



SUBMISSIONS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE LEGAL PRACTICE AMENDMENT BILL [B11-2017]

1. The Law Society of South Africa (LSSA) brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing the attorneys' profession in South Africa.
2. The LSSA welcomes the opportunity to provide comment on the Legal Practice Amendment Bill, 11 of 2017.
3. The LSSA is mindful of the fact that the issue of appearance in the Higher Courts is not dealt with in the Bill, but believe that, for completeness sake, the Bill should also address the disparity between the position of attorneys and advocates.
4. Section 25(2) of the Legal Practice Act, 2014 (LPA) provides that a legal practitioner, whether an advocate or an attorney, has the right to appear in any court or before any board, tribunal or similar institution.
5. The right of attorneys to appear in the High Court, the Supreme Court of Appeal or the Constitutional Court is however restricted. In terms of Section 25(3) of the LPA, attorneys wishing to appear in these courts have to apply to the registrar for a certificate of right of appearance, which will be issued if the attorney:
 - has been practising for a continuous period of not less than 3 years (the period may be reduced if the attorney has undergone a trial advocacy training programme) **and** is in possession of an LLB degree; (Section 25(3)(a)); *or*

- has gained appropriate relevant experience (Section 25(3)(b)).
6. In terms of the Right of Appearance in Courts Act, 62 of 1995 (which will be repealed once the LPA becomes fully operational), attorneys are entitled to acquire the right to appear in the High Court, the Supreme Court of Appeal and the Constitutional Court if he or she has been practising as an attorney for a continuous period of at least 3 years *or* is in possession of an LLB degree or a foreign degree equivalent to an LLB degree (Section 4(1)(a) and (b)).
 7. It should be noted that in future it will be more onerous for many attorneys to acquire a right of appearances certificate than at present, since, instead of years of practice *or* an LLB degree, the test will now be years of practice *and* an LLB degree.
 8. Further, no provision is made for an attorney in possession of a foreign degree to appear in these courts, which we believe defeats the purpose of Section 24(3) pertaining to the right of foreign legal practitioners.
 9. Conversely, advocates will be entitled to appear in any court, including the High Court, the Supreme Court of Appeal and the Constitutional Court, without having to meet the requirements set out in Section 25(3).
 10. The LSSA believes that it was never the intention of the legislature to exclude qualified legal practitioners from appearing in any court in the country. All legal practitioners now have a common law degree to complete and, should the LSSA's proposal as regards common practical vocational training (PVT) find favour, will have a common PVT programme for admission, with all the best training practises incorporated into this training.
 11. One of the objectives of the LPA is to bring about a transformed and unified legal profession that will enhance access to justice and, on the principle of equality and transformation, no legal practitioner should be excluded from appearing in any court in the country to argue any case.
 12. Should the LSSA's proposals regarding PVT not be accepted, trial advocacy could be a compulsory subject for the training of attorneys.

13. The LPA further does not address the position of attorneys in possession of law degrees other than the LLB degree, who have been issued with right of appearance certificates under the Right of Appearance in Courts Act. Such attorneys should retain their existing rights.
14. *In view of the above, the LSSA recommends that the words following “institution” in Section 25(2) of the LPA and the whole of Sections 25(3) and (4) be deleted.*
15. *We also recommend that all reference to “candidate attorney” in Section 25(5) be replaced with the words “candidate legal practitioner”.*