



Legislative and Regulatory Highlights

June 2023

Introduction

- This month's report looks at key legislative and regulatory updates during the month of June, as well as the considerations and adoption of various bills that are before Parliament.
- It covers the Electoral Commission Amendment Bill, the Public Service Commission (PSC) Bill, among others.
- The debate around universal health coverage in South Africa continues, with the NCOP Select Committee on Health and Social Services raising several concerns on how the National Health Insurance (NHI) will be implemented, with the Department of Health seemingly scant on details. We look at the latest developments around the Bill.



Vote

Electoral Commission Amendment Bill

- On 21 June, the Democratic Alliance (DA) introduced the Electoral Commission Amendment Bill before the National Assembly.
- This comes two years after a notice in the government gazette was published to amend the Electoral Commission Act to enable Provincial Premiers to be able to call for referenda.
- The Bill further seeks to repeal the Referendum Act of 1983.
- Despite there being a provision in the country's Constitution for the Premier to call for a referendum (Section 127), in accordance with national legislation, there are currently no mechanisms granting Premiers with such powers.
- The DA argues that "the current legislative framework under the Electoral Commission Act and the Referendums Act does provide for the holding of referenda in order to ascertain the views of voters,, however both Acts only provide for mechanisms available to the president to call for a national referendum".
- The reasons why the DA wants Premiers to have powers to call for referendums are by and large unclear.
- The introduction of the bill follows calls by lobby groups such as the Cape Independence Advocacy Group for the Western Cape to secede from South Africa and become independent.
- In 2020, Afriforum resolved at its congress in Knysna for "growing autonomy" of the Western Cape.
- The civil society group had threatened to take the referendum legislation to the Constitutional Court to allow a Premier to also call for a referendum as allowed for in the Constitution.

Invitation for public comments on the PSC Bill

- On 12 Jun, the Public Service Commission (PSC) welcomed the Cabinet's decision to adopt and approve the publication of the draft Public Service Commission of 2023 for public comments.
- The PSC Bill seeks to regulate the process for appointments of Commissioners of the Commission.
- The Bill further seeks to provide for the Commission to fulfil its constitutional mandate in respect of public entities and local government.
- The Commission intends developing a monitoring and evaluation tool for the district service delivery model (DDM) as part of the responses to the needs of government and its attempt at professionalising the public service.
- The Bill will enable the PSC to operate as an independent and impartial constitutional body.
- The PSC was established in terms of Section 196 of the Constitution of the Republic of South Africa, 1996.
- Its mission is to promote the constitutionally enshrined democratic principles and values of the public service by investigating, researching, monitoring, evaluating, communicating and reporting on public administration.

- Recently, the PSC has come under attack for its inability to play an effective oversight role over the public service. Some of the thorny issues centre around its political accountability framework, budgeting and the limited scope as it does not cover the local government sphere in the absence of a single public service.
- For its part, government has been very slow in creating a single public service for South Africa that would allow for greater oversight of all the spheres.

Independent Police Investigative Directorate Amendment Bill

- On 7 June Cabinet approved the processing of the draft Independent Police Investigative Directorate Amendment Bill to Parliament.
- The Bill amends the IPID Act, 2011 (Act 1 of 2011), and makes proposals aimed at entrenching the institutional and operational independence of the IPID, giving effect to the “McBride judgement”.
- The ruling set out the decision by the Police Minister to suspend and institute disciplinary proceedings against Executive Director of IPID invalid and set it aside. This also included the removal of Executive Director from office.
- In 2018, then Police Minister Nkosinathi Nhleko illegally suspended IPID head Robert McBride, saying their relationship had broken down irretrievably.
- The Constitutional Court subsequently found that provisions authorising the Police Minister to suspend, take disciplinary steps or remove the IPID head were invalid.
- The Bill proposes a more transparent and open process for the appointment of the Executive Director and a detailed and thorough process for integrity testing of IPID officials.
- The independence of IPID has been a bone of contention for years, with some arguing that the fact that the body gets its budget from the Ministry of Police may compromise it, as it is meant to investigate cases of wrongdoing by law enforcement officers.
- In April, Anti-crime group Action Society stated that it wants the legislation governing IPID’s operations, the Independent Police Investigative Directorate Act of 2011, to be changed and the Constitution to be amended to provide for IPID status as a chapter nine institution.



NCOP Passes the Eskom Debt Relief Bill

- On the 21 June, the NCOP voted in favour of passing of the Eskom Debt Relief Bill.
- This Bill will compel the National Revenue Fund to provide debt relief for Eskom to the tune of R254 billion over the next three financial years.
- This Bill was referred to the NCOP in terms of Section 13 of the Money Bills Act No. 9 of 2009.
- The Bill was tabled in Parliament by the Minister of Finance on 22 February 2023 during the presentation of the year’s budget.
- Government aims at bolstering Eskom’s balances sheet and to secure electricity supply.
- The Congress of South African Trade Unions (COSATU) welcomed the passage of the Eskom Debt Relief Bill, as part of a package of measures to stabilise Eskom , rebuild it so that it can discharge its developmental mandate.
- The Bill was passed amidst heavy criticism from opposition parties and analysts, who have argued that it would not resolve the ongoing energy crisis.

- Most notable opposition to this Bill is Efficient Group Chief economist Davie Roodt, who stated that “the R254 billion was likely to increase after Eskom agreed to a three-year annual wage increase of 7% for its non-managerial employees”.
- Freedom Front Plus (FF+) member of Parliament (MP) Wouter Wessels said the Bill will solve the real problem. “That is outstanding debt. This Bill is only addressing that. It is not going to address the fact that there’s generation capacity needed.”
- Nevertheless, the outcomes of the vote were 30 in favour, against 18, and without abstentions.
- Given the critical need for a stable power supply, bailouts for the power utility are important, however in the long run, Eskom will need to chart a path for a sustainable financial model. Ideally one that will not require further bailouts from the government.
- Aside from the R254 billion debt-relief arrangement announced this year, the National Treasury has awarded Eskom R242 billion in bailouts between 2013/14 and 2022/23.
- This generally begs the question of whether this time around the utility will be able to effectively address its financial and operational woes.

Concerns over the National Health Insurance Bill

- Parliament’s Select Committee on Health and Social Services has raised several concerns around the NHI Bill that was recently passed through the National Assembly (NA).
- The Select Committee was briefed by the Department of Health on the Bill on 20 June.
- The main causes of attrition with the Bill regard its constitutionality, its financial model and the powers vested upon the Minister of Health in working out the Bills mechanics.
- Committee members are still unclear about how the NHI will improve healthcare in the country and how the scheme will be funded. There were also concerns raised around people who were undocumented and many South Africans did not have IDs.
- The NHI Bill, passed by the NA on June 13, has received praise and criticism from businesses, opposition political parties, health-care professional groups, and activists.
- Health Minister, Dr Joe Phaahla, responded to the criticisms by pointing to the “bigger picture” by way of suggesting that the members should focus on the aims of the Bill which is to give access to the marginalised healthcare users in South Africa.
- The inability by the Department of Health to competently address the issues raised by the Committee is a cause for concern. For the Bill not to do more harm than good, the Department of Health needs to start thinking of ways to address the issues raised.
- Achieving equitable healthcare access for all South Africans has long been the resolution of the ruling African National Congress (ANC), dating back several national conferences. With the party losing electoral support over several elections and threats of a further reduced majority in next year’s elections, the ANC will look to enact the bill into law and use it as a campaign tool.
- It is likely that if and when the bill is enacted in its current form it will be challenged in court.



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