

Prepare for POPI

The long-awaited Protection of Personal Information Act may be here sooner than you think



The Protection of Personal Information (POPI) Act, No.4 of 2013, was gazetted in November 2013. From that date it became a law of South Africa, but has yet to commence in terms of taking effect. On 11 April 2014 there was partial commencement of the POPI Act conditions which allowed for the establishment of the new Information Regulator, as required by the POPI Act.

In July 2015 the nominations period was opened for the appointment of the panel, which had five positions to be filled. An unknown number of nominations were received by the time the period closed in August 2015.

In April 2016 the Portfolio Committee on Justice and Correctional Services of the Parliament of South Africa announced the names of 10 people as a short-list of nominees to be considered for the five panel positions.

The final list of five nominations, revealed in May 2016 are:

- Adv Pansy Tlakula (nominated as chair);

- Adv Cordelia Stroom;
- Johannes Weapond;
- Prof Tana Pristorius; and
- Sizwe Lindelo Snail.

A quorum of MPs was not available in Parliament to confirm these nominations, which has led to a further delay. The confirmation vote is currently scheduled to take place in August 2016. The actual formation of the Information Regulator should follow soon thereafter. The Regulator will then prepare recommendations as to which sections of the POPI Act are to be commenced and when. This could take anywhere from a few weeks to a few months.

In February 2016, during his 2016/17 budget speech, the Minister of Finance Pravin Gordhan announced that budget was being allocated to support the establishment of the Information Regulator.

An amount of R10-million was allocated for 2016, increasing to R26-million in 2017 and R27-million in 2018.

It was also mentioned in supporting documentation that there would be a complement of 12 administrative personnel and their office requirements. These are understood to be in addition to the Information Regulator panel.

On the international scene, the European Union (EU) and Commission have recently ratified the new EU-wide

General Data Protection Regulation (GDPR), which will harmonise the laws in effect across all of the member states. The GDPR now has 25 May 2018 as the effective date.

October 2015 saw the suspension of the 15-year-old “Safe Harbour” agreement between the EU and the federal authorities in the United States, following a finding of the European Court of Justice. This led to a period of uncertainty about trans-Atlantic exchanges of data, until the European commission launched the “Privacy Shield” agreement, designed to provide protection to EU standards for the data of EU citizens when sent to the US, in February 2016. Another development was the publication of a report earlier in 2016 by the United Nations Development Programme (UNDP), which expressed concern about the delay in the implementation in full of the POPI Act as a further obstacle towards achievement of the UN development goals in South Africa. There is no doubt that this will act as a further stimulus to ensure the full commencement of the POPI Act sooner rather than later. ■

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