



Public Participation and the Law

Speaker: Janice Tooley



09:40 - 10:25	Comparison of PP for WULA & EIA applications
10:25 - 11:10	PAIA, POPIA & EIA
11:10 - 11:30	Questions



- Online Event
- Friday, 7 November 2025

A comparison of PP for WULA & EIA applications (EA, WML, AEL)

1. National Water Act, 1998

- Section 22: permissible water use
- Section 41: Procedure for licence applications
- Water Use Licence & Appeal Regulations, 2017 (amendment pending)

2. National Environmental Management Act, 1998

- Section 1: Definition of a specific environmental management Act (SEMA), includes the National Water Act and subordinate legislation
- Section 2 principles
- Sections 23 & 24
- Section 24L: Alignment of environmental authorisations
- EIA Regulations 2014 (as amended; amendment pending)

3. Constitution Section 33 & Promotion of Administrative Justice Act, 2000 - “PAJA”

Proposed amendments published for comment - 19 May 2023

Status?

STAATSKOERANT, 19 MEI 2023		No. 48630 79
DEPARTMENT OF WATER AND SANITATION		
NO. 3434		19 May 2023
No. R. 2022		
NATIONAL WATER ACT, 1998 AS AMENDED (THE "ACT")		
THE REVISION OF REGULATIONS REGARDING THE PROCEDURAL REQUIREMENTS FOR WATER USE LICENCE APPLICATIONS AND AMENDMENTS		
I, Senzo Mchunu, Minister of Water and Sanitation, in terms of section 69(1) of the National Water Act, 1998 (Act No. 36 of 1998), hereby publish for public comments the regulations regarding the procedural requirements for water use licence applications and amendments as set out in the Schedule hereto. Members of the public are invited to submit written comments on the proposed notice to the Minister of Water and Sanitation within sixty (60) days of publication of this notice in the following manner. (a) Post: Private Bag X313 Pretoria 0001 (b) Fax: (012) 323 0321 (c) E-mail: skosanam@dws.gov.za Comments must be marked for the attention of the Chief Director: Water Use Licensing Management: Adv. S Skosana. The Minister of Water and Sanitation has, under section 26(1)(k) of the National Water Act, 1998 (Act No. 36 of 1998), as amended, made the Regulations in the Schedule.  SENZO MCHUNU, MP MINISTER: WATER AND SANITATION DATE: 10/05/2023		

Water Use Licence Application & Appeals Regulations, 2017

- ▶ GN R267 in GG 40713 of 24 March 2017

PUBLIC PARTICIPATION

17. Procedure for public participation
18. Register for interested and affected parties
19. Public Participation Report

A comparison of PP for WULA & EIA applications: similarities & differences

	WULA&A Regulations	EIA Regulations
Calculating time	• Exclude public holidays; 15 December to 5 January	
Fixing notice board	• Visible & publicly accessible at site and any alternative sites • At least 60cm by 42 cm • <i>Font size: not less than 48 (WULA); lettering & format determined by competent authority (EIA)</i>	
Written notice	• Owners, persons in control; occupiers of site & alternatives; & adjacent to site • Municipal councillor and rate payers organisation • Any organ of state with jurisdiction • Any additional party required by licensing authority • <i>WULA + Valid land claimant</i>	

	WULA&A Regulations	EIA Regulations
Advertisements	• 1 local newspaper / official Gazette • At least 1 provincial national newspaper if activity / water use / impact extends beyond metro <i>or local (WULA) / district (EIA) municipality</i> boundary (unless in Gazette)	
Reasonable alternative notice methods	• Agreed to by responsible / competent authority • Persons desirous but unable to participate - illiteracy or disability (+ <i>EIA any other disadvantage</i>)	
Contents of notifications	• Details of application (WULA - + “adequate”) • Nature & locality of water uses / activities • Where further information can be obtained • Manner in which & person to who representations can be made • <i>WULA: + application has been submitted to authority; water uses; specified date for lodging comments/objections (not <u>more</u> (???) than 60 days after last notice)</i> • <i>EIA: + whether basic assessment or S&EIR procedures</i>	

	WULA&A Regulations	EIA Regulations
I&AP register	Names, contact details and address	
	All persons referred to in 17(3)(b) (written notice) who: • took part in ppp • during consideration of WULA • 2 years after licence granted	Submit register to competent authority of persons who: • submitted comments • attended meetings • Requested registration • All organs of state with jurisdiction
Comment period	Min. 60 days	Min. 30 days
No. of comment periods	1	1 (BA) or 2 (S&EIR)
Landowner consent	Application form (lawful access)	Required if applicant is not the landowner (except mining, linear or SIP projects)

	WULA&A Regulations	EIA Regulations
I&APs' right to comment & assistance	Implicit - Appendix D Regulation 19(2) - - persons unable to access written comments (illiteracy, disability) - reasonable alternative methods of recording comments	Regulation 43: Registered I&APs State department - 30 days Regulation 44(2) - persons unable to access written comments (illiteracy, disability, other disadvantage) - reasonable alternative methods of recording comments
Public Participation Guidelines	None	S24J Public Participation Guidelines, 2017 - meetings; when participation needs to be more than “minimum requirements” in EIA Regulations
Public participation record	Regulation 19 & Appendix D - 8 - Public Participation Report	Regulation 44(1) & Appendices 1 - 6

WULA&A Regulation 19. Public Participation Report

(1) The applicant must compile and submit a public participation report to the responsible authority containing the following:-

- (a) written comments or objections of interested and affected parties;
- (b) records of meetings; and
- (c) register of I&AP as contemplated in regulation 18.

ANNEXURE D: TABLE OF CONTENTS OF TECHNICAL REPORTS FOR MINIMUM INFORMATION REQUIREMENTS TO BE SUBMITTED

8. Public participation report (purpose: consultation of interested & affected parties)

- ▶ 1. Introduction
- ▶ 2. Objectives of the public participation
- ▶ 3. Identification of I&APs
- ▶ 4. Notification of I&APs
 - 4.1 Method of notification
 - 4.2 Proof of notification
- ▶ 5. Notification of I&APs of reports and other studies
- ▶ 6. I&APs
 - 6.1 Access and opportunity to comment on all written submissions
 - 6.2 Response to comments received: feedback to I&APs
 - 6.3 Disclosure of I&APs' interests
 - 6.4 Notifying I&APs of the decision
- ▶ 7. Record of issues raised
- ▶ 8. Addressing the comments and concerns raised by the I&APs
- ▶ 9. Conclusions and recommendations

	WULA&A Regulations	EIA Regulations
Notification of decision	Person who lodged an objection during WULA	Registered I&APs within 14 days of date of decision
Right of appeal	Applicant / other person if submitted objections during WULA (Reg. 21 + NWA S148(1)(f))	No restrictions NEMA S43
Appeal	Within 30 days to Minister (Water Tribunal) of coming aware of decision / provided with reasons	Within 20 days of being notified National Appeal Regulations, 2025

Integrated licensing

NEMA S 24L: Alignment of environmental authorisations

Competent authority (environmental authorisation) & any other authority empowered under a SEMA may agree to issue an integrated environmental authorisation.

2014 EIA Regulations:

► 7(3) application for environmental authorisation & application for licence ITO SEMA / any other legislation: processes - cooperative governance.

41(7) application for environmental authorisation & application for licence ITO SEMA, combined public participation processes, provided all relevant authorities agree.

NWA 22. Permissible water use

(3) A responsible authority may dispense with requirement for a licence for water use if satisfied that the purpose of this Act will be met by the grant of a licence, permit or other authorisation under any other law.

(4) In the interests of cooperative governance, a responsible authority may promote arrangements with other organs of state to combine their respective licence requirements into a single licence requirement.

NWA 41. Procedures for licence applications

(5) The Minister must align and integrate the process for consideration of a water use license with the timeframes and processes applicable to applications for-

(a) licences, permits or rights for prospecting, exploration, mining and production in terms of the Mineral and Petroleum Resources Development Act, 2002; and

(b) environmental authorisations in terms of the NEMA or SEMA.

WULA & Appeals Regulations:

17 (2) Where: public participation process already undertaken through EIA processes or any other public consultation process, & contains & covers all issues pertaining to water use activities, then that public participation process report may, subject to approval by responsible authority, be submitted for requirements of WULA

NEMA Section 2 Principles

- Apply throughout South Africa
- to the actions of all organs of state that may significantly affect the environment &
 - (c) serve as guidelines - any organ of state must exercise any function when taking any decision in terms of NEMA or any statutory provision concerning environmental protection;
 - (e) guide interpretation, administration & implementation of NEMA + any other law concerned with environmental protection & management.

NEMA S2 Principles relevant to public participation

- Environmental management must place people & their needs at forefront of its concern.
- Environmental management must serve people's physical, psychological, developmental, cultural & social interests equitably.
- Participation of all interested & affected parties in environmental governance must be promoted.
- All people must have opportunity to develop understanding, skills & capacity necessary for achieving equitable & effective participation.
- Participation by vulnerable & disadvantaged persons must be ensured.

NEMA S2 Principles

- Decisions must take into account interests, needs & values of all I&APs, & this includes recognising all forms of knowledge (traditional & ordinary).
- Decisions must be taken in open & transparent manner.
- Access to information must be provided in accordance with the law.
- The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest & the environment must be protected as the people's common heritage.
- Full participation of women & youth in environmental management & development must be promoted.

Constitution Section 33 & Promotion of Administrative Justice Act, 2000 (“PAJA”)

Constitution, Section 33: Just administrative action

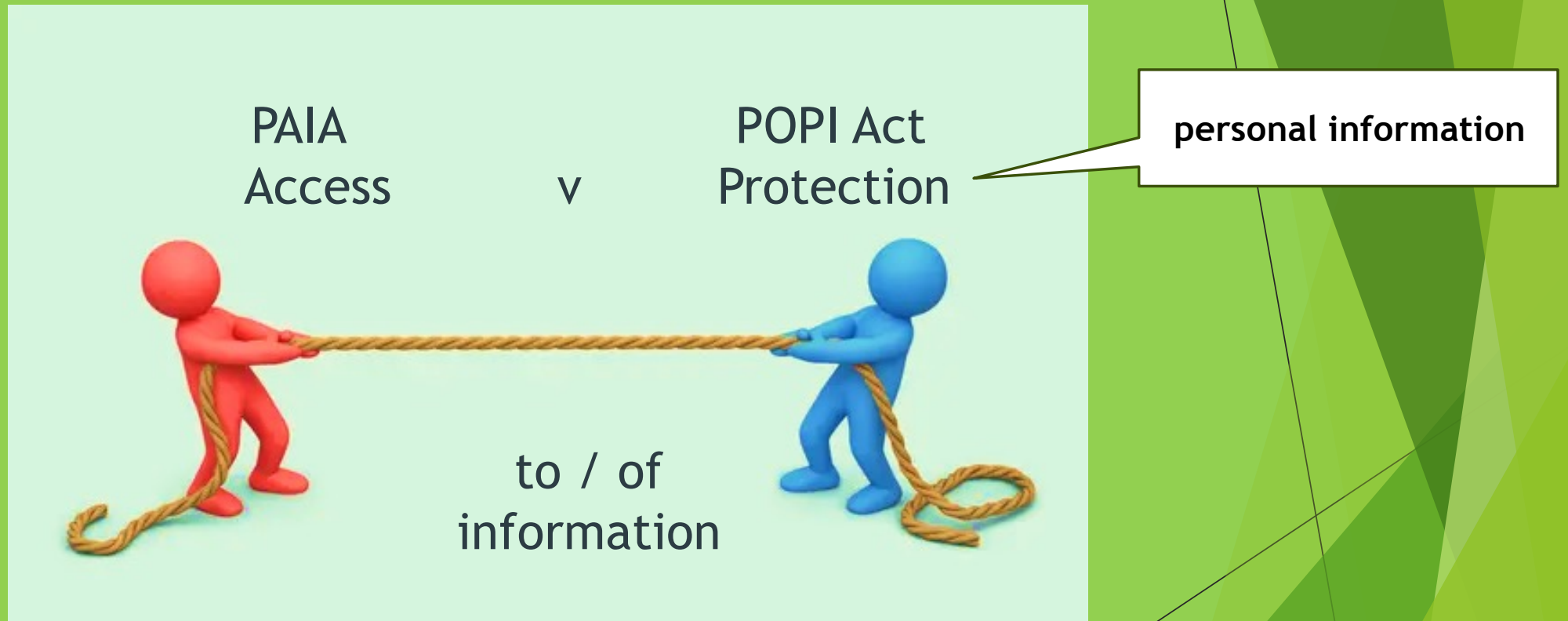
1. *Everyone has the right to administrative action that is **lawful, reasonable & procedurally fair**.*
2. *Everyone whose rights have been adversely affected by administrative action has right to be given written reasons.*
3. *National legislation must be enacted to give effect to these rights, and must:-*
 - (a) *provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;*
 - (b) *impose a duty on the state to give effect to the rights in ss (1) & (2);*
 - (c) *promote an efficient administration.*

Promotion of Administrative Justice Act, 2000

- “PAJA”

- *Decisions must be lawful, reasonable & procedurally fair.*
 - Adequate notice & right to make representations (unless reasonable & justifiable)
 - Right to clear statement & written reasons (procedure)
 - Right to have decision reviewed by the courts (once internal remedies followed)
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- ▶ The Escarpment Environment Protection Group case
 - ▶ SDCEA / Eskom SCA case
 - ▶ Sustaining the Wild Coast / Shell (pending Constitutional Court decision)
 - ▶ Searcher
 - ▶ MCEJO / Tendele

PAIA, POPI Act & EIA



How does this affect EIA?

Access to information:

Constitution, 1996:

Section 32: Access to information

(1) Everyone has the right of access to:-

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Access to information:

Promotion of Access to Information Act, 2000 & Regulations:

- *Information held by the state / public bodies*
- *Information held by private bodies*
- *Grounds for refusal of access to records*
- *Mandatory disclosure in the public interest*

Promotion of Access to Information Act 2 of 2000 (PAIA)

Grounds for Refusal of Access to Records incl.

- ▶ privacy of third party who is natural person
- ▶ certain records of South African Revenue Service
- ▶ commercial information of third party
- ▶ confidential information of third party
- ▶ safety of individuals, and protection of property
- ▶ police dockets in bail proceedings, law enforcement and legal proceedings
- ▶ records privileged from production in legal proceedings
- ▶ research information of third party,
- ▶ defence, security and international relations of Republic
- ▶ economic interests and financial welfare of Republic and commercial activities of public bodies
- ▶ manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

- **S 46 & 70 Mandatory disclosure in public interest**
 - (a) the disclosure of the record would reveal evidence of-*
 - (i) a substantial contravention of, or failure to comply with, the law; or*
 - (ii) an imminent and serious public safety or environmental risk; AND*
 - (b) the public interest disclosure clearly outweighs harm contemplated in the provision in question*



RIGHT OF ACCESS TO INFORMATION

Arcelormittal South Africa v Vaal Environmental Justice Alliance (69/2014 [ZASCA] 184 26 November 2014)

- ▶ Environmental master plan (rehabilitation of Vanderbijlpark site) & number of documents (Vaal dump site)
- Do civic organisations have a right to access to information?
- SCA re-affirmed High Court's decision that:
 - ▶ civic organisations - VEJA - advocates for environmental rights & community justice
 - ▶ entitled to information under PAIA
 - ▶ particularly where record or information is required for exercise or protection of rights & in public interest.

Access to information:

NEMA Section 2 principles:

Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

EIA Regulations, 2014: disclosure of material information

Section 12: applicant's duties

Section 13: EAP's & specialist duties (unless protected by law)

Chapter 6: Public participation

Protection of information:

Constitution, 1996:

Section 14. Privacy

Everyone has the right to privacy

Protection of Personal Information Act, 2013

- Regulations
- Guidelines to develop a Code of Conduct

POPI Act: key terminology

“data subject” means the person to whom personal information relates

“person” means a natural person or a juristic person;

“responsible party” means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information;

“operator” means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party;

“private bodies” (trade, business or profession) v **“public body”**

Definition of “personal information”

Information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to-

- ▶ race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth
- ▶ education or medical, financial, criminal or employment history
- ▶ any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- ▶ biometric information;
- ▶ personal opinions, views or preferences of the person;
- ▶ correspondence sent by person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- ▶ views or opinions of another individual about the person; and
- ▶ name of person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

“processing” means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including-

- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- (b) dissemination by means of transmission, distribution or making available in any other form; or
- (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;

“consent” means any voluntary, specific & informed expression of will in terms of which permission is given for the processing of personal information

Protection of Personal Information Act 4 of 2013 (POPIA) - purpose

- ▶ give effect to constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at-
 - ▶ **balancing right to privacy against other rights, particularly right of access to information;**
 - ▶ protecting important interests, including free flow of information within Republic and across international borders;
- ▶ regulate manner in which personal information may be processed, by establishing conditions, in harmony with international standards, that prescribe minimum threshold requirements for lawful processing of personal information;
- ▶ provide persons with rights and remedies to protect their personal information from processing that is not in accordance with this Act;
- ▶ establish voluntary and compulsory measures, including establishment of an Information Regulator, to ensure respect for and to promote, enforce, and fulfil the rights protected by this Act.

POPI Act - key provisions

Section 3: Application & interpretation

(3): This Act must be interpreted in a manner that-

- (a) gives effect to the purpose of the Act set out in section 2 (purpose); and
- (b) **does not prevent any public or private body from exercising or performing its powers, duties and functions in terms of the law as far as such powers, duties and functions relate to the processing of personal information and such processing is in accordance with this Act or any other legislation, as referred to in subsection (2), that regulates the processing of personal information.**

4. Lawful processing of personal information - conditions

- (a) “Accountability” - section 8;
- (b) “Processing limitation” - sections 9 to 12;
- (c) “Purpose specification” - sections 13 and 14;
- (d) “Further processing limitation” - section 15;
- (e) “Information quality” - section 16;
- (f) “Openness” - sections 17 and 18;
- (g) “Security safeguards” - sections 19 to 22;
- (h) “Data subject participation” - sections 23 to 25

EIAs & POPI Act - personal information:

EIA Regulations, 2014: Chapter 6: Public participation

39. Obtain written landowner consent

41(2)(b): Written notice to:

- occupiers of site, landowners/persons in control of site & adjacent to site
- Municipal councillor
- Any organ of state with jurisdiction
- Details of contact person (EAP / other) in advertisements, notices, notice boards

EIA Regulations, 2014: Chapter 6: Public participation

42. Open & maintain register of interested and affected parties

- Submitted written comments
- Attended meetings
- Requested in writing to be registered
- All organs of state with jurisdiction

+ Submit register to competent authority (names, contact details & addresses of I&APs)

43 & 44. Comments on reports and plans

- I&APs' written comments
- I&APs' comments otherwise recorded (illiteracy, disability, other disadvantage)
- Disclosure of direct business, financial, personal or other interests
- Records of meetings (including attendance registers)

EIA Regulations, 2014: Applications & reports

16. Applicant's name & contact details; EAP's details

19. Basic Assessment Report; 21. Scoping Report; 23. EIA Report read with Appendices 1, 2,3

- EAP's details and CV
- Public participation details (copies of supporting documents & inputs)
- Summary of I&AP issues
- Inclusion of comments & inputs from stakeholders & I&APs
- Any information provided by I&APs

EIA Regulations, 2014: Applications & reports

Appendix 4: EMPr - EAP's details

Appendix 5: Closure Plan - EAP's details; details of PPP, incl. summary & copies of representations & comments received from I&APs

Appendix 6: specialist studies (and gazetted protocols & minimum requirements) - specialist's details & CV; details of PPP, incl. summary & copies of representations & comments received from I&APs

4. Notification of Registered I&APS OF decision

34. Environmental audits - recommendations to potential & registered I&APs

Compliance with POPIA - EIA

1. OBTAIN PRIOR WRITTEN CONSENT FROM I&APs to use details for specific purpose
2. IF NOT, REDACT / WITHHOLD PERSONAL INFORMATION FROM PUBLIC DOCUMENTS (e.g. attendance registers, minutes, correspondence, CRR)
3. EXCEPTIONS:
 - Legal obligation / duty -
 - Provide full I&AP register & full public participation record to competent authority
 - Provide EAP's and specialists' details and CVs
 - Summary of issues; comments and responses
 - Government officials & municipal officials (contact details = tolls of public service)
 - Details already in public domain

Compliance with POPI Act - EIA

4. COLLECT DIRECTLY FROM DATA SUBJECT EXCEPT IF DETAILS DELIBERATELY IN PUBLIC DOMAIN
5. NOTIFICATION WHEN COLLECTING PERSONAL INFORMATION & PURPOSE
6. BE CAREFUL OF PERSONAL INFORMATION OF OTHER I&APS WITHIN COMMENTS
7. DON'T SHARE I&AP DATABASES WITH THIRD PARTIES EXCEPT 'OPERATORS' (PROPER CONTROL)
8. DON'T USE DATABASES FOR OTHER PURPOSES WITHOUT CONSENT
9. SECURE DATABASES
10. THESE RULES APPLY TO APPLICANTS, EAPS, SPECIALISTS, PERSON CONDUCTING PUBLIC PARTICIPATION, ENVIRONMENTAL AUDITORS & "OPERATORS")

ERR ON THE SIDE OF CAUTION!

Compliance with POPIA - general compliance

1. APPOINT INFORMATION OFFICER - register
2. CONDUCT DATA PROTECTION AUDIT -personal information your business collects, how it is processed, stored, and shared etc
3. DEVELOP & IMPLEMENT DATA PROTECTION POLICIES AND PROCEDURES (Data Handling Policy, Privacy Policy, Data Breach Policy, and any other relevant documents) - communicate to employees and stakeholders
4. OBTAIN CONSENT - explicit consent from data subjects before collecting & processing their personal information (consent must be documented & can be withdrawn by data subject at any time)

5. **SECURE PERSONAL INFORMATION** - appropriate technical and organisational measures to protect personal information from unauthorised access, loss, or destruction (encryption, secure storage solutions, and regular security assessments).
6. **TRAIN EMPLOYEES** - regular training sessions (understand their responsibilities under POPIA & data protection principles, importance of securing personal information, & procedures for handling data breaches)
7. **MONITOR & REVIEW COMPLIANCE** (periodic audits & assessments to identify & address any new risks)
8. **REPORT DATA BREACHES** to the Information Regulator within 72 hours & notify affected data subjects. (incident response plan)
9. **MAINTAIN RECORDS** (demonstrate compliance - detailed records of all data processing activities)

PAIA, POPI Act and EIA

Access
PAIA

Protection
POPIA



EIA
to / of
information