

## LEPPARD LEGISLATION WATCH

JULY 2017

Although another relatively quiet month on the legislative front, two matters that were published could have a significant impact on all of us, and we therefore need to make a note of them. The first one relates to a Discussion Paper issued by the Department of Home Affairs relating to its repositioning, and the second relates to the intention of the Ministry of Transport to introduce the Road Accident Benefit Scheme Bill.

### What to watch – selected recent developments

#### Employment and Staff Zone

- ❖ Magistrates Courts Act: Courts of Law Amendment Bill – this Bill proposes far-reaching changes relating to garnishee or emolument attachment orders, which include imposing liability on employers or other garnishees for inaction in implementing these orders; an overhaul of the approach to emoluments attachment orders; the review of certain jurisdiction clauses in contracts and other legal proceedings; and increased requirements for admissions of liability, consent orders and offers by judgment debtors.

#### General

- ❖ National Environmental Management Act, National Environmental Management Biodiversity Act, and National Environmental Management Waste Act – all three Acts are proposed to be amended with an increased focus on environmental rehabilitation provisions. Some other key provisions relate to the control of invasive species and what constitutes the eradication thereof (and whose responsibility it is), and providing definitions for different kinds of waste, including business, building and demolition, domestic, general, hazardous and inert waste.
- ❖ Broad-Based Black Economic Empowerment Act – a notice has been published relating to the threshold for major B-BEEE transactions (R25 million) which have to be registered. Different deadlines apply for the registration depending on when the transaction took place. Registration will result in the B-BEEE Commission assessing the transaction and giving input,

although the details of the input and its impact, as well as the documents that need to be submitted are not stated in the notice.

- ❖ Occupational Health and Safety Act – guidelines have been gazette for the construction regulations. These regulations are relevant to the renovation, repair and dismantling of a building or similar structure.
- ❖ Discussion Paper: Draft repositioning of Home Affairs - A discussion paper on the repositioning of the Home Affairs Department (DHA) has been published for comment in Government Gazette 40847. The plan is to reposition the department as a modern and secure national department, and explains why the department needs to be positioned within the security system of the state. The plan is for the department to serve as the backbone of the digital economy and to be at the centre of a national security system. Written comment is invited until 30 September 2017. Although these aims sound very admirable, the concern expressed by some commentators at this stage, is that DHA is going to seek to control of all aspects of our lives involving our identity and that more everyday interactions are going to cost us money, given the revenue generation focus of the discussion paper. For example, all official transactions that require identity to be verified, such as the transfer of a house or a vehicle, would attract a fee for a check against the National Identity System. Additionally, the following would also require mandatory compliance with DHA biometric identity checks: • banks complying with FICA requirements; • airlines verifying the identity of passengers; • telecom providers performing RICA compliance; • higher education student verification for registration and access to examination centres; • public schools for student registrations; • public hospitals for admission entry. One can envisage the massive and expensive task ahead for DHA to ensure the necessary hardware and software is in place, as well as rectifying current errors. Most of these funds would be sought to be recovered from the private sector, which would be given digital access to the National Information System database. Issues of the protection of personal information and privacy have not been adequately addressed in the discussion paper.
- ❖ Road Accident Benefit Scheme Bill – the RABS is intended to replace the current fault-based system administered by the Road Accident Fund (RAF), which often results in extensive and costly litigation, prolonged claims finalisation and high administrative costs. Under RABS, fault will not be considered on the part of the claimant or other persons involved in the road accident. The focus will essentially be on how the claimant is immediately assisted. The Road Accident Benefit Scheme Bill proposes replacing the Road Accident Fund Act (although it does not outright repeal that Act), and is relevant to financial institutions, medical schemes and health care providers. The Bill proposes amongst others: (i) Making the exclusion of civil liability for

certain road accident injuries and deaths one of its objectives although criminal liability will still be a possibility. Criminal liability could arise in instances of reckless, grossly negligent and similar actions. (ii) General limitations including: • Limiting the RBS Administrator's liability to emergency service if a person is a non-permit or visa holder and non-citizen; and • Not allowing civil damages for road accident bodily injuries or deaths against the employer of a driver. (In other words, seeking to limit the vicarious liability of an employer. (iii) Limited health care services with specific attention given to contracted health care providers, non-contracted health care providers, and individual treatment and rehabilitation plans; (iv) Limited temporary and long-term income support benefits including that the person must be ordinarily resident in SA and mandatory vocational training programmes required at any time; (v) Limited family support benefits including ending such benefit on attaining 60 and requiring that a dependant must be ordinarily resident in SA; (vi) Limited funeral benefits including requiring proof that a road accident caused the death; (vii) Giving the RBS Administrator the discretion to terminate, suspend or revise benefits at any time on certain grounds including the uncertain ground of "revising the benefit if good reason exists which justify the revision of the benefit"; (viii) Placing a duty on financial institutions, medical schemes and health care providers to provide personal information, including personal financial information, at the request of the Administrator; and (ix) That a claim that must be made under the future law will lapse after 3 years from when the claim arose, if a claim is not submitted as required. The proposed introduction of the Bill has not been well received in some quarters, with some commentators saying that many sticking points have not been ironed out and that an agreed-upon process during recent parliamentary discussions has not been followed.

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