contains various provisions relating to the confiscation and forfeiture of property deemed to be, or regarded to be the proceeds of crime. (In this regard it should be noted that the Act contains provisions aimed at criminal proceedings and civil proceedings and that some of these provisions are of retrospective application. Due to the technical nature of these provisions it is recommended that, where applicable, the provisions of the Act be consulted.)

2.5.3 Financial Intelligence Centre Act, 38 of 2001 (FICA)

The Financial Intelligence Centre Act, as amended, (generally referred to as "FICA") was signed by the President in November 2001. Its provisions were implemented over time, commencing during January 2002.

The Act (FICA) establishes a Financial Intelligence Centre and a Money Laundering Advisory Council. The purpose of these entities is to combat money laundering activities.

FICA imposes certain **reporting duties** and **compliance obligations**.

The Act imposes compliance obligations on so-called "accountable institutions". The said obligations include:

- A duty to identify clients;
- A duty to retain records of certain business transactions;
- A duty to report certain transactions; and
- The adoption of measures to ensure compliance (i.e. the implementation of so-called "internal rules", provision of training etc.)

A list of "accountable institutions" is contained in Schedule 1 of the Act.

Regarding the reporting of suspicious transactions, FICA makes provision for a duty to report "suspicious or unusual transactions". In this regard it provides that any person who carries on a business or who manages, is in charge of or is employed by a business and who knows or suspects certain facts, has a duty to report their knowledge or suspicion to the FIC within a prescribed period. Matters that require reporting include knowledge or suspicion of the following:

- The receipt of proceeds of unlawful activities;
- Transactions which are likely to facilitate the transfer of proceeds of unlawful activities;
- Transactions conducted to avoid giving rise to a reporting duty under FICA;
- Transactions that have no apparent business or lawful purpose;
- Transactions relevant to the investigation of tax evasion; or
- The use of a business entity for money laundering purposes.

A person who fails to make a report as required commits an offence and is liable to a fine not exceeding R10 million or imprisonment not exceeding 15 years.

FICA also creates certain powers relating to seizure of certain documents and records. It also provides for the seizure of cash (in excess of certain limits) transported across the borders of the RSA.

2.6 Other Acts (including rules and policies) of general application

2.6.1 North West Delegation of Powers Act, 20 of 1994

The main purpose of this act is to empower the Premier and Members of the Executive Council to delegate certain of its powers.

The Premier may delegate any power, whether express or implied, conferred on him/her by any law promulgated and of force in the North West to:

- any Member of the Executive Council of the Provincial Legislature ("MEC"); or
- any head or acting head of a Provincial Department as contemplated by the North West Provincial Service Commission Act, 1994.

An MEC may delegate or further delegate any power, whether express or implied, conferred on him/her by any law promulgated and of force in the North West or by virtue of a delegation by the Premier, unless the further delegation of such power is expressly prohibited by the Premier to any head or acting head of a Provincial Department as contemplated by the North West Provincial Service Commission Act, 1994.

Any delegation under this act may at any time be withdrawn by the person having effected such delegation.

The delegation of any power in terms of this act shall not preclude the Premier or MEC from exercising such power himself or herself, provided the person to whom such power had been delegated, has not in any particular case already started exercising such powers.

The Premier or any MEC may not delegate any power conferred on him/her by any law to issue proclamations and to make regulations. The Premier may also not delegate any power which, in terms of the Constitution of the Republic of South Africa must be exercised by the Premier as head of the Province.

2.6.2 North West Commissions Act, 18 of 1994

This act applies to instances where the Premier of the North West ("the Premier") has appointed a commission for the purpose of investigating a matter of public concern in terms of the Constitution.

Whenever a commission has been appointed in terms of the Constitution, the Premier may make regulations in relation to such commission with regard to the conferring of additional powers on the commission, or the procedure to be followed at the investigation or for the preservation of secrecy.

The Premier may also prescribe penalties for any contravention of regulations made by him/her.

The act empowers commissions to, for the purpose of ascertaining any matter relating to the subject of its investigations exercise the same powers as a Provincial Division of the Supreme Court with regard to witnesses. The commission may:

- summon witnesses;
- cause an oath or affirmation to be administered to them;
- examine them; and
- call for the production of books, documents, films, recordings, materials, equipment, substances and objects (whether in solid or liquid form) in their possession or custody, or under their control.

Any person who has been summoned to attend any sitting of a commission as a witness or who has been examined by or given evidence before a commission, will be entitled to witness fees as if he/she had been summoned to attend or had given evidence at a criminal trial in a Provincial Division of the Supreme Court.

Furthermore, in connection with the giving of any evidence or the production of anything required by a commission, the same law relating to privilege that is applicable to a witness giving evidence or summoned to produce a book or document in Court applies.

The evidence and addresses heard and the examinations conducted by a commission must be heard and conducted in public. However, the chairperson of the commission may in his/her discretion, exclude any class of person or all persons whose presence is in his/her opinion not necessary or desirable.

The following are offences in terms of this act. Any person who:

- insults, disparages or belittles any member of a commission or the secretary thereof; or
- wilfully interrupts the proceedings of a commission or otherwise wilfully disturbs the good order of its proceedings; or
- wilfully hinders or obstructs a commission in the exercise and performance of its powers, functions and duties;

will be guilty of an offence and liable on conviction to a fine of R2 000 or to imprisonment for a period of six months, or to both.

In addition to the above penalties, the chairperson of a commission may order the person performing any of the above acts, to be removed and detained in custody until the rising of the commission.

The following are regarded as offences by witnesses. Any person summoned to attend and give evidence before or to be examined by a commission, who, without sufficient cause:

- fails to attend at the time and place specified in the summons or to remain in attendance until the conclusion of the inquiry or until he or she is excused by the chairperson of the commission from further attendance; or
- having attended, refuses to take the oath or to make an affirmation as a witness after he or she has been required by the chairperson of the commission to do so; or
- after having taken the oath or having made an affirmation, fails or refuses to answer fully and to the satisfaction of the commission, to the best of his or her knowledge, any question lawfully put to him or her in the course of the inquiry; or
- fails to produce any book, document, film, recording, material, equipment, sub-stance or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce in terms of the act;

shall be guilty of an offence and liable on conviction to a fine of R2 000 or to imprisonment for a period of six months, or to both.

Furthermore, any person who, after having taken the oath or having made an affirmation, makes a false statement or gives false evidence before a commission on any matter, knowing such statement or evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine of R2000 or to imprisonment for a period of one year, or to both.

The following prohibitions and offences are created with regard to matters under investigation by a commission. Until such time as a commission has concluded its investigations, no person shall

- at any meeting open to members of the public or any section thereof;
- in any placard, poster, handbill, circular, letter or document directed to members of the public or any section thereof;
- in any newspaper, magazine or periodical; or
- in any broadcast by way of radio or television;

state, express, impart or distribute his or her views, comments or opinions, or those of any other person, organisation or body, in regard to

- any matter pertaining to or relevant in connection with the subject of such investigation;
- the evidence given or placed before the commission, and the reliability of such evidence or the possible or probable effect thereof on the investigations, findings and recommendations of the commission;
- the credibility, attitude or character of any person who has given or placed evidence before the commission or has been or is likely to be called upon or summoned for that purpose or who has requested to give or place evidence before the commission; or
- the attitude or character of any member of the commission.



Any person who contravenes or fails to comply with the above mentioned prohibitions, will be guilty of an offence and liable on conviction to a fine of R4 200 or to imprisonment for a period of one year or to both.

The victimisation or threatening of witnesses or prospective witnesses who has given or placed evidence before a commission is an offence.

Persons whose conduct is the subject of inquiry by commission, or who is in any way implicated or involved with the matter under investigation, are entitled to be represented at the inquiry by an advocate or attorney of the Supreme Court.

2.6.3 Promotion of Access to Information Act, 2 of 2000

Not summarised in this document. For the full act please refer to <http://www.finance.gov.za>.

2.6.4 Regulation of Interception of Communications and Provision of Communication-related information Act, 70 of 2002

The intentional interception of communication may only be done in accordance with this act.

The act allows persons, other than law enforcement officers, to intercept any communication if he/she is a party to such communication. Communication may however not be intercepted by such a person for the purposes of committing an offence. Persons other than law enforcement officers may also intercept any communication if one of the parties to the communication has given prior consent in writing to such interception.

The act empowers law enforcement officers to intercept any communication if he/she is a party to such communication, and if such officer is satisfied that there are reasonable grounds to believe that the interception of the communication of another party to the communication is necessary. Law enforcement officers may also intercept any communication if one of the parties to the communication has given prior consent in writing to such interception, and he/she is satisfied that there are reasonable grounds to believe that the party who has given consent will participate in a direct communication.

The act regulates the following instances of interception of communication, and sets out the procedures that must be followed when so intercepting:

- interception of indirect communication in connection with the carrying on of business;
- interception by law enforcement officers in order to prevent serious bodily harm;
- interception for the purposes of determining a certain location in case of emergency;
- interception that is authorised by certain other Acts for example Correctional Services Act, 1998; and
- monitoring of a signal for purposes of installation or maintenance of equipment, facilities or devices takes place, as well as the situation where monitoring of a signal and radio frequency spectrum must take place for the purposes of managing radio frequency spectrum.



The act prohibits the provision of real-time or archived communication-related information, and provides that no telecommunication service provider or employee of a telecommunication service provider may intentionally provide or attempt to provide any real-time or archived communication-related information to any person other than the customer of the telecommunication service provider concerned to whom such real-time or archived communication-related information relates.

A person may apply to a designated judge for the issuing of interception directions. The act sets out form and the content of such applications and directions, and prescribes the procedure by means of which directions and entry warrants may be executed.

A telecommunication service provider must provide a telecommunication service which has the capability to be intercepted, and must store communication-related information.

The Minister of Justice ("the Minister"), in consultation with the relevant Ministers and the Cabinet member responsible for national financial matters, must, at State expense

- establish one or more centres, to be known as interception centres, for the interception of communications in terms of this act;
- equip, operate and maintain such interception centres;
- acquire, install and maintain connections between telecommunication systems and interception centres; and
- administer the interception centres.

The Minister must exercise final responsibility over the administration and functioning of interception centres. Furthermore, the Minister must enter into service level agreements with the relevant Ministers in respect of the provision of services by the interception centres to the law enforcement agencies.

The act establishes an office to be known as the Office for Interception Centres ("the Office") which is headed by the Director: Office for Interception Centres ("the Director"). The act sets out the powers, functions and duties of the Director.

The act establishes a fund to be known as the Internet Service Providers Assistance Fund ("the Fund"), and prescribes how the Fund will be funded.

The act requires the maintenance of secrecy with regard to information which was obtained in the exercising of powers in terms of this act, and only allows disclosure thereof in certain circumstances.

The act empowers the Minister to, upon application and in consultation with the relevant Ministers, exempt any:

- Internet service provider from complying with certain sections of the act, in respect of their facilities and devices;
- Telecommunication service provider or any other person from one or all of the prohibited acts mentioned in the act; and
- Law enforcement agency from the prohibited acts of possessing and purchasing of listed equipment.



The act sets out the considerations which the Minister must take into account before granting an exception.

Information regarding the commission of any criminal offence, obtained in accordance with this act may be admissible as evidence in criminal proceedings or civil proceedings in terms of the Prevention of Organised Crime Act. Such information may only be used upon the written authority of the National Director, or any member of the prosecuting authority authorised thereto in writing by the National Director.

Any person who intentionally intercepts or attempts to intercept any communication in the course of its occurrence or transmission, is guilty of an offence, except in the instances authorised by this act.

Any telecommunication service provider or employee of a telecommunication service provider who intentionally provides or attempts to provide any real-time or archived communication-related information to any person other than the customer of the telecommunication service provider concerned to whom such real-time or archived communication-related information relates, is guilty of an offence, except if done in accordance with this act.

Any person who:

- in any application made in terms of this act, furnishes information or makes a statement, knowing such information or statement to be false, incorrect or misleading or not believing it to be correct;
- acts contrary to the authority of any direction issued under this act or proceeds to act under any such direction knowing that it has expired;
- acts contrary to the authority of an entry warrant issued under this act or, without being authorised thereto under an entry warrant, enters any premises for purposes of intercepting a postal article or communication, or installing and maintaining an interception device, on that premises;
- forges or, with the intent to deceive, alters or tampers with any direction or entry warrant issued under this act;
- furnishes particulars or information in any affidavit or report referred to in this act, knowing such particulars or information to be false, incorrect or misleading or not believing it to be correct; or
- obstructs, hinders or interferes with an authorised person who executes any direction or entry warrant issued under this act or assists with the execution thereof, in the exercising of his or her powers under that direction or entry warrant, is guilty of an offence.

No person who in good faith assists an authorised person with the execution of a direction; and believes on reasonable grounds that such authorised person is acting in accordance with such a direction, is liable to prosecution for a contravention of this act.

Any person who is found in possession of any cellular phone or SIM-card in regard to which there is reasonable suspicion that it has been stolen and is unable to give a satisfactory account of such possession, is guilty of an offence.



Any person who in any manner acquires or receives into his or her possession from any other person a stolen cellular phone or SIM-card without having reasonable cause for believing at the time of such acquisition or receipt that such cellular phone or SIM-card is the property of the person from whom he or she acquires or receives it or that such person has been duly authorised by the owner thereof to deal with it or dispose of it, is guilty of an offence. In the absence of evidence to the contrary which raises a reasonable doubt, proof of such possession is sufficient evidence of the absence of reasonable cause.

Any person who, intentionally and unlawfully, in any manner

- modifies, tampers with, alters, reconfigures or interferes with, any telecommunication equipment, including a cellular phone and a SIM-card, or any part thereof;
- reverse engineers, decompiles, disassembles or interferes with, the software installed on any telecommunication equipment, including a cellular phone and a SIM-card, by the manufacturer thereof;

is guilty of an offence.

Any person who, intentionally and unlawfully, in any manner

- modifies, tampers with or interferes with, any interception or monitoring equipment, device or apparatus installed or utilised in terms of this act; or
- allows any other person to perform such acts;

is guilty of an offence.

Any person who fails to report the loss, theft or destruction of a cellular phone or SIM-card in terms of this act is guilty of an offence. Whenever a person is charged with this offence, and it is proved that such person was, at the time, the owner or authorised possessor of the cellular phone or SIM-card alleged to have been lost, stolen or destroyed, proof that the person has failed to produce such cellular phone or SIM-card within seven days of a written request by a police official to do so, will, in the absence of evidence to the contrary which raises reasonable doubt, be sufficient evidence that the cellular phone or SIM-card has been lost, stolen or destroyed.

The act imposes penalties of up to R5 million for contravention of its provisions.

The Cabinet member responsible for communications, after consultation with the Independent Communications Authority of South Africa, may, in the case of a second or subsequent conviction of a telecommunication service provider in terms of this act, revoke the licence issued to the telecommunication service provider to provide a telecommunication service.

2.6.5 Promotion of Administrative Justice Act, 3 of 2000

In terms of the Constitution, everyone has the right to administrative action that is lawful, reasonable and procedurally fair and everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.



"Administrative action" is defined in the act.¹

All administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

Fair administrative action would normally entail:

- adequate notice of the nature and purpose of the proposed administrative action;
- a reasonable opportunity to make representations;
- a clear statement of the administrative action;
- adequate notice of any right of review or internal appeal, and
- adequate notice of the right to request reasons.

Where administrative action materially and adversely affects the rights of the public, procedurally fair action would entail:

- a public inquiry;
- a notice and comment procedure; and
- the following of another fair procedure

When a person's rights have been materially and adversely affected by administrative action and he/she has not been given reasons within 90 days they may request written reasons from the person making the decision.

Proceedings may be instituted in a court for the judicial review of an administrative action. Administrative action may be reviewed if:

- the person who took the decision was
 - not authorised to do so;
 - acted under a delegation of power which was not authorised; or
 - biased or reasonably suspected of bias.
- a procedure or condition was not complied with;
- it was procedurally unfair;
- it was materially influenced by an error of law;
- taken for another reason than those authorised;

¹ "administrative action" means any decision taken, or any failure to take a decision, by—
(a) an organ of state, when
(i) exercising a power in terms of the Constitution or a provincial constitution; or
(ii) exercising a public power or performing a public function in terms of any legislation; or
(b) a natural or juristic person, other than
adversely affects the rights of any person and which has a direct, external legal effect, but does not include
(aa) the executive powers or functions of the National Executive;
(bb) the executive powers or functions of the Provincial Executive,
(cc) the executive powers or functions of a municipal council;
(dd) the legislative functions of Parliament, a provincial legislature or a municipal council;
(ee) the judicial functions of a judicial officer of a court.
(ff) a decision to institute or continue a prosecution;
(gg) a decision relating to any aspect regarding the nomination, selection, or appointment of a judicial official or any other person, by the Judicial Service Commission in terms of any law;
(h) a
(ii) any decision taken, or failure to take a decision, in terms of section 4 (1);

- taken for an ulterior purpose;
- irrelevant considerations were taken into account or relevant considerations were not considered;
- the decision was taken in bad faith;
- the decision was taken arbitrarily;
- it is unlawful or unconstitutional; and
- if it was unreasonable.

2.6.6 Electronic Communications and Transactions Act, 25 of 2002

The main object of this act is to enable and facilitate electronic communications and transactions in the public interest. In order to achieve this object, the act aims to, amongst others:

- promote the understanding, acceptance of, and growth in the number of electronic transactions in South Africa;
- remove and prevent barriers to electronic communications and transactions in SA;
- promote legal certainty and confidence in respect of electronic communications and transactions; and
- ensure that electronic transactions in SA conform to the highest international standards.

The act applies to all electronic transactions and data messages.

The act requires the Minister of Communications ("the Minister") to develop a three-year national e-strategy for SA, and sets out the factors which the Minister must take into account when developing such strategy. Cabinet must, on acceptance of the national e-strategy, declare the implementation thereof as a national priority, and after approval by Cabinet, the Minister must publish the national e-strategy in the Government Gazette.

The act requires the Minister to report to Cabinet on progress made and objectives achieved on an annual basis.

The national e-strategy must inter alia outline strategies and programmes to provide Internet connectivity to disadvantaged communities and encourage the private sector to initiate schemes to provide universal access. The Minister must, in consultation with the Minister of Trade and Industry, evaluate the adequacy of any existing processes, programmes and infrastructure providing for the utilisation by SMMEs of electronic transactions.

The Minister must formulate an electronic transactions policy in accordance with the requirements and procedure as set out in the act.

The act sets out the legal requirements for data messages, and amongst others determines that where there is a legal requirement that a document must be in writing, such requirement is met if the document or information is in the form of a data message and accessible in a manner usable for subsequent reference.

The following legal requirements are addressed in the context of electronic data:

- electronic signatures and the legal requirements therefor and effects thereof;
- originality of information;

- admissibility and evidential weight of data messages;
- retention of information;
- production of documents or information;
- notarisation, acknowledgement and certification of a signature, statement or document; and
- the submission of multiple copies of a document to a single addressee at the same time.

The act deals with the legal position and effect of automated transactions/agreements. The act creates certain presumptions with regard to the time and place of communications, and the dispatch and receipt thereof.

With regard to e-government services, the act empowers public bodies to issue permits, licences or approvals in the form of a data message or to make or receive payment in electronic form or by electronic means.

The South African Post Office Limited ("SAPO") is designated as a preferred authentication service provider.

The act prescribes the procedure that must be followed to register cryptography providers, and requires the Director-General of Communications ("the DG") to establish and maintain a register of cryptography providers. The act restricts the disclosure of information contained in this register, except where it is disclosed to a relevant authority which investigates a criminal offence, or for the purposes of any criminal proceedings or to government agencies responsible for safety and security in SA pursuant to an official request. Disclosure in contravention hereof, is an offence and any person convicted thereof may be liable to a fine or to imprisonment for a period of two years.

The DG must act as the Accreditation Authority for the purposes of this act, and he/she may appoint employees of the Department of Communications ("the DOC") as Deputy Accreditation Authorities and officers.

The act sets out the powers and duties of Accreditation Authorities, and such duties include inter alia the monitoring of the conduct, systems and operations of an authentication service provider to ensure its compliance with the act. The act sets out the procedure and criteria for accreditation of authentication products and services, as well as the grounds upon which accreditation may be revoked or terminated. The Accreditation Authority must maintain a publicly accessible database in respect of authentication products or services that are accredited, as well as revoked accreditations or recognitions.

The act allows for consumer protection where electronic transactions are involved, but specifically excludes electronic transactions pertaining to the following:

- financial services (including investment services, insurance and reinsurance operations, banking services and operations relating to dealings in securities);
- auctions;
- supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer;
- where the goods are made to the consumer's specifications, or are clearly personalised, or by reason of their nature cannot be returned, or are likely to deteriorate or expire rapidly.

The protection that is provided to consumers in this act applies irrespective of the legal system applicable to the agreement that has been concluded.



The act requires suppliers that offer goods or services for sale, for hire or for exchange by way of an electronic transaction, to make certain information available to consumers on the website where such goods or services are offered. The act also requires such suppliers to provide consumers with an opportunity to review the entire electronic transaction, to correct any mistakes, and to withdraw from the transaction before finally placing any order. Failure to do so on the part of the supplier, may allow the consumer to cancel the transaction within 14 days of receiving the goods or services under the transaction, and to return the performance of the supplier or, where applicable, cease using the services performed. In these instances the supplier must refund all payments made by the consumer minus the direct cost of returning the goods.

The act provides for a "Cooling-off period" during which the consumer is entitled to cancel a transaction or agreement without reason and without penalty within seven days after the date of the receipt of the goods, or if it is services that have been acquired, within seven days after the date of the conclusion of the agreement.

The act regulates the situation where suppliers send consumers unsolicited commercial communications, and stipulates that such suppliers must provide the consumer with the option to cancel his or her subscription to the mailing list of that person. No agreement is concluded where a consumer has failed to respond to an unsolicited communication.

Any provision in an agreement which excludes any rights provided for in the act will be null and void, and consumers may lodge complaints with the Consumer Affairs Committee in respect of any non-compliance with the act by a supplier.

The act provides for the protection of personal information that have been obtained through electronic transactions, and amongst others allows a party that controls such personal information to use it to compile profiles for statistical purposes and to freely trade with the profiles and statistical data, as long as the profiles or statistical data cannot be linked to any specific data subject by a third party.

The Minister may declare certain classes of information that is important for the protection of the national security of SA or the economic and social well-being of its citizens to be critical data for the purposes of the act. In this regard the Minister may determine requirements for the registration of critical databases, and procedures to be followed for registration. Furthermore, the Minister may prescribe minimum standards or prohibitions in respect of the general management of, access to, and transfer and control of critical databases.

The act provides for the establishment of a juristic person to be known as the ".za Domain Name Authority" ("the Authority"), who assumes the responsibility for the .za domain name space.

The act provides for the limitation of liability of service providers (persons providing information system services) on certain conditions that are set out in the act as well as for the limitations of liability with regard to caching, hosting and information location tools

The act empowers the DG to appoint any employee of the DOC as a cyber inspector who may then perform the functions provided for in the act. Cyber inspectors must be issued with a certificate of appointment that is signed by or on behalf of the DG before they can exercise any of their powers or functions. Such inspectors may inter alia monitor and inspect any website or activity on an information system in the public domain and report any unlawful activity.

“Access” with regard to cyber crime is defined so as to include “the actions of a person who, after taking note of any data, becomes aware of the fact that he or she is not authorised to access that data and still continues to access that data.”

The following constitutes offences in terms of the act:

- Any person who intentionally accesses or intercepts any data without authority or permission;
- A person who intentionally and without authority to do so, interferes with data in a way which causes such data to be modified, destroyed or otherwise rendered ineffective;
- A person who unlawfully produces, sells, offers to sell, procures for use, designs, adapts for use, distributes or possesses any device, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data, or performs any of those acts with regard to a password, access code or any other similar kind of data with the intent to unlawfully utilise such item to contravene this act;
- A person who utilises any device or computer program mentioned above in order to unlawfully overcome security measures designed to protect such data of access thereto; and
- A person who commits any act with the intent to interfere with access to an information system so as to constitute a denial, including a partial denial, of service to legitimate users.

With regard to computer-related extortion, fraud and forgery, a person who performs or threatens to perform any of the acts described above for the purpose of obtaining any unlawful proprietary advantage by undertaking to cease or desist from such action, or by undertaking to restore any damage caused as a result of those actions, is guilty of an offence.

Furthermore, a person who performs any of the acts described above, for the purpose of obtaining any unlawful advantage by causing fake data to be produced with the intent that it be considered or acted upon as if it were authentic, is guilty of an offence.

Any person who attempts to commit, or who commits any of the offences referred to in the act is guilty of an offence and is liable on conviction to a fine or imprisonment for a period of up to five years.

2.6.7 Protected Disclosures Act, 26 of 2000

The Protected Disclosures Act was promulgated to facilitate reporting by employees (whistle blowers) of fraud, corruption or other unlawful or irregular actions by their employer(s) or co-employees without fear of any discrimination or reprisal by their employers or co-employees.

Any employee who has information of fraud, corruption or other unlawful or irregular action(s) by his/her employer(s) or co-employees can report such actions, provided that he/she has information that:

- A crime has been, is being, or is likely to be committed by the employer or employee(s);
- The employer or employees has/have failed to comply with an obligation imposed by law;



- A miscarriage of justice has or will likely occur because of the employer's or employee(s) actions;
- The health or safety of an individual has been, is being, or is likely to be endangered;
- The environment has been, is being or is likely to be endangered;
- Unfair discrimination has been or is being practiced; or
- Any of the above has been, is being, or is likely to be concealed.

The Act prohibits the employer to react to the employee's detriment if his/her disclosure is covered by the Act. This means that the employer may not:

- Dismiss, suspend, demote, harass or intimidate the employee;
- Subject the employee to disciplinary action;
- Transfer the employee against his or her will;
- Refuse due transfer or promotion;
- Alter the employment conditions of the employee unilaterally;
- Refuse the employee a reference or provide him or her with an adverse reference;
- Deny appointment;
- Threaten the employee with any of the above; or
- Otherwise affect the employee negatively.

3. Acts, Regulations and Policies relating to SPECIFIC COMPONENTS

3.1 Assets

3.1.1 **Tender Board Act, 86 of 1968** (Not summarised in this document)

3.1.2 **The Public Finance Management Act, 1 of 1999 and Regulations** (Refer to Section 2.2)

3.1.3 **North West Tender Board Act, 3 of 1994**

The act establishes the North West Tender Board ("the Board").

The Government or any traditional authority in the North West Province ("the Province") must procure its supplies and services and dispose of all its stores and other movable property through the Board.

Members of the Board may hold their office for two years, unless such period has been extended (not more than 12 months) by the Member of the Executive Council of the North West responsible for financial matters ("the MEC") in consultation with the Executive Council (as referred to in the Constitution of the republic of South Africa, 1993). The act also provides for the instances in which members of the Board must vacate his/her office.

The purpose of the Board is to procure supplies and services for the Government and to arrange the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the Government and to dispose of movable Government property. The act then sets out the powers of the Board in order to achieve such purpose.



The act empowers the Board to appoint committees to perform certain authorised functions, and the Board may designate a chairperson in respect of every such committee.

No one may improperly interfere with the decisions or operations of the Board, and no decisions which were influenced by improper interference are valid. All decisions of the Board must be recorded in the prescribed manner.

The tendering system followed by the Board must be fair, public and competitive.

Any interested party may within 14 days of the publication of a decision of the Board submit to the Board a written request for the reasons for such decision, and the Board must then furnish the full reasons for its decision.

The Minister of Finance may make regulations that provide for the imposition by the Board of a monetary penalty on any person with whom the Board concluded an agreement on behalf of the Government (or any tribal authority) on the strength of information furnished by such person which, subsequent to the conclusion of such agreement, is shown to have been incorrect information.

3.1.4 Trust Property Control Act, 57 of 1988

The main purpose of this act is to regulate the control of trust property. The word "trust" is defined, and it is important to note that this act does not regulate testamentary trusts. The latter is regulated by the Administration of Estates Act.

The act regulates the jurisdiction of the Master(s) of the High Court for trust matters.

The act stipulates that trustees may only act in such capacity if they are authorized thereto in writing by the Master, which authorisation will only be given:

- upon furnishing of security to the satisfaction of the Master for the due and faithful performance of his/her duties as trustee; or
- has been exempted from furnishing security by a court order or by the Master in terms of a trust deed.

The care, diligence and skills that are required of trustees in the performance of their duties and exercise of their powers are those expected of a person "who manages the affairs of another", and trustees cannot be exempted or indemnified against liability for breach of trust or for failure to show such degree of care, diligence and skill.

All moneys received by trustees in such capacity must be deposited in a separate trust account at a banking institution or building society, and all trust property must be registered and identified as such for the sake of proper bookkeeping. Trust property may not form part of the personal estate of the trustee.

Any irregularities noticed by the auditor of a trust must be reported in writing to the trustee, and if not rectified by him/her, must be reported to the Master. Any person having an interest in the trust property may apply for a court order to direct the trustee to comply with his/her duties. The trustee may even be removed from office if the court is satisfied that such removal will be in the interests of the trust and its beneficiaries. Examples of causes for such removal are:



- conviction of any offence of which dishonesty is an element or of any other offence for which he/she has been sentenced to imprisonment without the option of a fine; or
- failure to give security to the satisfaction of the Master; or
- sequestration, liquidation or the placement under judicial management; or
- declaration of mental illness or incapability of managing his/her own affairs; or
- failure to perform any duty imposed upon him/her under this Act or to comply with any lawful request of the Master.

The act further provides for the remuneration of the trustee and circumstances under which the trustee may and must resign.

3.1.5 General Conditions and Procedures (St 36), May 1994 (Not summarised in this document)

3.1.6 General Conditions and Procedures (St 37), May 1994 (Not summarised in this document)

3.1.7 Walker User Manual (Not summarised in this document)

3.1.8 Municipal Finance Management Act, 56 of 2003 (Refer to Section 2.4)

3.2 Cash, Debtors and Creditors

3.2.1 The Public Finance Management Act, 1 of 1999 (Refer to Section 2.2)

3.2.2 Municipal Finance Management Act, 56 of 2003 (Refer to Section 2.4)

3.2.3 The Prevention and Combatting of Corrupt Activities Act, 12 of 2004 (Refer to Section 2.5.1)

3.2.4 The Prevention of Organised Crime Act, 121 of 1998 (Refer to Section 2.5.2)

3.2.5 Financial Intelligence Centre Act, 38 of 2001 (FICA) (Refer to Section 2.5.3)

3.3 Stock and Inventory

3.3.1 Unexplained Possession of Suspected Stolen Property Act, 62 of 1955 (Not summarised in this document)

3.3.2 Receiving of Stolen Property Act, 62 of 1955 (Not summarised in this document)

3.3.3 Unauthorised Borrowing (Section 1 of Act 50 of 1956) (Not summarised in this document)

3.3.4 Receiving of Stolen Stock and Produce Act, 57 of 1959 (Not summarised in this document)

3.3.5 Unexplained Possession of Suspected Stock and Produce Act, 57 of 1969 (Not summarised in this document)

3.3.6 Medicines and Related Substances Act, 101 of 1965

This act provides for the establishment of the Medicines Control Council ("the Council"), a juristic person, to function in terms of this act. With regard to the Council the act provides for the following:

- composition;
- appointment of members, executive committee and other committees;
- period of office and remuneration; and
- meetings.

The act provides for the sources of funds of the council, and the manner in which it must be accounted for.

The act provides for the appointment of a Registrar and Deputy Registrar of Medicines. Such Registrar must function in terms of the provisions of this act, and in accordance with the powers and duties assigned to it by the Council, the Minister of Health ("the Minister") or the Director-General of Health ("the DG").

The act stipulates that the Registrar must keep a medicines register, which must contain:

- all medicines of which the registration has been approved by the Council;
- all particulars in regard to such medicines; and
- the holder of the certificate of registration of such medicines.

Any medicines which are subject to registration may only be sold if it has been registered.

The Council may by resolution (published in the Gazette and approved by the Minister), determine that a medicine or class or category of medicines shall be subject to registration.

The act prescribes the manner and procedure for registration of medicines, cancellation of registration and appeal procedures relating thereto. Any registration and cancellation thereof must be published in the Gazette.

The Council may authorize the sale of unregistered medicine for certain purposes to specified persons or institutions in a specified quantity.

The act stipulates that no medicine or scheduled substance may be sold (or be advertised for sale) unless the container or package in which it is sold bears a label stating certain prescribed particulars, and in the case of an advertisement also complies with the prescribed requirements.

The act prohibits the following:

- the supply of medicine in accordance with a bonus system, rebate system or any other incentive scheme;
- the sampling (the free supply of medicines by a manufacturer or wholesaler or its agent to a pharmacist, medical practitioner, dentist, veterinarian, nurse etc) of medicines;
- marketing of medicines unless it is in accordance with prescribed requirements;
- sale of medicines which do not comply with prescribed requirements;
- the publication or distribution of false advertisements concerning medicines (for example making a claim that a medicine has a therapeutic efficacy and effect which has not been approved by the

Council or to suggest that a medicine should be used for a purpose or under circumstances that have not been approved by the Council);

- wholesalers to purchase medicines from any source other than from the original manufacturer or from the primary importer of the finished product; and
- the sale, possession or manufacture of certain medicines and/or Scheduled substances under certain circumstances and by certain persons (inter alia nurses, practitioners, pharmacists etc).

With regard to the latter, the act imposes certain conditions for the sale, possession and manufacture of certain medicines/Scheduled substances.

The act classifies substances in accordance with their composition in Schedule 0 to Schedule 5. In the Schedules, the substances have been named and any conditions with regard to labelling and provision of other information have been set out therein.

The act requires that medical practitioners, dentists, practitioners, nurses or other persons registered under the Health Professions Act be licensed in order to compound and dispense medicines. The act then stipulates the manner and procedure for application for such license.

Licences may also be issued to manufacturers, wholesalers or distributors of medicines or medical devices in order to manufacture, import or export, act as a wholesaler of or distribute certain medicines or medical devices. Conditions relating to quality assurance principles and good manufacturing and distribution practices may be attached to the license.

Medicines may only be compounded or dispensed by persons who are authorised thereto in terms of the Pharmacy Act, is a veterinarian or is the holder of a licence. Furthermore, no manufacturer, wholesaler or distributor may manufacture, import, export, act as a wholesaler of or distribute any medicine unless he or she is the holder of such licence.

Notice of the granting or refusal of licenses must be given to the applicants together with reasons for refusal if applicable.

The act provides for the period of validity of the license and conditions under which the license may be suspended or cancelled.

The act provides for the manner in which pharmacists may generically substitute medicines.

The act provides for the establishment of a pricing committee which may make recommendations to the Minister regarding the following:

- the introduction of a transparent pricing system for all medicines and Scheduled substances sold in South Africa;
- appropriate dispensing fees to be charged by a pharmacist or other licensed persons; and
- appropriate fees to be charged by wholesalers or distributors or other persons selling Schedule 0 medicines.

The Council has the power, if it is of the opinion that it is not in the public interest that any medicine shall be made available to the public, to order that any quantity of such medicine in the possession of any person be returned. Such persons include manufacturers and importers.

The act provides for appeal procedures against decisions by the Council.

The DG may appoint inspectors to assist him/her with the enforcement of this act. Inspectors will be furnished with a certificate to that effect, and must produce such certificate before he/she exercises or performs any power or function under this act. The act specifies the powers of inspectors which include the power to enter upon any place or premises from which a business is conducted by a person who compounds or dispenses medicines or scheduled substances, and to inspect any medicine or scheduled substance, any book, record or documents that the inspector believes on reasonable grounds contains any information relevant to the administration or enforcement of this act.

The act creates the following offences. Any person who:

- obstructs or hinders any inspector in the exercise of his/her powers or the performance of his/her duties;
- sells unregistered medicines, contravenes the provisions with regard to labels and advertisements, bonusing and sampling;
- fails to furnish the Council with required information;
- issues false advertisements relating to medicines/substances; or
- contravenes or fails to comply with any condition imposed for the registration of medicines; or
- fails to comply with any direction given by the Council relating to the distribution of undesirable medicines; or
- with fraudulent intent tampers with any sample taken in terms of this act; or
- makes any false or misleading statement in connection with any medicine or Scheduled substance
 - in an application for the registration thereof; or
 - in the course of the sale thereof; or
- sells any medicine or Scheduled substance upon the container of which a false or misleading statement in connection with the contents is written; or
- for purposes of business or trade makes use of any report or certificate made or issued by an inspector, analyst, pharmacologist or pathologist under this act; or
- contravenes any provision with regard to licensing, generic substitution, pricing, and purchase or sale by wholesalers;
- fails to adhere to the provisions relating to the preservation of secrecy; and
- manufactures, sells or uses a veterinary medicine in contravention of the act.

is guilty of an offence.

The penalties are as follows:

- Payment of a fine, or imprisonment for a period not exceeding 10 years.
- Declaration of any medicine or Scheduled substance in respect of which the offence has been committed to be forfeited to the State. Any medicine or Scheduled substance so forfeited will be destroyed or otherwise dealt with as the DG may direct.

No person may disclose any information acquired by him/her in the exercise of powers or the performance of functions under this act and relating to the business or affairs of any person, or use such information for self-gain or for the benefit of his employer, except under the circumstances provided for in the act.

3.3.7 Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972

This act prohibits the following actions:

The sale, manufacture, or importation for sale, of foodstuffs, cosmetics or disinfectants (hereafter only referred to as "foodstuffs") which *inter alia*:

- contains or has been treated with a prohibited substance; or
- contains a particular substance in a greater measure than that permitted by regulation or has been treated with such; or
- does not comply with a prescribed standard of composition, strength, purity or quality; or
- is prohibited to sell; or
- is contaminated, impure or decayed, or is, or is in terms of any regulation deemed to be harmful or injurious to human health or has been treated with such substance; or
- contains or has been treated with a substance not present in any such foodstuff when it is in a normal, pure and sound condition; or
- to which any substance has been added so as to increase the mass or volume of such foodstuff with the object to deceive; or
- from which any substance or ingredient has been abstracted, removed or omitted with the result that its nutritive value or other properties, in comparison with those of such a foodstuff in a normal, pure and sound condition, are diminished or otherwise detrimentally affected; or
- has been treated in such manner that its damaged or unsound condition or inferior quality is concealed whether entirely or partly.

Foodstuff is defined as "any article or substance (except a drug as defined in the Drugs Control Act, 1965 (Act No. 101 of 1965)) ordinarily eaten or drunk by man or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance."

The above mentioned prohibitions do not apply however to the sale, manufacture or importation of foodstuffs under certain conditions.

The act requires the labels of certain foodstuffs to contain certain information when such foodstuff is not taken and delivered direct to the purchaser from bulk stock. However, this provision does not apply to the sale of any foodstuff which is the subject of a patent, and which is sold in a condition complying with the specifications of the patent, and bears a label specifying the patent number.

The act prohibits certain processes, methods, appliance, containers, when foodstuffs are manufactured, treated, packaged, labelled, stored or conveyed, and subsequently prohibits the manufacture, sale or importation for sale of foodstuffs etc in which such processes etc have been used.



No person may publish a false or misleading advertisement of any foodstuff or, describe such foodstuff in a manner which is false or misleading with regard to its origin, nature, substance, composition, quality, strength, nutritive value or other properties or the time, mode or place of its manufacture or sell or imports any foodstuff that have been described in such manner.

The act creates certain defences, and states that no person will be convicted on a charge of selling, manufacturing or importing or otherwise dealing with any foodstuff in contravention of this act if he/she proves:

- that the foodstuff to which the charge relates was not sold, manufactured or imported for human consumption or use; or
- that the imported article was imported under a written warranty complying with certain conditions, and
 - that he/she did not suspect that the article was a prohibited article; and
 - that he/she sold it in the condition in which he/she acquired or imported it and that he/she did not suspect that it was in any other condition than that in which it was acquired or imported;
- that he/she is not a person selling the foodstuff to which the false/misleading advertisement relates and that he/she did not know that the advertisement was in any respect false or misleading.

The act stipulates that an act or omission of an employee, manager or agent which constitutes an offence under this act will be deemed to be the act or omission of his employer or principal and the said employer or principal may be convicted and sentenced in respect of it unless he/she proves:

- that he/she did not permit or connive at such act or omission; and
- that he/she took all reasonable measures to prevent an act or omission of the nature in question; or
- that the act or omission did not fall within the course of the employment or the scope of the authority of the employee, manager or agent concerned.

The fact that an employer or principal forbade an act or omission shall not itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.

The Director-General of Health and Welfare ("the DG") may authorise persons as inspectors who will have the powers, duties and functions as set out in the act. Such inspectors will be provided with a letter of authority signed by or on behalf of the DG, certifying that such person has been authorized as an inspector.

The DG may also authorise persons to be analysts to analyse or examine samples of any article or substance for the purposes of this act.

The act deals with the procedure relating to the examination, control and disposal of certain imported articles which are under the control of the Commissioner for Customs and Excise in terms of the Customs and Excise Act, 1964.

The act empowers the Minister of Health and Welfare ("the Minister") to make regulations pertaining to various matters addressed in this act, such as prescribing any foodstuff to be deemed to be harmful or injurious to human health. Such regulations made by the Minister, may prescribe penalties for any contravention of or failure to comply with its provisions.

The act requires that secrecy in terms of this act be preserved, prohibits any person from:

- disclosing the contents of any certificate or report on the analysis or examination of a sample in terms of this Act without the authority in writing of the DG ; or
- disclosing any information acquired in the carrying out of functions or the performance of duties under this act that relates to the business or affairs of any other person.

Information may only be disclosed for when required to do so by any court or under any law.

The act creates the following offences.

Offence	Penalty
<p>Any person who:</p> <ul style="list-style-type: none"> ■ obstructs or hinders an inspector in the performance of his functions or duties or the exercise of his powers under this act; or ■ when an inspector demands of him an explanation or particulars or information relating to a matter within his knowledge, refuses or fails to give such explanation, particulars or information or gives an explanation or particulars or information which is false or misleading knowing it to be false or misleading; or ■ otherwise than in the exercise or performance of a power, duty or function under this Act, removes, obliterates, alters, damages, breaks or opens a mark, seal or fastening placed by an inspector on any foodstuff, cosmetic or disinfectant or its package or container or on or over any door or opening giving access to it; or ■ falsely holds himself out to be an inspector; or ■ retakes any sample or other article obtained or seized under this Act, or hinders or obstructs the obtaining or seizure of any such sample or other article; or ■ falsely makes use of in connection with, or applies to, any foodstuff, cosmetic or disinfectant, any warranty, certificate, report, invoice or other document; or ■ for purposes of business or trade makes use of any report or certificate furnished in terms of this Act by an inspector or any analyst, 	<ul style="list-style-type: none"> ■ on a first conviction: a fine of R400 or to imprisonment for a period of 6 months or to both; ■ on a second conviction: a fine of R800 or to imprisonment for a period of 12 months or to both; ■ on a third or subsequent conviction: a fine of R2000 or to imprisonment for a period of 24 months or to both.

When a person is convicted in terms of this act, the court may declare any foodstuff, cosmetic, disinfectant, appliance, product, material, substance or other object in respect of which the offence has been committed or which was used for, in or in connection with the commission of the offence, to be forfeited to the State. Such forfeited goods must be destroyed or dealt with as the DG directs.

The act further provides for certain facts to be deemed as proven in legal proceedings and creates certain presumptions.

The act places a restriction on the liability of persons/entities and provides that no person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this act.

The act empowers the Minister to apply this act to any foodstuffs, cosmetics or disinfectants which arrive at or are imported through an import harbour or other place in South Africa and which are addressed to or intended for transmission to a state or territory which is not part of South Africa.



3.3.8 Hazardous Substances Act, 15 of 1973

The main purpose of this act is to provide for the control of substances which may cause injury or ill-health to, or death of human beings and for the control of certain electronic products.

The act divides hazardous substances or products into groups in relation to the degree of danger:

- **Group I and II** hazardous substances are any substance or mixture of substances which might by reason of its toxic, corrosive, irritant, strongly sensitizing or flammable nature or because it generates pressure through decomposition, heat or other means, cause injury, ill-health or death to human beings;
- **Group III** includes any electronic products (as defined); and
- **Group IV** hazardous substances are certain defined radioactive material which is outside a nuclear installation, does not form part of or is used in the nuclear fuel cycle.

and which is used or intended to be used for medical, scientific, agricultural, commercial or industrial purposes, and any radioactive waste arising from such radioactive material.

The act further provides for the prohibition and control of the importation, manufacture, sale, use, operation, application, modification, acquisition, exportation, and disposal or dumping of such substances and products.

The Director General of Health ("the DG") may issue licences to persons upon payment of the prescribed fee, and on certain conditions to carry on business as a supplier of Group I hazardous substances, or to sell, let, use, operate or apply any Group III hazardous substance; or to install a Group III hazardous substance on any premises mentioned in such licence.

Such licence may however be suspended or cancelled under certain conditions stipulated in the act.

The DG may appoint inspectors for certain groups of hazardous substances. Such inspector may enter any premises on or in which any hazardous substances are suspected to be manufactured, packed, marked, labelled, kept, stored, conveyed, sold, used, operated, applied, administered or dumped. The inspector may inspect or search such premises, or examine, or extract, take and remove samples of, any substance (other than a Group III or a Group IV hazardous substance, which may only be inspected, and not removed) found in or upon such premises and demand certain information from any person on such premises.

The inspector may then place an embargo (for a certain or indefinite period) on any grouped hazardous substance, appliance, vehicle or other object which he believes/suspects is held/used in contravention of this Act. Such embargo includes a prohibition on the export, sale, dumping, lease, use, operation, application, or installation thereof on any premises.

Any person who, without the permission of an inspector, removes, permits or aids to remove any substance, appliance, vehicle or other object under an embargo out of the possession or control of an inspector is guilty of an offence.

An inspector or police official may further, without prior notice to any person, seize any grouped hazardous substance, appliance, vehicle or other object which they believe to be involved in the commission of an offence in terms of this Act. Any person who tries to obstruct the seizure or custody of such substance, or



without the written permission of an inspector or police official removes it from their custody or control, is guilty of an offence.

An act or omission of an:

- employee, mandatary or agent which constitutes an offence under this Act
- shall be deemed to be the act or omission of his employer, mandator or principal, and the latter may be convicted and sentenced unless:
 - he proves that he did not permit or connive at such act or omission; and
 - that he took all reasonable measures to prevent such an act or omission; and
 - that such act or omission did not fall within the course of the employment or the performance of the mandate or the scope of the authority of the employee, mandatary or agent concerned.

The act creates the following offences: Any person who

- obstructs or hinders an inspector in the performance of his/her functions, duties or powers;
- when an inspector demands of him an explanation or particulars or information relating to a matter within his knowledge, refuses or fails to give such explanation, particulars or information or gives an explanation or particulars or information which is false or misleading knowing it to be false or misleading;
- removes, obliterated, alters, damages, breaks or opens a mark, seal or fastening placed by an inspector on any substance or its package or on or over any door or opening giving access to it;
- falsely represents himself to be an inspector;
- retakes any sample or other substance obtained or seized under this Act, or hinders or obstructs the obtaining or seizure of any such sample or other substance;
- falsely in connection with any grouped hazardous substance makes use of, or applies to any such substance, any warranty, certificate, report, invoice or other document; or
- for purposes of business or trade makes use of any report or certificate furnished in terms of this act by an inspector or an analyst.

The following penalties apply:

Offence	Penalty
<ul style="list-style-type: none"> ■ Production, acquisition, disposal, importation and exportation of Group IV substances; and ■ for the purposes of business or trade makes use of any report or certificate furnished in terms of the act by an inspector or an analyst. 	Fine or imprisonment for a period not exceeding ten years or both a fine and such imprisonment
The sale of Group I and Group III, and letting, use, operation, application and installation of Group III, hazardous substances, in contravention of the act.	Fine or imprisonment for a period not exceeding six years or both a fine and such imprisonment;
Contravention of <ul style="list-style-type: none"> ■ Provision of warranties; ■ Preservation of secrecy; ■ Embargo and seizure; ■ Removal, obliteration, alteration, damaging, breaking or opening of a mark, seal or fastening placed by an inspector on any substance or its package or on or over any door or opening giving access to it; ■ falsely representing to be an inspector; ■ retaking any sample or other substance obtained or seized under the act, or hindering or obstructing the obtaining or seizure of any such sample or other substance; ■ falsely in connection with any grouped hazardous substance makes use of, or applies to any such substance, any warranty, certificate, report, invoice or other document. 	A fine or imprisonment for a period not exceeding two years or both a fine and such imprisonment;
<ul style="list-style-type: none"> ■ obstructing or hindering an inspector in the performance of his functions or duties or the exercise of his powers under the act; and ■ when an inspector demands an explanation or particulars or information relating to a matter within someone's knowledge, refuses or fails to give such explanation, particulars or information or gives an explanation or particulars or information which is false or misleading knowing it to be false or misleading. 	A fine or imprisonment for a period not exceeding 12 months or both a fine and such imprisonment;
Contravention of regulations made by the Minister.	A fine or to imprisonment for a period not exceeding six months or both a fine and such imprisonment, and a further fine not exceeding R10 or further imprisonment not exceeding one day for every day on which he so contravened the provision concerned or failed to comply therewith: Provided that the period of such further imprisonment shall not exceed 90 days

Conviction of an offence relating to any grouped hazardous substance, will cause such appliance, product, or other object involved in the offence to be forfeited to the State, and the costs incurred in respect thereof may be recovered from the person convicted.

However, no person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this act.



- 3.3.9 **The Public Finance Management Act, 1 of 1999 and Regulations** (Refer to Section 2.2)
- 3.3.10 **General Conditions And Procedures (St 36), May 1994** (Not summarised in this document)
- 3.3.11 **General Conditions And Procedures (St 37), May 1994** (Not summarised in this document)
- 3.3.12 **Walker User Manual** (Not summarised in this document)

3.4 Purchase and Procurement

- 3.4.1 **The Consitution Act** (Refer to Section 2.1)
- 3.4.2 **State Tender Board Act, 86 of 1968** (Not summarised in this document)
- 3.4.3 **North West Tender Board Act, 3 of 1994** (Refer to Section 3.1.3)
- 3.4.4 **Preferential Procurement Policy Framework Act, 5 of 2000 ("PPPFA")**

The main purpose of this act is to give effect to section 217 of the Constitution by providing a framework for the implementation of preferential procurement. The Constitution requires procurement by Government to:

- be done in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;
- provide for categories of preference in the awarding of contracts, and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

The act applies to all organs of state, and requires them to determine their preferential procurement policy, and implement it by using the following framework:

- A preference point system must be followed in the evaluation of contracts/tenders;
- For contracts above R500 000 a 90/10 preference point system must be followed, which means that a maximum of 10 points may be allocated for Black Economic Empowerment ("BEE") and other socio economic issues, and 90 points must be allocated for price and functionality (technical criteria). The act gives examples of specific socio economic issues for which preference points may be allocated;
- For contracts between R30 000 and R500 000, a 80/20 preference point system must be followed, which means that a maximum of 20 points may be allocated for BEE and other socio economic issues, and 80 points must be allocated for price and functionality (technical criteria).
- The formulae in the act must be used during evaluation of tenders/contracts.

On reasonable and justifiable grounds, tenders may be awarded to a tenderer that did not score the highest number of points.



The act defines “Historically Disadvantaged Individual” (HDI) as: an SA citizen who could not, due to the apartheid policy, participate in national elections prior to the 1983 or the 1993 Constitutions; and/or who is a female; and/or who has a disability.

A person who obtained South African citizenship on or after the 1993 Constitution is deemed not to be an HDI.

The act contains certain prescripts with regard to the contents of tender documentation that must be adhered to, and provides guidelines for the evaluation of tenders. The act further allows organs of state to enforce certain penalties if they detect that a tenderer has submitted fraudulent information, or does not attain certain agreed upon goals.

- 3.4.5 **Medicines And Related Substances Control Act, 101 of 1965** (Refer to Section 3.3.6)
- 3.4.6 **Foodstuffs, Cosmetics And Disinfectants Act, 54 of 1972** (Refer to Section 3.3.7)
- 3.4.7 **Hazardous Substances Act, 15 of 1973** (Refer to Section 3.3.8)
- 3.4.8 **Tender Board Circulars, 1 of 2000 and 1 of 2002** (Not summarised in this document)
- 3.4.9 **Tender Board Circular, 1 of 2003** (Not summarised in this document)
- 3.4.10 **General Conditions And Procedures (St 36) May 1994** (Not summarised in this document)
- 3.4.11 **General Conditions And Procedures (St 37) May 1994** (Not summarised in this document)
- 3.4.12 **Walker User Manual** (Not summarised in this document)
- 3.4.13 **Credit Card Usage Policy** (Not summarised in this document)
- 3.4.14 **Municipal Finance Management Act, 56 of 2003** (Refer to Section 2.4)
- 3.4.15 **The Prevention And Combatting of Corrupt Activities Act** (Refer to Section 2.5.1)
- 3.4.16 **The Prevention of Organised Crime Act, 121 of 1998** (Refer to Section 2.5.2)
- 3.4.17 **Financial Intelligence Centre Act, 38 of 2001 (FICA)** (Refer to Section 2.5.3)
- 3.5 Investments**
 - 3.5.1 **The Constitution Act** (Refer to Section 2.1)
 - 3.5.2 **The Public Finance Management Act, 1 of 1999 and Regulations** (Refer to Section 2.2)

3.5.3 The Trust Property Control Act, 57 of 1988 (Refer to Section 3.1.4)

3.5.4 The New Provincial RDP Fund Act, 6 of 1994

The act establishes the Provincial Reconstruction and Development Programme Fund ("the Fund") which shall be credited with:

- money appropriated by the North West Provincial Legislature for the Fund;
- domestic and foreign grants;
- interest derived from the investment of money standing to the credit of the Fund;
- the proceeds derived from the sale of state assets for the purposes mentioned in the act; and
- money accruing to the Fund from any other source.

Subject to the approval of the Executive Council, the money of the Fund must be utilised:

- for the purposes specified in an act of the Legislature of the North West that provides for the implementation of the Provincial Reconstruction and Development Programme; and
- for the defraying of costs incidental to the administration of this act.

The act requires the Fund to keep a bank account in its name with a banking institution decided upon by the Member of the Executive Council ("MEC") responsible for Finance.

The act regulates the control and administration of the Fund, and requires the Head of the Department of Finance: North West Province to be the accounting officer and to:

- control the Fund;
- cause proper record of all the financial transaction, assets and liabilities of the Fund to be kept; and
- cause, as soon as possible after the end of each financial year, accounts of the revenue and expenditure of the Fund for such year and a balance sheet of its assets and liabilities as at the end of that year, to be prepared.

The Fund must be administered subject to the provisions of the North West Provincial Exchequer Act, 1994, and the Fund's accounts and balance sheet must be audited by the Auditor-General.

Any money of the Fund which is not required for immediate use may be invested with the Public Investment Commissioners or with a financial institution approved by the MEC and may be withdrawn when required.

Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit of the Fund to the next succeeding financial year.

3.5.5 Municipal Finance Management Act, 56 of 2003 (Refer to Section 2.4)

3.5.6 Prevention and Combating of Corrupt Activities Act, 12 of 2004 (Refer to Section 2.5.1)

3.5.7 The Prevention of Organised Crime Act, 121 of 1998 (Refer to Section 2.5.2)

3.5.8 Financial Intelligence Centre Act, 38 of 2001 (FICA) (Refer to Section 2.5.3)

3.6 Personnel Administration

3.6.1 Public Service Act, 1994 (Proclamation No. 103 of 1994)

The main purpose of this act is to provide for the structure, organisation and administration of the public service including the South African Management and Development Institute ("SAMDI") and the Training Fund.

The act describes the composition of the public service, and sets out the functions and powers of the Minister of Public Service and Administration, Executing Authorities and Premiers.

The act determines that no person shall be appointed or transferred permanently unless he or she is a South African citizen, is of good character, and complies with certain health requirements.

The act deals with the following matters that are relevant to the public service:

- appointment, transfer and promotion on probation;
- transfers and secondment within the Public Service;
- retirement and retention of services; and
- discharge of officers.

Public Service officers may be discharged for, amongst others, the following:

- continued ill-health;
- abolition of his/her post or any reduction in or reorganisation or readjustment of departments or offices;
- if such discharge is in the interests of the Public Service, for reasons other than his/her own unfitness or incapacity;
- unfitness for his/her duties or incapacity to carry them out efficiently;
- misconduct;
- misrepresentation of his/her position in relation to a condition for permanent appointment; and
- if his/her continued employment constitutes a security risk for the State.

The act caters for the following issues relevant to officers in the Public Service:

- reduction of salaries;
- grievances of officers and employees;
- political rights of officers and employees;
- remuneration of officers and employees; and
- wrongly granted remuneration.

The act stipulates that whenever any person is conveyed in or makes use of any vehicle which is the property of the State, and any loss or damage is caused that results from physical injury, death, or damage to property, the State shall only accept liability for such losses or damages, if the person is conveyed or uses the vehicle in the performance of the functions of the State.



The act stipulates that the Public Service Staff Code is binding upon any department, officer and employee.

3.6.2 Labour Relations Act, 66 of 1995

The purpose of this act is to advance economic development, social justice, labour peace and the democratisation of the workplace.

This act does not apply to members of the following institutions:

- the National Defence Force;
- the National Intelligence Agency;
- the South African Secret Service; and
- Comsec.

The act provides for the appointment of a registrar of labour relations ("the registrar"), and sets out the functions of such official. These functions include amongst others, the keeping of a register of registered trade unions and registered employers' organisations. The act grants any person the right to inspect any of the following documents in the registrar's office:

- the registers of registered trade unions, registered employers' organisations, federations of trade unions, federations of employers' organisations and councils;
- the certificates of registration and the registered constitutions of registered trade unions, registered employers' organisations, and councils and the constitutions of federations of trade unions and federations of employers' organisations; and
- the auditor's report on the above mentioned institutions.

The act sets out the procedure by means of which to appeal against decisions of the registrar.

The act gives every employee the right to form a trade union or to join a trade union. The act then sets out the rights of members of trade unions. Similarly, every employer has the right to participate in forming an employer's organisation, to join an employer's organisation, to participate in its lawful activities, to participate in the elections of their members and to stand for election.

The act prohibits discrimination of any employee or employer who exercises any right conferred by this act.

The act sets out the rights of trade unions and employers' organisations, which include amongst others, the right to determine its own constitution and rules, and to plan and organise its administration and lawful activities.

The act deals extensively with collective bargaining, and in this regard determines the following:

With regard to organisational rights, representative trade unions (as defined in the act) are entitled to enter the employer's premises in order to recruit members, communicate with members or serve members' interests. Furthermore, representative trade unions may hold meetings with employees outside their working hours at the employer's premises. These rights are however subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.



Employees who are members of representative trade unions may authorise their employer in writing to deduct subscriptions or levies that are payable to the trade union from his/her wages.

The act sets out the requirements and the allowed numbers for the election of trade union representatives, for example, for 10 members of the trade union employed in the workplace, one trade union representative may be elected, and when more than 10 members of the trade union are employed in the work place, two trade union representatives may be elected.

The nomination, election, terms of office and removal from office of a trade union representative is governed by the constitution of the representative trade union. The act sets out the rights of trade union representatives.

Employers are required to disclose to a trade union representative all relevant information that will allow the trade union representative to effectively perform the functions as set out in the act. Furthermore, whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose to such union all relevant information that will allow the union to engage effectively in consultation or collective bargaining. Confidential information must be indicated in writing. The following information does not however have to be disclosed: Information that

- is legally privileged;
- the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
- is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
- is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

The act sets out the manner in which to deal with disputes that may arise with regard to the disclosure of information.

The above mentioned rights are restricted for workers in the domestic sector (employees engaged in domestic work in their employers' homes or on the property on which the home is situated.)

The act sets out the procedure which must be followed when registered trade unions want to exercise the rights conferred by the act. The act sets out the procedure on how to deal with any disputes about organisational rights.

With regard to collective agreements, the act regulates the legal effect of collective agreements, and sets out the procedure for dealing with disputes around collective agreements.

The act regulates the functioning of agency shop agreements by means of which an employer is required to deduct an agreed agency fee from the wages of employees who are not members of the trade union but are eligible for membership thereof.

The act regulates the legal effect and functioning of closed shop agreements. In terms of these agreements all employees that are covered by the agreement are required to be members of the trade union.



The act regulates the establishment and functioning of bargaining councils. The act empowers bargaining councils to amongst others, conclude collective agreements, enforce those collective agreements and to perform certain dispute resolution functions. The act sets out the minimum requirements for the constitution of bargaining councils, and regulates the binding effect of a collective agreement concluded in a bargaining council.

The act regulates the appointment and powers of designated agents of bargaining councils, and also regulates the manner in which collective agreements may be enforced by bargaining councils.

The act regulates the amalgamation of bargaining councils, bargaining councils in the public service and the procedure for disputes between such bargaining councils.

The act regulates the establishment and registration of statutory councils. After registering a statutory council, the registrar must issue a certificate of registration that must specify the registered scope of the statutory council and send the certificate and a certified copy of the registered constitution to all the parties to the statutory council and any representatives appointed to the statutory council.

The act sets out the powers and functions of Statutory Councils, which include amongst others the power to perform certain dispute resolution functions and to promote and establish training and education schemes. Furthermore, the act regulates situations where parties withdraw from statutory councils, where new representatives are appointed to statutory councils, and the change of status of such councils.

The act places the duty on statutory councils to keep certain records and to provide the registrar with the information as required by the act, which include amongst others, its auditor's report, financial statements and explanations relating to the latter.

With regard to statutory committees, the act regulates the following:

- The delegation of functions to committees of the council;
- The admission of parties to councils;
- The changing of constitution or name of the council;
- Variation of scope; and
- Winding up.

The act provides for procedures on how to deal with disputes about demarcation between sectors and areas for employees, employers or collective agreements.

Every employee has the right to strike and every employer may lock-out its employees in certain circumstances. The act places certain limitations on the right to strike or recourse to lock-out. The act also regulates the right to take part in secondary strikes.

"Protected strikes" may take place. A protected strike means a strike that complies with the requirements as set out in the act, and a "protected lock-out" has a corresponding meaning. Participation in such a strike or lock-out does not constitute a delict or a breach of contract. An employer is however not obliged to remunerate an employee for services that the employee does not render during a protected strike or a protected lock-out. If the employee's remuneration includes payment in kind in respect of accommodation,



the provision of food and other basic amenities of life, the employer, at the request of the employee, must not discontinue the payment in kind during the strike or lock-out, and after the end of the strike or lock-out, the employer may recover the monetary value of such remuneration.

Employees may not be dismissed for participating in a protected strike, but nothing precludes an employer from fairly dismissing an employee for a reason related to the employee's conduct during the strike, or for a reason based on the employer's operational requirements.

In the case of any strike or lock-out that does not comply with the provisions of the act, the Labour Court may:

- grant an interdict or order to restrain any person from participating in such a strike or lock-out; and
- order the payment of just and equitable compensation for any loss attributable to the strike or lock-out after taking into account certain factors that are set out in the act.

The act sets out the procedure which must be followed before an order as mentioned above may be granted. Participation in a strike that does not comply with the act may constitute a fair reason for dismissal.

The act regulates picketing and allows a registered trade union to authorise a picket by its members and supporters for the purposes of peacefully demonstrating in support of any protected strike or in opposition to any lock-out.

Authorised pickets may be held in any place to which the public has access but outside the premises of an employer or with the permission of the employer, inside the employer's premises, which permission may not be unreasonably withheld.

The act empowers the essential services committee to conduct investigations as to whether the whole or a part of a service is an essential service (as defined). If the essential services committee designates the whole or a part of a service as an essential service, a notice to that effect must be published in the Government Gazette.

The act deems the following two services as essential services:

- The Parliamentary Service; and
- The South African Police Service.

Disputes as to whether a service is an essential service must be referred in writing to the essential services committee. The act sets out a separate procedure for disputes in which a party is involved that is precluded from participating in a strike or a lock-out due to the fact that such party is engaged in an essential service. Such disputes must be referred to either a council, (if the parties to the dispute fall within the registered scope of that council), or the CCMA if no council has jurisdiction.

The act defines maintenance services as a service of which the interruption thereof has the effect of material physical destruction to any working area, plant or machinery. An employer may apply in writing to the essential services committee for a determination that the whole or a part of the employer's business or service is a maintenance service.



An employer may not take into employment any person to continue or maintain production during a protected strike if the whole or a part of the employer's service has been designated a maintenance service, or for the purpose of performing the work of any employee who is locked out, unless the lock-out is in response to a strike.

The act gives every employee who is not engaged in an essential service or a maintenance service the right to take part in protest action in certain circumstances and after following the right procedures.

The act provides for the procedure for the establishment of workplace forums and sets out their main powers and functions. These include amongst others, to promote the interests of all employees in the workplace, whether or not they are trade union members, and to enhance efficiency in the workplace. Workplace forums may only be established in a workplace in which an employer employs more than 100 employees. The act sets out further requirements for the constitution of a workplace forum, such as that it must inter alia establish a formula for determining the number of seats in the workplace forum, a formula for the distribution of seats in the workplace forum so as to reflect the occupational structure of the workplace, and provide for the procedure and manner in which elections and ballots must be conducted.

The act regulates the timeframe and structure of meetings of workplace forums.

The act sets out certain specific matters upon which a workplace forum is entitled to be consulted by the employer. They include inter alia:

- Restructuring the workplace, including the introduction of new technology and new work methods;
- Changes in the organisation of work; and
- Mergers and transfers of ownership in so far as they have an impact on the employees;

Before an employer may implement a proposal in relation to the matters on which he/she must consult with the workplace forum, such employer must consult the workplace forum and attempt to reach consensus with it, and must allow the workplace forum an opportunity during the consultation to make representations and to advance alternative proposals. The employer must then consider and respond to such representations or alternative proposals, and state any reasons for disagreeing. If consensus cannot be reached, the employer must invoke any agreed procedure to resolve the differences before implementing the employer's proposal.

Unless the matters for joint decision-making are regulated by a collective agreement with the representative trade union, an employer must consult and reach consensus with a workplace forum before implementing any proposal concerning:

- Disciplinary codes and procedures;
- Rules relating to the proper regulation of the workplace in so far as they apply to conduct not related to the work performance of employees;
- Measures designed to protect and advance persons disadvantaged by unfair discrimination; and
- Changes by the employer or by employer-appointed representatives on trusts or boards of employer-controlled schemes, to the rules regulating social benefit schemes.

The act places a duty on an employer to disclose to the workplace forum all relevant information that will allow the workplace forum to engage effectively in consultation and joint decision-making.

An employer is however not required to disclose information that:

- Is legally privileged;
- The employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
- That is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
- That is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

Disputes about the disclosure of information may be referred to the CCMA in accordance with the procedure as set out in the act.

The act sets out the procedure which must be followed when a workplace forum is dissolved.

The act regulates trade unions and employers organisations, and sets out the requirements, procedure and effects of registration thereof. The act requires these institutions to follow the standards of generally accepted accounting practice ("gaap"), and to keep books and records of its income, expenditure, assets and liabilities in accordance therewith and to prepare financial statements within a certain period. An annual audit of its books and records of account and its financial statements must be done by an auditor in accordance with gaap and the auditor must report in writing to the trade union or employers' organisation and must in such report, express an opinion as to whether or not the trade union or employers' organisation has complied with those provisions of its constitution relating to financial matters. The financial statements and the auditor's report must be made available to the members for inspection.

The act requires every registered trade union and every registered employers' organisation to preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets, and auditor's reports, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate. The act also requires these institutions to keep

- A list of its members;
- The minutes of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate; and
- The ballot papers for a period of three years from the date of every ballot.

The act sets out certain information that must be submitted to the registrar, and the periods for such submission.

The act sets out the procedure that must be followed for a trade union or employer's organisation to change its constitution or its name.

The act also sets out the procedure and requirements for amalgamation of trade unions and the winding-up of trade unions or employers' organisations, and it determines the circumstances and procedure for cancelling the registration of trade unions or employers' organisations.

The act also provides for the regulation of Federations of Trade Unions and Employers' Organisations.



The act regulates the establishment of the Commission for Conciliation, Mediation and Arbitration ("the CCMA"), which is independent of the State, any political party, trade union employer, employers' organisation, federation of trade unions or federation of employers' organisations, and which has jurisdiction in all the provinces of the Republic.

The act sets out the functions of the CCMA, which include the function to attempt to resolve, through conciliation, any dispute referred to it in terms of this act. The act empowers the CCMA to make rules regarding certain matters. The act regulates the governance, composition and finances of the CCMA.

The act sets out the procedure which must be followed by the CCMA when a dispute has been referred to it. The Arbitration Act, 1965 does not apply to any arbitration done by the CCMA.

The act deals with the establishment, status and composition of the Labour Court. The act also regulates the procedure whereby judges are appointed to the Labour Court, and their tenure, remuneration and terms and conditions of appointment.

The act stipulates that the Labour Court has jurisdiction in all the provinces of South Africa and has exclusive jurisdiction in respect of labour matters. The act furthermore regulates the following with regard to the Labour Court:

- Representation before the Court;
- Costs;
- Enforcement of orders;
- Seal of the Court;
- Variation and rescission of orders of the Court; and
- Appeals against judgment or orders of the Court.

The act also deals with the Labour Appeal Court ("the LAC"), and in this regard regulates the following:

- Establishment and status of the LAC;
- Composition of the LAC;
- Appointment of other judges of the LAC;
- Tenure, remuneration and terms and conditions of appointment of LAC judges;
- Officers of the LAC;
- Area of jurisdiction and seat of the LAC;
- Powers of the LAC on hearing of appeals;
- Rules for the LAC;
- Representation before the LAC;
- Costs;
- Service and enforcement of orders; and
- Seal of the LAC.

The act gives every employee the right not to be unfairly dismissed or to be subjected to unfair labour practices. The act then defines the terms "dismissal" and "unfair labour practice". The act mentions which actions will be regarded as automatically unfair dismissals.



The act sets out the procedure that must be followed by employers when dismissing employees based on operational requirements. The act then sets out the procedure to be followed when there is a dispute regarding the unfair dismissals and unfair labour practices.

The act stipulates the remedies that may be used/implemented by the Labour Court or an arbitrator for unfair dismissal and unfair labour practice.

The act limits the amount of compensation that is payable to an employee whose dismissal is found to be unfair. The act requires such an amount to be just and equitable but states that it may not be more than the equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

The act deals with the situation when contracts of employment are transferred to a new employer, and sets out the legal requirements in such a situation.

The act also regulates the position with regard to temporary employment services.

In terms of the act, contracts of employment may not disregard or waive collective agreements or arbitration awards that are applicable.

The act sets out the circumstances under which persons will be presumed to be "employees" for the purposes of this act.

The act places an onus on employers to keep certain records such as applicable collective agreements, arbitration awards and determinations made in terms of the Wage Act.

The act contains the following schedules:

- Schedule 1: Establishment of bargaining councils for public service
- Schedule 2: Guidelines for constitution of workplace forum
- Schedule 3: Commission for conciliation, mediation & arbitration
- Schedule 4: Dispute resolution: flow diagrams
- Schedule 5: Amendment of laws
- Schedule 6: Repealed laws
- Schedule 7: Transitional arrangements
- Schedule 8: Code of good practice: dismissal
- Schedule 9: Model constitution for a statutory council
- Schedule 10: Powers of designated agent of bargaining council

3.6.3 Basic Conditions of Employment Act, 75 of 1997

The main purpose of this act is to stipulate the basic conditions of employment upon which each employee is entitled and to which each employer must adhere to.

The act defines “employee” as any person, excluding an independent contractor,

- who works for another person or for the State; and
- who receives, or is entitled to receive any remuneration; and
- any other person who in any manner assists in carrying on or conducting the business of an employer.

Employment contracts may be more favourable than the provisions set out in this act, but they may not be more stringent. Although this act takes precedence over any agreement between employer and employee, it should be remembered that this act does not apply to certain categories of employees. For example, working time provisions do not apply to senior managerial employees, sales staff who travel to customers and who regulate their own hours of work, and employees who work less than 24 hours a month for an employer.

Working hours: employees should only work 45 hours in any week, and nine hours in any day of a five day week; or eight hours in any day of a week consisting of more than five days.

Overtime: employees may not be required or allowed to work overtime unless such overtime is in accordance with an agreement, and then overtime may not be more than ten hours’ overtime a week (the number of hours may be increased by a collective agreement). Wages for overtime must at least be one and one-half times the employee’s wage. Time off may also be granted instead of wages.

For continuous work of more than five hours, an employee should get a **meal interval** of at least one continuous hour.

Employees must be allowed daily and weekly rest periods as follows:

- daily rest period of at least twelve consecutive hours between ending and recommencing work; and
- weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.

Sunday work and work on public holiday: Employee must be paid double.

Leave: (not applicable to employees who work less than 24 hours a month for an employer) Leave entitlement is as follows:

- **Annual leave:** 21 consecutive days’ on full remuneration per year;
- **Sick leave:** equal to the number of days the employee would normally work during a period of six weeks. The employer is not required to pay an employee for sick leave if the employee has been absent from work for more than two consecutive days, or on more than two occasions during an eight week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee’s absence on account of sickness or injury;

- **Maternity leave:** At least four consecutive months' maternity leave;
- **Family responsibility leave:** (only applies to an employee who has been in employment with an employer for longer than four months; and who works for at least four days a week for that employer). Three days' paid leave, when the employee's child is born, employee's child is sick; or in the event of the death of the employee's spouse or life partner; or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

On commencement of work, an employee must receive an employment contract, and the employer must keep the records specified by the act. The employee must receive a pay slip with every remuneration payment. deductions must be agreed upon or be permitted by law.

Notice periods:

- one week, if the employee has been employed for six months or less;
- two weeks, if the employee has been employed for more than six months but not more than one year;
- four weeks, if the employee has been employed for one year or more; or is a farm worker or domestic worker who has been employed for more than six months.

Payment may be made instead of giving notice, but if notice is given it must be given in writing.

Dismissal for operational requirements ("requirements based on the economic, technological, structural or similar needs of an employer"): Payment of severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer.

The act further provides for sectoral determinations establishing basic conditions of employment for employees in a sector and area. Should a matter be regulated in both this Act and a sectoral determination, the provision in the sectoral determination must prevail.

The Minister may appoint labour inspectors who must promote, monitor and enforce compliance with an employment laws.

The Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act, except in respect of certain offences.

It might be useful to note that the act creates certain presumptions as to who are employees: A person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if certain circumstances exist.

The following offences and penalties apply:

Subject	Maximum term of imprisonment
Employment of children in contravention of the act	3 years
Forced labour	3 years
Breach of confidentiality	1 year
Obstruction, undue influence and fraud in terms of powers and functions that are performed in terms of the act.	1 year

3.6.4 Remuneration of Public Office Bearers Act, 20 of 1998

The act prescribes the manner in which the following public office bearers are remunerated and receive benefits:

- The President;
- Members of the National Assembly (excluding members of the Cabinet and Deputy Ministers), and permanent delegates;
- Deputy President, Ministers and Deputy Ministers;
- Traditional leaders, members of local Houses of Traditional Leaders, members of provincial Houses of Traditional Leaders and members of National House of Traditional Leaders; and
- Premiers and MECs.

The benefits which are regulated in this act and to which the above mentioned office bearers are entitled to are:

- Salaries and allowances;
- Pension benefits; and
- Medical aid benefits.

3.6.5 Employment Equity Act, 55 of 1998

The main purpose of this act is to achieve equity in the workplace by promoting equal opportunity and fair treatment and implementing affirmative action measures to redress the disadvantages in employment experienced by black people, women, and people with disabilities.

"Designated employers" in terms of this act are:

- employers who employ 50 or more employees;
- employers who employ fewer than 50 employees but has a total annual turnover equal to or above the threshold set in the table below;
- a municipality;
- organs of state; and
- employers bound by collective agreement which appoints it as a designated employer.

The act applies to all employees and employers. Employers must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on any grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

It is however not unfair discrimination to take affirmative action measures consistent with this act or to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

The act restricts testing of employees as follows:

Nature of test	Proviso
Medical tests	<ul style="list-style-type: none"> Only if legislation permits or requires the testing; or It is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job.
HIV status	<ul style="list-style-type: none"> Only if the Labour Court has declared it justifiable.
Psychometric testing and other similar assessments	<ul style="list-style-type: none"> Only if the test or assessment being used has been scientifically shown to be valid and reliable; Can be applied fairly to all employees; and is not biased against any employee or group.

Designated employers must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of the Act. They must consult with their employees, conduct an analysis, prepare an employment equity plan, and report to the Director-General of the Department of Labour on progress made in implementing its employment equity plan.

A designated employer must prepare and implement an employment equity plan which sets out amongst others, the following:

- objectives to be achieved for each year of the plan;
- the affirmative action measures to be implemented;
- the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce;
- the timetable within which this is to be achieved; and the strategies intended to achieve those goals;
- the timetable for each year of the plan for the achievement of goals and objectives other than numerical goals; and
- the duration of the plan.

A designated employer that employs fewer than 150 employees must submit a report to the Director-General of Labour once every two years, while a designated employer that employs 150 or more employees must submit a report once every year.

The act establishes the Commission for Employment Equity as an advisory body to the Minister of Labour.

Every employer that wants to submit a tender for government, must comply with this act, and attach to their tender a certificate that proves compliance.

Offences:

The following offences are created by the act:

- obstruction or attempt to improperly influence any person who is exercising a power or performing a function in terms of this Act; or
- knowingly giving false information in any document or information provided to the Director-General of Labour or a labour inspector in terms of this act;
- no employer may knowingly take any measure to avoid becoming a designated employer.

Contravention of the above is subject to a fine not exceeding R10 000.

This Schedule sets out the maximum fines that may be imposed for the contravention of the Act.

Contravention	Status of contravention	Amount
<ul style="list-style-type: none"> ■ Failure to consult with employees; ■ Failure to perform analysis of employment practices, policies and procedures and working environment to identify employment barriers; ■ Failure to prepare and implement employment equity plan; ■ Failure to submit report to the DG ■ Failure to publicize the report if entity is a public company; and ■ Failure to prepare successive employment equity plans. 	No previous contravention	R500 000
	A previous contravention in respect of the same provision	R600 000
	A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within three years	R700 000
	Three previous contraventions in respect of the same provision within three years	R800 000
	Four previous contraventions in respect of the same provision within three years	R900 000

Turnover threshold applicable to designated employers

Sector or subsectors in accordance with the Standard Industrial Classification	Total annual turnover
Agriculture	R2,00 m
Mining and Quarrying	R7,50 m
Manufacturing	R10,00 m
Electricity, Gas and Water	R10,00 m
Construction	R5,00 m
Retail and Motor Trade and Repair Services	R15,00 m
Wholesale Trade, Commercial Agents and Allied Services	R25,00 m
Catering, Accommodation and other Trade	R5,00 m
Transport, Storage and Communications	R10,00 m
Finance and Business Services	R10,00 m
Community, Special and Personal Services	R5,00 m

3.6.6 Skills Development Act, 97 of 1998

The main purpose of this act is to provide a framework within which to develop and implement strategies for the development and improvement of the skills of the South African workforce.

This act goes hand in hand with the South African Qualifications Authority Act. In order to achieve its purpose, the act provides inter alia for the establishment of the following:

- the National Skills Authority, and the National Skills Fund;
- a skills development levy-financing scheme as envisaged in the Skills Development Levies Act;
- SETAs (Sector Education and Training Authorities);
- labour centres; and
- the Skills Development Planning Unit.

The SETAs are established for national economic sectors, and their main functions are to:

- develop and implement a sector skills plan within the framework of the national skills development strategy;
- collect and disburse the skills development levies; and
- liaise with the National Skills Authority.

The SETAs are mainly financed from 80 per cent of the skills development levies, interest and penalties allocated in terms of the Skills Development Levies Act. The moneys received by a SETA may be used only in accordance with prescribed standards or criteria to fund the performance of its functions, and to pay for its administration.

The National Skills Fund receives the remaining 20 per cent of the skills development levies, interest and penalties collected in respect of every SETA.

The SETAs must be managed in accordance with the Public Finance Management Act, and are subject to audit by the Auditor-General.

The Skills Development Planning Unit must research and analyse the labour market in order to determine skills development needs, and must assist in the formulation of the national skills development strategy and the sector skills development plans.

The Director-General of Labour must establish labour centres and appoint persons to perform the functions allocated to such centres in terms of the act.

Each public service employer in the national and provincial spheres of government must budget for at least one per cent of its payroll for the training and education of its employees.

The following offences are created in terms of the act:

- obstruction or attempt to influence a person improperly who is performing a function in terms of the act;
- obtaining any prescribed document by means of fraud, false pretences or by submitting a false or forged prescribed document;
- furnishing of false information in any prescribed document ;
- provision of employment services for gain without being registered; or
- conducting the business of a private employment services agency in contravention of this Act.

The penalty for these offences is a fine or imprisonment for a period not more than one year.

3.6.7 Resolution 2 of 1999 of the Central Bargaining Council (Code of Conduct) (Not summarised in this document)

3.6.8 Personal User Manual (Not summarised in this document)

3.6.9 Policy: Human Resource Procurement (Chapter 11) (Not summarised in this document)

3.6.10 Policy, Credit Cards, Premier, MECs, Speaker and HODs (Not summarised in this document)

3.6.11 Subsistence and Transport Policy Manual (Not summarised in this document)

3.6.12 Handbook for MECs and presiding officers (Not summarised in this document)

3.7 Financial Statements, Journal and Suspense Accounts

3.7.1 Constitution of the Republic of South Africa, 108 of 1996 (Refer to Section 2.1)

3.7.2 Public Finance Management Act and Regulations (Refer to Section 2.2)

3.7.3 Nonprofit Organisations Act, 71 of 1997 (Refer to Section 3.8.2)



3.7.4 National Treasury Guide on Preparation of Financial Statements (Not summarised in this document)

3.7.5 Walker User Manual (Not summarised in this document)

3.7.6 Municipal Finance Management Act, 56 of 2003 (Refer to Section 2.4)

3.7.7 Prevention and Combating of Corrupt Activities Act, 12 of 2004 (Refer to Section 2.5.1)

3.7.8 The Prevention of Organised Crime Act, 121 of 1998 (Refer to Section 2.5.2)

3.7.9 Financial Intelligence Centre Act, 38 of 2001 (FICA) (Refer to Section 2.5.3)

3.8 Transfer Payments

3.8.1 Public Finance Management Act and Regulations (Refer to Section 2.2)

3.8.2 Non-profit Organisations Act, 71 of 1997

The main object of this act is to encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population of the South Africa.

Nonprofit organisations are trusts, companies or other associations of persons established for a public purpose, of which the income and property are not distributable to its members or office-bearers.

Every organ of state must determine and co-ordinate the implementation of its policies and measures in order to promote, support and enhance the capacity of nonprofit organisations to perform their functions. For this purpose the Minister for Welfare and Population Development ("the Minister") must establish a Directorate for Nonprofit Organisations ("the Directorate") within the Department. The Director of Nonprofit Organisations ("the Director") will be in charge of the Directorate.

The act sets out the functions of the Directorate which includes amongst others, the facilitation of the process for developing and implementing policy, and the determination and implementation of programs to support nonprofit organisations in their endeavour to register. Furthermore, the Directorate must amongst others, prepare and issue codes of good practice for nonprofit organisations and those persons, bodies and organisations making donations or grants to nonprofit organisations.

The Minister must table in Parliament a written narrative and financial report on the activities of the Directorate.

The Minister must appoint a panel of Arbitrators and an Arbitration Tribunal, as well as Advisory or Technical Committees in order to achieve the objects of this Act.

The act prescribes the requirements for registration as nonprofit organisations, and allows the Minister to prescribe benefits or allowances for such registered organisations. Organisations that have not been allowed to register may appeal against such decision not to register. The act also prescribes the accounting records and reports required from nonprofit organisations.

If nonprofit organisations do not comply with their constitution and obligations, the Director must send a compliance notice to such organisation and refer the nonprofit organisation to the South African Police Service for criminal investigation if such non compliance constitutes an offence.

The Director may cancel the registration of nonprofit organisations if they do not adhere to notices of non compliance or make material false representations to the Director. Decisions to cancel registration may be referred to the Arbitration Tribunal for consideration. Voluntary deregistration is also possible by following the procedure as set out in the act.

The Director must keep a register of all nonprofit organisations that have been registered, those whose registrations have been cancelled, and those who have voluntarily deregistered or have been wound up or dissolved.

The act creates the following offences. It is an offence:

- to cause a nonprofit organisation, when it is being wound up or dissolved, to transfer its remaining assets otherwise than required in the act;
- for bodies or organisations:
 - to represent themselves as being validly registered in terms of this act if they are not so registered;
 - to make use of a registration number, a registration certificate or any information contained in the registration certificate if they have not been registered in terms of this act; or
 - to make material false representations in any document or a narrative, financial or other report submitted to the Director.

A person convicted of an offence in terms of this act is liable to pay a fine or to imprisonment or to both a fine and imprisonment.

3.8.3 Social Assistance Act, 59 of 1992

The act provides for the Minister of Welfare and Population Development in concurrence with the Minister of Finance, to make certain grants such as:

- grants to aged and disabled persons and to war veterans;
- a child-support grant to a primary care-giver of a child who is under the age of seven;
- a foster child grant to a foster parent; and
- a care-dependency grant to a parent or foster parent in respect of a care-dependent child.

Before the above mentioned persons may receive grants in terms of this act, he/she must satisfy the Director General Welfare and Population Development ("the DG") that he/she

- is an aged or disabled person or a war veteran;
- is resident in South Africa at the time of the application;
- is a South African citizen; and
- complies with any prescribed conditions.

Before a person will be entitled to a child-support grant, he/she must satisfy the DG that

- he/she is the primary care-giver of a child; and
- he/she and the child
 - are resident in South Africa at the time of the application;
 - are South African citizens; and
 - comply with any prescribed conditions.

The act empowers the Minister in concurrence with the Minister of Finance, to make financial awards to any welfare organization which undertakes or takes or co-ordinates organized activities, measures or programmes in the field of developmental social welfare services; and any organization which in terms of its constitution has the care of mentally or psychiatrically disabled persons as one of its objects as contemplated by the Fund-raising Act, 1978.

The DG may make a financial award to a person if he/she is satisfied that such person is in need of social relief of distress. The act sets out the contents and form of the application for such social assistance. The act also empowers the DG to conduct an investigation in respect of the applicant if he/she deems it necessary. The act sets out the circumstances under which grants may be stopped, for example when a person is absent from South Africa for a continuous period of six months or longer.

If the DG is of the opinion that a beneficiary misspends his/her grant or for any other reason, the DG may suspend payment of the grant, or appoint a person to receive the grant on behalf of such beneficiary and to apply it for the benefit of that beneficiary.

The act sets out the procedure by means of which sums that was overpaid, may be refunded. The National Treasury may however in its discretion, write off the whole or any portion of an amount owing to the State under the circumstances as set out in the act. Any person who is aggrieved by a decision of the DG in terms of this act, may appeal in writing against such decision to the Minister.

The act prohibits the cession, transfer, or pledge of any right to an amount payable in terms of this act. This act also declares that such a right may not be liable to attachment or any form of execution under a judgment or order of a court of law.

The act declares it an offence to furnish any false or misleading information in connection with an application for social assistance. Similarly, if a person receives any social assistance knowing that he/she is not entitled thereto, such person is guilty of an offence.

The act empowers the DG conduct an inquiry into any matter concerning the rendering of social assistance. In this regard the DG have certain powers such as to subpoena any person who in his or her opinion may furnish information of material importance concerning such matter, or who is suspected of having in his or her possession or care or under his or her control a book, document or thing that may have a bearing on the investigation, to appear before him/her. The act sets out the procedure that must be followed by the DG to issue such subpoena.

The act requires the following persons/entities to furnish certain information relating to an applicant the DG if so required.



- the DG of Home Affairs;
- any registrar of deeds; or
- any other officer in the service of the State.

The act creates following offences: Any person who

- hinders or obstructs the DG in the performance of his/her functions under this act; or
- refuses or fails to comply with a requirement or request of the DG; or
- intentionally furnishes the DG with false or misleading information; or
- has been duly subpoenaed and who fails,
 - to appear at the time and place specified in the subpoena; or
 - to remain in attendance until excused by the presiding officer or
- has been subpoenaed and who refuses to be sworn or to make an affirmation as a witness

is guilty of an offence.

The act stipulates that a person convicted of any of the above offences, will be liable upon conviction to a fine or to imprisonment for a period of 12 months or to both such fine and imprisonment.

The act empowers the Minister to make regulations with regard to matters such as amongst others, the payment of grants, including the maximum amount that may be paid, the determination of the amount to be paid, payment to a person other than the beneficiary and the stopping of payment.

3.8.4 The Trust Property Control Act, 57 of 1988 (Refer to Section 3.1.4)

3.8.5 Walker User Manual (Not summarised in this document)

3.8.6 Municipal Finance Management Act, 56 of 2003 (Refer to Section 2.4)

3.8.7 Prevention and Combating of Corrupt Activities Act, 12 of 2004 (Refer to Section 2.5.1)

3.8.8 The Prevention of Organised Crime Act, 121 of 1998 (Refer to Section 2.5.2)

3.8.9 Financial Intelligence Centre Act, 38 of 2001 (FICA) (Refer to Section 2.5.3)

3.9 Pension Payments

3.9.1 General Pensions Act, 29 of 1979

The main purpose of this act is to consolidate certain laws relating to pensions generally, and to regulate pension matters generally.

The act prohibits the assignment, transfer, cession or pledge of any annuity or benefit (or right in respect thereof) that is payable under a pension law. Furthermore, no such rights may be hypothecated, be attached



(except as provided for in the Maintenance Act) or be subjected to execution under a judgment or court order of a court of law.

Any benefit received under any pension law by any person whose estate is sequestrated shall not form part of the assets in his insolvent estate.

An annuity payable under a pension law shall, notwithstanding anything to the contrary in another act, be payable until the last day of the month in which the pensioner concerned dies.

If the Director General for Health and Welfare ("the DG") is satisfied that it is undesirable for any reason to pay the whole amount of any annuity or benefit payable to any person under a pension law, directly to such person, he/she may order that such annuity or benefit or a portion thereof be paid to some other person for the benefit of the beneficiary or his dependants.

The DG must ensure that a Civil Pensions Stabilisation Account ("the Account") is kept which will receive

- contributions by members of pension funds;
- money appropriated by Parliament for the Account; and
- interest from the investment of moneys in the Account; and
- such other moneys as may accrue to the Account from any other source.

The DG may direct that an amount be paid out of this Account to a pension fund in order to assist such pension fund in meeting its additional liabilities resulting from an increase in annuities, allowances or bonuses.

Moneys to the credit of the Account and which are not immediately required for the above mentioned purpose, must be invested with the Public Debt Commissioners. The account must however be audited by the Auditor-General.

The act regulates the period regarding payment of benefits.

The act regulates the pension benefits for officers and employees of Parliament and their widows and dependants.

The act regulates the preservation of pension rights of certain persons, for example, if the membership of a member of a pension fund is on account of any reason terminated before he/she attains the age at which he/she would have the right to retire on pension, the DG may declare such member a dormant member of the pension fund with effect from the date on which his/her membership was so terminated if it is deemed expedient that such pensionable service as such member should be retained. The act then regulates the following with regard to such dormant member:

- contributions and pension benefits payable to and by such dormant member;
- position of the widow or dependant or estate of such dormant member who has died before the fixed date;
- position where a dormant member becomes or again becomes a contributing member of a pension fund; and
- transfer of pensionable service of a dormant member to another pension fund



The act further regulates the following:

- pensions payable in respect of the former State President (any person who occupied this position before 1 April 1968) and such person's widow;
- pension rights of certain members of the National Road Board Provident Fund;
- pension benefits of persons whose services are terminated in certain circumstances;
- employees of local authorities who become employees of a water board;
- payment of gratuity to beneficiaries designated by members of pension funds; and
- payment from State Revenue Fund in terms of laws relating to pensions.

Any pension or any right to a pension due and payable on or as a result of, or after the death of a member of a pension fund to the widow, child or other dependant of such member, in terms of the relevant pension law, shall for the purposes of the Estate Duty Act, 1955, be deemed not to be "property" as defined in that act.

The act empowers the Minister after consultation with the Minister of Finance to make regulations providing for the management of and control over pension funds.

The accounting records of a pension fund must be audited by the Auditor-General.

3.9.2 Social Assistance Act, 59 of 1992 (Refer to Section 3.8.3)

3.9.3 Special Pensions Act, 69 of 1996

This act establishes the Special Pensions Board ("the Board") which is accountable to the Minister of Finance ("the Minister"), and which consists of a Chairperson and four other members.

The act regulates the appointment of members of the Board, remuneration of such members, the conduct of members, meetings of the Board, finances of the Board, governance, duties and powers of the Board, investigations by the Board, legal proceedings against Board and the dissolution of the Board.

The act also establishes the Special Pensions Review Board to consider every appeal submitted to it. This Review Board may confirm the decision of the Board or may replace it with another decision.

A person who made sacrifices or served the public interest in establishing a non-racial, democratic constitutional order and who is a citizen, or entitled to be a citizen, of South Africa ("SA"), has the right to a pension in terms of this act if that person:

- was at least 35 years of age on the commencement date; and
- was prevented from providing for a pension because, for a total or combined period of at least five years prior to 2 February 1990, one or more of the following circumstances applied:
 - that person was engaged full-time in the service of a political organisation (as defined in the act);
 - that person was prevented from leaving a particular place or area within SA, or from being at a particular place or in a particular area within SA, as a result of an order issued in terms of certain laws;
 - that person was imprisoned or detained in terms of any law or for any crime mentioned in the act, or that person was imprisoned for any offence committed with a political objective.

The act sets out factors that must be taken into account when determining whether a person committed an offence with a political objective.

A person who made sacrifices or served the public interest in establishing a non-racial democratic constitutional order and who is a citizen, or entitled to be a citizen of SA has the right to a pension in terms of this Act if that person:

- was prevented from providing for a pension because, prior to 2 February 1990, that person suffered a permanent and total disability arising out of any of the circumstances listed above; or
- complies with the criteria above and submits proof to the satisfaction of the Board that he or she suffers from a terminal disease.

For each pensioner, the Board must determine the amount of the monthly pension in accordance with the table in Schedule 3 to the act. The act then sets out the manner in which the Board must determine each pensioner's qualifying period.

Persons are disqualified from receiving or continuing to receive a pension if, after making the sacrifice or serving the public interest as referred to above, that person

- either actively engaged in actions calculated to undermine efforts to establish a non-racial democratic constitutional order;
- or was convicted of a crime (as defined) committed after 2 February 1990.

The act sets out the rights and circumstances under which persons have the right to a survivor's lump sum benefit in terms of this act. The act also sets out the circumstances under which a person who would be eligible for a survivor's benefit is disqualified from receiving that benefit, for example, if that person either actively engaged in actions calculated to undermine efforts to establish a non-racial democratic constitutional order, or has been convicted of a crime committed after 2 February 1990.

The act sets out the entitlements of a survivor on the death of a pensioner mentioned above.

If a deceased person is survived by more than one spouse, each of whom qualifies for a survivor's benefit in terms of this act, the Board must determine the proportion of the survivor's benefit that is to be paid to each qualifying spouse. The total benefits for all the surviving spouses must however not exceed the benefit that would have been payable had there been only one surviving spouse. This principle applies equally to the case where a deceased person is not survived by a spouse, but is survived by more than one dependant, each of whom qualifies for a survivor's benefit in terms of this act.

The act sets out the procedure which must be followed for the application for benefits in terms of this act, and also sets out the manner in which the Board must determine the benefit entitlement of the applicants. The act provides for review of decisions of the Board by persons who are aggrieved by its decisions.

The method and timing of payment of benefits in terms of this act are stipulated.

The Minister may increase the pensions payable to pensioners on any basis that he/she considers appropriate.



A pension, or a right in respect of a pension, payable in terms of this act cannot be assigned, transferred, pledged, hypothecated or otherwise ceded, and is not liable to be attached and may not be subject to any form of execution under a judgment or an order of any court of law. If a beneficiary, or a person acting under the lawful authority of a beneficiary, attempts to assign, transfer, pledge, hypothecate or otherwise cede any pension payable in terms of this act, the Minister may direct that the pension concerned must be withheld, suspended or discontinued.

The act does not prohibit beneficiaries who qualify for other benefits in addition to this act, to receive payments in terms of the Social Pension Act, 1973, and the Military Pensions Act, 1976.

Benefits received in terms of this act are taxable.

A person or political organisation is guilty of an offence if that person or organisation

- prevents or obstructs the performance of any activity contemplated by this act;
- refuses, or without sufficient cause fails to comply with an obligation imposed in terms of this act; or
- intentionally submits false or misleading information to the Board.

Such person or political organisation, if convicted of such offence is liable for a maximum fine of R5 000.

A person or political organisation convicted of such offence in circumstances in which such person or organisation has benefited in any way, is liable to the same penalty as that applicable in respect of the crime of fraud.

A person who intentionally fails to notify the department of Finance of the death of a person who was receiving benefits in terms of this act, and as a result of that failure is benefited in any way, is guilty of an offence.

3.9.4 National Welfare Act, 100 of 1978

This act establishes the South African Welfare Council ("the Council"), and prescribes the composition of the Council, the period of appointment of its members, meetings, and reporting on its performance.

The main function of the Council is to advise Government in relation to matters such as the general policy which should be followed to promote and ensure the social stability of the inhabitants of the Republic and to prevent social decline, and the measures generally necessary to combat or prevent social problems. The Council may with the approval of the Minister of Health and Welfare, arrange conferences in connection with social problems or matters relating to its functions.

The Director General of Health and Welfare ("the DG") must appoint an officer in the public service as secretary of the Council, who shall also perform the administrative work of the Council.

The act empowers the Minister of Health and Welfare ("the Minister") to establish regions which consist of one or more magisterial districts. For each such region, the Minister must establish a regional welfare board. The act prescribes inter alia the composition of the regional welfare boards, the selection of its members, their period of office, meetings, quorum for and procedure at meetings, as well as the powers and functions of the boards. These powers include the investigation of the social problems which occur in its region, and to consider, plan and propose measures for the solution thereof.



The act requires every regional welfare board to determine the existing and future welfare needs of the inhabitants or any particular section of the inhabitants of its region or any part thereof, and for this purpose investigate and consider any representations received in this connection. Furthermore, it must plan and prepare a welfare programme, and make recommendation, for the purpose of providing in any welfare needs.

The act empowers a regional welfare board to register a fund-raising organization as a welfare organization for a region. Such registration must take place in the manner and on the conditions as set out in the act. The act sets out the circumstances under which a regional welfare board may amend, withdraw or suspend a registration certificate.

The act provides for an appeal procedure for a welfare organization or other organization which is aggrieved by a decision of a regional welfare board.

3.9.5 Prevention and Combating of Corrupt Activities Act, 12 of 2004 (Refer to Section 2.5.1)