Western Cape Government

Western Cape Education Department

Procurement Management

FILE NUMBER: 5/1/3/B/WCED 3158/25
ENQUIRIES: K. MABUTO

Dear prospective bidder,

1. You are hereby invited to bid for requirements of the Western Cape Education Department (WCED) in respect of the service indicated below and you are encouraged to carefully read ALL information contained within this invitation.

BID NUMBER	: B/WCED 3158/25
BID DESCRIPTION	: **APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT PERSONNEL SUITABILITY CHECKS (VETTING) AS PART OF THE WCED'S RECRUITMENT, SELECTION AND APPOINTMENT PROCESS FOR A PERIOD OF FIVE YEARS.**
CLOSING DATE AND TIME	: 14 AUGUST 2026 AT 11:00am
VALIDITY PERIOD	: 120 DAYS

2. To be eligible to conduct business with the Western Cape Government (WCG), you must be registered on the Central Supplier Database (CSD). If you are not registered on the CSD you are required to self-register on www.csd.gov.za. Assistance in this regard may be requested from the National Treasury on (012) 315 5509 or csd@treasury.gov.za.

3. Although this is not a compulsory requirement for this bid, service providers may register on the Western Cape Supplier Evidence bank (WCSEB) which has replaced the Western Cape Supplier Database (WCSD) with effect from 1 October 2019. For registration, **see attached brochure.** To update profile information, please update this information with the Western Cape Provincial Treasury situated at:

   SAP Ariba
   2nd Floor
   Waterford Place
   Century City

4. To be able to submit a responsive bid, you are required to:

   a) furnish all required information as documented in the WCBD 3.4 Specifications Compliance Schedule;
   b) tailor your bid offer to conform to the advertised evaluation criteria;
   c) submit ALL required supporting documents (e.g. Memorandum of Understanding (Should the bid be submitted as a Consortium/Joint Venture, each party must be actively registered on the CSD), lease agreements, company profiles, Gantt Charts, etc.);
   d) Should the bid be submitted as a Consortium/Joint Venture, submit a Memorandum of Understanding outlining the roles and responsibilities of each party and each party must be actively registered on the CSD.
   e) submit your Master Registration Number (Supplier number) as registered on the CSD to enable the WCED to verify your tax compliance status.

f) ensure all signatures on bid documentation are completed where required, i.e. bidder and witnesses, failing which the bid will be invalid.

This bid contains a checklist to enable you to submit a responsive bid. It is incumbent on you to ensure that you have completed all the required documents in its entirety.

5. The bid documents include a WCBD 4 Declaration of Interest Form which you have to complete. We stress that these documents must be completed in full and returned with the bid. Be reminded of the fact that the WCED will verify the information divulged within this declaration and should it transpire that a bidder has submitted a false declaration, the remedies at the Department's disposal will be considered (a bid may be disqualified if a bidder has attempted to breach or have abused the SCM system).

6. The Western Cape Government interim arrangements to give effect to the Preferential Procurement Regulations, 2022 effective from 16 January 2023 will apply in this bid. Please acquaint yourself with such Regulations. Please note that points for B-BBEE status level of contribution will only be awarded to bidders who claim such points through the completion of the WCD 6.1 Preference Points Claim Form, in full (and which you are required to read in its entirety) and who submit proof of such B-BBEE status level of contribution, which can be in the form of the following:
   a) a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) and which is applicable for the sector within which the bid is submitted (for example, a B-BBEE certificate for the catering and Hospitality sector is not applicable for Transport and Storage bids); or
   b) an affidavit, in the form prescribed by the Department of Trade and Industry (dti) which confirms the annual total revenue and level of black ownership together with the sector in respect of which it is issued. This form is obtainable on the dti website; or
   c) an affidavit issued by Companies Intellectual Property Commission (CIPC).

7. The General Conditions of Contract (GCC) and if applicable, any other special conditions of contract, which are reflected in the WCBD 3.4 Specifications Compliance Schedule will prevail in this bid. Bidders are requested to refrain from setting own conditions of contract. Invariably, such bids will be regarded as non-responsive to the bid invitation.

8. Bid documents must be deposited in the bid box situated at:

1 North Wharf Square Building,
2 Lower Loop Street,
Foreshore,
Cape Town
8001

This bid box is accessible 24 hours a day, 7 days a week and is located as indicated above. The slot opening can be accessed from the street level and there is no need to enter the building to deposit the bid into the box. **If the bid is late, it will not be accepted for consideration.**

Only if the bid documents are too bulky to be deposited through the slot opening of the bid box, bid documents may be hand delivered to:

The Deputy Director: SCM Operations (Att: E Philander)

1 North Wharf Square Building,
2 Lower Loop Street,
Foreshore,
Cape Town
8001

Should you opt to deliver such bid via a courier, the onus remains with the bidder to ensure that the bid is submitted timeously and to the correct address. Please refer to the directions regarding the lodging of bids.

9. Should you have difficulties with the interpretation of certain clauses or requirements of the bid documents or the completion of forms, you may direct your enquiries during office hours (09h00 – 12h00) to:

Name: K Mabuto
Telephone no: (021) 467 2043
Email address: Kutala.Mabuto@westerncape.gov.za

Yours faithfully

Daniels

R DANIELS
ASSISTANT DIRECTOR: SPECIFICATIONS & QUOTATIONS
DATE: 2026 -07- 17

WESTERN CAPE EDUCATION DEPARTMENT

CHECKLIST

BID REQUIREMENT	REFERENCE
BID OFFERS WITHOUT THE FOLLOWING DOCUMENTS WILL NOT BE CONSIDERED:	
Completed in full and signed WCBD 1 The Bid	WCBD 1
In the case of Consortia or Joint Ventures a Memorandum of Understanding, outlining the roles and responsibilities of all parties to the Joint Ventures or Consortia, must be signed by all parties.	
Completed in full WCBD 3.1 Pricing Schedule	WCBD 3.1
Completed in full WCBD 3.4 Specification Compliance Schedule	WCBD 3.4
(Itemised Pricing Schedule)	Annexure B
All signatures on bid documentation are completed where required, i.e. bidder and witnesses, failing which the bid will be invalid	
NON-ADHERENCE TO THE FOLLOWING WILL INVALIDATE A BID	
General Conditions of Contract	Annexure A
Protection of Personal Information Act (POPIA)	Annexure C
NON-ADHERENCE TO THE FOLLOWING WILL NOT INVALIDATE A BID:	
A fully completed Consolidated Declaration of Interest (WCBD 4). In the case of a Consortium or Joint Venture both parties must complete and sign the Declaration of Interest form.	SBD 4
a) a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) and which is applicable for the sector within which the bid is submitted (for example, a B-BBEE certificate for the catering and Hospitality sector is not applicable for Transport and Storage bids); or b) an affidavit, in the form prescribed by the Department of Trade and Industry (dti) which confirms the annual total revenue and level of black ownership together with the sector in respect of which it is issued. This form is obtainable on the dti website; or c) an affidavit issued by Companies Intellectual Property Commission (CIPC)	WCBD 6.1
An original or certified copy of a B-BBEE Status level of Contribution Certificate. In the case of a Consortium or Joint Venture a consolidated B-BBEE Status Level of Contribution Certificate, in the name of the Joint Venture or Consortium must be submitted.	
An original or certified **black & white** copy of the company registration documents, i.e CK 1, CK 2, etc.	
Bidders are encouraged to submit an electronic copy of their bid together with the hard copy submission. The electronic copy should be identical in all respects to the physical copy submitted.	
I confirm that all documents requested are attached / not attached Comments: .... Signature..Print...Date..............................	
Each bid must be addressed in accordance with the directives in the bid documents and must be lodged in a separate sealed envelope with the name and address of the bidder, the bid number and the closing date indicated on the reverse side of the envelope.	

WESTERN CAPE EDUCATION DEPARTMENT

CHECKLIST

BID REQUIREMENT	REFERENCE	COMPLETED / ATTACHED
Completed and signed WCBD 1 The Bid	WCBD 1	
General Conditions of Contract	Annexure A	
Completed WCBD 3.1 Pricing Schedule	WCBD 3.1	
Completed in full WCBD 3.4 Specification Compliance Schedule	WCBD 3.4	
Itemised pricing schedule	Annexure B	
Protection of Personal Information Act (POPIA)	Annexure C	
All signatures on bid documentation are completed where required, i.e. bidder and witnesses, failing which the bid will be invalid		
A fully completed Consolidated Declaration of Interest (WCBD 4). In the case of a Consortium or Joint Venture both parties must complete and sign the Declaration of Interest form.	SBD 4	
Preference points claim form in terms of the preferential procurement regulations 2022 and in terms of the Western Cape Governments interim strategy as it relates to preference points	WCBD 6.1	
a)a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) and which is applicable for the sector within which the bid is submitted (for example, a B-BBEE certificate for the catering and Hospitality sector is not applicable for Transport and Storage bids); or b)an affidavit, in the form prescribed by the Department of Trade and Industry (dti) which confirms the annual total revenue and level of black ownership together with the sector in respect of which it is issued. This form is obtainable on the dti website; or c)an affidavit issued by Companies Intellectual Property Commission (CIPC)		
An original or certified **black & white** copy of the company registration documents, i.e CK 1, CK 2, etc.		
BIDDERS MUST SUBMIT A B-BBEE CERTIFICATE, TO QUALIFY FOR PREFERENCE POINTS		
I confirm that all documents requested are attached / not attached Comments: …………………………………………………………………………………… Signature…………………………Print…………………………Date……………………		
Each bid must be addressed in accordance with the directives in the bid documents and must be lodged in a separate sealed envelope with the name and address of the bidder, the bid number and the closing date indicated on the reverse side of the envelope.		
FOR DEPARTMENTAL USE: ……… Checked by ……………………………………… Verified by: ……………………………………………… Date: ……………………………………………… Date: ……………………………………………………		

LESS RED-TAPE

Making it easier to do business in the Western Cape

Governance documents submitted only ONCE to the WCSEB instead of each tender (tenders <R500 000)

SBD 4, 8 and 9 consolidated into ONE document: WCBD4

Documents are vetted CENTRALLY and housed in a central repository for Provincial utilisation

RFI process REMOVED. Request for Quote (RFQ) is linked to suppliers' commodity list, request issued only to suppliers with matching lists

Tax compliance is VERIFIED VIA CSD - no need to submit tax clearance certificate to WCSEB

Suppliers will NOT be SUSPENDED for a non-compliant tax status. Procuring institution will verify compliance of recommended supplier

CSD and WCSEB registration process has been CONSOLIDATED AND STREAMLINED

Western Cape Government
Provincial Treasury

CONTACT

021 833 5361

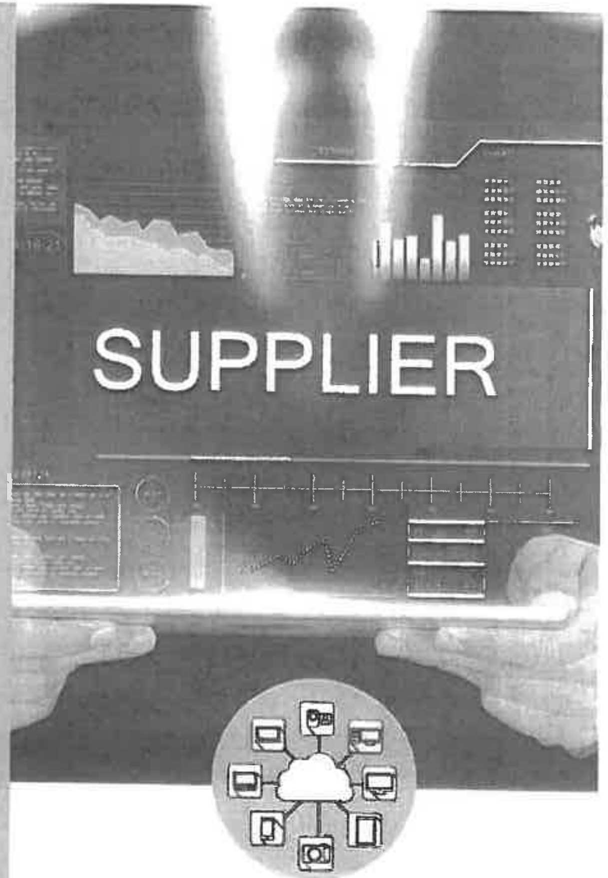
Provincial Treasury
4 Waterford Place, 2nd floor
Century City, Cape Town
8000

wcseb@westerncape.gov.za

CSD Self registration
https://secure.csd.gov.za/

Western Cape
Supplier Helpdesk
www.westerncape.gov.za/provincial-treasury/services/supplier-helpdesk

Operating hours:
Monday - Friday 8:00 - 15:30



TRANSITION

Western Cape Supplier Evidence Bank (WCSEB)

replaced
Western Cape Supplier Database (WCSD)

Western Cape Government
Provincial Treasury

CENTRAL SUPPLIER DATABASE (CSD)

The CSD was established by National Treasury on behalf of all departments, constitutional institutions and public entities listed in schedule 2 & 3 of the Public Finance Management Act.

All suppliers intending to do business with government MUST be registered on the CSD. This does not apply when government procures via petty cash; foreign suppliers (no local registered entity); or any other entity as may be directed by National Treasury from time to time.

Suppliers can self-register online: https://secure.csd.gov.za

Western Cape Government suppliers must additionally be registered on the Western Cape Supplier Evidence Bank (WCSEB) for procurement via the eProcurement System (ePS) also known as Integrated Procurement Solution or IPS to ensure compliance documentation is lodged.

The WCSEB replaced the WCSD on 1 October 2019 and complements the national master supplier database as a central repository of governance documentary evidence

DOCUMENTS TO REGISTER ON WCSEB

- Completed registration form and commodity list;
- Certified copies of director(s) Identity document;
- Completed WCBD4,
- Completed WCBD6.1 and BBBEE certificate/affidavit (for preference points);
- Certified copy of Security Officer's Board certificate (security services only);
- Certified copy of Construction Industry Development Board certificate (CIBD) or iTender website printout (building and construction services only); and or
- Any sector specific documentation as may be defined.

SUPPLIER PROFILE MAINTENANCE (WCSEB)

- Documents are valid for 1 year from date of registration
- To prevent suspension on WCSEB, reminders will be issued 30 days prior to expiry to update WCBD4, WCBD6.1 and BBBEE Certificate/ affidavit
- Suppliers must update profile changes by completing registration forms

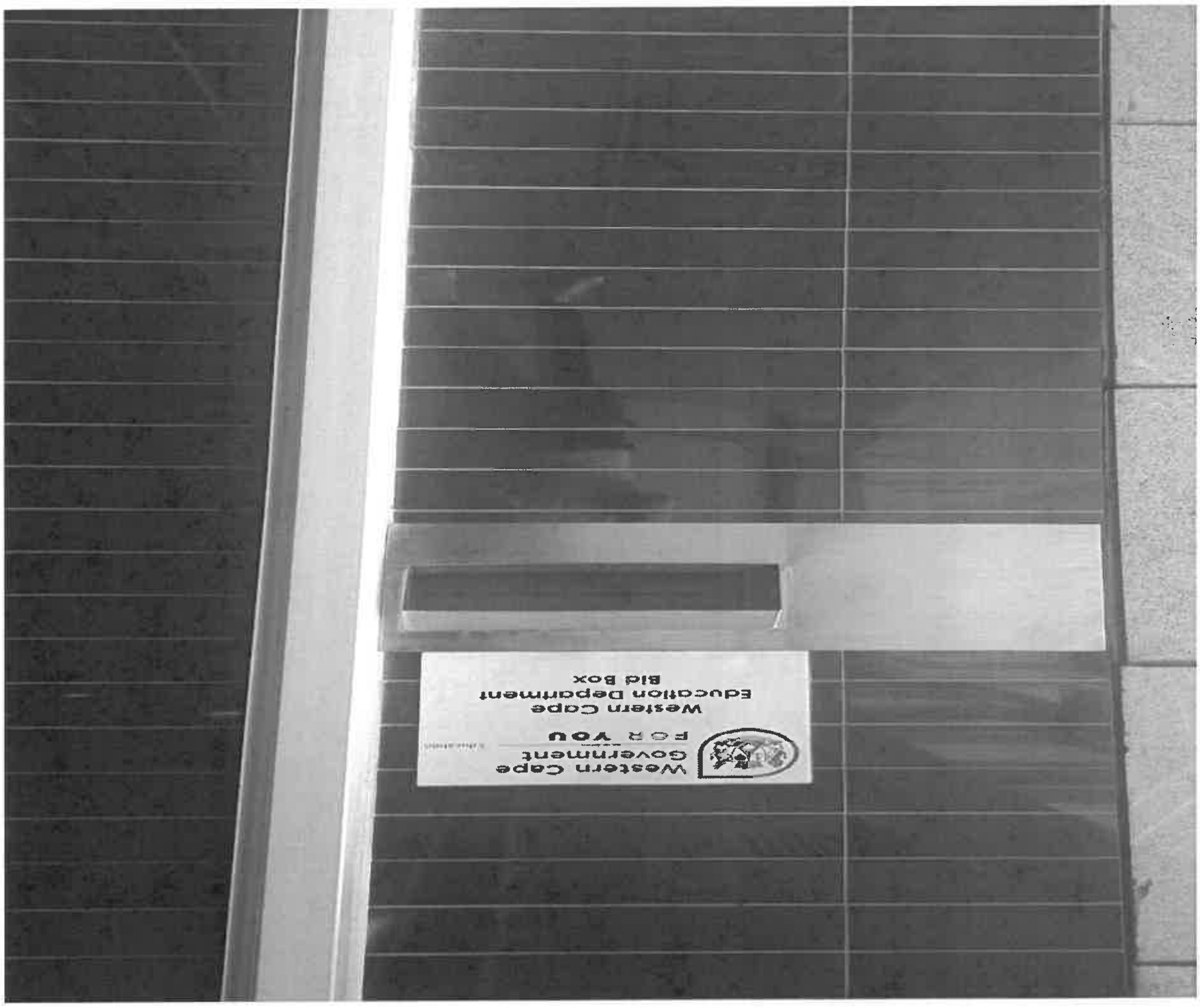
APPLICATION OF PPPFR AS RELATED TO WCG

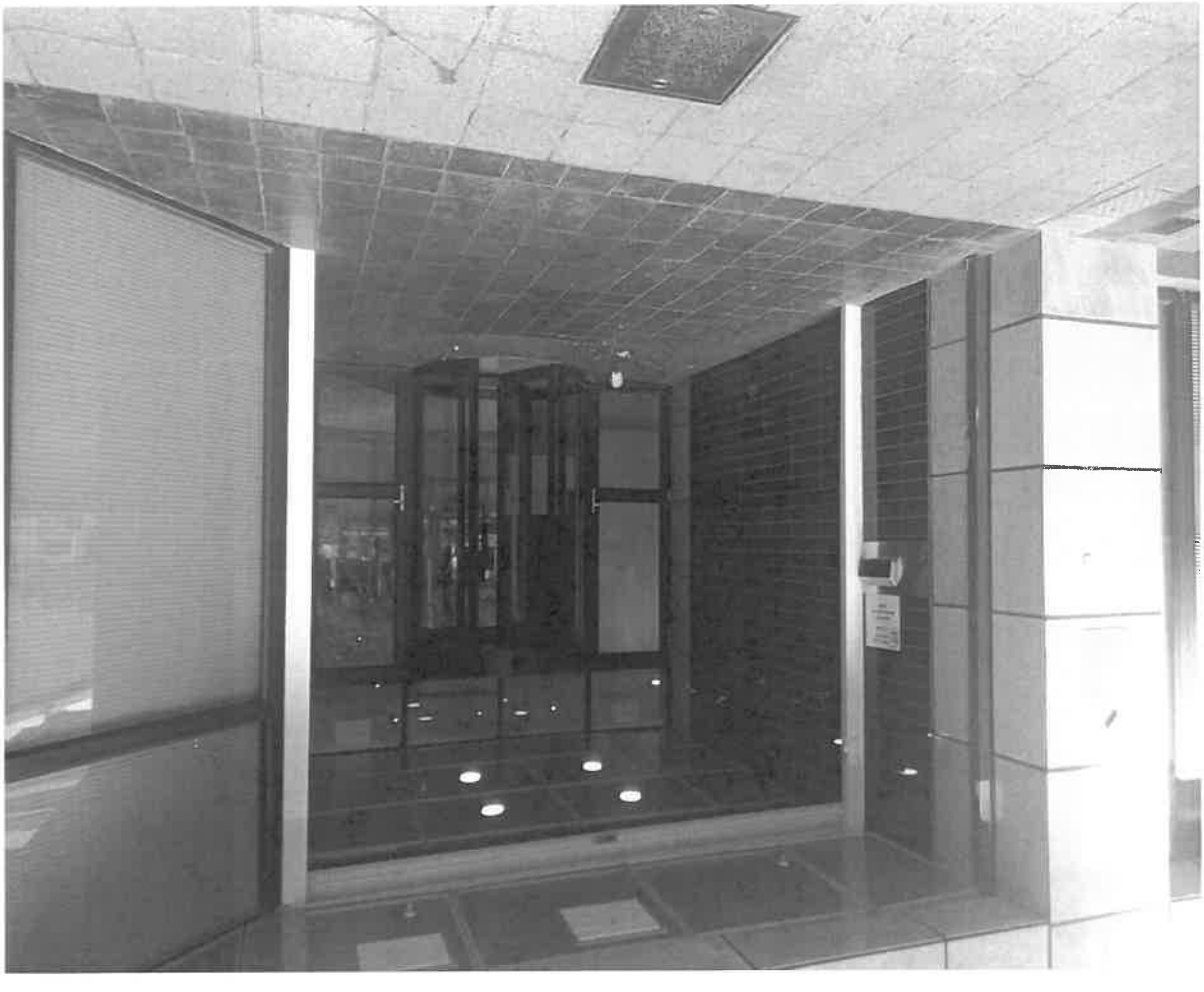
In terms of paragraph 6 (1) of the Preferential Procurement Policy Framework Regulations 2017 (PPPFR's):

- The 80/20 preference point system must be applied for acquisition of goods/services with a rand value equal to or more than R30 000.
- The PPPFR's does not apply to quotations estimated between R2 000 and up to R30 000. Bidders will be evaluated based on price only.
- Regional indicators has been developed on IPS to target local suppliers in a particular municipal region to allow for the empowerment of local Small, Medium and Micro enterprises in order to stimulate localised competition and encourage the growth of small and start-up enterprises. This also allows the WCG to ensure value for money, improved contract management and supplier performance.
- A rotation methodology will be utilised to rotate Requests for Quotation (RFQ) opportunities to a maximum of 125 suppliers per request.
- Suppliers will only receive RFQs when they are eligible to receive the requests.
- Suppliers must only select the commodities relevant to its core business when registering/updating its profile on the WCSEB.

LINKING OF SUPPLIERS ON WCSEB

- Suppliers' commodities must be correctly selected in line with its core business. Suppliers will not be linked to events already advertised.


Western Cape
Government
FOR YOU
Western Cape
Education Department
Bid Box



PART A
INVITATION TO BID

ZERO-TOLERANCE TO FRAUD, THEFT AND CORRUPTION (ANTI-FRAUD, THEFT AND CORRUPTION)

THE WCG IS COMMITTED TO GOVERN ETHICALLY AND TO COMPLY FULLY WITH ANTI-FRAUD, THEFT AND CORRUPTION LAWS AND TO CONTINUOUSLY CONDUCT ITSELF WITH INTEGRITY AND WITH PROPER REGARD FOR ETHICAL PRACTICES.

THE WCG HAS A ZERO TOLERANCE APPROACH TO ACTS OF FRAUD, THEFT AND CORRUPTION BY ITS OFFICIALS AND ANY SERVICE PROVIDER CONDUCTING BUSINESS WITH THE WCG.

THE WCG EXPECTS ALL ITS OFFICIALS AND ANYONE ACTING ON ITS BEHALF TO COMPLY WITH THESE PRINCIPLES TO ACT IN THE BEST INTEREST OF THE WCG AND THE PUBLIC AT ALL TIMES.

THE WCG IS COMMITTED TO PROTECTING PUBLIC REVENUE, EXPENDITURE, ASSETS AND REPUTATION FROM ANY ATTEMPT BY ANY PERSON TO GAIN FINANCIAL OR OTHER BENEFIT IN AN UNLAWFUL, DISHONEST OR UNETHICAL MANNER.

INCIDENTS AND SUSPICIOUS ACTIVITIES WILL BE THOROUGHLY INVESTIGATED AND WHERE CRIMINAL ACTIVITY IS CONFIRMED, RESPONSIBLE PARTIES WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (*NAME OF DEPARTMENT/ PUBLIC ENTITY*)					
BID NUMBER:	**B/WCED 3158/25**	*CLOSING DATE:*	**14 AUGUST 2026**	*CLOSING TIME:*	**11H00**
DESCRIPTION	**APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT PERSONNEL SUITABILITY CHECKS (VETTING) AS PART OF THE WCED'S RECRUITMENT, SELECTION AND APPOINTMENT PROCESS FOR A PERIOD OF FIVE YEARS.**				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (*STREET ADDRESS*)					
1 NORTH WHARF SQUARE BUILDING, 2 LOWER LOOP STREET, FORESHORE, CAPE TOWN, 8001 (PHOTO OF BID/TENDER BOX ENCLOSED)					

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO		**TECHNICAL ENQUIRIES MAY BE DIRECTED TO:**	
CONTACT PERSON	*Ms. K. Mabuto*	*CONTACT PERSON*	*Mr. S. Langeveldt*
TELEPHONE NUMBER	*021 467 2043*	*TELEPHONE NUMBER*	*021 467 2782*
FACSIMILE NUMBER		*FACSIMILE NUMBER*	
E-MAIL ADDRESS	*Kutala.Mabuto@westemcape.gov.za*	*E-MAIL ADDRESS*	*Stacey.Langeveldt@westemcape.gov.za*

SUPPLIER INFORMATION								
NAME OF BIDDER								
POSTAL ADDRESS								
STREET ADDRESS								
TELEPHONE NUMBER	*CODE*		*NUMBER*					
CELLPHONE NUMBER								
FACSIMILE NUMBER	*CODE*		*NUMBER*					
E-MAIL ADDRESS								
VAT REGISTRATION NUMBER								
SUPPLIER COMPLIANCE STATUS	*WCSEB No.*		*TCS PIN:*		**AND**	*CSD No:*	*MAAA*	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	*[TICK APPLICABLE BOX]* ☐ *Yes* ☐ *No*			*B-BBEE STATUS LEVEL SWORN AFFIDAVIT*	*[TICK APPLICABLE BOX]* ☐ *Yes* ☐ *No*			
IF YES, WAS THE CERTIFICATE ISSUED BY A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL ACREDITATION SYSTEM (SANAS)	*[TICK APPLICABLE BOX]* ☐ *Yes* ☐ *No*							
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs& QSEs) MUST BE SUBMITTED TOGETHER WITH A COMPLETED 6.1 IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]								

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/ SERVICES/ WORKS OFFERED?	☐ *Yes* ☐ *No* *[IF YES ENCLOSE PROOF]*	*ARE YOU A FOREIGN BASED SUPPLIER FOR* **THE GOODS /SERVICES /WORKS OFFERED?**	☐ *Yes* ☐ *No* *[IF YES, ANSWER THE QUESTIONNAIRE BELOW]*

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ *YES* ☐ *NO*
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ *YES* ☐ *NO*
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ *YES* ☐ *NO*
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ *YES* ☐ *NO*
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ *YES* ☐ *NO*

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

PART B
TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.

1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**

1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.

1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (WCBD7).**

2. TAX COMPLIANCE REQUIREMENTS

2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.

2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.

2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING THROUGH THE WEBSITE WWW.SARS.GOV.ZA.

2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE WITH TOGETHER WITH THE BID.

2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE AND CSD NUMBER AS MENTIONED IN 2.3 ABOVE.

2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID

SIGNATURE OF BIDDER: ....

CAPACITY UNDER WHICH THIS BID IS SIGNED: ....
(Proof of authority must be submitted e.g. company resolution)

DATE: ....

Annexure A

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

(i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
(ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.

- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if (applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.

1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 "Day" means calendar day.

1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.

1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.

1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 "GCC" means the General Conditions of Contract.

1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 "Project site," where applicable, means the place indicated in bidding documents.

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
(d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
(e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
(b) in the event of termination of production of the spare parts:
 (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

(a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;

(b) if the Supplier fails to perform any other obligation(s) under the contract; or

(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer/ Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

(i) the name and address of the supplier and / or person restricted by the purchaser;
(ii) the date of commencement of the restriction
(iii) the period of restriction; and
(iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

34 Prohibition of Restrictive practices

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

PRICING SCHEDULE – FIRM PRICES

THIS DOCUMENT MUST BE COMPLETED IN CONJUNCTION WITH WCBD 3.4 IN BLACK OR BLUE INDELIBLE INK (NOT IN PENCIL)

(FAILURE TO DO SO WILL RESULT IN YOUR BID BEING DISQUALIFIED)

Name of bidder: …………………………………	Bid number: **B/WCED 3158/25**
Closing time: **11:00**	Closing date: **14 August 2026**

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY (INCLUDING VAT)
1.	1 SERVICE	APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT PERSONNEL SUITABILITY CHECKS (VETTING) AS PART OF THE WCED'S RECRUITMENT, SELECTION AND APPOINTMENT PROCESS FOR A PERIOD OF FIVE YEARS.	
		TOTAL COST YEAR 1	R…………………… YEAR 1 (Incl. Vat)
		TOTAL COST YEAR 2	R…………………… YEAR 2 (Incl. Vat)
		TOTAL COST YEAR 3	R…………………… YEAR 3 (Incl. Vat)
		TOTAL COST YEAR 4	R…………………… YEAR 4 (Incl. Vat)
		TOTAL COST YEAR 5	R…………………… YEAR 5 (Incl. Vat)
		Note: **The prices offered herein must commensurate with the prices offered in the cost breakdown (Annexure B). * Bidders must submit pricing for all items indicated in Annexure A. Failure to do so, will render the bid non-compliant.	R…………………… TOTAL BID PRICE (inclusive of VAT)

B/WCED 3158/25: ITEMISED PRICING SCHEDULE – FIRM PRICES

ANNEXURE B

No.	Personnel Suitability Specifications	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	Mandatory Verification Types (Items 1–19)						
1	National Matric qualification pre-1992 via UMALUSI inclusive of SAQA institutional accreditation.						R 0.00
2	National Matric qualification post -1992 via UMALUSI inclusive of SAQA institutional accreditation.						R 0.00
3	National tertiary qualifications via the relevant institution inclusive of SAQA institutional accreditation.						R 0.00
4	International Qualification inclusive of Institutional Accreditation						R 0.00
5	Criminal by AFIS Check						R 0.00
6	Credit report -TransUnion						R 0.00
7	Credit report - Experian						R 0.00
8	Credit report -XDS						R 0.00
9	Credit report -Compuscan						R 0.00
10	Combined consumer credit profile						R 0.00
11	Citizenship validation						R 0.00
12	Sex Offender Register Check						R 0.00
13	Reference Check – Confirmation (dates, position, reason leaving and employment reference)						R 0.00
14	SMS Consent						R 0.00
15	WhatsApp Consent						R 0.00
16	Booking for fingerprint branches in all Provinces						R 0.00
17	Permanent/Temporary Residency Permit (Work permits)						R 0.00
18	Driver's License (Incl. Public Driver Permit (PDP's)						R 0.00
19	ID Validation						R 0.00
	Total Price (Mandatory Verification Types (Items 1–19))						**R 0.00**
	Other Verification Types (Items 20–25)						
20	Directorship Listing						R 0.00
21	Fraud Listing						R 0.00
22	Short courses/certificates						R 0.00
23	Membership of Organisations						R 0.00
24	Company Credit Check (South Africa, POR for International)						R 0.00
25	Fingerprint Detail						R 0.00
	Total Price (Other Verification Types (Items 20–25))						**R 0.00**
Training Users within the Head Office and district offices (Item 26)							
26	Online orientation and train Users and administration within WCED (Head Office and all the district offices if required) on the process of loading requests and documents on the relevant platform (AFIS).						R 0.00
	Total Price (Training Users within the Head Office and district offices (Item 26))						**R 0.00**
TOTAL PRICE FOR ALL FIVE YEARS							**R 0.00**

SPECIFICATION COMPLIANCE SCHEDULE (SERVICES)

THIS DOCUMENT MUST BE COMPLETED IN CONJUNCTION WITH WCBD 3.1 IN BLACK OR BLUE INDELIBLE INK (NOT IN PENCIL)
(FAILURE TO DO SO WILL RESULT IN YOUR BID BEING DISQUALIFIED)

Name of Bidder or Joint Venture.. Bid number: **B/WCED 3158/25**

Closing date: **14 August 2026** Closing time: **11:00**

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

The **Bidder is required to indicate, adjacent to each paragraph** in the column provided for this purpose, whether the bidder is in **compliance with the bid specifications** and to what extent by writing **"Yes, "No", or "Noted". If any comments must be made with regard to the latter, this must be provided on an addendum in which case the bidder must make reference to the relevant specification and attach any documentation, where required**.

THE WESTERN CAPE EDUCATION DEPARTMENT (WCED) RETAINS THE RIGHT NOT TO ACCEPT THE LOWEST, HIGHEST OR ANY BID, OR TO ACCEPT PART OR WHOLE OF ANY BID.

TOTAL BID PRICE (in RSA Currency including VAT) R....................
(Must be in line with amount indicated in WCBD 3.1) **SERVICE**

Item No	Quantity	Description	Total bid price
1	SERVICE	**APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT PERSONNEL SUITABILITY CHECKS (VETTING) AS PART OF THE WCED'S RECRUITMENT, SELECTION AND APPOINTMENT PROCESS FOR A PERIOD OF FIVE YEARS.** **Note:***The prices offered herein must be commensurate with the prices offered in the Pricing Schedule (WCBD 3.1).**	R.........................

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable	

BACKGROUND

The Western Cape Education Department (WCED) is responsible for early childhood development, primary and secondary school education in the Western Cape Province.

The Department consists of its Head Office and 8 Education Districts: Metro North, Metro South, Metro East, Metro Central, West Coast, Overberg, Cape Winelands and Eden and Central Karoo.

The WCED strives to attract competent, talented individuals by filling vacant positions with the most suitably qualified candidates. Appointing a new employee or an existing employee into a new position is a big investment for the WCED. Vetting candidates is a critical part of the recruitment and selection process supporting effective recruitment decisions.

Background checks will be conducted on all potential and existing candidates prior to the finalization of the recruitment process to verify personal information (which includes criminal backgrounds, credit checks, identification status, etc.). Verification includes both South African and foreign documents and qualifications.

Although the WCED reserves the right to verify information (credentials) at other sources / institutions where available e.g. South African Police Services (SAPS), South African Qualification Authority (SAQA), professional bodies and other government departments, the service provider must be able to perform all the verification checks indicated in the bid.

The Bidder must confirm that the following is complied with by indicating "YES" in the indicated column and by attaching the necessary documentation where required. By indicating "NO" the bidder confirms that it does not comply with the specifications and requirements.

PLEASE NOTE: DO NOT WRITE IN THE SHADED AREAS
MAKE ADDITIONAL COMMENTS TO RELEVANT SPECIFICATIONS ON AN ADDENDUM

1.	**DELIVERABLES** The WCED needs to appoint a service provider to conduct personnel suitability and verification checks as indicated below:	By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable	
1.1	National Matric qualification pre-1992 via UMALUSI inclusive of SAQA institutional accreditation.	**YES**	**NO**
1.2	National Matric qualification post -1992 via UMALUSI inclusive of SAQA institutional accreditation.	**YES**	**NO**
1.3	National tertiary qualifications via the relevant institution inclusive of SAQA institutional accreditation.	**YES**	**NO**

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE	
		By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable	
1.4	International qualification inclusive of institutional accreditation.	**YES**	**NO**
1.5	Criminal history – verify whether the candidate has been convicted of a crime, is on parole, has outstanding warrants of arrest, or is on a sex offender registry, using the Automated Fingerprint Identification System (AFIS).	**YES**	**NO**
1.6	Credit report – through either Transunion, Experian, Xpert Decision System (XDS) or Compuscan etc.	**YES**	**NO**
1.7	Citizenship validation – to verify that the candidate is a citizen of South Africa and to also confirm foreign nationals.	**YES**	**NO**
1.8	Reference check – to confirm dates, position and reason for leaving.	**YES**	**NO**
1.9	Employment reference.	**YES**	**NO**
1.10	Professional registration – Verify registration accreditation and/or affiliation of candidates with a registered professional body.	**YES**	**NO**
1.11	Permanent / temporary residence permit (work permit) - verify that the candidate has a legal right to work in South Africa.	**YES**	**NO**
1.12	Driver's license including Public Driver Permit (PDP) – verify whether the candidate has a valid driver's license and/or driver permit in particularly where it's an inherent job requirement of the position to have a valid driver's license and/or driver permit.	**YES**	**NO**
1.13	Identity Document (ID) validation.	**YES**	**NO**
2.	**Other additional verification types that may be required during the duration of the contract period:**		
2.1	Directorship listing – verify whether the candidate is a Director of a company.	**YES**	**NO**
2.2	Fraud listing – verify candidates against fraud listing.	**YES**	**NO**
2.3	Short courses / certificates obtained by the candidate.	**YES**	**NO**
2.4	Membership of Organizations / Companies – verify a candidate's membership or affiliation with an organization or company.	**YES**	**NO**

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable	
2.5	Company credit check – for South African candidates and Proof of Residence (**POR**) for international candidates.	**YES**	**NO**
2.6	Fingerprint detail – verify an individual's identity by matching their fingerprint against official records.	**YES**	**NO**
2.7	Fingerprint services to be available across all towns and cities in all provinces – (mandatory verification to be concluded at these venues by appointment).	**YES**	**NO**
2.8	Offsite verification – service provider to provide full verification service, this includes digital verification equipment as well as human resources.	**YES**	**NO**
2.9	SMSes and Whatsapp services to candidates.	**YES**	**NO**
2.10	Mandatory qualification verification checks to be conducted and concluded within minimum of six (6) working days from upload.	**YES**	**NO**
2.11	All other verification checks are to be concluded within three (3) working days from upload.	**YES**	**NO**
2.12	The required service must be provided through a secure web-based solution that aligns with and is compatible with the Western Cape Government's applicable technology, security, and information management standards.	**YES**	**NO**
2.13	An independent penetration test report must be provided when requested, for a penetration test conducted on the proposed solution within the last 12 months.	**YES**	**NO**
2.14	The solution must use secure authentication and access control mechanisms including support for Microsoft Entra ID federation.	**YES**	**NO**
2.15	The solution must protect information by means of encryption in transit and encryption at rest, using industry-accepted cryptographic standards.	**YES**	**NO**
2.16	The solution must comply with all applicable South African legal and regulatory requirements relating to the processing and protection of personal information, including the Protection of Personal Information Act, 2013.	**YES**	**NO**
2.17	All data processed and stored as part of the service, including uploaded supporting documents and vetting results, must remain hosted and resident within the Republic of South Africa. No data may be stored, replicated, backed up, or processed outside South Africa without the prior written approval of the Western Cape Government.	**YES**	**NO**

Paragraph	SPECIFICATION	**INDICATION OF COMPLIANCE** By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable	
2.18	The bidder must ensure that appropriate audit logging, monitoring, and traceability are maintained for user access and key transactions performed on the platform.	**YES**	**NO**
2.19	The bidder must describe the incident management and breach notification processes applicable to the service, including the timeframes and process for notifying the Western Cape Government in the event of a security incident or personal information breach affecting the service or its data.	**YES**	**NO**
2.20	The bidder must confirm the arrangements for backup, recovery, retention, and secure disposal of records processed through the platform, in line with legal, contractual, and Western Cape Government requirements.	**YES**	**NO**
2.21	Services rendered for verification of criminal records must be compatible with the latest version of the Biometric fingerprint processing unit and associated software.	**YES**	**NO**
2.22	Software and licensing will be the responsibility of the service provider.	**YES**	**NO**
2.23	Registered biometric scanners on the service provider's company profile.	**YES**	**NO**
2.24	The service provider must own their biometric scanners.	**YES**	**NO**
2.25	The service provider must be able to conduct verification of credentials daily.	**YES**	**NO**
2.26	Maintain an online database of all vetting checks conducted for the period of the contract and a download of all checks conducted at the end of the contract period.	**YES**	**NO**
2.27	Provide monthly reports on all vetting checks conducted for the period of the contract.	**YES**	**NO**
2.28	Render a bulk vetting service on criminal checks.	**YES**	**NO**
3.	**TRAINING**		
3.1	The service provider must provide on-line orientation and train Users and administration within WCED (Head Office and all the district offices if required) on the process of loading requests and documents on the relevant platform (AFIS) as and when required (Training dates to be agreed with the Project Manager).	**YES**	**NO**
4.	**CONFIDENTIALITY AND PROTECTION OF INFORMATION**		

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable	
4.1	The vetting services company must ensure confidentiality in respect of all services rendered to WCED, including but not limited to the following: a) Expenditure incurred by WCED pertaining to the services rendered by the vetting services company, and b) The personal information of the people being vetted.	**YES**	**NO**
4.2	The vetting services company must ensure that all activities undertaken comply with the Protection of Personal Information Act, 2013 "POPIA". **See Annexure C.**	**YES**	**NO**
4.3	The vetting services company to confirm the following: a) That they are financially capable (financially sound) to conduct the service; and b) They have the ability and resources to conduct the service.	**YES**	**NO**
5.	**EVALUATION CRITERIA**		
5.1	**The bid will not be considered without the following documents or compliance to the requirements stated:**		
5.1.1	Completed and signed WCBD 1 Invitation to Bid.		
5.1.2	Fully completed WCBD 3.1 Pricing Schedule.		
5.1.3	Fully completed Annexure B (Annexure to the Pricing Schedule).		
5.1.4	Fully completed WCBD 3.4 Specification Compliance Schedule.		
5.1.5	Submit proof that you are an authenticated registered user of AFISWITCH.		
5.1.6	Attendance of compulsory information session.		
5.1.7	Active registration on Central Supplier Database (CSD).		
5.1.8	Where applicable (Joint Ventures and Consortia) submission of a duly signed Memorandum of Understanding detailing the roles and responsibilities of all parties. In such cases all the parties must be actively registered on the WCSEB and CSD at the time that this bid is awarded. **Failure to submit the above required documents and compliance to the stated requirements will render the bid non-compliant.**		
6.	**MINIMUM BIDDING CONDITIONS**		

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable
6.1	**The bidder MUST submit with the bidding document, at bid closure, the following: (Failure to submit the items listed below, will render a bid non-compliant).** (a) Bidder must demonstrate in its bid that it has proven experience within vetting and related services within the last 2-3 years. **(Proof must be provided in the form of submitting a minimum of one (1) reference letter from the clientele confirming the proven experience of rendering similar service.**	
6.2	The bidder must, **within fourteen (14) calendar days** from the date of such communication by the WCED, **during the evaluation stage**, submit the documents listed hereunder in paragraphs 6.2.1 and 6.2.2 below.	
6.2.1	The bidder must provide proof that the proposed web-based solution has undergone an independent penetration test within the last twelve (12) months. The penetration test must cover: • the specific web-based solution proposed for WCED, including all internet-facing application components, related APIs, authentication and access control mechanisms, administrative interfaces, file handling functionality, and any integrations or components that process, store or transmit WCED data. • Where the proposed solution forms part of a larger platform, the bidder must clearly indicate which components were tested and explain how the tested scope relates to the solution being proposed to WCED. NB: There must be no open findings that are risk rated medium, high or critical.	
6.2.2	The bidder must **provide evidence** of the security controls applicable to the hosting environment and service platform, including recognized certifications or assurance reports such as ISO/IEC 27001, SOC 2 Type II, or equivalent. Bidders must submit a valid ISO/IEC 27001 certificate, SOC 2 Type II report, or equivalent, clearly covering the hosting environment and service platform. Documentary proof must be attached. Self-declarations will not be accepted **(Failure to submit the requested documents above on or before the stipulated date and time when requested, will result in the bid being non-compliant)**:	

<table>
<tr><th rowspan="2">Paragraph</th><th rowspan="2">SPECIFICATION</th><th colspan="2">INDICATION OF COMPLIANCE</th></tr>
<tr><th colspan="2">By indicating Yes within this column, the bidder confirms that it will meet the specified deliverable</th></tr>
<tr><td>6.3</td><td colspan="3">The Bidder must comply with the following requirements, which will not necessarily invalidate the bid:

Completion in full of the WCBD 4 Declaration of interest form and the addendum thereto. This form must be certified by a Commissioner of Oaths.

Declare any related party interest on an addendum to the WCBD 4. The declaration must reflect whether the bidder or any of the directors/shareholders/members/busin ess partners or associates of the bidding entity have any interest in any other related companies, whether these related companies are bidding for this contract or not. This addendum must also be certified by a Commissioner of Oaths.

The regulations promulgated in terms of the Public Finance Management Act (PFMA)1999, allows an accounting officer to disregard the bid of any bidder if that bidder, or any of its directors has (amongst others):
(i) abused the institution's supply chain management system
(ii) committed fraud or any other improper conduct in relation to such system.

Consequently, you are required to submit full and complete information in respect of the declaration of interest.

An original or certified black & white copy of the company registration documents, i.e CK 1, CK 2.

The Western Cape Government interim arrangements to give effect to the Preferential Procurement Regulations, 2022 effective from 16 January 2023 will apply in this bid. Please acquaint yourself with such Regulations. Please note that points for BB-BEE status level of contribution will only be awarded to bidders who claim such points through the completion of the WCD 6.1 Preference Points Claim Form(attached), in full (and which you are required to read in its entirety) and who submit proof of such BB-BEE status level of contribution, which can be in the form of the following:

a) a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) and which is applicable for the sector within which the bid is submitted (for example, a B-BBEE certificate for the catering and Hospitality sector is not applicable for Transport and Storage bids); or
b) an affidavit, in the form prescribed by the Department of Trade and Industry (dti) which confirms the annual total revenue and level of black ownership together with the sector in respect of which it is issued. This form is obtainable on the dti website; or
c) an affidavit issued by Companies Intellectual Property Commission (CIPC)
The Master Registration Number (Supplier number) enables the WCED to verify the bidder's tax compliance status on the CSD.</td></tr>
<tr><td>7.</td><td>PRICE AND B-BBEE

All compliant offers will be ranked according to the point system indicated below in terms of the preferential procurement regulations 2022:<table><tr><th>Evaluation Element</th><th>Point</th></tr><tr><td>1. Price</td><td>80</td></tr><tr><td>2. B-BBEE Points</td><td>20</td></tr><tr><td></td><td>100</td></tr></table></td><td></td><td></td></tr>
</table>

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable	
8.	**CONDITIONS OF CONTRACT:**		
8.1	The WCED will enter into a Service Level Agreement (SLA) with the successful service provider.	**YES**	**NO**
8.2	Payments will be made after service have been rendered, within 30 days of receipt of invoice.	**YES**	**NO**
8.3	Provide Department with reconciled accounts within 90 days.	**YES**	**NO**
8.4	Where verification of qualifications is requested the service provider must verify from SAQA inclusive of institutional accreditation.	**YES**	**NO**
8.5	Ensure that all accreditations are done via the applicable regulatory bodies/authorities.	**YES**	**NO**
8.6	The quantities required for the purpose of this bid are not guaranteed and will be determined solely by the requirements of the Department.	**YES**	**NO**
9.	**THE SUCCESSFUL SERVICE PROVIDER MUST:**		
9.1	Render the vetting services in terms of scope of work as stated in the terms of reference.	**YES**	**NO**
9.2	Familiarise with current WCED vetting services processes, policies and implementation of controls to ensure compliance.	**YES**	**NO**
9.3	Indicate a key person who would communicate with WCED regarding the execution of the service.	**YES**	**NO**
9.4	Orientate and train users and administration within the WCED including District Offices (if required) on the process of loading requests and documents on the relevant website (AFIS) as and when required (Training dates to be agreed with the Project Manager).	**YES**	**NO**
9.5	Attend quarterly meetings with the WCED to ensure that contractual obligations are met with as little disruption as possible.	**YES**	**NO**
9.6	The bidder must ensure that it is financially capable of fulfilling all obligations associated with the service.	**YES**	**NO**
9.7	Remedy any inconsistencies in terms of the Service Level Agreement within a reasonable timeframe, by no later than the next scheduled quarterly contract management meeting, unless agreed otherwise as stated in the minutes of such meetings.	**YES**	**NO**
9.8	Ensure that the quarterly contract management meetings are attended by an experienced Project/Contract Manager assigned to this contract who is able to make and execute decisions relevant to the management of this contract.	**YES**	**NO**
9.9	Ensure that invoicing must be done in accordance with the WCED official purchase order.	**YES**	**NO**
9.10	Maintain the registration as AFISWITCH user throughout the contract period.	**YES**	**NO**
10.	**The WCED will:**		

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable
10.1	Brief the successful service provider of any unforeseen changes, if necessary.	
10.2	Monitor the service and deliverables throughout the contract period.	
10.3	Provide the successful service provider with necessary and relevant information as required.	
10.4	Work closely with the service provider with regards to vetting services required.	
10.5	Provide a list of WCED personnel who would be working with the successful service provider.	
10.6	Arrange the quarterly contract management meetings with the successful service provider.	
10.7	Enter into a Service Level Agreement with the successful service provider.	
10.8	Review the vetting services company's performance in line with the contract and the Service Level Agreement entered.	
10.9	Monitor the vetting services company level performance and discuss findings at the quarterly scheduled meetings.	
11.	**CONTRACT MONITORING**	
11.1	The contract will be monitored in terms of the Service Level Agreement (SLA).	
12.	**PAYMENT CONDITIONS**	
	Payment will be made as follows:	
12.1	The service provider must submit a valid tax invoice to the **Project Manager**: **Ms. Stacey Langeveldt**, (1 North Wharf Square, 2 Lower Loop Street, 5th Floor, Foreshore, Cape Town) for payment, on a monthly basis.	
12.2	The WCED will pay after certification that the services for each order were rendered in full.	
12.3	The payment will be made within 30 days, after receipt of the valid tax invoice, certified by the Project Manager that the service was rendered satisfactory.	

Paragraph	SPECIFICATION	INDICATION OF COMPLIANCE By indicating **Yes** within this column, the bidder confirms that it will meet the specified deliverable
13.	**GENERAL CONDITIONS OF CONTRACT**	
13.1	This contract will be governed through the General Conditions of Contract attached to this bid document.	
13.2	Bidders must note that the penalties intended through clause 22 of the General Conditions of Contract, which forms part of the contract, will be imposed in the execution of this contract. Consequently, bidders must acquaint themselves with paragraphs 21 – 23 of the General Conditions of Contract which relates to the suppliers' performance on the contract.	
13.3	Bidders must note these conditions upfront to prevent their business and its' directors/members/shareholders from possibly being restricted to do business with the public sector.	

14. COMPULSORY INFORMATION SESSION

A compulsory information session will be held on **30 July 2026 AT 11H00** at **(1 North Wharf Square, 2 Lower Loop Street, Ground Floor, Foreshore, Cape Town).**

Potential bidders, who arrive **more than 15 minutes later** than the advertised commencement time of the information session, **will not be allowed into the venue. This is a compulsory information session and failure to attend the information session will invalidate the bid offer.**

The purpose of the information session shall be to highlight the pricing procedure, enable the potential successful service provider to acquaint him/herself with the requirements of the WCED and completion of the bid documents.

Bid documents are obtainable from the eTender portal: www.etenders.gov.za. No documents will be issued by the WCED.

Cut-off time for bidders to submit question will be on 4 August 2026 at 15:00.

PROVINCIAL GOVERNMENT WESTERN CAPE

DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION

1. To give effect to the requirements of the Western Cape Provincial Treasury Instructions, 2019: Supply Chain Management (Goods and Services), Public Finance Manage Act (PFMA) Supply Chain Management (SCM) Instruction No. 3 of 2021/2022 - SBD 4 Declaration of Interest, Section 4 (1)(b)(iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.

2. Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

3. All prospective bidders intending to do business with the Institution must be registered on the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB) if they wish to do business with the Western Cape Government (WCG)via the electronic Procurement Solution (ePS)..

4. The status of enterprises and persons listed on the National Treasury's Register for Tender Defaulters will be housed on the ePS. Institutions may not under any circumstances procure from enterprises and persons listed on the Database of Tender Defaulters.

5. The status of suppliers listed on the National Treasury's Database of Restricted Suppliers will be housed on the ePS; however, it remains incumbent on institutions to check the National Treasury Database of Restricted Suppliers before the conclusion of any procurement process. For suppliers listed as restricted, institutions must apply due diligence and risk assessment before deciding to proceed with procurement from any such supplier.

6. **Definitions**

   "bid" means a bidder's response to an institution's invitation to participate in a procurement process which may include a bid, price quotation or proposal;

   "Bid rigging (or collusive bidding)" occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and/or services through a bidding process. Bid rigging is, therefore, an agreement between competitors;

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

"**business interest**" means -

(a) a right or entitlement to share in profits, revenue or assets of anentity;

(b) a real or personal right in property;

(c) a right to remuneration or any other private gain or benefit, or

(d) includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of thoseparagraphs;

"**Consortium or Joint Venture**" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

"**Controlling interest**" means, the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise;

"**Corruption**"- General offences of corruption are defined in the Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) as:

Any person who directly or indirectly -

(a) accepts or agrees or offers to accept an!' gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person., in order to act personally or by influencing another person so to act, in a manner—

(i) that amounts to the-

(aa) illegal. dishonest. unauthorised. incomplete. or biased: or

(bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation:

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or 45 not to do anything. of the, is guilty of the offence of corruption.

"**CSD**" means the Central Supplier Database maintained by National Treasury;

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"employee", in relation to –

(a) a department, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and

(b) a public entity, means a person employed by the public entity;

"entity" means any -

(a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or

(b) sole proprietorship;

"entity conducting business with the Institution" means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province;

"Family member" means a person's -

(a) spouse; or

(b) child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption or some other legal arrangement (as the case may be);

"intermediary" means a person through whom an interest is acquired, and includes a representative or agent or any other person who has been granted authority to act on behalf of another person;

"**Institution**" means –

a provincial department or provincial public entity listed in Schedule 3C of the Act;

"**Provincial Government Western Cape (PGWC)**" means

(a) the Institution of the Western Cape, and

(b) a provincial public entity;

"RWOEE" means -

Remunerative Work Outside of the Employee's Employment

"spouse" means a person's -

(a) partner in marriage or civil union according to legislation;

(b) partner in a customary union according to indigenous law; or

(c) partner with whom he or she cohabits and who is publicly acknowledged by the person as his or her life partner or permanent companion.

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7. Regulation 13(c) of the Public Service Regulations (PSR) 2016, effective 1 February 2017, prohibits any employee from conducting business with an organ of state, or holding a directorship in a public or private company doing business with an organ of state unless the employee is a director (in an official capacity) of a company listed in schedules 2 and 3 of the Public Finance Management Act.

   a) Therefore, by 31 January 2017 all employees who are conducting business with an organ of state should either have:

      (i) resigned as an employee of the government institution or;

      (ii) cease conducting business with an organ of state or;

      (iii) resign as a director/shareholder/owner/member of an entity that conducts business with an organ of state.

8. Any legal person, or their family members, may make an offer or offers in terms of this invitation to bid. In view of potential conflict of interest, in the event that the resulting bid, or part thereof, be awarded to family members of persons employed by an organ of state, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where the bidder is employed by the Institution.

9. The bid of any bidder may be disregarded if that bidder or any of its directors abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; disclosure is found not to be true and complete; or failed to perform on any previous contract.

10. Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds.

11. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorises accounting officers and accounting authorities to:

    a) disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.

    b) cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.

12. Communication between partners in a joint venture or consortium will not be construed as collusive bidding.

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This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

13. In addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

SECTION A	**DETAILS OF THE ENTITY**	
	CSD Registration Number	MAAA
	Name of the Entity	
	Entity registration Number (where applicable)	
	Entity Type	
	Tax Reference Number	
Full details of directors, shareholder, member, partner, trustee, sole proprietor or any persons having a controlling interest with a right or entitlement to share in profits, revenue or assets of the entity should be disclosed in the Table A below.		

TABLE A

FULL NAME	**DESIGNATION** *(Where a director is a shareholder, both should be confirmed)*	**IDENTITY NUMBER**	**PERSONAL TAX REFERENCE NO.**	**PERCENTAGE INTEREST IN THE ENTITY**

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

SECTION B: DECLARATION OF THE BIDDER'S INTEREST *The supply chain management system of an institution must, irrespective of the procurement process followed, prohibit any award to an employee of the state, who either individually or as a director of a public or private company or a member of a close corporation, seek to conduct business with the WCG, unless such employee is in an official capacity a director of a company listed in Schedule 2 or 3 of the PFMA as prescribed by the Public Service Regulation 13(c).* *Furthermore, an employee employed by an organ of state conducting remunerative work outside of the employee's employment should first obtain the necessary approval by the delegated authority (RWOEE), failure to submit proof of such authority, where applicable, may result in disciplinary action.*			
B1.	Are any persons listed in Table A identified on the CSD as employees of an organ of state? ***(If yes, refer to Public Service Circular EIM 1/2016 to exercise the listed actions)***	NO	YES
B2.	Are any employees of the entity also employees of an organ of state? ***(If yes complete Table B and attach their approved "RWOEE")***	NO	YES
B3.	Are any family members of the persons listed in Table A employees of an organ of state? ***(If yes complete Table B)***	NO	YES

TABLE B

Details of persons (family members) connected to or employees of an organ of state should be disclosed in Table B below.

FULL NAME OF EMPLOYEE	IDENTITY NUMBER	DEPARTMENT/ ENTITY OF EMPLOYMENT	DESIGNATION/ RELATIONSHIP TO BIDDER**	INSTITUTION EMPLOYEE NO./ PERSAL NO. *(Indicate if not known)*

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

SECTION C: PERFORMANCE MANAGEMENT AND BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES To enable the prospective bidder to provide evidence of past and current performance.			
C1.	Did the entity conduct business with an organ of state in the last twelve months? **(If yes complete Table C)**	NO	YES

C2. TABLE C

Complete the below table to the maximum of the last 5 contracts.

NAME OF CONTRACTOR	PROVINCIAL DEPARTMENT OR PROVINCIAL ENTITY	TYPE OF SERVICES OR COMMODITY	CONTRACT/ ORDER NUMBER	PERIOD OF CONTRACT	VALUE OF CONTRACT

C3.	Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector?		NO	YES
C4.	Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)? *(To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 326 5445.)*		NO	YES
C5.	If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury?	NO	YES	N/A
C6.	Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)?		NO	YES
C7.	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?		NO	YES

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

SECTION D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT

This form must be signed by a duly authorised representative of the entity in the presence of a commissioner of oaths.

I, ... hereby swear/affirm;

i. that the information disclosed above is true and accurate;

ii. that I have read understand the content of the document;

iii. that I have arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.

iv. that the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specification, prices, including methods, factors or formulas used. to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates;

v. that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract; and

vi. that there have been no consultations, communications, agreements or arrangements made with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and that my entity was not involved in the drafting of the specifications or terms of reference for this bid.

....

DULY AUTHORISED REPRESENTATIVE'S SIGNATURE

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

1.1 Do you know and understand the contents of the declaration? ANSWER: ....

1.2 Do you have any objection to taking the prescribed oath? ANSWER: ....

1.3 Do you consider the prescribed oath to be binding on your conscience? ANSWER:......................

1.4 Do you want to make an affirmation? ANSWER: ....

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed and the deponent's signature/thumbprint/mark was place thereon in my presence.

....

SIGNATURE FULL NAMES Commissioner of Oaths

Designation (rank) .... ex officio: Republic of South Africa

Date:.. Place ....

Business Address: ....

....

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 AND IN TERMS OF THE WESTERN CAPE GOVERNMENTS INTERIM STRATEGY AS IT RELATES TO PREFERENCE POINTS

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS (TENDERERS) MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER, PREFERENTIAL PROCUREMENT REGULATIONS, 2022 AND THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT AND THE CODES OF GOOD PRACTICE

---

1. DEFINITIONS

1.1 **"acceptable tender"** means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.

1.2 **"affidavit"** is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, and this serves as evidence to its veracity and is required for court proceedings.

1.3 **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

1.4 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

1.5 **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

1.6 **"bid"** means a written offer on the official bid documents or invitation of price quotations and "tender" is the act of bidding /tendering;

1.7 "**Code of Good Practice"** means the generic codes or the sector codes as the case may be;

1.8 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

1.9 **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;

1.10 **"EME"** is an Exempted Micro Enterprise with an annual total revenue of R10 million or less.

1.11 **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

1.12 **"Large Enterprise"** is any enterprise with an annual total revenue above R50 million;

1.13 **"non-firm prices"** means all prices other than "firm" prices;

1.14 **"person"** includes a juristic person;

1.15 **"price" means an amount of money tendered for goods or services, and** includes all applicable taxes less all unconditional discounts;

1.16 **"proof of B-BBEE status level contributor"** means-

(a) The B-BBEE status level certificate issued by an authorized body or person;

(b) A sworn affidavit as prescribed in terms of the B-BBEE Codes of Good Practice; or

(c) Any other requirement prescribed in terms of the Broad- Based Black Economic Empowerment Act.

1.17 **QSE** is a Qualifying Small Enterprise with an annual total revenue between R10 million and R50 million;

1.18 **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

1.19 "**sub-contract**" means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.

1.20 "**tender**" means a written offer in the form determined by an organ of state in response to an invitation to provide or services through price quotations, competitive tendering process or any other method envisaged in legislation;

1.21 "**tender for income-generating contracts**" means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions;

1.22 **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

1.23 "**the Regulations**" means the Preferential Procurement Regulations, 2022;

1.24 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette on 11 October 2013;*

1.25 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

1.26 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

2. GENERAL CONDITIONS

2.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

2.2 Preference point system for this bid:

(a) The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable; or

(b) Either the 80/20 or 90/10 preference point system will be applicable to this tender

(delete whichever is not applicable for this tender).

2.3 Preference points for this bid (even in the case of a tender for income-generating contracts) shall be awarded for:

(a) Price; and

(b) B-BBEE Status Level of Contribution.

2.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
Total points for Price and B-BBEE must not exceed	100

2.5 Failure on the part of a bidder to fill in, sign this form and submit in the circumstances prescribed in the Codes of Good Practice either a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) or an affidavit confirming annual total revenue and level of black ownership together with the bid or an affidavit issued by Companies Intellectual Property Commission, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

2.6 The organ of state reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

3. ADJUDICATION USING A POINT SYSTEM

3.1 Subject to Section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the **bidder obtaining the highest number of total points** will be awarded the contract.

3.2 A tenderer must submit proof of its B-BBEE status level of contributor in order to claim points for B-BBEE.

3.3 A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE will not be disqualified but will only score:

(a) points out of 80 for price; and

(b) 0 points out of 20 for B-BBEE

3.4 Points scored must be rounded off to the nearest 2 decimal places.

3.5 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

3.6 As per section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the contract may be awarded to a bidder other than the one scoring the highest number of total points based on objective criteria in addition to those contemplated in paragraph (d) and (e) of the Act that justifies the award to another tenderer provided that it has been stipulated upfront in the tendering conditions.

3.7 Should two or more bids be equal in all respects; the award shall be decided by the drawing of lots.

4. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

4.1 POINTS AWARDED FOR PRICE

4.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEM

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 **or** **90/10**

$$Ps = 80\left(1 - \frac{Pt - P\min}{P\min}\right) \quad \text{or} \quad Ps = 90\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

5. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

5.1 POINTS AWARDED FOR PRICE

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 **or** **90/10**

$$Ps = 80\left(1 + \frac{Pt - P\,max}{P\,max}\right)$$

or

$$Ps = 90\left(1 + \frac{Pt - P\,max}{Pmax}\right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

6. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

6.1 In terms of WCG interim strategy, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

6.2 An **EME** must submit a valid, originally certified affidavit confirming annual turnover and level of black ownership or an affidavit issued by Companies Intellectual Property Commission

6.3 A ***QSE that is less than 51 per cent (50% or less) black owned*** must be verified in terms of the QSE scorecard issued via Government Gazette and submit a valid, original or a legible certified copy of a B-BBEE Verification Certificate issued by SANAS.

6.4 A ***QSE that is at least 51 per cent black owned (51% or higher)*** must submit a valid, originally certified affidavit confirming turnover and level of black ownership as well as declare its empowering status or an affidavit issued by Companies Intellectual Property Commission.

6.5 A ***large enterprise*** must submit a valid, original or originally certified copy of a B-BBEE Verification Certificate issued by a verification agency accredited by SANAS.

6.6 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

6.7 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE status level verification certificate for every separate tender.

6.8 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

7. BID DECLARATION

7.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

8. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPH 6

8.1 B-BBEE Status Level of Contribution....... = ... ***(maximum of 20 points)***

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 6.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or an affidavit confirming annual total revenue and level of black ownership in terms of the relevant sector code applicable to the tender.

9. SUB-CONTRACTING

9.1 Will any portion of the contract be sub-contracted? **YES/NO** *(delete which is not applicable)*

9.1.1 If yes, indicate:

(i) what percentage of the contract will be subcontracted? ....%

(ii) the name of the sub-contractor? ....

(iii) the B-BBEE status level of the sub-contractor? ....

(iv) whether the sub-contractor is an EME or QSE? **YES/NO** *(delete which is not applicable)*

9.1.2 Sub-contracting relates to a **particular** contract and if sub-contracting is applicable, the bidder to state in their response to a particular RFQ that a portion of that contract will be sub-contracted.

10. DECLARATION WITH REGARD TO COMPANY/FIRM

10.1 Name of company/ entity: ....

10.2 VAT registration number: ....

10.3 Company Registration number: ....

10.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/ Joint Venture/ Consortium
- ☐ One-person business/ sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[SELECT APPLICABLE ONE]

10.5 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBEE status level of contribution indicated in paragraph 7 above, qualifies the company/ firm for the preference(s) shown and I/we acknowledge that:

(a) The Western Cape Government reserves the right to audit the B-BBEE status claim submitted by the bidder.

(b) As set out in Section 130 of the B-BBEE Act as amended, any misrepresentation constitutes a criminal offence. A person commits an offence if that person knowingly:

(i) misrepresents or attempts to misrepresent the B-BBEE status of an enterprise;

(ii) provides false information or misrepresents information to a B-BBEE Verification Professional in order to secure a particular B-BBEE status or any benefit associated with compliance to the B-BBEE Act;

(iii) provides false information or misrepresents information relevant to assessing the B-BBEE status of an enterprise to any organ of state or public entity; or

(iv) engages in a fronting practice.

(c) If a B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity becomes aware of the commission of, or any attempt to commit any offence referred to in paragraph 10.5 (a) above will be reported to an appropriate law enforcement agency for investigation.

(d) Any person convicted of an offence by a court is liable in the case of contravention of 10.5 (b) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person to a fine not exceeding 10 per cent of its annual turnover.

(e) The purchaser may, if it becomes aware that a bidder may have obtained its B-BBEE status level of contribution on a fraudulent basis, investigate the matter. Should the investigation warrant a restriction be imposed, this will be referred to the National Treasury for investigation, processing and imposing the restriction on the National Treasury's List of Restricted Suppliers. The bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, may be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied.

(f) The purchaser may, in addition to any other remedy it may have –

(i) disqualify the person from the bidding process;

(ii) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(iii) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation; and

(iv) forward the matter for criminal prosecution.

(g) The information furnished is true and correct.

(h) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 2 of this form.

SIGNATURE(S) OF THE BIDDER(S): ....

DATE: ....

ADDRESS: ....

....

WITNESSES:

1. ....

2. ....

ANNEXURE C

Protection of Personal Information Act 4 of 2013[1]

[ASSENTED TO 19 NOVEMBER 2013]	[DATE OF COMMENCEMENT: 1 JULY 2020]
	(Unless otherwise indicated)

(English text signed by the President)

published in

GG 37067 of 26 November 2013

commencement

(see s. 115 of this Act)

provisions	date	refer to
s. 1, ss. 39 to 54 inclusive (Part A of Chapter 5) and ss. 112 and 113	11 April 2014	Proc R25 in *GG* 37544 of 11 April 2014
ss. 2 to 38, 55 to 109, 111, 114 (1), (2) and (3)	1 July 2020	Proc R21 in *GG* 43461 of 22 June 2020
ss. 110 and 114 (4)	30 June 2021	Proc R21 in *GG* 43461 of 22 June 2020
s. 58 (2)	1 February 2022 in so far as it becomes applicable to processing referred to in s. 57	GN 297 in *GG* 44383 of 1 April 2021, as amended by GN 560 in *GG* 44761 of 25 June 2021 and GenN 395 in *GG* 44782 of 30 June 2021

ACT

To promote the protection of personal information processed by public and private bodies; to introduce certain conditions so as to establish minimum requirements for the processing of personal information; to provide for the establishment of an Information Regulator to exercise certain powers and to perform certain duties and functions in terms of this Act and the Promotion of Access to Information Act, 2000; to provide for the issuing of codes of conduct; to provide for the rights of persons regarding unsolicited electronic communications and automated decision making; to regulate the flow of personal information across the borders of the Republic; and to provide for matters connected therewith.

Preamble

RECOGNISING THAT-

- section 14 of the Constitution of the Republic of South Africa, 1996, provides that everyone has the right to privacy;
- the right to privacy includes a right to protection against the unlawful collection, retention, dissemination and use of personal information;
- the State must respect, protect, promote and fulfil the rights in the Bill of Rights;

AND BEARING IN MIND THAT-

- consonant with the constitutional values of democracy and openness, the need for economic and social progress, within the framework of the information society, requires the removal of unnecessary impediments to the free flow of information, including personal information;

AND IN ORDER TO-

- regulate, in harmony with international standards, the processing of personal information by public and private bodies in a manner that gives effect to the right to privacy subject to justifiable limitations that are aimed at protecting other rights and important interests,

PARLIAMENT of the Republic of South Africa therefore enacts, as follows:-

CONTENTS OF ACT

1 This Act has been updated to include all available historical commencement details

CHAPTER 1
DEFINITIONS AND PURPOSE (ss 1-2)

1 Definitions

In this Act, unless the context indicates otherwise-

'biometrics' means a technique of personal identification that is based on physical, physiological or behavioural characterisation including blood typing, fingerprinting, DNA analysis, retinal scanning and voice recognition;

'child' means a natural person under the age of 18 years who is not legally competent, without the assistance of a competent person, to take any action or decision in respect of any matter concerning him- or herself;

'code of conduct' means a code of conduct issued in terms of Chapter 7;

'competent person' means any person who is legally competent to consent to any action or decision being taken in respect of any matter concerning a child;

'consent' means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information;

'Constitution' means the Constitution of the Republic of South Africa, 1996;

'data subject' means the person to whom personal information relates;

'de-identify', in relation to personal information of a data subject, means to delete any information that-

(a) identifies the data subject;

(b) can be used or manipulated by a reasonably foreseeable method to identify the data subject; or

(c) can be linked by a reasonably foreseeable method to other information that identifies the data subject,

and **'de-identified'** has a corresponding meaning;

'direct marketing' means to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of-

(a) promoting or offering to supply, in the ordinary course of business, any goods or services to the data subject; or

(b) requesting the data subject to make a donation of any kind for any reason;

'electronic communication' means any text, voice, sound or image message sent over an electronic communications network which is stored in the network or in the recipient's terminal equipment until it is collected by the recipient;

'enforcement notice' means a notice issued in terms of section 95;

'filing system' means any structured set of personal information, whether centralised, decentralised or dispersed on a functional or geographical basis, which is accessible according to specific criteria;

'information matching programme' means the comparison, whether manually or by means of any electronic or other device, of any document that contains personal information about ten or more data subjects with one or more documents that contain personal information of ten or more data subjects, for the purpose of producing or verifying information that may be used for the purpose of taking any action in regard to an identifiable data subject;

'information officer' of, or in relation to, a-

(a) public body means an information officer or deputy information officer as contemplated in terms of section 1 or 17; or

(b) private body means the head of a private body as contemplated in section 1,

of the Promotion of Access to Information Act;

'Minister' [2] means the Cabinet member responsible for the administration of justice;

'operator' means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party;

'person' means a natural person or a juristic person;

'personal information' means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to-

(a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

(b) information relating to the education or the medical, financial, criminal or employment history of the person;

(c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;

(d) the biometric information of the person;

(e) the personal opinions, views or preferences of the person;

(f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the person; and

(h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

'prescribed' means prescribed by regulation or by a code of conduct;

'private body' means-

(a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;

(b) a partnership which carries or has carried on any trade, business or profession; or

(c) any former or existing juristic person, but excludes a public body;

'processing' means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including-

(a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

(b) dissemination by means of transmission, distribution or making available in any other form; or

(c) merging, linking, as well as restriction, degradation, erasure or destruction of information;

'professional legal adviser' means any legally qualified person, whether in private practice or not, who lawfully provides a client, at his or her or its request, with independent, confidential legal advice;

'Promotion of Access to Information Act' means the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

'public body' means-

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or

(b) any other functionary or institution when-

(i) exercising a power or performing a duty 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;

'public record' means a record that is accessible in the public domain and which is in the possession of or under the control of a public body, whether or not it was created by that public body;

'record' means any recorded information-

(a) regardless of form or medium, including any of the following:

(i) Writing on any material;

(ii) information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;

(iii) label, marking or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;

(iv) book, map, plan, graph or drawing;

(v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

(b) in the possession or under the control of a responsible party;

(c) whether or not it was created by a responsible party; and

(d) regardless of when it came into existence;

'Regulator' means the Information Regulator established in terms of section 39;

're-identify', in relation to personal information of a data subject, means to resurrect any information that has been de-identified, that-

(a) identifies the data subject;

(b) can be used or manipulated by a reasonably foreseeable method to identify the data subject; or

(c) can be linked by a reasonably foreseeable method to other information that identifies the data subject,

and **'re-identified'** has a corresponding meaning;

'Republic' means the Republic of South Africa;

'responsible party' means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information;

'restriction' means to withhold from circulation, use or publication any personal information that forms part of a filing system, but not to delete or destroy such information;

'special personal information' means personal information as referred to in section 26;

'this Act' includes any regulation or code of conduct made under this Act; and

'unique identifier' means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party.

[Date of commencement of s. 1: 11 April 2014.]

2 The administration and the powers or functions entrusted by legislation transferred to the Minister of Justice and Constitutional Development (Proc 199 in *GG* 51368 of 11 October 2024)

2 Purpose of Act

The purpose of this Act is to-

(a) give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at-

(i) balancing the right to privacy against other rights, particularly the right of access to information; and

(ii) protecting important interests, including the free flow of information within the Republic and across international borders;

(b) regulate the manner in which personal information may be processed, by establishing conditions, in harmony with international standards, that prescribe the minimum threshold requirements for the lawful processing of personal information;

(c) provide persons with rights and remedies to protect their personal information from processing that is not in accordance with this Act; and

(d) establish voluntary and compulsory measures, including the establishment of an Information Regulator, to ensure respect for and to promote, enforce and fulfil the rights protected by this Act.

CHAPTER 2
APPLICATION PROVISIONS (ss 3-7)

3 Application and interpretation of Act

(1) This Act applies to the processing of personal information-

(a) entered in a record by or for a responsible party by making use of automated or non-automated means: Provided that when the recorded personal information is processed by non-automated means, it forms part of a filing system or is intended to form part thereof; and

(b) where the responsible party is-

(i) domiciled in the Republic; or

(ii) not domiciled in the Republic, but makes use of automated or non-automated means in the Republic, unless those means are used only to forward personal information through the Republic.

(2) *(a)* This Act applies, subject to paragraph *(b)*, to the exclusion of any provision of any other legislation that regulates the processing of personal information and that is materially inconsistent with an object, or a specific provision, of this Act.

(b) If any other legislation provides for conditions for the lawful processing of personal information that are more extensive than those set out in Chapter 3, the extensive conditions prevail.

(3) This Act must be interpreted in a manner that-

(a) gives effect to the purpose of the Act set out in section 2; and

(b) does not prevent any public or private body from exercising or performing its powers, duties and functions in terms of the law as far as such powers, duties and functions relate to the processing of personal information and such processing is in accordance with this Act or any other legislation, as referred to in subsection (2), that regulates the processing of personal information.

(4) **'Automated means'**, for the purposes of this section, means any equipment capable of operating automatically in response to instructions given for the purpose of processing information.

4 Lawful processing of personal information

(1) The conditions for the lawful processing of personal information by or for a responsible party are the following:

(a) 'Accountability', as referred to in section 8;

(b) 'Processing limitation', as referred to in sections 9 to 12;

(c) 'Purpose specification', as referred to in sections 13 and 14;

(d) 'Further processing limitation', as referred to in section 15;

(e) 'Information quality', as referred to in section 16;

(f) 'Openness', as referred to in sections 17 and 18;

(g) 'Security safeguards', as referred to in sections 19 to 22; and

(h) 'Data subject participation', as referred to in sections 23 to 25.

(2) The conditions, as referred to in subsection (1), are not applicable to the processing of personal information to the

extent that such processing is-

(a) excluded, in terms of section 6 or 7, from the operation of this Act; or

(b) exempted in terms of section 37 or 38, from one or more of the conditions concerned in relation to such processing.

(3) The processing of the special personal information of a data subject is prohibited in terms of section 26, unless the-

(a) provisions of sections 27 to 33 are applicable; or

(b) Regulator has granted an authorisation in terms of section 27 (2),

in which case, subject to section 37 or 38, the conditions for the lawful processing of personal information as referred to in Chapter 3 must be complied with.

(4) The processing of the personal information of a child is prohibited in terms of section 34, unless the-

(a) provisions of section 35 (1) are applicable; or

(b) Regulator has granted an authorisation in terms of section 35 (2),

in which case, subject to section 37, the conditions for the lawful processing of personal information as referred to in Chapter 3 must be complied with.

(5) The processing of the special personal information of a child is prohibited in terms of sections 26 and 34 unless the provisions of sections 27 and 35 are applicable in which case, subject to section 37, the conditions for the lawful processing of personal information as referred to in Chapter 3 must be complied with.

(6) The conditions for the lawful processing of personal information by or for a responsible party for the purpose of direct marketing by any means are reflected in Chapter 3, read with section 69 insofar as that section relates to direct marketing by means of unsolicited electronic communications.

(7) Sections 60 to 68 provide for the development, in appropriate circumstances, of codes of conduct for purposes of clarifying how the conditions referred to in subsection (1), subject to any exemptions which may have been granted in terms of section 37, are to be applied, or are to be complied with within a particular sector.

5 Rights of data subjects

A data subject has the right to have his, her or its personal information processed in accordance with the conditions for the lawful processing of personal information as referred to in Chapter 3, including the right-

(a) to be notified that-

(i) personal information about him, her or it is being collected as provided for in terms of section 18; or

(ii) his, her or its personal information has been accessed or acquired by an unauthorised person as provided for in terms of section 22;

(b) to establish whether a responsible party holds personal information of that data subject and to request access to his, her or its personal information as provided for in terms of section 23;

(c) to request, where necessary, the correction, destruction or deletion of his, her or its personal information as provided for in terms of section 24;

(d) to object, on reasonable grounds relating to his, her or its particular situation to the processing of his, her or its personal information as provided for in terms of section 11 (3) *(a)*;

(e) to object to the processing of his, her or its personal information-

(i) at any time for purposes of direct marketing in terms of section 11 (3) *(b)*; or

(ii) in terms of section 69 (3) *(c)*;

(f) not to have his, her or its personal information processed for purposes of direct marketing by means of unsolicited electronic communications except as referred to in section 69 (1);

(g) not to be subject, under certain circumstances, to a decision which is based solely on the basis of the automated processing of his, her or its personal information intended to provide a profile of such person as provided for in terms of section 71;

(h) to submit a complaint to the Regulator regarding the alleged interference with the protection of the personal information of any data subject or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in terms of section 74; and

(i) to institute civil proceedings regarding the alleged interference with the protection of his, her or its personal information as provided for in section 99.

6 Exclusions

(1) This Act does not apply to the processing of personal information-

(a) in the course of a purely personal or household activity;

(b) that has been de-identified to the extent that it cannot be re-identified again;

(c) by or on behalf of a public body-

(i) which involves national security, including activities that are aimed at assisting in the identification of the financing of terrorist and related activities, defence or public safety; or

(ii) the purpose of which is the prevention, detection, including assistance in the identification of the proceeds of unlawful activities and the combating of money laundering activities, investigation or proof of offences, the prosecution of offenders or the execution of sentences or security measures,

to the extent that adequate safeguards have been established in legislation for the protection of such personal information;

(d) by the Cabinet and its committees or the Executive Council of a province; or

(e) relating to the judicial functions of a court referred to in section 166 of the Constitution.

(2) **'Terrorist and related activities'**, for purposes of subsection (1) *(c)*, means those activities referred to in section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004).

7 Exclusion for journalistic, literary or artistic purposes

(1) This Act does not apply to the processing of personal information solely for the purpose of journalistic, literary or artistic

expression to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression.

(2) Where a responsible party who processes personal information for exclusively journalistic purposes is, by virtue of office, employment or profession, subject to a code of ethics that provides adequate safeguards for the protection of personal information, such code will apply to the processing concerned to the exclusion of this Act and any alleged interference with the protection of the personal information of a data subject that may arise as a result of such processing must be adjudicated as provided for in terms of that code.

(3) In the event that a dispute may arise in respect of whether adequate safeguards have been provided for in a code as required in terms of subsection (2) or not, regard may be had to-

(a) the special importance of the public interest in freedom of expression;

(b) domestic and international standards balancing the-

(i) public interest in allowing for the free flow of information to the public through the media in recognition of the right of the public to be informed; and

(ii) public interest in safeguarding the protection of personal information of data subjects;

(c) the need to secure the integrity of personal information;

(d) domestic and international standards of professional integrity for journalists; and

(e) the nature and ambit of self-regulatory forms of supervision provided by the profession.

CHAPTER 3
CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION (ss 8-35)

Part A
Processing of personal information in general (ss 8-25)

Condition 1
Accountability

8 Responsible party to ensure conditions for lawful processing

The responsible party must ensure that the conditions set out in this Chapter, and all the measures that give effect to such conditions, are complied with at the time of the determination of the purpose and means of the processing and during the processing itself.

Condition 2
Processing limitation

9 Lawfulness of processing

Personal information must be processed-

(a) lawfully; and

(b) in a reasonable manner that does not infringe the privacy of the data subject.

10 Minimality

Personal information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.

11 Consent, justification and objection

(1) Personal information may only be processed if-

(a) the data subject or a competent person where the data subject is a child consents to the processing;

(b) processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;

(c) processing complies with an obligation imposed by law on the responsible party;

(d) processing protects a legitimate interest of the data subject;

(e) processing is necessary for the proper performance of a public law duty by a public body; or

(f) processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

(2) *(a)* The responsible party bears the burden of proof for the data subject's or competent person's consent as referred to in subsection (1) *(a)*.

(b) The data subject or competent person may withdraw his, her or its consent, as referred to in subsection (1) *(a)*, at any time: Provided that the lawfulness of the processing of personal information before such withdrawal or the processing of personal information in terms of subsection (1) *(b)* to *(f)* will not be affected.

(3) A data subject may object, at any time, to the processing of personal information-

(a) in terms of subsection (1) *(d)* to *(f)*, in the prescribed manner, on reasonable grounds relating to his, her or its particular situation, unless legislation provides for such processing; or

(b) for purposes of direct marketing other than direct marketing by means of unsolicited electronic communications as referred to in section 69.

(4) If a data subject has objected to the processing of personal information in terms of subsection (3), the responsible party may no longer process the personal information.

12 Collection directly from data subject

(1) Personal information must be collected directly from the data subject, except as otherwise provided for in subsection (2).

(2) It is not necessary to comply with subsection (1) if-

(a) the information is contained in or derived from a public record or has deliberately been made public by the data

subject;

(b) the data subject or a competent person where the data subject is a child has consented to the collection of the information from another source;

(c) collection of the information from another source would not prejudice a legitimate interest of the data subject;

(d) collection of the information from another source is necessary-

(i) to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;

(ii) to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act 34 of 1997);

(iii) for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated;

(iv) in the interests of national security; or

(v) to maintain the legitimate interests of the responsible party or of a third party to whom the information is supplied;

(e) compliance would prejudice a lawful purpose of the collection; or

(f) compliance is not reasonably practicable in the circumstances of the particular case.

Condition 3
Purpose specification

13 Collection for specific purpose

(1) Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party.

(2) Steps must be taken in accordance with section 18 (1) to ensure that the data subject is aware of the purpose of the collection of the information unless the provisions of section 18 (4) are applicable.

14 Retention and restriction of records

(1) Subject to subsections (2) and (3), records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless-

(a) retention of the record is required or authorised by law;

(b) the responsible party reasonably requires the record for lawful purposes related to its functions or activities;

(c) retention of the record is required by a contract between the parties thereto; or

(d) the data subject or a competent person where the data subject is a child has consented to the retention of the record.

(2) Records of personal information may be retained for periods in excess of those contemplated in subsection (1) for historical, statistical or research purposes if the responsible party has established appropriate safeguards against the records being used for any other purposes.

(3) A responsible party that has used a record of personal information of a data subject to make a decision about the data subject, must-

(a) retain the record for such period as may be required or prescribed by law or a code of conduct; or

(b) if there is no law or code of conduct prescribing a retention period, retain the record for a period which will afford the data subject a reasonable opportunity, taking all considerations relating to the use of the personal information into account, to request access to the record.

(4) A responsible party must destroy or delete a record of personal information or de-identify it as soon as reasonably practicable after the responsible party is no longer authorised to retain the record in terms of subsection (1) or (2).

(5) The destruction or deletion of a record of personal information in terms of subsection (4) must be done in a manner that prevents its reconstruction in an intelligible form.

(6) The responsible party must restrict processing of personal information if-

(a) its accuracy is contested by the data subject, for a period enabling the responsible party to verify the accuracy of the information;

(b) the responsible party no longer needs the personal information for achieving the purpose for which the information was collected or subsequently processed, but it has to be maintained for purposes of proof;

(c) the processing is unlawful and the data subject opposes its destruction or deletion and requests the restriction of its use instead; or

(d) the data subject requests to transmit the personal data into another automated processing system.

(7) Personal information referred to in subsection (6) may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or with the consent of a competent person in respect of a child, or for the protection of the rights of another natural or legal person or if such processing is in the public interest.

(8) Where processing of personal information is restricted pursuant to subsection (6), the responsible party must inform the data subject before lifting the restriction on processing.

Condition 4
Further processing limitation

15 Further processing to be compatible with purpose of collection

(1) Further processing of personal information must be in accordance or compatible with the purpose for which it was collected in terms of section 13.

(2) To assess whether further processing is compatible with the purpose of collection, the responsible party must take account of-

(a) the relationship between the purpose of the intended further processing and the purpose for which the information has been collected;

(b) the nature of the information concerned;

(c) the consequences of the intended further processing for the data subject;

(d) the manner in which the information has been collected; and

(e) any contractual rights and obligations between the parties.

(3) The further processing of personal information is not incompatible with the purpose of collection if-

(a) the data subject or a competent person where the data subject is a child has consented to the further processing of the information;

(b) the information is available in or derived from a public record or has deliberately been made public by the data subject;

(c) further processing is necessary-

(i) to avoid prejudice to the maintenance of the law by any public body including the prevention, detection, investigation, prosecution and punishment of offences;

(ii) to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act 34 of 1997);

(iii) for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated; or

(iv) in the interests of national security;

(d) the further processing of the information is necessary to prevent or mitigate a serious and imminent threat to-

(i) public health or public safety; or

(ii) the life or health of the data subject or another individual;

(e) the information is used for historical, statistical or research purposes and the responsible party ensures that the further processing is carried out solely for such purposes and will not be published in an identifiable form; or

(f) the further processing of the information is in accordance with an exemption granted under section 37.

Condition 5
Information quality

16 Quality of information

(1) A responsible party must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary.

(2) In taking the steps referred to in subsection (1), the responsible party must have regard to the purpose for which personal information is collected or further processed.

Condition 6
Openness

17 Documentation

A responsible party must maintain the documentation of all processing operations under its responsibility as referred to in section 14 or 51 of the Promotion of Access to Information Act.

18 Notification to data subject when collecting personal information

(1) If personal information is collected, the responsible party must take reasonably practicable steps to ensure that the data subject is aware of-

(a) the information being collected and where the information is not collected from the data subject, the source from which it is collected;

(b) the name and address of the responsible party;

(c) the purpose for which the information is being collected;

(d) whether or not the supply of the information by that data subject is voluntary or mandatory;

(e) the consequences of failure to provide the information;

(f) any particular law authorising or requiring the collection of the information;

(g) the fact that, where applicable, the responsible party intends to transfer the information to a third country or international organisation and the level of protection afforded to the information by that third country or international organisation;

(h) any further information such as the-

(i) recipient or category of recipients of the information;

(ii) nature or category of the information;

(iii) existence of the right of access to and the right to rectify the information collected;

(iv) existence of the right to object to the processing of personal information as referred to in section 11 (3); and

(v) right to lodge a complaint to the Information Regulator and the contact details of the Information Regulator,

which is necessary, having regard to the specific circumstances in which the information is or is not to be processed, to enable processing in respect of the data subject to be reasonable.

(2) The steps referred to in subsection (1) must be taken-

(a) if the personal information is collected directly from the data subject, before the information is collected, unless the data subject is already aware of the information referred to in that subsection; or

(b) in any other case, before the information is collected or as soon as reasonably practicable after it has been collected.

(3) A responsible party that has previously taken the steps referred to in subsection (1) complies with subsection (1) in relation to the subsequent collection from the data subject of the same information or information of the same kind if the purpose of collection of the information remains the same.

(4) It is not necessary for a responsible party to comply with subsection (1) if-

(a) the data subject or a competent person where the data subject is a child has provided consent for the non-compliance;

(b) non-compliance would not prejudice the legitimate interests of the data subject as set out in terms of this Act;

(c) non-compliance is necessary-

(i) to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;

(ii) to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act 34 of 1997);

(iii) for the conduct of proceedings in any court or tribunal that have been commenced or are reasonably contemplated; or

(iv) in the interests of national security;

(d) compliance would prejudice a lawful purpose of the collection;

(e) compliance is not reasonably practicable in the circumstances of the particular case; or

(f) the information will-

(i) not be used in a form in which the data subject may be identified; or

(ii) be used for historical, statistical or research purposes.

Condition 7
Security Safeguards

19 Security measures on integrity and confidentiality of personal information

(1) A responsible party must secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent-

(a) loss of, damage to or unauthorised destruction of personal information; and

(b) unlawful access to or processing of personal information.

(2) In order to give effect to subsection (1), the responsible party must take reasonable measures to-

(a) identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;

(b) establish and maintain appropriate safeguards against the risks identified;

(c) regularly verify that the safeguards are effectively implemented; and

(d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

(3) The responsible party must have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.

20 Information processed by operator or person acting under authority

An operator or anyone processing personal information on behalf of a responsible party or an operator, must-

(a) process such information only with the knowledge or authorisation of the responsible party; and

(b) treat personal information which comes to their knowledge as confidential and must not disclose it,

unless required by law or in the course of the proper performance of their duties.

21 Security measures regarding information processed by operator

(1) A responsible party must, in terms of a written contract between the responsible party and the operator, ensure that the operator which processes personal information for the responsible party establishes and maintains the security measures referred to in section 19.

(2) The operator must notify the responsible party immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.

22 Notification of security compromises

(1) Where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person, the responsible party must notify-

(a) the Regulator; and

(b) subject to subsection (3), the data subject, unless the identity of such data subject cannot be established.

(2) The notification referred to in subsection (1) must be made as soon as reasonably possible after the discovery of the compromise, taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the integrity of the responsible party's information system.

(3) The responsible party may only delay notification of the data subject if a public body responsible for the prevention, detection or investigation of offences or the Regulator determines that notification will impede a criminal investigation by the public body concerned.

(4) The notification to a data subject referred to in subsection (1) must be in writing and communicated to the data subject in at least one of the following ways:

(a) Mailed to the data subject's last known physical or postal address;

(b) sent by e-mail to the data subject's last known e-mail address;

(c) placed in a prominent position on the website of the responsible party;

(d) published in the news media; or

(e) as may be directed by the Regulator.

(5) The notification referred to in subsection (1) must provide sufficient information to allow the data subject to take protective measures against the potential consequences of the compromise, including-

(a) a description of the possible consequences of the security compromise;

(b) a description of the measures that the responsible party intends to take or has taken to address the security compromise;

(c) a recommendation with regard to the measures to be taken by the data subject to mitigate the possible adverse effects of the security compromise; and

(d) if known to the responsible party, the identity of the unauthorised person who may have accessed or acquired the personal information.

(6) The Regulator may direct a responsible party to publicise, in any manner specified, the fact of any compromise to the integrity or confidentiality of personal information, if the Regulator has reasonable grounds to believe that such publicity would protect a data subject who may be affected by the compromise.

Condition 8
Data subject participation

23 Access to personal information

(1) A data subject, having provided adequate proof of identity, has the right to-

(a) request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about the data subject; and

(b) request from a responsible party the record or a description of the personal information about the data subject held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information-

(i) within a reasonable time;

(ii) at a prescribed fee, if any;

(iii) in a reasonable manner and format; and

(iv) in a form that is generally understandable.

(2) If, in response to a request in terms of subsection (1), personal information is communicated to a data subject, the data subject must be advised of the right in terms of section 24 to request the correction of information.

(3) If a data subject is required by a responsible party to pay a fee for services provided to the data subject in terms of subsection (1) *(b)* to enable the responsible party to respond to a request, the responsible party-

(a) must give the applicant a written estimate of the fee before providing the services; and

(b) may require the applicant to pay a deposit for all or part of the fee.

(4) *(a)* A responsible party may or must refuse, as the case may be, to disclose any information requested in terms of subsection (1) to which the grounds for refusal of access to records set out in the applicable sections of Chapter 4 of Part 2 and Chapter 4 of Part 3 of the Promotion of Access to Information Act apply.

(b) The provisions of sections 30 and 61 of the Promotion of Access to Information Act are applicable in respect of access to health or other records.

(5) If a request for access to personal information is made to a responsible party and part of that information may or must be refused in terms of subsection (4) *(a)*, every other part must be disclosed.

24 Correction of personal information

(1) A data subject may, in the prescribed manner, request a responsible party to-

(a) correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or

(b) destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain in terms of section 14.

(2) On receipt of a request in terms of subsection (1) a responsible party must, as soon as reasonably practicable-

(a) correct the information;

(b) destroy or delete the information;

(c) provide the data subject, to his or her satisfaction, with credible evidence in support of the information; or

(d) where agreement cannot be reached between the responsible party and the data subject, and if the data subject so requests, take such steps as are reasonable in the circumstances, to attach to the information in such a manner that it will always be read with the information, an indication that a correction of the information has been requested but has not been made.

(3) If the responsible party has taken steps under subsection (2) that result in a change to the information and the changed information has an impact on decisions that have been or will be taken in respect of the data subject in question, the responsible party must, if reasonably practicable, inform each person or body or responsible party to whom the personal information has been disclosed of those steps.

(4) The responsible party must notify a data subject, who has made a request in terms of subsection (1), of the action taken as a result of the request.

25 Manner of access

The provisions of sections 18 and 53 of the Promotion of Access to Information Act apply to requests made in terms of section 23 of this Act.

Part B
Processing of special personal information (ss 26-33)

26 Prohibition on processing of special personal information

A responsible party may, subject to section 27, not process personal information concerning-

(a) the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or

(b) the criminal behaviour of a data subject to the extent that such information relates to-

(i) the alleged commission by a data subject of any offence; or

(ii) any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.

27 General authorisation concerning special personal information

(1) The prohibition on processing personal information, as referred to in section 26, does not apply if the-

(a) processing is carried out with the consent of a data subject referred to in section 26;

(b) processing is necessary for the establishment, exercise or defence of a right or obligation in law;

(c) processing is necessary to comply with an obligation of international public law;

(d) processing is for historical, statistical or research purposes to the extent that-

(i) the purpose serves a public interest and the processing is necessary for the purpose concerned; or

(ii) it appears to be impossible or would involve a disproportionate effort to ask for consent,

and sufficient guarantees are provided for to ensure that the processing does not adversely affect the individual privacy of the data subject to a disproportionate extent;

(e) information has deliberately been made public by the data subject; or

(f) provisions of sections 28 to 33 are, as the case may be, complied with.

(2) The Regulator may, subject to subsection (3), upon application by a responsible party and by notice in the *Gazette*, authorise a responsible party to process special personal information if such processing is in the public interest and appropriate safeguards have been put in place to protect the personal information of the data subject.

(3) The Regulator may impose reasonable conditions in respect of any authorisation granted under subsection (2).

28 Authorisation concerning data subject's religious or philosophical beliefs

(1) The prohibition on processing personal information concerning a data subject's religious or philosophical beliefs, as referred to in section 26, does not apply if the processing is carried out by-

(a) spiritual or religious organisations, or independent sections of those organisations if-

(i) the information concerns data subjects belonging to those organisations; or

(ii) it is necessary to achieve their aims and principles;

(b) institutions founded on religious or philosophical principles with respect to their members or employees or other persons belonging to the institution, if it is necessary to achieve their aims and principles; or

(c) other institutions: Provided that the processing is necessary to protect the spiritual welfare of the data subjects, unless they have indicated that they object to the processing.

(2) In the cases referred to in subsection (1) *(a)*, the prohibition does not apply to processing of personal information concerning the religion or philosophy of life of family members of the data subjects, if-

(a) the association concerned maintains regular contact with those family members in connection with its aims; and

(b) the family members have not objected in writing to the processing.

(3) In the cases referred to in subsections (1) and (2), personal information concerning a data subject's religious or philosophical beliefs may not be supplied to third parties without the consent of the data subject.

29 Authorisation concerning data subject's race or ethnic origin

The prohibition on processing personal information concerning a data subject's race or ethnic origin, as referred to in section 26, does not apply if the processing is carried out to-

(a) identify data subjects and only when this is essential for that purpose; and

(b) comply with laws and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.

30 Authorisation concerning data subject's trade union membership

(1) The prohibition on processing personal information concerning a data subject's trade union membership, as referred to in section 26, does not apply to the processing by the trade union to which the data subject belongs or the trade union federation to which that trade union belongs, if such processing is necessary to achieve the aims of the trade union or trade union federation.

(2) In the cases referred to under subsection (1), no personal information may be supplied to third parties without the consent of the data subject.

31 Authorisation concerning data subject's political persuasion

(1) The prohibition on processing personal information concerning a data subject's political persuasion, as referred to in section 26, does not apply to processing by or for an institution, founded on political principles, of the personal information of-

(a) its members or employees or other persons belonging to the institution, if such processing is necessary to achieve the aims or principles of the institution; or

(b) a data subject if such processing is necessary for the purposes of-

(i) forming a political party;

(ii) participating in the activities of, or engaging in the recruitment of members for or canvassing supporters or voters for, a political party with the view to-

(aa) an election of the National Assembly or the provincial legislature as regulated in terms of the Electoral Act, 1998 (Act 73 of 1998);

(bb) municipal elections as regulated in terms of the Local Government: Municipal Electoral Act, 2000 (Act 27 of 2000); or

(cc) a referendum as regulated in terms of the Referendums Act, 1983 (Act 108 of 1983); or

(iii) campaigning for a political party or cause.

(2) In the cases referred to under subsection (1), no personal information may be supplied to third parties without the consent of the data subject.

32 Authorisation concerning data subject's health or sex life

(1) The prohibition on processing personal information concerning a data subject's health or sex life, as referred to in section 26, does not apply to the processing by-

- *(a)* medical professionals, healthcare institutions or facilities or social services, if such processing is necessary for the proper treatment and care of the data subject, or for the administration of the institution or professional practice concerned;
- *(b)* insurance companies, medical schemes, medical scheme administrators and managed healthcare organisations, if such processing is necessary for-
  - (i) assessing the risk to be insured by the insurance company or covered by the medical scheme and the data subject has not objected to the processing;
  - (ii) the performance of an insurance or medical scheme agreement; or
  - (iii) the enforcement of any contractual rights and obligations;
- *(c)* schools, if such processing is necessary to provide special support for pupils or making special arrangements in connection with their health or sex life;
- *(d)* any public or private body managing the care of a child if such processing is necessary for the performance of their lawful duties;
- *(e)* any public body, if such processing is necessary in connection with the implementation of prison sentences or detention measures; or
- *(f)* administrative bodies, pension funds, employers or institutions working for them, if such processing is necessary for-
  - (i) the implementation of the provisions of laws, pension regulations or collective agreements which create rights dependent on the health or sex life of the data subject; or
  - (ii) the reintegration of or support for workers or persons entitled to benefit in connection with sickness or work incapacity.

(2) In the cases referred to under subsection (1), the information may only be processed by responsible parties subject to an obligation of confidentiality by virtue of office, employment, profession or legal provision, or established by a written agreement between the responsible party and the data subject.

(3) A responsible party that is permitted to process information concerning a data subject's health or sex life in terms of this section and is not subject to an obligation of confidentiality by virtue of office, profession or legal provision, must treat the information as confidential, unless the responsible party is required by law or in connection with their duties to communicate the information to other parties who are authorised to process such information in accordance with subsection (1).

(4) The prohibition on processing any of the categories of personal information referred to in section 26, does not apply if it is necessary to supplement the processing of personal information concerning a data subject's health, as referred to under subsection (1) *(a)*, with a view to the proper treatment or care of the data subject.

(5) Personal information concerning inherited characteristics may not be processed in respect of a data subject from whom the information concerned has been obtained, unless-

- *(a)* a serious medical interest prevails; or
- *(b)* the processing is necessary for historical, statistical or research activity.

(6) More detailed rules may be prescribed concerning the application of subsection (1) *(b)* and *(f)*.

33 Authorisation concerning data subject's criminal behaviour or biometric information

(1) The prohibition on processing personal information concerning a data subject's criminal behaviour or biometric information, as referred to in section 26, does not apply if the processing is carried out by bodies charged by law with applying criminal law or by responsible parties who have obtained that information in accordance with the law.

(2) The processing of information concerning personnel in the service of the responsible party must take place in accordance with the rules established in compliance with labour legislation.

(3) The prohibition on processing any of the categories of personal information referred to in section 26 does not apply if such processing is necessary to supplement the processing of information on criminal behaviour or biometric information permitted by this section.

Part C
Processing of personal information of children (ss 34-35)

34 Prohibition on processing personal information of children

A responsible party may, subject to section 35, not process personal information concerning a child.

35 General authorisation concerning personal information of children

(1) The prohibition on processing personal information of children, as referred to in section 34, does not apply if the processing is-

- *(a)* carried out with the prior consent of a competent person;
- *(b)* necessary for the establishment, exercise or defence of a right or obligation in law;
- *(c)* necessary to comply with an obligation of international public law;
- *(d)* for historical, statistical or research purposes to the extent that-
  - (i) the purpose serves a public interest and the processing is necessary for the purpose concerned; or
  - (ii) it appears to be impossible or would involve a disproportionate effort to ask for consent,

  and sufficient guarantees are provided for to ensure that the processing does not adversely affect the individual privacy of the child to a disproportionate extent; or
- *(e)* of personal information which has deliberately been made public by the child with the consent of a competent person.

(2) The Regulator may, notwithstanding the prohibition referred to in section 34, but subject to subsection (3), upon application by a responsible party and by notice in the *Gazette*, authorise a responsible party to process the personal information of children if the processing is in the public interest and appropriate safeguards have been put in place to protect the personal information of the child.

(3) The Regulator may impose reasonable conditions in respect of any authorisation granted under subsection (2), including conditions with regard to how a responsible party must-

(a) upon request of a competent person provide a reasonable means for that person to-

(i) review the personal information processed; and

(ii) refuse to permit its further processing;

(b) provide notice-

(i) regarding the nature of the personal information of children that is processed;

(ii) how such information is processed; and

(iii) regarding any further processing practices;

(c) refrain from any action that is intended to encourage or persuade a child to disclose more personal information about him- or herself than is reasonably necessary given the purpose for which it is intended; and

(d) establish and maintain reasonable procedures to protect the integrity and confidentiality of the personal information collected from children.

CHAPTER 4
EXEMPTION FROM CONDITIONS FOR PROCESSING OF PERSONAL INFORMATION (ss 36-38)

36 General

Processing of personal information is not in breach of a condition for the processing of such information if the-

(a) Regulator grants an exemption in terms of section 37; or

(b) processing is in accordance with section 38.

37 Regulator may exempt processing of personal information

(1) The Regulator may, by notice in the *Gazette*, grant an exemption to a responsible party to process personal information, even if that processing is in breach of a condition for the processing of such information, or any measure that gives effect to such condition, if the Regulator is satisfied that, in the circumstances of the case-

(a) the public interest in the processing outweighs, to a substantial degree, any interference with the privacy of the data subject that could result from such processing; or

(b) the processing involves a clear benefit to the data subject or a third party that outweighs, to a substantial degree, any interference with the privacy of the data subject or third party that could result from such processing.

(2) The public interest referred to in subsection (1) includes-

(a) the interests of national security;

(b) the prevention, detection and prosecution of offences;

(c) important economic and financial interests of a public body;

(d) fostering compliance with legal provisions established in the interests referred to under paragraphs *(b)* and *(c)*;

(e) historical, statistical or research activity; or

(f) the special importance of the interest in freedom of expression.

(3) The Regulator may impose reasonable conditions in respect of any exemption granted under subsection (1).

38 Exemption in respect of certain functions

(1) Personal information processed for the purpose of discharging a relevant function is exempt from sections 11 (3) and (4), 12, 15 and 18 in any case to the extent to which the application of those provisions to the personal information would be likely to prejudice the proper discharge of that function.

(2) **'Relevant function'** for purposes of subsection (1), means any function-

(a) of a public body; or

(b) conferred on any person in terms of the law,

which is performed with the view to protecting members of the public against-

(i) financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate; or

(ii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity.

CHAPTER 5
SUPERVISION (ss 39-56)

Part A
Information Regulator (ss 39-54)

[Date of commencement of Part A: 11 April 2014.]

39 Establishment of Information Regulator

There is hereby established a juristic person to be known as the Information Regulator, which-

(a) has jurisdiction throughout the Republic;

(b) is independent and is subject only to the Constitution and to the law and must be impartial and perform its functions and exercise its powers without fear, favour or prejudice;

(c) must exercise its powers and perform its functions in accordance with this Act and the Promotion of Access to Information Act; and

(d) is accountable to the National Assembly.

[Date of commencement of s. 39: 11 April 2014.]

40 Powers, duties and functions of Regulator

(1) The powers, duties and functions of the Regulator in terms of this Act are-

(a) to provide **education** by-

(i) promoting an understanding and acceptance of the conditions for the lawful processing of personal information and of the objects of those conditions;

(ii) undertaking educational programmes, for the purpose of promoting the protection of personal information, on the Regulator's own behalf or in co-operation with other persons or authorities acting on behalf of the Regulator;

(iii) making public statements in relation to any matter affecting the protection of the personal information of a data subject or of any class of data subjects;

(iv) giving advice to data subjects in the exercise of their rights; and

(v) providing advice, upon request or on its own initiative, to a Minister or a public or private body on their obligations under the provisions, and generally on any matter relevant to the operation, of this Act;

(b) to **monitor and enforce compliance** by-

(i) public and private bodies with the provisions of this Act;

(ii) undertaking research into, and monitoring developments in, information processing and computer technology to ensure that any adverse effects of such developments on the protection of the personal information of data subjects are minimised, and reporting to the Minister the results of such research and monitoring;

(iii) examining any proposed legislation, including subordinate legislation, or proposed policy of the Government that the Regulator considers may affect the protection of the personal information of data subjects, and reporting to the Minister the results of that examination;

(iv) reporting upon request or on its own accord, to Parliament from time to time on any policy matter affecting the protection of the personal information of a data subject, including the need for, or desirability of, taking legislative, administrative, or other action to give protection or better protection to the personal information of a data subject;

(v) submitting a report to Parliament, within five months of the end of its financial year, on all its activities in terms of this Act during that financial year;

(vi) conducting an assessment, on its own initiative or when requested to do so, of a public or private body, in respect of the processing of personal information by that body for the purpose of ascertaining whether or not the information is processed according to the conditions for the lawful processing of personal information;

(vii) monitoring the use of unique identifiers of data subjects, and reporting to Parliament from time to time on the results of that monitoring, including any recommendation relating to the need of, or desirability of taking, legislative, administrative, or other action to give protection, or better protection, to the personal information of a data subject;

(viii) maintaining, publishing and making available and providing copies of such registers as are prescribed in this Act; and

(ix) examining any proposed legislation that makes provision for the-

(aa) collection of personal information by any public or private body; or

(bb) disclosure of personal information by one public or private body to any other public or private body, or both, to have particular regard, in the course of that examination, to the matters set out in section 44 (2), in any case where the Regulator considers that the information might be used for the purposes of an information matching programme,

and reporting to the Minister and Parliament the results of that examination;

(c) to **consult** with interested parties by-

(i) receiving and inviting representations from members of the public on any matter affecting the personal information of a data subject;

(ii) co-operating on a national and international basis with other persons and bodies concerned with the protection of personal information; and

(iii) acting as mediator between opposing parties on any matter that concerns the need for, or the desirability of, action by a responsible party in the interests of the protection of the personal information of a data subject;

(d) to handle **complaints** by-

(i) receiving and investigating complaints about alleged violations of the protection of personal information of data subjects and reporting to complainants in respect of such complaints;

(ii) gathering such information as in the Regulator's opinion will assist the Regulator in discharging the duties and carrying out the Regulator's functions under this Act;

(iii) attempting to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation; and

(iv) serving any notices in terms of this Act and further promoting the resolution of disputes in accordance with the prescripts of this Act;

(e) to conduct **research** and to report to Parliament-

(i) from time to time on the desirability of the acceptance, by South Africa, of any international instrument relating to the protection of the personal information of a data subject; and

(ii) on any other matter, including necessary legislative amendments, relating to protection of personal information that, in the Regulator's opinion, should be drawn to Parliament's attention;

(f) in respect of **codes of conduct** to-

(i) issue, from time to time, codes of conduct, amend codes and to revoke codes of conduct;

(ii) make guidelines to assist bodies to develop codes of conduct or to apply codes of conduct; and

(iii) consider afresh, upon application, determinations by adjudicators under approved codes of conduct;

(g) to facilitate **cross-border cooperation** in the enforcement of privacy laws by participating in any initiative that is aimed at such cooperation; and

(h) in **general** to-

(i) do anything incidental or conducive to the performance of any of the preceding functions;

(ii) exercise and perform such other functions, powers, and duties as are conferred or imposed on the Regulator by or under this Act or any other legislation;

(iii) require the responsible party to disclose to any person affected by a compromise to the integrity or confidentiality of personal information, such compromise in accordance with section 22; and

(iv) exercise the powers conferred upon the Regulator by this Act in matters relating to the access of information as provided by the Promotion of Access to Information Act.

(2) The Regulator may, from time to time, in the public interest or in the legitimate interests of any person or body of persons, publish reports relating generally to the exercise of the Regulator's functions under this Act or to any case or cases investigated by the Regulator, whether or not the matters to be dealt with in any such report have been the subject of a report to the Minister.

(3) The provisions of sections 3 and 4 of the Commissions Act, 1947 (Act 8 of 1947), will apply, with the necessary changes, to the Regulator.

(4) The powers and duties of the Regulator in terms of the Promotion of Access to Information Act are set out in Parts 4 and 5 of that Act.

[Date of commencement of s. 40: 11 April 2014.]

41 Appointment, term of office and removal of members of Regulator

(1) *(a)* The Regulator consists of the following members:

(i) A Chairperson; and

(ii) four other persons, as ordinary members of the Regulator.

(b) Members of the Regulator must be appropriately qualified, fit and proper persons-

(i) at least one of whom must be appointed on account of experience as a practising advocate or attorney or a professor of law at a university; and

(ii) the remainder of whom must be appointed on account of any other qualifications, expertise and experience relating to the objects of the Regulator.

(c) The Chairperson of the Regulator must be appointed in a full-time capacity and may, subject to subsection (4), not perform or undertake to perform any other remunerative work during the period in which he or she holds office as Chairperson.

(d) The ordinary members of the Regulator must be appointed as follows:

(i) Two ordinary members in a full-time capacity; and

(ii) two ordinary members in a full-time or part-time capacity.

(e) The members referred to in paragraph *(d)* who are appointed in a full-time capacity, may, subject to subsection (4), not perform or undertake to perform any other remunerative work during the period in which they hold office.

(f) The Chairperson must direct the work of the Regulator and the staff of the Regulator.

(g) A person may not be appointed as a member of the Regulator if he or she-

(i) is not a citizen of the Republic;

(ii) is a public servant;

(iii) is a member of Parliament, any provincial legislature or any municipal council;

(iv) is an office-bearer or employee of any political party;

(v) is an unrehabilitated insolvent;

(vi) has been declared by a court to be mentally ill or unfit; or

(vii) has at any time been convicted, whether in the Republic or elsewhere, of any offence involving dishonesty.

(2) *(a)* The Chairperson and the members of the Regulator referred to in subsection (1) *(a)* must be appointed by the President on the recommendation of the National Assembly, which recommendation must also indicate which ordinary members must be appointed in a full-time or part-time capacity.

(b) The National Assembly must recommend persons-

(i) nominated by a committee of the Assembly composed of members of parties represented in the Assembly; and

(ii) approved by the Assembly by a resolution adopted with a supporting vote of a majority of the members of the Assembly.

(3) The members of the Regulator will be appointed for a period of not more than five years and will, at the expiration of such period, be eligible for reappointment.

(4) The Chairperson of the Regulator or a member who has been appointed in a full-time capacity may, notwithstanding the provisions of subsection (1) *(c)* or *(e)*, only perform or undertake to perform any other remunerative work during the period that he or she holds office as Chairperson or member with the prior written consent of the Minister.

(5) A person appointed as a member of the Regulator may, upon written notice to the President, resign from office.

(6) *(a)* A member may be removed from office only on-

(i) the ground of misconduct, incapacity or incompetence;

(ii) a finding to that effect by a committee of the National Assembly; and

(iii) the adoption by the National Assembly of a resolution calling for that person's removal from office.

(b) A resolution of the National Assembly concerning the removal from office of a member of the Regulator must be adopted with a supporting vote of a majority of the members of the Assembly.

(c) The President-

(i) may suspend a member from office at any time after the start of the proceedings of a committee of the National

Assembly for the removal of that member; and

(ii) must remove a member from office upon adoption by the Assembly of the resolution calling for that member's removal.

[Date of commencement of s. 41: 11 April 2014.]

42 Vacancies

(1) A vacancy in the Regulator occurs if a member-

(a) becomes subject to a disqualification referred to in section 41 (1) *(g)*;

(b) tenders his or her resignation as contemplated in section 41 (5) and the resignation takes effect;

(c) is removed from office in terms of section 41 (6);

(d) dies; or

(e) becomes permanently incapable of doing his or her work.

(2) *(a)* Where a vacancy has arisen as contemplated in subsection (1), the procedure contemplated in section 41 (2) applies.

(b) Any member appointed under this subsection holds office for the rest of the period of the predecessor's term of office, unless the President, upon recommendation by the National Assembly, appoints that member for a longer period which may not exceed five years.

[Date of commencement of s. 42: 11 April 2014.]

43 Powers, duties and functions of Chairperson and other members

(1) The Chairperson-

(a) must exercise the powers and perform the duties and functions conferred on or assigned to him or her by the Regulator in terms of this Act and the Promotion of Access to Information Act; and

(b) is, for the purposes of exercising the powers and performing the duties and functions conferred on or assigned to him or her by the Regulator in terms of this Act and the Promotion of Access to Information Act, accountable to the Regulator.

(2) *(a)* The members referred to in section 41 (1) *(d)* (i) must exercise their powers and perform their duties and functions as follows:

(i) One member in terms of this Act; and

(ii) one member in terms of the Promotion of Access to Information Act.

(b) The members referred to in section 41 (1) *(d)* (ii) must exercise their powers and perform their duties and functions either in terms of this Act or the Promotion of Access to Information Act, or both.

(c) The members, referred to in paragraphs *(a)* and *(b)*, are, for the purposes of exercising their powers and performing their duties and functions, accountable to the Chairperson.

[Date of commencement of s. 43: 11 April 2014.]

44 Regulator to have regard to certain matters

(1) In the performance of its functions, and the exercise of its powers, under this Act the Regulator must-

(a) have due regard to the conditions for the lawful processing of personal information as referred to in Chapter 3;

(b) have due regard for the protection of all human rights and social interests that compete with privacy, including the general desirability of a free flow of information and the recognition of the legitimate interests of public and private bodies in achieving their objectives in an efficient way;

(c) take account of international obligations accepted by South Africa; and

(d) consider any developing general international guidelines relevant to the better protection of individual privacy.

(2) In performing its functions in terms of section 40 (1) *(b)* (ix) *(bb)* with regard to information matching programmes, the Regulator must have particular regard to whether or not the-

(a) objective of the programme relates to a matter of significant public importance;

(b) use of the programme to achieve that objective will result in monetary savings that are both significant and quantifiable or in other comparable benefits to society;

(c) use of an alternative means of achieving that objective would give either of the results referred to in paragraph *(b)*;

(d) public interest in allowing the programme to proceed outweighs the public interest in adhering to the conditions for the lawful processing of personal information that the programme would otherwise contravene; and

(e) programme involves information matching on a scale that is excessive, having regard to-

(i) the number of responsible parties or operators that will be involved in the programme; and

(ii) the amount of detail about a data subject that will be matched under the programme.

(3) In determining whether the processing of personal information for exclusively journalistic purposes by a responsible party who is, by virtue of office, employment or profession, not subject to a code of ethics as referred to in section 7 (1), constitutes an interference with the protection of the personal information of the data subject in terms of section 73, the Regulator must have particular regard to the factors referred to in section 7 (3) *(a)* to *(d)*.

[Date of commencement of s. 44: 11 April 2014.]

45 Conflict of interest

(1) If any member of the Regulator or any person appointed by the Regulator in terms of this Act has a material interest in any matter which could conflict with the proper performance of his or her duties in terms of this Act or the Promotion of Access to Information Act, he or she must disclose that interest, as prescribed, as soon as practicable after the relevant facts came to his or her knowledge.

(2) *(a)* If a member of the Regulator or person referred to in subsection (1)-

(i) is present at a meeting of the Regulator or committee referred to in section 49 or 50 at which a matter contemplated in that subsection is to be considered, the member or person concerned must disclose the nature of his or her interest to the meeting before the matter is considered; or

(ii) fails to make a disclosure as required by this subsection and is present at a meeting of the Regulator or committee, as the case may be, or in any other manner participates in the proceedings, such proceedings in relation to the relevant matter must, as soon as the non-disclosure is discovered, be reviewed and be varied or set aside by the Regulator or the committee, as the case may be, without the participation of the member or person concerned.

(b) A member of the Regulator or person referred to in subsection (1) who is obliged to make a disclosure in terms of this subsection may not be present during any deliberation, or take part in any decision, in relation to the matter in question.

(c) Any disclosure made in terms of this subsection must be noted in the minutes of the relevant meeting of the Regulator or committee.

(3) A member of the Regulator or person referred to in subsection (1) who has disclosed a conflict of interest in terms of subsection (1)-

(a) may perform all duties relating to the matter in question if a decision has been taken that the interest is trivial or irrelevant; or

(b) must be relieved of all duties relating to the matter in question and such duties must be performed by another member of the Regulator or by another person referred to in subsection (1), as the case may be, who has no such conflict of interest.

[Date of commencement of s. 45: 11 April 2014.]

46 Remuneration, allowances, benefits and privileges of members

(1) A member of the Regulator or a person referred to in section 49 (1) *(b)* or 50 (1) *(b)* who is not subject to the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994), or who is not a judge of the High Court of South Africa or a magistrate will be entitled to such remuneration, allowances, including allowances for reimbursement of travelling and subsistence expenses incurred by him or her in the performance of his or her functions under this Act and the Promotion of Access to Information Act, benefits and privileges as the Minister in consultation with the Minister of Finance may determine.

(2) The remuneration, allowances, benefits or privileges of different members of the Regulator may differ according to the different-

(a) positions held by them in the Regulator; or

(b) functions performed, whether in a part-time or full-time capacity, by them from time to time.

[Date of commencement of s. 46: 11 April 2014.]

47 Staff

(1) The Regulator must establish its own administration to assist it in the performance of its functions and to this end the Regulator must appoint, or secure the secondment in terms of subsection (6) of-

(a) a suitably qualified and experienced person as chief executive officer of the Regulator for the purpose of assisting the Regulator, subject to the Regulator's direction and supervision, in the performance of all financial and administrative functions in terms of this Act and the Promotion of Access to Information Act, work arising from the administration of this Act and the Promotion of Access to Information Act and to exercise any power delegated by the Regulator to him or her; and

(b) such other member of staff as the Regulator may deem necessary to assist the Regulator and the chief executive officer, as the case may be, with all such work as may arise through the performance of its functions.

(2) *(a)* The chief executive officer may appoint a senior member of staff as acting chief executive officer to perform the functions of the chief executive officer in his or her absence.

(b) A member of the Regulator may not be appointed as acting chief executive officer.

(c) In the event that a vacancy occurs in the office of the chief executive officer the Regulator must appoint an acting chief executive officer.

(3) The Regulator must, in the appointment of the staff of the Regulator-

(a) provide for the advancement of persons disadvantaged by unfair discrimination, with the aim that its staff, when viewed collectively, represents a broad cross-section of the population of the Republic; and

(b) subject to paragraph *(a)*, apply equal opportunity employment practices.

(4) The Regulator may pay to the persons in its employ such remuneration and allowances and provide them with such pension and other employment benefits as are consistent with that paid in the public sector.

(5) In exercising its powers in terms of subsections (1) and (4), the Regulator must consult with the Minister of Finance.

(6) The Regulator may, in the performance of the functions contemplated in subsection (1), at its request, be assisted by officials in the Public Service seconded to the service of the Regulator in terms of any law regulating such secondment: Provided that the secondment of an official to the service of the Regulator may not exceed 12 months and that the initial period of secondment may only be extended once for a subsequent period not exceeding 12 months.

(7) The Regulator may, in consultation with the Minister of Finance, on a temporary basis or for a particular matter which is being investigated by it, employ any person with special knowledge of any matter relating to the work of the Regulator, or obtain the co-operation of any body, to advise or assist the Regulator in the performance of its functions under this Act and the Promotion of Access to Information Act, and fix the remuneration, including reimbursement for travelling, subsistence and other expenses, of such person or body.

[Date of commencement of s. 47: 11 April 2014.]

48 Powers, duties and functions of chief executive officer

The chief executive officer-

(a) is the head of administration and the accounting officer, as referred to in section 52 (3), of the Regulator;

(b) may appoint a senior member of staff as acting chief executive officer as referred to in section 47 (2);

(c) is responsible for the-

(i) management of the affairs and operations of the Regulator;

(ii) formation and development of an efficient administration;

(iii) organisation and management of, and administrative control over, all the members of staff appointed in terms of section 47 (1) *(b)* and all the persons seconded in terms of section 47 (6);

(iv) maintenance of discipline in respect of the members of staff; and

(v) execution of the decisions of the Regulator,

and is for those purposes accountable to the Regulator and must report thereon to the Regulator as often as may be required by the Regulator; and

(d) must exercise the powers and perform the duties and functions which the Regulator may from time to time confer upon or assign to him or her in order to achieve the objects of the Regulator, and is for those purposes accountable to the Regulator.

[Date of commencement of s. 48: 11 April 2014.]

49 Committees of Regulator

(1) The Regulator may, if it considers it necessary for the proper performance of its functions establish one or more committees, which must consist of-

(a) such members of the Regulator as the Regulator may designate; or

(b) such members of the Regulator as the Regulator may designate and other persons appointed by the Regulator, as referred to in section 47 (7), for the period determined by the Regulator.

(2) The Regulator may at any time extend the period of an appointment referred to in subsection (1) *(b)* or, if in its opinion good reasons exist therefor, revoke any such appointment.

(3) The Regulator must designate the chairperson and, if the Regulator deems it necessary, the vice-chairperson of a committee established under subsection (1).

(4) *(a)* A committee referred to in subsection (1) must, subject to the directions of the Regulator, perform those functions of the Regulator assigned to it by the Regulator.

(b) Any function so performed by a committee referred to in subsection (1) will be deemed to have been performed by the Regulator.

(5) The Regulator may at any time dissolve any committee established by the Regulator.

(6) The provisions of sections 40 (4) and 51 will apply, with the necessary changes, to a committee of the Regulator.

[Date of commencement of s. 49: 11 April 2014.]

50 Establishment of Enforcement Committee

(1) The Regulator must establish an Enforcement Committee which must consist of-

(a) at least one member of the Regulator; and

(b) such other persons appointed by the Regulator, as referred to in section 47 (7), for the period determined by the Regulator.

(2) The Regulator must-

(a) in consultation with the Chief Justice and Minister, appoint a-

(i) judge of the High Court of South Africa, whether in active service or not; or

(ii) magistrate with at least 10 years' appropriate experience, whether in active service or not; or

(b) appoint an advocate or attorney with at least 10 years' appropriate experience,

as Chairperson of the Enforcement Committee.

(3) The Chairperson of the Enforcement Committee must manage the work of and preside at hearings of the Enforcement Committee.

(4) *(a)* A member referred to in subsection (1) *(a)* may not participate in any proceedings of the Regulator in terms of which a decision is taken with regard to a recommendation by the Enforcement Committee as referred to in section 93.

(b) A person referred to in subsection (1) *(b)* must be a fit and proper person and must comply with the criteria, referred to in section 41 (1) *(g)*, for appointment as a member of the Regulator.

[Date of commencement of s. 50: 11 April 2014.]

51 Meetings of Regulator

(1) Meetings of the Regulator must be held at the times and places determined by the Chairperson of the Regulator.

(2) Three members of the Regulator constitute a quorum for a meeting.

(3) *(a)* The Chairperson may regulate the proceedings at meetings as he or she may think fit and must keep minutes of the proceedings.

(b) If the Chairperson is absent from a meeting the members present shall elect one of their number to preside at that meeting.

(4) *(a)* Subject to subsection (2), a decision of the Regulator is taken by resolution agreed to by the majority of members at any meeting of the Regulator.

(b) In the event of an equality of votes regarding any matter the Chairperson has a casting vote in addition to his or her deliberative vote.

[Date of commencement of s. 51: 11 April 2014.]

52 Funds

(1) Funds of the Regulator consist of-

(a) such sums of money that Parliament appropriates annually, for the use of the Regulator as may be necessary for the proper exercise, performance and discharge, by the Regulator, of its powers, duties and functions under this Act and the Promotion of Access to Information Act; and

(b) fees as may be prescribed in terms of section 111 (1).

(2) The financial year of the Regulator is the period from 1 April in any year to 31 March in the following year, except that the first financial year of the Regulator begins on the date that this Chapter comes into operation, and ends on 31 March next following that date.

(3) The chief executive officer of the Regulator is for purposes of the Public Finance Management Act, 1999 (Act 1 of

1999), the accounting officer and must execute his or her duties in accordance with that Act.

(4) Within six months after the end of each financial year, the Regulator must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising-

(a) a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Regulator during the preceding financial year; and

(b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.

(5) The Auditor-General must audit the Regulator's financial records each year.

[Date of commencement of s. 52: 11 April 2014.]

53 Protection of Regulator

Any person acting on behalf or under the direction of the Regulator, is not civilly or criminally liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power, duty or function of the Regulator in terms of this Act or the Promotion of Access to Information Act.

[Date of commencement of s. 53: 11 April 2014.]

54 Duty of confidentiality

A person acting on behalf or under the direction of the Regulator, must, both during or after his or her term of office or employment, treat as confidential the personal information which comes to his or her knowledge in the course of the performance of his or her official duties, except if the communication of such information is required by law or in the proper performance of his or her duties.

[Date of commencement of s. 54: 11 April 2014.]

Part B
Information Officer (ss 55-56)

55 Duties and responsibilities of Information Officer

(1) An information officer's responsibilities include-

(a) the encouragement of compliance, by the body, with the conditions for the lawful processing of personal information;

(b) dealing with requests made to the body pursuant to this Act;

(c) working with the Regulator in relation to investigations conducted pursuant to Chapter 6 in relation to the body;

(d) otherwise ensuring compliance by the body with the provisions of this Act; and

(e) as may be prescribed.

(2) Officers must take up their duties in terms of this Act only after the responsible party has registered them with the Regulator.

56 Designation and delegation of deputy information officers

Each public and private body must make provision, in the manner prescribed in section 17 of the Promotion of Access to Information Act, with the necessary changes, for the designation of-

(a) such a number of persons, if any, as deputy information officers as is necessary to perform the duties and responsibilities as set out in section 55 (1) of this Act; and

(b) any power or duty conferred or imposed on an information officer by this Act to a deputy information officer of that public or private body.

CHAPTER 6
PRIOR AUTHORISATION (ss 57-59)

57 Processing subject to prior authorisation

(1) The responsible party must obtain prior authorisation from the Regulator, in terms of section 58, prior to any processing if that responsible party plans to-

(a) process any unique identifiers of data subjects-

(i) for a purpose other than the one for which the identifier was specifically intended at collection; and

(ii) with the aim of linking the information together with information processed by other responsible parties;

(b) process information on criminal behaviour or on unlawful or objectionable conduct on behalf of third parties;

(c) process information for the purposes of credit reporting; or

(d) transfer special personal information, as referred to in section 26, or the personal information of children as referred to in section 34, to a third party in a foreign country that does not provide an adequate level of protection for the processing of personal information as referred to in section 72.

(2) The provisions of subsection (1) may be applied by the Regulator to other types of information processing by law or regulation if such processing carries a particular risk for the legitimate interests of the data subject.

(3) This section and section 58 are not applicable if a code of conduct has been issued and has come into force in terms of Chapter 7 in a specific sector or sectors of society.

(4) A responsible party must obtain prior authorisation as referred to in subsection (1) only once and not each time that personal information is received or processed, except where the processing departs from that which has been authorised in accordance with the provisions of subsection (1).

58 Responsible party to notify Regulator if processing is subject to prior authorisation

(1) Information processing as contemplated in section 57 (1) must be notified as such by the responsible party to the Regulator.

(2) Responsible parties may not carry out information processing that has been notified to the Regulator in terms of subsection (1) until the Regulator has completed its investigation or until they have received notice that a more detailed investigation will not be conducted.

[Date of commencement of sub-s. (2) in so far as it becomes applicable to processing referred to in s. 57: 1 February 2022.]

(3) In the case of the notification of information processing to which section 57 (1) is applicable, the Regulator must inform the responsible party in writing within four weeks of the notification as to whether or not it will conduct a more detailed investigation.

(4) In the event that the Regulator decides to conduct a more detailed investigation, it must indicate the period within which it plans to conduct this investigation, which period must not exceed 13 weeks.

(5) On conclusion of the more detailed investigation referred to in subsection (4) the Regulator must issue a statement concerning the lawfulness of the information processing.

(6) A statement by the Regulator in terms of subsection (5), to the extent that the information processing is not lawful, is deemed to be an enforcement notice served in terms of section 95 of this Act.

(7) A responsible party that has suspended its processing as required by subsection (2), and which has not received the Regulator's decision within the time limits specified in subsections (3) and (4), may presume a decision in its favour and continue with its processing.

59 Failure to notify processing subject to prior authorisation

If section 58 (1) or (2) is contravened, the responsible party is guilty of an offence and liable to a penalty as set out in section 107.

CHAPTER 7
CODES OF CONDUCT (ss 60-68)

60 Issuing of codes of conduct

(1) The Regulator may from time to time issue codes of conduct.

(2) A code of conduct must-

(a) incorporate all the conditions for the lawful processing of personal information or set out obligations that provide a functional equivalent of all the obligations set out in those conditions; and

(b) prescribe how the conditions for the lawful processing of personal information are to be applied, or are to be complied with, given the particular features of the sector or sectors of society in which the relevant responsible parties are operating.

(3) A code of conduct may apply in relation to any one or more of the following:

(a) Any specified information or class of information;

(b) any specified body or class of bodies;

(c) any specified activity or class of activities; or

(d) any specified industry, profession, or vocation or class of industries, professions, or vocations.

(4) A code of conduct must also-

(a) specify appropriate measures-

(i) for information matching programmes if such programmes are used within a specific sector; or

(ii) for protecting the legitimate interests of data subjects insofar as automated decision making, as referred to in section 71, is concerned;

(b) provide for the review of the code by the Regulator; and

(c) provide for the expiry of the code.

61 Process for issuing codes of conduct

(1) The Regulator may issue a code of conduct under section 60-

(a) on the Regulator's own initiative, but after consultation with affected stakeholders or a body representing such stakeholders; or

(b) on the application, in the prescribed form, by a body which is, in the opinion of the Regulator, sufficiently representative of any class of bodies, or of any industry, profession, or vocation as defined in the code in respect of such class of bodies or of any such industry, profession or vocation.

(2) The Regulator must give notice in the *Gazette* that the issuing of a code of conduct is being considered, which notice must contain a statement that-

(a) the details of the code of conduct being considered, including a draft of the proposed code, may be obtained from the Regulator; and

(b) submissions on the proposed code may be made in writing to the Regulator within such period as is specified in the notice.

(3) The Regulator may not issue a code of conduct unless it has considered the submissions made to the Regulator in terms of subsection (2) *(b)*, if any, and is satisfied that all persons affected by the proposed code have had a reasonable opportunity to be heard.

(4) The decision as to whether an application for the issuing of a code has been successful must be made within a reasonable period which must not exceed 13 weeks.

62 Notification, availability and commencement of code of conduct

(1) If a code of conduct is issued under section 60 the Regulator must ensure that-

(a) there is published in the *Gazette*, as soon as reasonably practicable after the code is issued, a notice indicating-

(i) that the code has been issued; and

(ii) where copies of the code are available for inspection free of charge and for purchase; and

(b) as long as the code remains in force, copies of it are available-

(i) on the Regulator's website;

(ii) for inspection by members of the public free of charge at the Regulator's offices; and

(iii) for purchase or copying by members of the public at a reasonable price at the Regulator's offices.

(2) A code of conduct issued under section 60 comes into force on the 28th day after the date of its notification in the *Gazette* or on such later date as may be specified in the code and is binding on every class or classes of body, industry, profession or vocation referred to therein.

63 Procedure for dealing with complaints

(1) A code of conduct may prescribe procedures for making and dealing with complaints alleging a breach of the code, but no such provision may limit or restrict any provision of Chapter 10.

(2) If the code sets out procedures for making and dealing with complaints, the Regulator must be satisfied that-

(a) the procedures meet the-

(i) prescribed standards; and

(ii) guidelines issued by the Regulator in terms of section 65,

relating to the making of and dealing with complaints;

(b) the code provides for the appointment of an independent adjudicator to whom complaints may be made;

(c) the code provides that, in exercising his or her powers and performing his or her functions, under the code, an adjudicator for the code must have due regard to the matters listed in section 44;

(d) the code requires the adjudicator to prepare and submit a report, in a form satisfactory to the Regulator, to the Regulator within five months of the end of a financial year of the Regulator on the operation of the code during that financial year; and

(e) the code requires the report prepared for each year to specify the number and nature of complaints made to an adjudicator under the code during the relevant financial year.

(3) A responsible party or data subject who is aggrieved by a determination, including any declaration, order or direction that is included in the determination, made by an adjudicator after having investigated a complaint relating to the protection of personal information under an approved code of conduct, may submit a complaint in terms of section 74 (2) with the Regulator against the determination upon payment of a prescribed fee.

(4) The adjudicator's determination continues to have effect unless and until the Regulator makes a determination under Chapter 10 relating to the complaint or unless the Regulator determines otherwise.

64 Amendment and revocation of codes of conduct

(1) The Regulator may amend or revoke a code of conduct issued under section 60.

(2) The provisions of sections 60 to 63 apply in respect of any amendment or revocation of a code of conduct.

65 Guidelines about codes of conduct

(1) The Regulator may provide written guidelines-

(a) to assist bodies to develop codes of conduct or to apply approved codes of conduct;

(b) relating to making and dealing with complaints under approved codes of conduct; and

(c) about matters the Regulator may consider in deciding whether to approve a code of conduct or a variation or revocation of an approved code of conduct.

(2) The Regulator must have regard to the guidelines as set out in section 7 (3) *(a)* to *(d)* when considering the approval of a code of conduct for the processing of personal information for exclusively journalistic purposes where the responsible party is not subject to a code of ethics as referred to in section 7 (1).

(3) Before providing guidelines for the purposes of subsection (1) *(b)*, the Regulator must give everyone the Regulator considers has a real and substantial legitimate interest in the matters covered by the proposed guidelines an opportunity to comment on them.

(4) The Regulator must publish guidelines provided under subsection (1) in the *Gazette*.

66 Register of approved codes of conduct

(1) The Regulator must keep a register of approved codes of conduct.

(2) The Regulator may decide the form of the register and how it is to be kept.

(3) The Regulator must make the register available to the public in the way that the Regulator determines.

(4) The Regulator may charge reasonable fees for-

(a) making the register available to the public; or

(b) providing copies of, or extracts from, the register.

67 Review of operation of approved code of conduct

(1) The Regulator may, on its own initiative, review the operation of an approved code of conduct.

(2) The Regulator may do one or more of the following for the purposes of the review:

(a) Consider the process under the code for making and dealing with complaints;

(b) inspect the records of an adjudicator for the code;

(c) consider the outcome of complaints dealt with under the code;

(d) interview an adjudicator for the code; and

(e) appoint experts to review those provisions of the code that the Regulator believes require expert evaluation.

(3) The review may inform a decision by the Regulator under section 64 to revoke the approved code of conduct with immediate effect or at a future date to be determined by the Regulator.

68 Effect of failure to comply with code of conduct

If a code issued under section 60 is in force, failure to comply with the code is deemed to be a breach of the conditions for the lawful processing of personal information referred to in Chapter 3 and is dealt with in terms of Chapter 10.

CHAPTER 8
RIGHTS OF DATA SUBJECTS REGARDING DIRECT MARKETING BY MEANS OF UNSOLICITED ELECTRONIC COMMUNICATIONS, DIRECTORIES AND AUTOMATED DECISION MAKING (ss 69-71)

69 Direct marketing by means of unsolicited electronic communications

(1) The processing of personal information of a data subject for the purpose of direct marketing by means of any form of electronic communication, including automatic calling machines, facsimile machines, SMSs or e-mail is prohibited unless the data subject-

(a) has given his, her or its consent to the processing; or

(b) is, subject to subsection (3), a customer of the responsible party.

(2) *(a)* A responsible party may approach a data subject-

(i) whose consent is required in terms of subsection (1) *(a)*; and

(ii) who has not previously withheld such consent,

only once in order to request the consent of that data subject.

(b) The data subject's consent must be requested in the prescribed manner and form.

(3) A responsible party may only process the personal information of a data subject who is a customer of the responsible party in terms of subsection (1) *(b)*-

(a) if the responsible party has obtained the contact details of the data subject in the context of the sale of a product or service;

(b) for the purpose of direct marketing of the responsible party's own similar products or services; and

(c) if the data subject has been given a reasonable opportunity to object, free of charge and in a manner free of unnecessary formality, to such use of his, her or its electronic details-

(i) at the time when the information was collected; and

(ii) on the occasion of each communication with the data subject for the purpose of marketing if the data subject has not initially refused such use.

(4) Any communication for the purpose of direct marketing must contain-

(a) details of the identity of the sender or the person on whose behalf the communication has been sent; and

(b) an address or other contact details to which the recipient may send a request that such communications cease.

(5) **'Automatic calling machine'**, for purposes of subsection (1), means a machine that is able to do automated calls without human intervention.

70 Directories

(1) A data subject who is a subscriber to a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which his, her or its personal information is included, must be informed, free of charge and before the information is included in the directory-

(a) about the purpose of the directory; and

(b) about any further uses to which the directory may possibly be put, based on search functions embedded in electronic versions of the directory.

(2) A data subject must be given a reasonable opportunity to object, free of charge and in a manner free of unnecessary formality, to such use of his, her or its personal information or to request verification, confirmation or withdrawal of such information if the data subject has not initially refused such use.

(3) Subsections (1) and (2) do not apply to editions of directories that were produced in printed or off-line electronic form prior to the commencement of this section.

(4) If the personal information of data subjects who are subscribers to fixed or mobile public voice telephony services have been included in a public subscriber directory in conformity with the conditions for the lawful processing of personal information prior to the commencement of this section, the personal information of such subscribers may remain included in this public directory in its printed or electronic versions, after having received the information required by subsection (1).

(5) **'Subscriber'**, for purposes of this section, means any person who is party to a contract with the provider of publicly available electronic communications services for the supply of such services.

71 Automated decision making

(1) Subject to subsection (2), a data subject may not be subject to a decision which results in legal consequences for him, her or it, or which affects him, her or it to a substantial degree, which is based solely on the basis of the automated processing of personal information intended to provide a profile of such person including his or her performance at work, or his, her or its credit worthiness, reliability, location, health, personal preferences or conduct.

(2) The provisions of subsection (1) do not apply if the decision-

(a) has been taken in connection with the conclusion or execution of a contract, and-

(i) the request of the data subject in terms of the contract has been met; or

(ii) appropriate measures have been taken to protect the data subject's legitimate interests; or

(b) is governed by a law or code of conduct in which appropriate measures are specified for protecting the legitimate interests of data subjects.

(3) The appropriate measures, referred to in subsection (2) *(a)* (ii), must-

(a) provide an opportunity for a data subject to make representations about a decision referred to in subsection (1); and

(b) require a responsible party to provide a data subject with sufficient information about the underlying logic of the automated processing of the information relating to him or her to enable him or her to make representations in terms of paragraph *(a)*.

CHAPTER 9
TRANSBORDER INFORMATION FLOWS (s 72)

72 Transfers of personal information outside Republic

(1) A responsible party in the Republic may not transfer personal information about a data subject to a third party who is in a foreign country unless-

(a) the third party who is the recipient of the information is subject to a law, binding corporate rules or binding agreement which provide an adequate level of protection that-

(i) effectively upholds principles for reasonable processing of the information that are substantially similar to the conditions for the lawful processing of personal information relating to a data subject who is a natural person and, where applicable, a juristic person; and

(ii) includes provisions, that are substantially similar to this section, relating to the further transfer of personal information from the recipient to third parties who are in a foreign country;

(b) the data subject consents to the transfer;

(c) the transfer is necessary for the performance of a contract between the data subject and the responsible party, or for the implementation of pre-contractual measures taken in response to the data subject's request;

(d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the responsible party and a third party; or

(e) the transfer is for the benefit of the data subject, and-

(i) it is not reasonably practicable to obtain the consent of the data subject to that transfer; and

(ii) if it were reasonably practicable to obtain such consent, the data subject would be likely to give it.

(2) For the purpose of this section-

(a) **'binding corporate rules'** means personal information processing policies, within a group of undertakings, which are adhered to by a responsible party or operator within that group of undertakings when transferring personal information to a responsible party or operator within that same group of undertakings in a foreign country; and

(b) **'group of undertakings'** means a controlling undertaking and its controlled undertakings.

CHAPTER 10
ENFORCEMENT (ss 73-99)

73 Interference with protection of personal information of data subject

For the purposes of this Chapter, interference with the protection of the personal information of a data subject consists, in relation to that data subject, of-

(a) any breach of the conditions for the lawful processing of personal information as referred to in Chapter 3;

(b) non-compliance with section 22, 54, 69, 70, 71 or 72; or

(c) a breach of the provisions of a code of conduct issued in terms of section 60.

74 Complaints

(1) Any person may submit a complaint to the Regulator in the prescribed manner and form alleging interference with the protection of the personal information of a data subject.

(2) A responsible party or data subject may, in terms of section 63 (3), submit a complaint to the Regulator in the prescribed manner and form if he, she or it is aggrieved by the determination of an adjudicator.

75 Mode of complaints to Regulator

(1) A complaint to the Regulator must be made in writing.

(2) The Regulator must give such reasonable assistance as is necessary in the circumstances to enable a person, who wishes to make a complaint to the Regulator, to put the complaint in writing.

76 Action on receipt of complaint

(1) On receiving a complaint in terms of section 74, the Regulator may-

(a) conduct a pre-investigation as referred to in section 79;

(b) act, at any time during the investigation and where appropriate, as conciliator in relation to any interference with the protection of the personal information of a data subject in the prescribed manner;

(c) decide, in accordance with section 77, to take no action on the complaint or, as the case may be, require no further action in respect of the complaint;

(d) conduct a full investigation of the complaint;

(e) refer the complaint, in terms of section 92, to the Enforcement Committee; or

(f) take such further action as is contemplated by this Chapter.

(2) The Regulator must, as soon as is reasonably practicable, advise the complainant and the responsible party to whom the complaint relates of the course of action that the Regulator proposes to adopt under subsection (1).

(3) The Regulator may, on its own initiative, commence an investigation into the interference with the protection of the personal information of a data subject as referred to in section 73.

77 Regulator may decide to take no action on complaint

(1) The Regulator, after investigating a complaint received in terms of section 73, may decide to take no action or, as the case may be, require no further action in respect of the complaint if, in the Regulator's opinion-

(a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable;

(b) the subject matter of the complaint is trivial;

(c) the complaint is frivolous or vexatious or is not made in good faith;

(d) the complainant does not desire that action be taken or, as the case may be, continued;

(e) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or

(f) in cases where the complaint relates to a matter in respect of which a code of conduct is in force and the code of conduct makes provision for a complaints procedure, the complainant has failed to pursue, or to pursue fully, an avenue of redress available under that complaints procedure that it would be reasonable for the complainant to pursue.

(2) Notwithstanding anything in subsection (1), the Regulator may in its discretion decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Regulator that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

(3) In any case where the Regulator decides to take no action, or no further action, on a complaint, the Regulator must inform the complainant of that decision and the reasons for it.

78 Referral of complaint to regulatory body

(1) If, on receiving a complaint in terms of section 74, the Regulator considers that the complaint relates, in whole or in part, to a matter that is more properly within the jurisdiction of another regulatory body established in terms of any law, the Regulator must forthwith determine whether the complaint should be dealt with, in whole or in part, under this Act after consultation with the body concerned.

(2) If the Regulator determines that the complaint should be dealt with by another body, the Regulator must forthwith refer the complaint to that body to be dealt with accordingly and must notify the complainant of the referral.

79 Pre-investigation proceedings of Regulator

Before proceeding to investigate any matter in terms of this Chapter, the Regulator must, in the prescribed manner, inform-

(a) the complainant, the data subject to whom the investigation relates (if not the complainant) and any person alleged to be aggrieved (if not the complainant), of the Regulator's intention to conduct the investigation; and

(b) the responsible party to whom the investigation relates of the-

(i) details of the complaint or, as the case may be, the subject matter of the investigation; and

(ii) right of that responsible party to submit to the Regulator, within a reasonable period, a written response in relation to the complaint or, as the case may be, the subject-matter of the investigation.

80 Settlement of complaints

If it appears from a complaint, or any written response made in relation to a complaint under section 79 *(b)* (ii), that it may be possible to secure-

(a) a settlement between any of the parties concerned; and

(b) if appropriate, a satisfactory assurance against the repetition of any action that is the subject matter of the complaint or the doing of further actions of a similar kind by the person concerned,

the Regulator may, without investigating the complaint or, as the case may be, investigating the complaint further, in the prescribed manner, use its best endeavours to secure such a settlement and assurance.

81 Investigation proceedings of Regulator

For the purposes of the investigation of a complaint the Regulator may-

(a) summon and enforce the appearance of persons before the Regulator and compel them to give oral or written evidence on oath and to produce any records and things that the Regulator considers necessary to investigate the complaint, in the same manner and to the same extent as the High Court;

(b) administer oaths;

(c) receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Regulator sees fit, whether or not it is or would be admissible in a court of law;

(d) at any reasonable time, subject to section 81, enter and search any premises occupied by a responsible party;

(e) conduct a private interview with any person in any premises entered under section 84 subject to section 82; and

(f) otherwise carry out in those premises any inquiries that the Regulator sees fit in terms of section 82.

82 Issue of warrants

(1) A judge of the High Court, a regional magistrate or a magistrate, if satisfied by information on oath supplied by the Regulator that there are reasonable grounds for suspecting that-

(a) a responsible party is interfering with the protection of the personal information of a data subject; or

(b) an offence under this Act has been or is being committed,

and that evidence of the contravention or of the commission of the offence is to be found on any premises specified in the information, that are within the jurisdiction of that judge or magistrate, may, subject to subsection (2), grant a warrant to enter and search such premises.

(2) A warrant issued under subsection (1) authorises any of the Regulator's members or staff members, subject to section 84, at any time within seven days of the date of the warrant to enter the premises as identified in the warrant, to search them, to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal information and to inspect and seize any record, other material or equipment found there which may be such evidence as is mentioned in that subsection.

83 Requirements for issuing of warrant

(1) A judge or magistrate must not issue a warrant under section 82 unless satisfied that-

(a) the Regulator has given seven days' notice in writing to the occupier of the premises in question demanding access to the premises;

(b) either-

(i) access was demanded at a reasonable hour and was unreasonably refused; or

(ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request by any of the Regulator's members or staff to permit the members or the members of staff to do any of the things referred to in section 82 (2); and

(c) that the occupier, has, after the refusal, been notified by the Regulator of the application for the warrant and has had an opportunity of being heard on the question whether the warrant should be issued.

(2) Subsection (1) does not apply if the judge or magistrate is satisfied that the case is one of urgency or that compliance with that subsection would defeat the object of the entry.

(3) A judge or magistrate who issues a warrant under section 82 must also issue two copies of it and certify them clearly as copies.

84 Execution of warrants

(1) A police officer who is assisting a person authorised to conduct an entry and search in terms of a warrant issued under section 82 may overcome resistance to the entry and search by using such force as is reasonably necessary.

(2) A warrant issued under this section must be executed at a reasonable hour unless it appears to the person executing it that there are reasonable grounds for suspecting that the evidence in question would not be found if it were so executed.

(3) If the person who occupies the premises in respect of which a warrant is issued under section 82 is present when the warrant is executed, he or she must be shown the warrant and supplied with a copy of it, and if that person is not present a copy of the warrant must be left in a prominent place on the premises.

(4) A person seizing anything in pursuance of a warrant under section 82 must give a receipt to the occupier or leave the receipt on the premises.

(5) Anything so seized may be retained for as long as is necessary in all circumstances but the person in occupation of the premises in question must be given a copy of any documentation that is seized if he or she so requests and the person executing the warrant considers that it can be done without undue delay.

(6) A person authorised to conduct an entry and search in terms of section 82 must be accompanied and assisted by a police officer.

(7) A person who enters and searches any premises under this section must conduct the entry and search with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy.

(8) A person who enters and searches premises under this section must before questioning any person-

(a) advise that person of the right to be assisted at the time by an advocate or attorney; and

(b) allow that person to exercise that right.

(9) No self-incriminating answer given or statement made to a person who conducts a search in terms of a warrant issued under section 82 is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 102 and then only to the extent that the answer or statement is relevant to prove the offence charged.

85 Matters exempt from search and seizure

If the Regulator has granted an exemption in terms of section 37, the information that is processed in terms of that exemption is not subject to search and seizure empowered by a warrant issued under section 82.

86 Communication between legal adviser and client exempt

(1) Subject to the provisions of this section, the powers of search and seizure conferred by a warrant issued under section 82 must not be exercised in respect of-

(a) any communication between a professional legal adviser and his or her client in connection with the giving of legal advice to the client with respect to his or her obligations, liabilities or rights; or

(b) any communication between a professional legal adviser and his or her client, or between such an adviser or his or her client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act, including proceedings before a court, and for the purposes of such proceedings.

(2) Subsection (1) applies also to-

(a) any copy or other record of any such communication as is mentioned therein; and

(b) any document or article enclosed with or referred to in any such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in contemplation of and for the purposes of such proceedings as are mentioned therein.

87 Objection to search and seizure

If the person in occupation of any premises in respect of which a warrant is issued under this Act objects to the inspection or seizure under the warrant of any material on the ground that it-

(a) contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant or search must, if he or she is of the opinion that the article or document contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the Registrar of the High Court which has jurisdiction or his or her delegate, to attach and remove that article or document for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not; or

(b) consists partly of matters in respect of which those powers are not exercised, he or she must, if the person executing the warrant so requests, furnish that person with a copy of so much of the material as is not exempt from those powers.

88 Return of warrants

A warrant issued under section 82 must be returned to the court from which it was issued-

(a) after being executed; or

(b) if not executed within the time authorised for its execution,

and the person who has executed the warrant must make an endorsement on it stating what powers have been exercised by him or her under the warrant.

89 Assessment

(1) The Regulator, on its own initiative, or at the request by or on behalf of the responsible party, data subject or any other person must make an assessment in the prescribed manner of whether an instance of processing of personal information complies with the provisions of this Act.

(2) The Regulator must make the assessment if it appears to be appropriate, unless, where the assessment is made on request, the Regulator has not been supplied with such information as it may reasonably require in order to-

(a) satisfy itself as to the identity of the person making the request; and

(b) enable it to identify the action in question.

(3) The matters to which the Regulator may have regard in determining whether it is appropriate to make an assessment include-

(a) the extent to which the request appears to it to raise a matter of substance;

(b) any undue delay in making the request; and

(c) whether or not the person making the request is entitled to make an application in terms of section 23 or 24 in respect of the personal information in question.

(4) If the Regulator has received a request under this section it must notify the requester-

(a) whether it has made an assessment as a result of the request; and

(b) to the extent that it considers appropriate, having regard in particular to any exemption which has been granted by the Regulator in terms of section 37 from section 23 or 24 applying in relation to the personal information concerned, of any view formed or action taken as a result of the request.

90 Information notice

(1) If the Regulator-

(a) has received a request under section 89 in respect of any processing of personal information; or

(b) reasonably requires any information for the purpose of determining whether the responsible party has interfered or is interfering with the personal information of a data subject,

the Regulator may serve the responsible party with an information notice requiring the responsible party to furnish the Regulator, within a specified period, in a form specified in the notice, with a report indicating that the processing is taking place in compliance with the provisions of the Act, or with such information relating to the request or to compliance with the Act as is so specified.

(2) An information notice must contain particulars of the right of appeal conferred by section 97, and-

(a) in a case falling within subsection (1) *(a)*, a statement that the Regulator has received a request under section 89 in relation to the specified processing; or

(b) in a case falling within subsection (1) *(b)*, a statement that the Regulator regards the specified information as relevant for the purpose of determining whether the responsible party has complied, or is complying, with the conditions for the lawful processing of personal information and the reasons for regarding it as relevant for that purpose.

(3) Subject to subsection (5), the period specified in an information notice must not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.

(4) If the Regulator considers that the information is required as a matter of urgency, it may include in the notice a statement to that effect and a statement of its reasons for reaching that conclusion, and in that event subsection (3) does not apply.

(5) A notice in terms of subsection (4) may not require the information to be furnished before the end of a period of three days beginning with the day on which the notice is served.

(6) An information notice may not require a responsible party to furnish the Regulator with any communication between a-

(a) professional legal adviser and his or her client in connection with the giving of legal advice on the client's obligations, liabilities or rights under this Act; or

(b) professional legal adviser and his or her client, or between such an adviser or his or her client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before a court) and for the purposes of such proceedings.

(7) In subsection (6) references to the client of a professional legal adviser include any person representing such a client.

(8) An information notice may not require a responsible party to furnish the Regulator with information that would, by revealing evidence of the commission of any offence other than an offence under this Act, expose the responsible party to criminal proceedings.

(9) The Regulator may cancel an information notice by written notice to the responsible party on whom it was served.

91 Parties to be informed of result of assessment

(1) After completing the assessment referred to in section 89 the Regulator-

(a) must report to the responsible party the results of the assessment and any recommendations that the Regulator considers appropriate; and

(b) may, in appropriate cases, require the responsible party, within a specified time, to inform the Regulator of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.

(2) The Regulator may make public any information relating to the personal information management practices of a responsible party that has been the subject of an assessment under this section if the Regulator considers it in the public

interest to do so.

(3) A report made by the Regulator under subsection (1) is deemed to be the equivalent of an enforcement notice in terms of section 95.

92 Matters referred to Enforcement Committee

(1) After completing the investigation of a complaint or other matter in terms of this Act, the Regulator may refer such complaint or other matter to the Enforcement Committee for consideration, a finding in respect of the complaint or other matter and a recommendation in respect of the proposed action to be taken by the Regulator as referred to in section 93.

(2) The Regulator may prescribe the procedure to be followed by the Enforcement Committee, including-

(a) the manner in which the responsible party and data subject may make submissions to the Enforcement Committee;

(b) the opportunity afforded to the parties who make submissions to the Enforcement Committee to make use of legal or other representation;

(c) the period within which the Enforcement Committee must make a finding and submit its recommendation to the Regulator in respect of the complaint or other matter; and

(d) the manner in which the Enforcement Committee may finalise urgent matters.

93 Functions of Enforcement Committee

The Enforcement Committee-

(a) must consider all matters referred to it by the Regulator in terms of section 92 or the Promotion of Access to Information Act and make a finding in respect thereof; and

(b) may make any recommendation to the Regulator necessary or incidental to any action that should be taken against-

(i) a responsible party in terms of this Act; or

(ii) an information officer or head of a private body, as the case may be, in terms of the Promotion of Access to Information Act.

94 Parties to be informed of developments during and result of investigation

If an investigation is made following a complaint, and-

(a) the Regulator believes that no interference with the protection of the personal information of a data subject has taken place and therefore does not serve an enforcement notice;

(b) the Regulator has referred the complaint to the Enforcement Committee for consideration in terms of section 92;

(c) an enforcement notice is served in terms of section 95;

(d) a served enforcement notice is cancelled in terms of section 96;

(e) an appeal is lodged against the enforcement notice for cancellation or variation of the notice in terms of section 97; or

(f) an appeal against an enforcement notice is allowed, the notice is substituted or the appeal is dismissed in terms of section 98,

the Regulator must inform the complainant and the responsible party, as soon as reasonably practicable, in the manner prescribed of any development mentioned in paragraphs *(a)* to *(f)* and the result of the investigation.

95 Enforcement notice

(1) If the Regulator, after having considered the recommendation of the Enforcement Committee in terms of section 93, is satisfied that a responsible party has interfered or is interfering with the protection of the personal information of a data subject as referred to in section 73, the Regulator may serve the responsible party with an enforcement notice requiring the responsible party to do either or both of the following:

(a) To take specified steps within a period specified in the notice, or to refrain from taking such steps; or

(b) to stop processing personal information specified in the notice, or to stop processing personal information for a purpose or in a manner specified in the notice within a period specified in the notice.

(2) An enforcement notice must contain-

(a) a statement indicating the nature of the interference with the protection of the personal information of the data subject and the reasons for reaching that conclusion; and

(b) particulars of the rights of appeal conferred by section 97.

(3) Subject to subsection (4), an enforcement notice may not require any of the provisions of the notice to be complied with before the end of the period within which an appeal may be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(4) If the Regulator considers that an enforcement notice should be complied with as a matter of urgency it may include in the notice a statement to that effect and a statement of its reasons for reaching that conclusion, and in that event subsection (3) does not apply.

(5) A notice in terms of subsection (4) may not require any of the provisions of the notice to be complied with before the end of a period of three days beginning with the day on which the notice is served.

96 Cancellation of enforcement notice

(1) A responsible party on whom an enforcement notice has been served may, at any time after the expiry of the period during which an appeal may be brought against that notice, apply in writing to the Regulator for the cancellation or variation of that notice on the ground that, by reason of a change of circumstances, all or any of the provisions of that notice need not be complied with in order to ensure compliance with the conditions for the lawful processing of personal information.

(2) If the Regulator considers that all or any of the provisions of an enforcement notice need not be complied with in order to ensure compliance with a condition for the lawful processing of personal information or conditions to which it relates, it may cancel or vary the notice by written notice to the responsible party on whom it was served.

97 Right of appeal

(1) A responsible party on whom an information or enforcement notice has been served may, within 30 days of receiving the notice, appeal to the High Court having jurisdiction for the setting aside or variation of the notice.

(2) A complainant, who has been informed of the result of the investigation in terms of section 77 (3) or 96, may, within 180 days of receiving the result, appeal to the High Court having jurisdiction against the result.

98 Consideration of appeal

(1) If in an appeal under section 97 the court considers-

(a) that the notice or decision against which the appeal is brought is not in accordance with the law; or

(b) that the notice or decision involved an exercise of discretion by the Regulator that ought to have been exercised differently,

the court must allow the appeal and may set aside the notice or substitute such other notice or decision as should have been served or made by the Regulator.

(2) In such an appeal, the court may review any determination of fact on which the notice in question was based.

99 Civil remedies

(1) A data subject or, at the request of the data subject, the Regulator, may institute a civil action for damages in a court having jurisdiction against a responsible party for breach of any provision of this Act as referred to in section 73, whether or not there is intent or negligence on the part of the responsible party.

(2) In the event of a breach the responsible party may raise any of the following defences against an action for damages:

(a) *Vis major*;

(b) consent of the plaintiff;

(c) fault on the part of the plaintiff;

(d) compliance was not reasonably practicable in the circumstances of the particular case; or

(e) the Regulator has granted an exemption in terms of section 37.

(3) A court hearing proceedings in terms of subsection (1) may award an amount that is just and equitable, including-

(a) payment of damages as compensation for patrimonial and non-patrimonial loss suffered by a data subject as a result of breach of the provisions of this Act;

(b) aggravated damages, in a sum determined in the discretion of the Court;

(c) interest; and

(d) costs of suit on such scale as may be determined by the Court.

(4) Any amount awarded to the Regulator in terms of subsection (3) must be dealt with in the following manner:

(a) The full amount must be deposited into a specifically designated trust account established by the Regulator with an appropriate financial institution;

(b) as a first charge against the amount, the Regulator may recover all reasonable expenses incurred in bringing proceedings at the request of a data subject in terms of subsection (1) and in administering the distributions made to the data subject in terms of subsection (5); and

(c) the balance, if any (in this section referred to as the 'distributable balance'), must be distributed by the Regulator to the data subject at whose request the proceedings were brought.

(5) Any amount not distributed within three years from the date of the first distribution of payments in terms of subsection (4), accrue to the Regulator in the Regulator's official capacity.

(6) The distributable balance must be distributed on a pro rata basis to the data subject referred to in subsection (1).

(7) A Court issuing any order under this section must order it to be published in the *Gazette* and by such other appropriate public media announcement as the Court considers appropriate.

(8) Any civil action instituted under this section may be withdrawn, abandoned or compromised, but any agreement or compromise must be made an order of Court.

(9) If a civil action has not been instituted, any agreement or settlement, if any, may, on application to the Court by the Regulator after due notice to the other party, be made an order of Court and must be published in the *Gazette* and by such other public media announcement as the Court considers appropriate.

CHAPTER 11
OFFENCES, PENALTIES AND ADMINISTRATIVE FINES (ss 100-109)

100 Obstruction of Regulator

Any person who hinders, obstructs or unlawfully influences the Regulator or any person acting on behalf of or under the direction of the Regulator in the performance of the Regulator's duties and functions under this Act, is guilty of an offence.

101 Breach of confidentiality

Any person who contravenes the provisions of section 54, is guilty of an offence.

102 Obstruction of execution of warrant

Any person who-

(a) intentionally obstructs a person in the execution of a warrant issued under section 82; or

(b) fails without reasonable excuse to give any person executing such a warrant such assistance as he or she may reasonably require for the execution of the warrant,

is guilty of an offence.

103 Failure to comply with enforcement or information notices

(1) A responsible party which fails to comply with an enforcement notice served in terms of section 95, is guilty of an offence.

(2) A responsible party which, in purported compliance with an information notice served in terms of section 90-

(a) makes a statement knowing it to be false; or

(b) recklessly makes a statement which is false, in a material respect,

is guilty of an offence.

104 Offences by witnesses

(1) Any person summoned in terms of section 81 to attend and give evidence or to produce any book, document or object before the Regulator who, without sufficient cause fails-

(a) to attend at the time and place specified in the summons;

(b) to remain in attendance until conclusion of the proceedings or until he or she is excused by the Chairperson of the Regulator from further attendance;

(c) having attended, refuses to be sworn or to make an affirmation as witness after he or she has been required by the Chairperson of the Regulator to do so;

(d) having been sworn or having made an affirmation, to answer fully and satisfactorily any question lawfully put to him or her; or

(e) to produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce,

is guilty of an offence.

(2) Any person who after having been sworn or having made an affirmation, gives false evidence before the Regulator on any matter, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence.

105 Unlawful acts by responsible party in connection with account number

(1) A responsible party who contravenes the provisions of section 8 insofar as those provisions relate to the processing of an account number of a data subject is, subject to subsections (2) and (3), guilty of an offence.

(2) The contravention referred to in subsection (1) must-

(a) be of a serious or persistent nature; and

(b) likely cause substantial damage or distress to the data subject.

(3) The responsible party must-

(a) have known or ought to have known that-

(i) there was a risk that the contravention would occur; or

(ii) such contravention would likely cause substantial damage or distress to the data subject; and

(b) have failed to take reasonable steps to prevent the contravention.

(4) Whenever a responsible party is charged with an offence under subsection (1), it is a valid defence to such a charge to contend that he or she has taken all reasonable steps to comply with the provisions of section 8.

(5) **'Account number'**, for purposes of this section and section 106, means any unique identifier that has been assigned-

(a) to one data subject only; or

(b) jointly to more than one data subject,

by a financial or other institution which enables the data subject, referred to in paragraph *(a)*, to access his, her or its own funds or to access credit facilities or which enables a data subject, referred to in paragraph *(b)*, to access joint funds or to access joint credit facilities.

106 Unlawful acts by third parties in connection with account number

(1) A person who knowingly or recklessly, without the consent of the responsible party-

(a) obtains or discloses an account number of a data subject; or

(b) procures the disclosure of an account number of a data subject to another person,

is, subject to subsection (2), guilty of an offence.

(2) Whenever a person is charged with an offence under subsection (1), it is a valid defence to such a charge to contend that-

(a) the obtaining, disclosure or procuring of the account number was-

(i) necessary for the purpose of the prevention, detection, investigation or proof of an offence; or

(ii) required or authorised in terms of the law or in terms of a court order;

(b) he or she acted in the reasonable belief that he or she was legally entitled to obtain or disclose the account number or, as the case may be, to procure the disclosure of the account number to the other person;

(c) he or she acted in the reasonable belief that he or she would have had the consent of the responsible party if the responsible party had known of the obtaining, disclosing or procuring and the circumstances of it; or

(d) in the particular circumstances the obtaining, disclosing or procuring was in the public interest.

(3) A person who sells an account number which he or she has obtained in contravention of subsection (1), is guilty of an offence.

(4) A person who offers to sell the account number of a data subject which that person-

(a) has obtained; or

(b) subsequently obtained,

in contravention of subsection (1), is guilty of an offence.

(5) For the purposes of subsection (4), an advertisement indicating that an account number of a data subject is or may be for sale is an offer to sell the information.

107 Penalties

Any person convicted of an offence in terms of this Act, is liable, in the case of a contravention of-

(a) section 100, 103 (1), 104 (2), 105 (1), 106 (1), (3) or (4) to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment; or

(b) section 59, 101, 102, 103 (2) or 104 (1), to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

108 Magistrate's Court jurisdiction to impose penalties

Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in section 107.

109 Administrative fines

(1) If a responsible party is alleged to have committed an offence in terms of this Act, the Regulator may cause to be delivered by hand to that person (hereinafter referred to as the infringer) an infringement notice which must contain the particulars contemplated in subsection (2).

(2) A notice referred to in subsection (1) must-

(a) specify the name and address of the infringer;

(b) specify the particulars of the alleged offence;

(c) specify the amount of the administrative fine payable, which amount may, subject to subsection (10), not exceed R10 million;

(d) inform the infringer that, not later than 30 days after the date of service of the infringement notice, the infringer may-

(i) pay the administrative fine;

(ii) make arrangements with the Regulator to pay the administrative fine in instalments; or

(iii) elect to be tried in court on a charge of having committed the alleged offence referred to in terms of this Act; and

(e) state that a failure to comply with the requirements of the notice within the time permitted, will result in the administrative fine becoming recoverable as contemplated in subsection (5).

(3) When determining an appropriate fine, the Regulator must consider the following factors:

(a) The nature of the personal information involved;

(b) the duration and extent of the contravention;

(c) the number of data subjects affected or potentially affected by the contravention;

(d) whether or not the contravention raises an issue of public importance;

(e) the likelihood of substantial damage or distress, including injury to feelings or anxiety suffered by data subjects;

(f) whether the responsible party or a third party could have prevented the contravention from occurring;

(g) any failure to carry out a risk assessment or a failure to operate good policies, procedures and practices to protect personal information; and

(h) whether the responsible party has previously committed an offence in terms of this Act.

(4) If an infringer elects to be tried in court on a charge of having committed the alleged offence in terms of this Act, the Regulator must hand the matter over to the South African Police Service and inform the infringer accordingly.

(5) If an infringer fails to comply with the requirements of a notice, the Regulator may file with the clerk or registrar of any competent court a statement certified by it as correct, setting forth the amount of the administrative fine payable by the infringer, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the Regulator for a liquid debt in the amount specified in the statement.

(6) The Regulator may not impose an administrative fine contemplated in this section if the responsible party concerned has been charged with an offence in terms of this Act in respect of the same set of facts.

(7) No prosecution may be instituted against a responsible party if the responsible party concerned has paid an administrative fine in terms of this section in respect of the same set of facts.

(8) An administrative fine imposed in terms of this section does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(9) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the Constitution.

(10) The Minister may, from time to time and after consultation with the Regulator, by notice in the *Gazette*, adjust the amount referred to in subsection (2) *(c)* in accordance with the average of the consumer price index, as published from time to time in the *Gazette*, for the immediately preceding period of 12 months multiplied by the number of years that the amount referred to in subsection (2) *(c)* has remained the same.

CHAPTER 12
GENERAL PROVISIONS (ss 110-115)

110 Amendment of laws

The laws mentioned in the Schedule are amended to the extent indicated in the third column of the Schedule.

[Date of commencement of s. 110: 30 June 2021.]

111 Fees

(1) The Minister may, subject to section 113 and after consultation with the Regulator, prescribe fees to be paid by data subjects-

(a) to responsible parties as referred to in section 23 (1) *(b)* (ii); and

(b) to the Regulator as referred to in section 63 (3).

(2) Different fees may be prescribed in respect of different categories of responsible parties and data subjects referred to in subsection (1) *(a)* and *(b)*, respectively.

112 Regulations

(1) The Minister may, subject to section 113, make regulations relating to-

(a) the establishment of the Regulator; and

(b) fees referred to in section 111 (1).

(2) The Regulator may, subject to section 113, make regulations relating to-

(a) the manner in terms of which a data subject may object to the processing of personal information as referred to in section 11 (3);

(b) the manner in which a data subject may submit a request to a responsible party as referred to in section 24 (1);

(c) the processing of health information by certain responsible parties as referred to in section 32 (6);

(d) the responsibilities of information officers as referred to in section 55 (1) *(e)*;

(e) the form in terms of which an application for a code of conduct must be submitted to the Regulator as referred to in section 61 (1) *(b)*;

(f) the manner and form within which the data subject's consent must be requested as referred to in section 69 (2);

(g) the manner and form in terms of which a complaint must be submitted in terms of section 74;

(h) the Regulator acting as conciliator in relation to any interference with the protection of personal information as referred to in section 76 (1) *(b)*;

(i) the notification of the parties concerned of an investigation to be conducted as referred to in section 79;

(j) the settlement of complaints as referred to in section 80;

(k) the manner in which an assessment of the processing of personal information will be made as referred to in section 89 (1);

(l) the manner in terms of which the parties concerned must be informed of the developments during and result of an investigation as referred to in section 94; and

(m) matters incidental to the imposition of administrative fines as referred to in section 109.

[Date of commencement of s. 112: 11 April 2014.]

113 Procedure for making regulations

(1) The Minister, before making or amending any regulations referred to in section 112 (1), must publish a notice in the *Gazette*-

(a) setting out that draft regulations have been developed;

(b) specifying where a copy of the draft regulations may be obtained; and

(c) inviting written comments to be submitted on the proposed regulations within a specified period.

(2) After complying with subsection (1) and after consultation with the Regulator in respect of the draft regulations referred to in section 112, the Minister may-

(a) amend the draft regulations; and

(b) subject to subsection (5), publish the regulations in final form in the *Gazette*.

(3) The Regulator, before making or amending any regulations referred to in section 112 (2), must publish a notice in the *Gazette*-

(a) setting out that draft regulations have been developed;

(b) specifying where a copy of the draft regulations may be obtained; and

(c) inviting written comments to be submitted on the proposed regulations within a specified period.

(4) After complying with subsection (3), the Regulator may-

(a) amend the draft regulations; and

(b) subject to subsection (5), publish the regulations in final form in the *Gazette*.

(5) *(a)* The Minister or the Regulator, as the case may be, must, within 30 days before publication of the regulations in the *Gazette*, as referred to in subsection (2) *(b)* or (4) *(b)*, table them in Parliament.

(b) Subsection (1) or (3) does not apply in respect of any amendment of the regulations as a result of the process referred to in paragraph *(a)*.

[Date of commencement of s. 113: 11 April 2014.]

114 Transitional arrangements

(1) All processing of personal information must within one year after the commencement of this section be made to conform to this Act.

(2) The period of one year referred to in subsection (1) may be extended by the Minister, on request or of his or her own accord and after consultation with the Regulator, by notice in the *Gazette* in respect of different class or classes of information and bodies by an additional period which period may not exceed three years.

(3) Section 58 (2) does not apply to processing referred to in section 57, which is taking place on the date of commencement of this Act, until the Regulator determines otherwise by notice in *Gazette*.

(4) The South African Human Rights Commission must, in consultation with the Information Regulator, finalise or conclude its functions referred to in sections 83 and 84 of the Promotion of Access to Information Act, as soon as reasonably possible after the amendment of those sections in terms of this Act.

[Date of commencement of sub-s. (4): 30 June 2021.]

115 Short title and commencement

(1) This Act is called the Protection of Personal Information Act, 2013, and commences on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates of commencement may be determined in respect of different provisions of this Act or in respect of

different class or classes of information and bodies.

Schedule
LAWS AMENDED BY SECTION 110

No. and year of law	Short title	Extent of repeal or amendment
Act 23 of 1994	Public Protector Act, 1994	1. Amends section 6 (4), as follows: paragraph *(a)* substitutes paragraph *(b)*; paragraph *(b)* substitutes paragraph *(c)*; and paragraph *(c)* deletes paragraph *(d)*.
Act 2 of 2000	Promotion of Access to Information Act, 2000	1. Amends section 1, as follows: paragraph *(a)* inserts the definition of 'biometrics'; paragraph *(b)* omits the definition of 'Human Rights Commission'; paragraph *(c)* substitutes the definition of 'personal information'; paragraph *(d)* omits the definition of 'personal requester'; and paragraph *(e)* inserts the definition of 'Information Regulator'.
		2. Substitutes section 10.
		3. Amends section 11 by substituting subsection (2). 4. Amends section 14, as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* substitutes subsection (3).
		5. Amends section 15, as follows: paragraph *(a)* substitutes the words in subsection (1) preceding paragraph *(a)*; paragraph *(b)* deletes subsection (2); and paragraph *(c)* substitutes subsection (3).
		6. Amends section 21 by substituting paragraphs *(a)* and *(b)*. 7. Amends section 22, as follows: paragraph *(a)* substitutes subsection (1); paragraph *(b)* substitutes subsection (2); and paragraph *(c)* substitutes subsection (3).
		8. Amends section 25, as follows: paragraph *(a)* substitutes subsection (2) *(c)*; and paragraph *(b)* substitutes subsection (3)*(c)*. 9. Amends section 26 (3) by substituting paragraph *(c)*.
		10. Amends section 29 by substituting subsection (9). 11. Amends section 49, as follows: paragraph *(a)* substitutes subsection (3) *(b)* and *(c)*; and paragraph *(b)* substitutes subsection (4). 12. Amends section 51, as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* substitutes subsection (3).
		13. Amends section 52, as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)*; paragraph *(b)* deletes subsection (2); and paragraph *(c)* substitutes subsection (3). 14. Amends section 54, as follows: paragraph *(a)* substitutes subsection (1); paragraph *(b)* substitutes subsection (2); and paragraph *(c)* substitutes subsection (3) *(b)* and *(c)*.
		15. Amends section 56, as follows: paragraph *(a)* substitutes subsection (2) *(c)*; and paragraph *(b)* substitutes subsection (3) *(c)*. 16. Amends section 57 (3) by substituting paragraph *(c)*. 17. Amends section 73, as follows: paragraph *(a)* substitutes subsection (3) *(b)* and *(c)*; and paragraph *(b)* substitutes subsection (4).
		18. Amends Chapter 1 of Part 4 by inserting Chapter 1A (sections 77A to 77K inclusive).
		19. Substitutes section 78.
		20. Amends the heading of Part 5 by substituting the words 'Human Rights Commission' with the words 'Information Regulator'. 21. Amends sections 32, 83, 84 and 85 by substituting the words 'Human Rights Commission' wherever they occur, with the words 'Information Regulator'. 22. Repeals section 88. 23. Substitutes the long title.
Act 25 of 2002	Electronic Communications and Transactions Act, 2002	1. Amends section 1 by substituting the definition of 'personal information'. 2. Repeals sections 45, 50 and 51.
Act 34 of 2005	National Credit Act, 2005	1. Amends section 1 substituting the definition of 'prohibited conduct'.
		2. Amends section 55 by substituting subsection (2). 3. Amends section 68 by deleting subsection (2). 4. Amends section 136 by substituting subsection (1). 5. Amends section 137 (1) by deleting paragraph *(a)*.