

## **Protection of Personal Information Bill – PAIA amendments summary**

### **Process of Bill**

- Tabled in Parliament 25 August 2009
- Referred to Portfolio Committee for Justice and Constitutional Development. Has been through several iterations before the committee passed the bill on 5 September 2012.
- Bill was introduced for debate in National Assembly on 11 September and passed the same day, with only the IFP voting against the bill.
- Parliament advised:
  - The bill was referred to the NCOP on 11 September
  - NCOP will refer the bill NCOP Select Committee on Security and Constitutional Development for its consideration before the bill is debated by the Council. I have been unable to obtain any timeline for this to date.

### **Key amendments to PAIA**

- Access to personal information of the requester will be governed by the personal information bill (although the request procedure under PAIA will continue to apply).
- The bill creates an Information Regulator that will have powers both in terms of the personal information bill and PAIA.
- Powers of the SAHRC under PAIA are transferred to the Information Regulator.
- The Information Regulator is also given additional powers in respect of PAIA to act as an independent arbiter. The procedure, in summary, is as follows:
  - A requester or third party may make a complaint to the Information Regulator within 180 days of receiving a decision from a public or private body.
  - The Information Regulator may:
    - Investigate the complaint
    - Refer the complaint to the enforcement committee (a committee of the regulator)
    - Decide to take no action if:
      - the complaint is out of time and no reasonable grounds for condonation exist;
      - the complaint is frivolous or vexatious or not made in good faith;
      - further action is unnecessary or inappropriate
  - The Information Regulator also has the power to seek a settlement before investigation.
  - After the Information Regulator receives a recommendation from the enforcement committee, the Information Regulator can serve the information officer of the public or private body with a notice confirming, amending or setting aside the decision that is the subject of the complaint and requiring the body to take action or refrain from taking action as specified in the notice.
  - It is an offence carrying a penalty of a fine and/or up to 3 years imprisonment not to comply with an enforcement notice
- When conducting an investigation the Information Regulator has the power to:
  - Summon appearance and compel giving of evidence.
  - Administer oaths
  - Receive and accept any evidence other information the Regulator sees fit, whether or not it would be admissible in court.
  - Enter and search any premises occupied by the public or private body
  - Conduct a private interview with any person in such a premise.
  - Otherwise carry out on the premises any inquiries the Regulator sees fit.
- When considering a matter the Information Regulator has the same powers as the court to examine the record in dispute (the power in section 80 of PAIA).
- There is a general right of appeal to court from a decision of the Information Regulator.

- A complaint to the Information Regulator must be undertaken before a party can make an application to court.
- The time period for applying to court in section 78(2) will be amended to 180 days (consistent with the decision in *Brummer v Minister for Social Development*).
- The Information Regulator also has a general power at its own initiative or at the request of an information officer or any other person to make an assessment (in a manner to be prescribed) of whether a public or private body generally complies with the provisions of PAIA insofar as its policies and implementation procedures are concerned.