

WORKING PAPER FOR THE ESTABLISHMENT OF AN

ASSOCIATION FOR LEGAL PRACTITIONERS

Introduction

1. The Legal Practice Act 28 of 2014 creates a new regulatory regime for the entire legal profession.

This necessitates the formation of a broad-based professional association for all practitioners that will not only focus on the interests of practitioners but position the legal profession as Rule of Law champion and of protecting and promoting constitutional rights.

2. The constituencies of the attorneys' profession were consulted in 2015 and 2016, which led to a resolution to establish an association of legal practitioners.
3. Intensive further consultation will take place to ensure that legitimacy, value proposition and leadership are entrenched in the organisational design.

EXECUTIVE SUMMARY

The Association will be a professional home to all legal practitioners in South Africa. The Association will represent, add value to and speak on behalf of legal practitioners. It will promote the image and independence of the legal profession and ensure its national impact by protecting and promoting the values enshrined in the Constitution and by acting in the public interest.

VISION

- A unified, progressive legal practitioners' Association, with an extensive membership will be established prior to the inauguration of the Legal Practice Council;
- This Association will be recognised for leadership, which is principle-based, inclusive and innovative in its thinking and action, as it serves the interests of the legal profession and promotes its dignity and professional standing;
- The Association will demonstrate in its actions a passion for the Rule of Law and the role of the profession in the promotion thereof for the public good and in promoting the Constitution of the Republic of South Africa.

PURPOSE OF THE ORGANISATION

The Association will be a professional home to all legal practitioners in South Africa. The Association will represent, add value to and speak on behalf of legal practitioners, as set out in the value proposition. It will promote the independence of the legal profession and ensure its national impact by protecting and promoting the values enshrined in the Constitution and by acting in the interest of the public.

VALUE PROPOSITION FOR MEMBER LEGAL PRACTITIONERS

(This is critical for developing attractiveness and sustainability of the business of the Association).

The Association will provide value for member legal practitioners by

- having influence with regard to legal and other issues in the public interest;
- providing accessible and affordable professional education and development: both vocational and CPD;
- representing and promoting their rights and the value of their work;
- identifying and serving their common interest;

- promoting their constructive, powerful image;
- providing them with business and practice support;
- providing affiliation at international, national and regional levels;
- ensuring liaison with the Legal Practice Council;
- providing agency services for the profession e.g. authentication of electronic signatures; and
- ensuring research, investigation and input to legislation.

For consideration

ASSOCIATION FOR LEGAL PRACTITIONERS

1. SUGGESTED PREAMBLE TO THE CONSTITUTION

WHEREAS South Africa is one sovereign, democratic State founded on the following values:

- human dignity, the achievement of equality, the advancement of human rights and freedoms,*
- non racialism and non-sexism, and*
- the supremacy of the Constitution and the Rule of Law;*

WHEREAS an independent judiciary and independent legal profession are a cornerstone of a Constitutional democracy;

WHEREAS the legal profession recognises the essential need to promote, defend and advance the Constitution and its values;

WHEREAS this role of lawyers is recognised by the United Nations Charter on the Basic Principles of the Role of Lawyers;

WHEREAS the legal profession in South Africa recognises that this undertaking can only be achieved by a united, strong, legitimate and independent legal profession;

WHEREAS the legal profession recognises that it is necessary to promote the status, dignity and interests of the profession;

AND WHEREAS the legal profession in South Africa is resolved to reject the divisions of the past, the use of law as a tool of oppression and injustice, now is united to promote, defend and advance the Constitution, its values and the Rule of Law;

IT IS HEREBY RESOLVED AS FOLLOWS:

2. NAME OF THE ASSOCIATION

The name will be determined by the Task Team.

It should be reflective of the purpose of the Association and strongly enhance its recognition, nationally and internationally.

3. IMPLEMENTATION

3.1 Legitimacy, leadership and organisational culture

The Association must be recognised as legitimate by all stakeholders that are relevant to the profession. It is important to ensure that the Association will be influential in its action as well as attractive to potential members.

For this reason, the Association will be the centre of leadership for the profession. It will exercise 360 degrees leadership in making an impact with regard to the Legal Practice Council, Government, stakeholders, members and the public at large.

Leadership will determine the organisational culture of the Association. This will influence its direction, sustainability as well as its processes. The culture must reflect an adherence to high standards of service, sustainable relationships, credibility, innovation and imagination.

3.2 Statement of guiding principles

(This is an extremely important element as it will contribute substantially to the credibility and relevance of the entity).

- ensuring independence of the legal profession;
- recognising the status, dignity, value and role of legal practitioners in creating a just society (advocacy);
- promoting high standards of practice;
- promoting a culture of professional development;
- committing to a code of ethics;
- respecting transformational imperatives;
- promoting and protecting constitutional values;
- strengthening regional and international engagement;
- responding dynamically to change; and
- ensuring best practice in governance.

3.3 Finance and assets

(Most international professional legal associations are faced by the same challenge: How to broaden its financial base to ensure sustainability?)

Assets/funding currently available in the profession should be considered as a matter of urgency.

The current trademarks (LEAD, De Rebus and LSSA) must be protected.

As many sources as possible should be investigated.

Possible sources of income can include:

- membership fees;
- agency fees for actions on behalf of members;
- remuneration for support services to practitioners, e.g. material, advice, research;
- consultancy services, e.g. research, opinions, etc.;
- ICT developments, e.g. advanced electronic signatures
- education: tuition fees, sales and business income;

- grants from Legal Practitioners Fund and Legal Practice Council;
- grants from third parties, e.g. SETA;
- outsourced services;
- commercial endorsements, e.g. insurance and financial benefits;
- donations;
- advertising;
- partnerships and joint ventures;
- transfer of LSSA assets/funds.

3.4 Professional networking and liaison

(In a modern environment the establishment of sustainable, productive relationships is critical).

The following will be relevant:

- affiliations with international, regional and national organisations;
- association with similar organisations;
- structured exchanges with the judiciary and government;
- accreditation of the profession and education;
- partnerships and joint ventures with relevant organisations e.g. universities and business;
- stakeholder relationships;
- interaction with the public.

3.5 Communication strategy

Internal and external communication must at all times be directed by an effective and efficient strategy to promote the entity as an influential, professional and value-adding solution as well as to continue to inform efficiently.

The communication strategy will be driven by the branding development.

3.6 Education

The Legal Practice Act does not prescribe the actual provision of education for the profession. The future educational division will be aligned with the Association.

(The extent of provision will be determined by various factors, inter alia decisions by the NF with regard to vocational training, continuing professional development, assessment, accreditation and as well as by funding and training needs).

3.7 Governance and elections

This must be refined to ensure legitimacy.

3.8 Membership

- Membership will be open to all admitted legal practitioners who embrace the vision of the Association.
- Members will be organised in chambers based on their designations.
- Practising legal practitioners will have voting rights and be entitled to add an appropriate acronym to identify membership, such as LLP (Licenced Legal Practitioner). This must be registered

3.9 Location

The national office of the Association must preferably be located close to the office of the Legal Practice Council.

Provision must be made for provincial offices. Education and provincial offices may be combined, subject to sustainability.

3.10 Form of operation

A voluntary Association with tax exemption is suggested for flexibility.

The Task Team will give consideration to statutory recognition.

3.11 Management operation

The structure and system must be cost-effective. Appropriate expertise will be required and sustainability requires a lean structure, supported by appropriate technology.

3.12 Staffing

A modern approach to staffing will be necessary.

It is envisaged that general management, members' affairs, advocacy, input to legislation, communication, journal and education will be primary functions, together with support functions.

Staffing should apply a mixture between a minimum but efficient full-time staff complement and the outsourcing or allocation of other functions on contract per result basis, to non-fulltime persons.

4. LSSA FUNCTIONS

Without arguing for the continuation of the LSSA, the transfer of relevant functions must be considered with reference to the risk workshop to be conducted by the LPA Task Team and Management.

LSSA COUNCIL TASK TEAM

7 SEPTEMBER 2016

For consideration