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## Commencement of certain sections of the Protection of Personal Information Act, 2013

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The Protection of Personal Information Act, 2013 (Act 4 of 2013) gives effect to section 14 of the Constitution which provides that everyone has the right to privacy. The Act promotes the protection of personal information processed by public and private bodies and seeks to balance the right to privacy against other rights, such as access to information.

The Act has been put into operation incrementally, with a number of sections of the Act having been implemented in April 2014. Some of these sections include those relating to the establishment of the Information Regulator. The members of the Information Regulator took office on 1 December 2016.

Many of the remaining provisions of the Act could only be put into operation at a later stage as they require a state of operational readiness for the Information Regulator to assume its powers, functions and duties in terms of the Act.

Much has since been done in this regard culminating in the commencement of a number of remaining sections which has now been proclaimed by the President. The relevant sections and applicable dates are as follows:

Sections 2 to 38; sections 55 to 109; section 111; and section 114 (1), (2) and (3) shall commence on 1 July 2020.

Sections 110 and 114(4) shall commence on 30 June 2021.

The sections which will commence on 1 July 2020 are essential parts of the Act and comprise sections which pertain to, amongst others, the conditions for the lawful processing of personal information; the regulation of the processing of special personal information; Codes of Conduct issued by the Information Regulator; procedures for dealing with complaints; provisions regulating direct marketing by means of unsolicited electronic communication, and general enforcement of the Act.

Section 114(1) is of particular importance as it states that all forms of processing of personal information must, within one year after the commencement of the section, be made to conform to the Act. This means that entities (both in the form of private and public bodies) will have to ensure compliance with the Act by 1 July 2021. However, it stands to reason that private and public bodies should attempt to comply with the provisions of the Act as soon as possible in order to give effect to the rights of individuals.

The reason for the delay in relation to the commencement of sections 110 and 114(4) – which are to commence on 30 June 2021 - is that these sections pertain to the amendment of laws and the effective transfer of functions of the Promotion of Access to Information Act, 2000 (PAIA) from the South African Human Rights Commission to the Information Regulator. In this regard, the

Commission must finalise or conclude its functions referred to in sections 83 and 84 of PAIA and all mechanisms must be in place for the Regulator to take over these functions.

Entities which process personal information must ensure that it is done in a lawful way. The Act is fundamental in safeguarding persons' personal information and thus protecting them against data breaches and theft of personal information.

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