

Small firms 'panic' as five-year exemption ends

A five-year exemption to a law that requires small businesses to provide information on their activities to the South African Human Rights Commission is set to expire at the end of the month

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A FIVE-year exemption to a law that requires small businesses to provide information on their activities to the South African Human Rights Commission is set to expire at the end of the month.

This leaves them with less than two weeks to comply or face possible fines and even imprisonment, although there is no record of any enforcement of the law due to noncompliance.

Small businesses and other private bodies are required to present information such as owner details in a manual to the commission. This requirement is set out in the Promotion of Access to Information Act, which aims to increase information flow, transparency and accountability in the public and private sector.

The provision is in keeping with the constitutional right to access to information in the public interest, giving individuals looking for information a clear idea of what is available if they can provide the necessary justification for wanting it.

However, the Department of Justice and Constitutional Development in 2005 exempted small businesses, recognising the potential administrative burden, but this has not yet been renewed. But Daniella Kafouris, manager of risk advisory services at Deloitte, said a five-year extension to achieve compliance was extended to private companies in sectors such as financial and business services with an annual turnover of more than R10m, along with agricultural businesses with a turnover of more than R2m and mining and quarry businesses with sales of more than R7m.

"Now they have to comply and a lot of companies are in a panic. Some found out too late that the extension will come to an end this year, but others have planned for it," Ms Kafouris said.

The head of the access to information unit at the South African Human Rights Commission, Chantal Kisoona, said the commission recognised the need to balance the purpose of the act with the needs of small businesses, which might not have the legal resources to comply.

The commission had petitioned the Department of Justice to extend the exemption, but was still waiting for a response, she said.

Although the legislation had been in place for a decade, there were low levels of compliance with this component by the public sector. But the private sector response has been "remarkable", she said.

There were stiff penalties for noncompliance, as much as two years in prison for a business owner, or a fine, but to date these penalty provisions had not been implemented, said Ms Kisoona.

SA was fortunate to have legislation that provided qualified access to a private company's information, and was celebrated worldwide because of this, she said.

Dario Milo, a partner at Webber Wentzel, said the legal firm had received several requests in the past two weeks from companies seeking assistance with compiling the manuals under the

Promotion of Access to Information Act. There was no legal provision for another extension and those not compliant would be in breach of the act, he said.

Ms Kafouris said companies still drafting or reviewing their manuals would do well to also consider the provisions of the Protection of Personal Information Act. If they complied with Promotion of Access to Information Act, there would be no need to register with the protection of personal information regulator.