

## IMPORTANT NEWS

### RULES OF MAGISTRATES' COURTS TWEAKED

When plaintiffs in cases before Magistrates' Courts submit affidavits in support of an application for summary judgement, a copy of the served notice of intention to defend must be attached to the affidavit. This is one of the proposals contained in amendments to Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published in Government Gazette 38694.

Other amendments include:

- A copy of any liquid document upon which a claim is based must also be attached to the affidavit;
- The notice of application for summary judgement must state that the application will be heard within ten days of the date of delivery of the notice;
- Rule 60 is amended to indicate that a court can, on good cause shown, condone non-compliance with these rules; and
- Changes are also introduced to form 8 of annexure 1 of the rules to incorporate the amendments.

Meanwhile in the same Gazette, amendments to rules regulating the conduct of the High Court have been published.

Changes are introduced to rule 10A dealing with the Joinder of Provincial or National Executive Authorities and Service on Rules Board for Courts of Law. Challenges to the rules must include the serving of a notice setting out the basis of the challenge on the Rules Board for Courts of Law. The amendments also include a new subrule 1 to rule 53 which focuses on the review of decisions or proceedings of any inferior court or tribunal, board or officer. Applicants to review decisions must receive the record of proceedings from the registrar and make copies of the relevant sections. Applicants will then have an opportunity to amend the notice of motion and make changes to the affidavit.

Both sets of amendments come into effect on **22 May 2015**.

Source: <http://www.sabinetlaw.co.za/> or GG 38694 (17.04.15)

### PARLIAMENT CALLS FOR COMMENT ON EXPROPRIATION BILL

The National Assembly's Public Works Committee has called for comment on the Expropriation Bill.

The Bill was tabled in parliament in February this year. The Draft Bill was published for comment in 2013. Cabinet had approved the Bill in March 2013 to be released for comment.

At the time, Cabinet declared that the proposed legislation will aim to "achieve certainty and give guidance to those involved in or subject to, an expropriation process, both for the state, as well as a private individual". The Bill intends repealing the current Expropriation Act of 1975.

A review of the current Act was undertaken to bring about consistency with the "spirit and provisions" of the constitution. The proposed legislation will make it clear that property can be expropriated in the public interest. "Expropriation in the public interest, for instance, provides government with a tool to achieve its commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources".

The Bill calls for any disputes around compensation to be settled in a relevant Court. The Public Works Department will be expected to set up an expropriation register. The Bill will put uniform expropriation procedures in place for all expropriating authorities at the three levels of government.

The proposed legislation sets down the powers of the Public Works Minister to expropriate property, the procedures for the investigation and valuation of property, how the intention to expropriate is conveyed and how expropriation is to transpire, how compensation is to be paid and the role of the Court in settling disputes.

Public hearings on the Bill will be held in Parliament on **19 and 26 May 2015**. Written comment is invited until **6 May 2015**. It can be emailed to [abusakwe@parliament.gov.za](mailto:abusakwe@parliament.gov.za)

Source: <http://www.sabinetlaw.co.za/>

### **FICA BILL OUT FOR COMMENT**

Comment is sought by **31 May 2015** on a draft Financial Intelligence Centre Amendment Bill aimed at introducing “a risk-based approach to customer due diligence”.

According to a media statement on the proposed new statute, once in place this approach will simplify the existing complex, rules-based system of compliance. With that in mind, it seeks to provide financial institutions with the flexibility to determine how they verify the identity of a client, taking into account the “particular circumstances” concerned. In addition, the Bill introduces the concept of domestic and foreign “prominent influential persons (PIPs)”: a classification intended to assist financial institutions in “properly identifying their clients” and facilitating the application of “appropriate standards of due diligence”. Since the proposed classification does not assume that PIPs are more likely to be involved in criminal activity, financial institutions will not be prevented from doing business with them.

Informed by the results of a 2009 review of the country’s regime for combating money laundering and the financing of terrorism, the draft Bill includes provisions enhancing the supervisory powers of the Financial Intelligence Centre and extending its functions in relation to ‘suspicious transactions’. A draft memorandum on the Bill’s objects also points to proposals seeking to: strengthen enforcement mechanisms; and align the Act with UN Security Council Resolutions relating to the freezing of assets. It is envisaged that the Counter Money Laundering Advisory Council will be dissolved. In anticipation of reporting in June to the UN financial action task force responsible for the 2009 review, the proposed new statute demonstrates government’s “political commitment” to “the process of continuous improvement”.

Source: <http://legalbrief.co.za/>

### **LOTTERIES AMENDMENT ACT IN EFFECT**

The Lotteries Amendment Act came into effect on **14 April 2015**.

The Act seeks to:

- Set up a National Lotteries Commission
- Extend the powers of the Commission
- Allow for an organ of state to run the national lottery if need be
- Improve the accountability of distributing agencies-to be appointed for five years
- Remove reference to Reconstruction and Development Programme

The legislation flows from policy proposals gleaned during consultations on the Draft Lotteries Policy held at the end of 2012. The National Lotteries Board confirmed in February 2012 that a review of the National Lotteries Act was underway. At the time, the board stressed that a much clearer funding policy for the board’s trust fund was needed. More emphasis had to be placed on the impact of allocations.

A notable amendment introduced during the parliamentary process is that the state will be able to run the lottery for eight years under certain circumstances. This would kick in if a private operator was not complying with the licence conditions or where a licence could not be issued for various reasons.

Source: <http://www.sabinetlaw.co.za/>

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### **RECOMMENDED READING**

**Tax Issues arising from the Amalgamation or Merger Procedure in the Companies Act 71 of 2008**, by Joon Chong & Kathleen van der Linde, Stellenbosch Law Review, Vol 25 No 3 2014

**The Contract/Delict Interface in the Constitutional Court**, by Alistair Price, Stellenbosch Law Review, Vol 25 No 3 2014

**The Statutory Security Right in Section 118(3) of the Local Government: Municipal Systems Act 32 of 2000 – Does it Survive Transfer of the land? Discussion of City of Tshwane Metropolitan Municipality v Mathabathe 2013 4 SA 319 (SCA)**, by Reghard Brits, *Stellenbosch Law Review*, Vol 25 No 3 2014

**Averting Liquidations with Business Rescue: Does a Section 155 Compromise Place the Bar too High**, by Hans Klopper & Richard S Bradstreet, *Stellenbosch Law Review*, Vol 25 No 3 2014

**Collective Misconduct in the Workplace: Is “Team Misconduct” “Collective Guilt” in Disguise?**, by Lindiwe Maqutu, *Stellenbosch Law Review*, Vol 25 No 3 2014

## SUMMARY OF RECENT CONSTITUTIONAL COURT JUDGMENTS

### CITY POWER (PTY) LTD v GRINPAL ENERGY MANAGEMENT SERVICES (PTY) LTD AND OTHERS (CCT133/14) [2015] ZACC 9 (20 APRIL 2015)

In a judgment that could have wide-ranging implications for government, the Constitutional Court held that state organs, as employers, have to take over the employment contracts of workers, previously employed by an outsourced contractor, if a contract or tender is cancelled and if the work that was outsourced is transferred back to the state. The question before the Court was the relationship between section 197 of the Labour Relations Act (LRA) and the Municipal Systems Act. The section says that when business is transferred between one employer and another, the contracts and employment conditions of employees must be taken over by the new employer unless otherwise agreed between the two parties. The Municipal Systems Act governs how municipalities are supposed to spend their budgets.

The dispute arose when City Power terminated a contract it had with Grinpal Energy Management Services, a company employed to provide prepaid metres and electrification infrastructure to 38 000 residents of Alexandra. The contract came to an end in 2010 because Grinpal's tax certificate was allegedly fraudulent. In terms of the LRA, workers employed by Grinpal should have been transferred to City Power, according to the contractor. But City Power argued successfully in the Labour Court and the Labour Appeal Court that, as a municipal entity, it was obliged to abide by the relevant sections of the Municipal Systems Act which meant that it could not exceed its annual budget. The Constitutional Court, however, ruled against City Power, which was ordered to pay costs of three counsel. In a unanimous judgment written by Acting Judge Tshiqi the Court ruled that City Power, as an entity employed by a municipality, is obliged to abide by section 197. The Court went further, stating that the LRA overrides other legislation when it comes to matters of employment, and that this applies to the state and to private companies.

Source: <http://legalbrief.co.za/diary/legalbrief-today/newsletters/>

### COUGHLAN N.O. v ROAD ACCIDENT FUND (CCT160/14) [2015] ZACC 10 (20 APRIL 2015)

The foster care grants a grandmother received to take care of three children after their mother was killed in a road accident do not absolve the RAF from compensating the children for loss of support. This is the ruling the Constitutional Court upheld on appeal by a curator for the three, now young adults. Their mother, Noelle Beyers was hit by a car in 2002. The children's maternal grandparents successfully applied to be foster parents and received foster care grants of R770 a month for each child until they turned 18. In 2007 a court-appointed curator, Advocate Wayne Coughlan, lodged a claim with the RAF for loss of support on behalf of the children. While the fund agreed that R112 942 should be paid to the children, it believed the amount the foster parents had received in grants should be deducted. Judge Robert Henney held in 2013 that the amount should not be deducted. On appeal by the RAF, the SCA found in favour of the RAF. The Constitutional Court upheld the appeal by Coughlan. Acting Judge Zukisa Tshiqi dismissed the SCA's reliance on a previous judgment that held that not to deduct the grant would amount to double recovery by a claimant at the expense of the taxpayer. But the Judge said that in cases of child grants, the state assumed the role of a caregiver and when the state paid compensation for loss of support through the fund, it stepped into the shoes of the wrongdoer. It is irrelevant that the money is paid by two state organs because its objectives are completely different and the state, when it makes the payment, does so to fulfil myriad obligations.

Source: <http://legalbrief.co.za/diary/legalbrief-today/newsletters/>

## SUMMARY OF RECENT SUPREME COURT OF APPEAL JUDGMENT

### SHAKAWA HUNTING & GAME LODGE (PTY) LTD v ASKARI ADVENTURES CC (44/2014) [2015] ZASCA 62 (17 APRIL 2015)

Contract – interpretation - written agreement providing that respondent company to pay appellant 10% of its value if sold - meaning of term 'value'- assets of respondent company sold – whether appellant entitled to 10% of selling price.

Source: [http://www.justice.gov.za/sca/judgments/judgem\\_sca.htm](http://www.justice.gov.za/sca/judgments/judgem_sca.htm)

## SUMMARY OF RECENT IMPORTANT HIGH COURT JUDGMENTS

### NOW LANDLORDS CAN SWITCH OFF THE LIGHTS - ANVA PROPERTIES CC v END STREET ENTERTAINMENT ENTERPRISES CC

In a recent judgment dealing with a landlord's obligation to pay for electricity (to the City of Cape Town) in circumstances where the tenant is not paying or reimbursing the landlord, the Western Cape High Court has authorised the landlord to cut off the electricity supply to the tenant. The judgment will be of particular interest to landlords who have long had to endure the uncertainty of knowing what their rights are in such circumstances. The argument presented by the landlord was that it was effectively subsidising the respondent's business. Historically the cutting of the electricity supply by the landlord in such circumstances resulted in some cases in tenants bringing claims for spoliation and damages against the landlord or using these claims as counter claims in legal proceedings instituted by the landlord against them.

Source: <http://legalbrief.co.za/diary/legalbrief-today/newsletters/>

### MUSLIM MOTHER WINS PRECEDENT-SETTING MAINTENANCE CASE

In what lawyers believe to be a precedent-setting case, KZN High Court (Durban) Judge Fikile Mokgohloa, has awarded interim maintenance to a woman married and divorced in terms of Islamic law. It adds the order by Mokgohloa gives legal recognition to the marriage and paves the way for further court action the woman intends bringing to be lawfully divorced. "To the best of my knowledge, this is a first in this division that a judge has made an order that she receive a Rule 43 (interim maintenance) award", her attorney, Rheta Meiring, said. "In her verbal judgment, the judge said that the Marriage Act applies. She dismissed with costs the respondent's claim that a Court has no jurisdiction over the matter because the marriage was not legal in terms of SA law", she said. "This ruling shows that the judiciary will now pronounce and extend the common law and come to the protection of people who are excluded in terms of their religious marriages, but of course included in our Constitution".

Source: <http://legalbrief.co.za/diary/legalbrief-today/newsletters/>

## BILLS

NATIONAL SPORT AND RECREATION AMENDMENT BILL, 2016, SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT AMENDMENT BILL, 2017, SOUTH AFRICAN COMBAT SPORT BILL, 2017 AND FITNESS INDUSTRY REGULATORY BILL, 2017	Published for comment	GG 38693 (17.04.15)
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## PROCLAMATIONS AND NOTICES

RULES BOARD FOR COURTS OF LAW ACT 107 OF 1985	Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa amended with effect from 22 May 2015	GG 38694 (17.04.15)
	Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa amended with effect from 22 May 2015	GG 38694 (17.04.15)
HEALTH PROFESSIONS ACT 56 OF 1974	Health Professions Council of South Africa: Rules relating to fees payable to the Council published and BN 2 in GG 37205 of 3 January 2014 repealed	GG 38692 (14.04.15)
ANIMAL DISEASES ACT 35 OF 1984	Proposed revised import requirements for cattle, sheep and goats from Botswana, Lesotho, Namibia and Swaziland published for comment	GG 38701 (17.04.15)

ELECTRICITY ACT 41 OF 1987	Licence fees payable by licensed generators of electricity for the period 1 April 2015 to 31 March 2016 published	GG 38693 (17.04.15)
BANKS ACT 94 OF 1990	Designation of Ithala SOC Limited, a wholly owned subsidiary of Ithala Development Finance Corporation Limited, as an institution of which the activities do not fall within the meaning of 'the business of a bank' for the period 1 January 2015 to 30 June 2015 published and GN 238 in GG 37490 of 4 April 2014 substituted	GG 38693 (17.04.15)
	Notice to Defencex and associated entities, investors and interested parties published	GG 38693 (17.04.15)
MARKETING OF AGRICULTURAL PRODUCTS ACT 47 OF 1996	Application for the implementation of statutory measures in the pomegranate industry published for comment by directly affected groups	GG 38693 (17.04.15)
LOTTERIES ACT 57 OF 1997	Regulations Relating to Allocation of Money in National Lottery Distribution Trust Fund amended	GG 38687 (14.04.15)
	Direction for the Distribution Agencies in Determining Distribution of Funds from the National Lottery Distribution Trust Fund amended	GG 38699 (15.04.15)
COMPETITION ACT 89 OF 1998	Competition Commission:	
	Guidelines for the Determination of Administrative Penalties for Prohibited Practices published with effect from 1 May 2015	GG 38693 (17.04.15)
	Notification of decision to approve merger with conditions published	GG 38690 (14.04.15)
	Notification of closed conditional merger approvals 1 April 2014-31 March 2015 published	GG 38691 (15.04.15)
MEDICAL SCHEMES ACT 131 OF 1998	Notice of intention to publish declaration of certain electoral and voting practices as undesirable business practice in terms of s. 61 (2) published for comment	GG 38693 (17.04.15)
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000	Department of Finance: Section 14 manual published	GG 38685 (17.04.15)
	Descriptions submitted in terms of s. 15 (1) by the Eastern Cape Provincial Government: Office of the Premier and by the Umhlathuze Municipality published	GG 38693 (17.04.15)
INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT 13 OF 2000	Findings Document: Review of Regulation on South African Local Content: Television and Radio: 2015 published	GG 38700 (16.04.15)
COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002	Capital requirements with which a manager of a collective investment scheme in hedge funds must comply published	GG 38693 (17.04.15)
NATIONAL	South African Qualifications Authority (SAQA): Proposed	GG 38689 (13.04.15)

QUALIFICATIONS FRAMEWORK ACT 67 OF 2008	<p>recognition of professional bodies and registration of designation/s on the NQF published for comment:</p> <p>Law Society of South Africa (LSSA): attorney</p> <ul style="list-style-type: none"> <li>• Institute of Certified Bookkeepers and Accountants (ICBA): Certified Junior Bookkeeper, Certified Senior Bookkeeper, Certified Technical Financial Accountant, Certified Financial Accountant, Certified Public Accounts Administrator and Certified Public Accountant</li> <li>• Coaches and Mentors of South Africa (COMENSA): COMENSA Credentialed Practitioner, COMENSA Senior Practitioner and COMENSA Master Practitioner</li> </ul>	
USE OF OFFICIAL LANGUAGES ACT 12 OF 2012	<p>Draft Language Policies published for comment:</p> <ul style="list-style-type: none"> <li>• Department of International Relations and Cooperation (DIRCO)</li> <li>• Robben Island Museum (GenN 330 in GG 38698 of 13 April 2015) (p3)</li> </ul>	<p>GG 38686(13.04.15)</p> <p>GG 38698 (13.04.15)</p>
LOTTERIES AMENDMENT ACT 32 OF 2013	<p>Date of commencement: 14 April 2015</p> <p>Amends s. 1, the title of Chapter 1, ss. 3, 4, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 28, 29, 30, 31, 32 &amp; 60, substitutes ss. 2, 5 &amp; 33, inserts ss. 2A-G, 3A-C, 10A, 13A, 13B &amp; 26A-H and repeals ss. 7 &amp; 27 of the Lotteries Act 57 of 1997</p>	<p>GG 38687 (14.04.15)</p>

## PROVINCIAL LEGISLATION

### Eastern Cape

Local Government: Municipal Property Rates Act 6 of 2004	King Sabata Dalindyebo Municipality: Resolution levying property rates for the financial year 1 July 2014 to 30 June 2015 published with effect from 1 July 2014	PG 3373 (14.04.15)
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### Gauteng

Consumer Affairs (Unfair Business Practices) Act 7 of 1996	Notice to establish Consumer Affairs Courts and determination of seats in the City of Tshwane Metropolitan Municipality; Ekurhuleni Metropolitan Municipality; Sedibeng District Municipality; and West Rand District Municipality published	PG 118 (10.04.15)
Local Government: Municipal Systems Act 32 of 2000	Emfuleni Local Municipality: 2015/2016 Financial year: Draft Credit Control and Debt Collection By-laws; Draft Rates By-law; Determination of draft Property Rates Levies; and Draft Municipal Tariff By-law published	PG 122 (13.04.15)

### Limpopo

Local Government: Municipal Structures Act 117 of 1998	Amendment of Proclamation of names of traditional leaders to serve in proceedings of district and local municipal councils for a period of five years (2011-2016) as published under GenN 278 in PG 1984 of 21 September 2011 published	PG 2497 (10.04.15)
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**Mpumalanga**

Local Government: Municipal Systems Act 32 of 2000	Notice of Business and Street Trading and Liquor Selling By-laws published for comment	PG 2440 (10.04.15)
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**Northern Cape**

Consumer Protection Act 68 of 2008	Rules of Conduct for the Northern Cape Consumer Court published	PG 1887 (14.04.15)
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**Western Cape**

Western Cape Health Services Fees Act 5 of 2008	Errata: Amendments to the Uniform Patient Fee Schedule Regulations for health care services rendered by the Western Cape Department of Health for externally funded patients (including, amongst others, foreign patients and private doctor patients) as published under PN 84 in PG 7368 of 25 March 2015 published	PG 7376 (10.04.15)
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Sea-Shore Act 21 of 1935	Riversdale: Proposal to enter into a lease with the Koningsfontein (Pty) Ltd for the construction of a jetty below the high-water mark of the Goukou River published for comment	PG 7376 (10.04.15)
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**LEAD SEMINARS**

<b>SEMINAR</b>	<b>PRESENTER</b>	<b>DATES</b>
Drafting of Wills and Testamentary Trusts	Ceris Field	Johannesburg: 20 - 22 May 2015 Bloemfontein: 10 - 12 June 2015 Cape Town: 29 - 31 July 2015 East London: 26 - 28 August 2015
Case Management	Ismail Hussain SC	Cape Town: 8, 9 May 2015 Durban: 15, 16 May 2015 East London: 22, 23 May 2015 Bloemfontein: 29, 30 May 2015 Nelspruit: 26, 27 June 2015 Mafikeng: 3, 4 July 2015 Pretoria: 10, 11 July 2015 Johannesburg: 24, 25 July 2015 Polokwane: 21,22 August 2015
Labour Law Update	Moksha Naidoo	East London: 18 June 2015 Port Elizabeth: 19 June 2015 Durban: 22 June 2015 Cape Town: 23 June 2015 Pretoria: 26 June 2015 Bloemfontein: 29 June 2015 Johannesburg: 30 June 2015
5-Day Mediation Training Workshop	The workshop presenters are all acknowledged experts in the field of mediation	Pietermaritzburg: 04-08 May 2015 Nelspruit: 18-22 May 2015 Bloemfontein: 26-30 Octobe 2015r
Litigation Techniques	Willem Gravett	Johannesburg: 1 June 2015 Pretoria: 2 June 2015

		Bloemfontein: 3 June 2015 Cape Town: 4 June 2015 Durban 5 June 2015 Port Elizabeth: 8 June 2015 East London: 9 June 2015
Pension Law	Andrew Mothibi	East London: 3 July 2015 Cape Town: 6 July 2015 Bloemfontein: 20 July 2015 Port Elizabeth: 27 July 2015 Midrand: 3 August 2015 Durban: 17 August 2015
Medical Law	Dr Henry Lerm	Port Elizabeth: 10, 11 July 2015 East London: 17,18 July 2015 Durban: 31 July, 1 August 2015 Pretoria: 14, 15 August 2015 Cape Town: 21, 22 August 2015 Johannesburg: 28, 29 August 2015
Debt Collection	Brett Bentley	Durban: 3 November 2015 Cape Town: 6 November 2015 Johannesburg: 11 November 2015 Pretoria: 12 November 2015 Port Elizabeth: 17 November 2015 East London: 18 November 2015 Bloemfontein: 23 November 2015
Consumer Protection Act	Trudie Broekmann	East London: 19 November 2015 Port Elizabeth: 20 November 2015
National Credit Act	Frans Haupt	East London: 5 November 2015 Port Elizabeth: 6 November 2015 Bloemfontein: 9 November 2015 Johannesburg: 12 November 2015 Pretoria: 13 November 2015 Cape Town: 22 November 2015 Durban: 23 November 2015

For more information visit <http://www.lssalead.org.za/>

#### Associated Firms

##### Free State

Phatshoane Henney Attorneys  
Breytenbach Mavuso inc.  
Cloete & Neveling inc.  
De Beer & Claassen  
Neumann van Rooyen inc.  
Nostix (Pty) Ltd

##### North-West

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##### Limpopo

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##### Gauteng

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