

## SUMMARY OF WRITTEN SUBMISSIONS: LEGAL PRACTICE BILL [B 20 - 2012]

### Introduction

The Portfolio Committee on Justice and Constitutional Development invited stakeholders and interested persons to make written submissions on the Legal Practice Bill [B 20 - 2012].

To date, 41 written submissions have been received.

- Table 1 provides a clause by clause summary of the submissions.
- Table 2 reflects general recommendations.

**TABLE 1**

**Submissions/Recommendations by clause**

<b>Clause</b>	<b>Name</b>	<b>Submission / Recommendation</b>	<b>DOJCD Response</b>
Long title	Legal Aid South Africa	Add "so as to create a strong and independent legal profession" , to record that the creation of a strong and independent legal profession is essential.	The Department has no objection to the principle.
Preamble	Legal Aid South Africa	Add "a strong and independent legal profession is key to the creation of an independent judiciary" , to record that the creation of a strong and independent legal profession is essential.	The Department has no objection to the principle although the preamble already provides for the strengthening of the independence of the legal profession.

Clause	Name	Submission / Recommendation	DOJCD Response
Preamble	R Naidoo	There is no clear constitutional imperative that imposes a mandatory obligation on the state to regulate the legal profession. Section 22 of the Constitution of the RSA is discretionary.	The preamble states that the professions' transformation and restructuring should be in line with the Constitution.
Preamble	UNISA	The reference to the removal of "any barrier for entry to the legal profession" is too wide. It should preferably be omitted, alternatively, amended to proclaim that only those barriers which are unnecessary, have to be removed.	The principle is supported. It is suggested that the word "unnecessary" be inserted.
Preamble	Law Society of South Africa	The reference to removal of barriers for entry into the legal profession should refer to the removal of any unnecessary barriers. There must of necessity be barriers for entry into a profession.	The principle is supported. It is suggested that the word "unnecessary" be inserted.
1	UNISA	<p>*An attorney is defined as "a legal practitioner practicing with a fidelity fund certificate". Given that a legal practitioner is defined as either an attorney or an advocate, it means that an attorney, who fails to obtain a fidelity fund certificate, is automatically an advocate.</p> <p>*"Trust account practice" means a practice conducted by one or more attorneys who are required to hold a Fidelity fund certificate". However, some legal practitioners do not need fidelity fund certificates and if a sole practitioner in a particular year does not get a fidelity fund certificate, does his firm then change from a trust account practice to something else?</p>	<p>*The Department agrees that the definition should be amended.</p> <p>*Attorneys obtain Fidelity Fund certificates in their own names, as individuals.</p>
1	Legal Resources Centre	The definition of 'attorney' is problematic as some attorneys are exempt.	The Department agrees that the definition should be amended.
1	NADEL	<p>Definitions for the following must be inserted:</p> <p>*law teacher</p> <p>*commercial entity.</p>	<p>*The Department does not agree with this proposal.</p> <p>*Clause 34(6) is clear on what a commercial entity is.</p>

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		Pupils, candidate attorneys and juristic entities are defined in the Bill.? It is not clear what the position of law teachers is.	*A law teacher will fall under the Bill if he or she is an attorney or advocate. * It is clear to whom the Bill pertains.
1	Law Society of South Africa	<p>The definitions must be amended as follows:</p> <p>"'advocate' means a legal practitioner who was duly admitted and enrolled as an advocate in terms of the Admission of Advocates Act, 1964, or who is admitted, enrolled and registered as such under this Act".</p> <p>"'attorney'" means a legal practitioner who was duly admitted and enrolled as an attorney in terms of the Attorneys Act, 1979, or who is admitted, enrolled and registered as such under this Act".</p> <p>"Conveyancer" is defined as including a person referred to in the definition of "conveyancer" in the Deeds Registries Act, 1937.( It is undesirable that there be a cross reference to other Acts, and the definition currently in the Deeds Registries Act should be incorporated into the Bill. The regulation of conveyancers should be governed by the Bill and not by the provisions of any other Act. There should be a corresponding amendment of the Deeds Registries Act to bring it into conformity with the Bill).</p>	The Department agrees that the definitions should be amended. The definitions proposed by the LSSA are supported.
1	General Council of the Bar	The definition of "advocate" must be "a legal practitioner practising as a sole practitioner on a referral basis and without a Fidelity Fund certificate."	Advocates may not always work on a referral basis (see clause 34(2)(b)).
1	R Naidoo	What does "ordinary" mean in the definition of "day" ?	The Department proposes that the definition be amended to provide that " 'day' means any day other than a

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			Saturday, Sunday or public holiday".
1	Legal Aid South Africa	The definition of "day" should be "calendar day", to accord with practice.	The Department proposes that the definition be amended to provide that " 'day' means any day other than a Saturday, Sunday or public holiday".
1	C Erasmus	The term "judiciary" should be defined to be in accordance with the Constitution.	The word is not used in the Bill and need not be defined.
1	SA Human Rights Commission	The SA Human Rights Commission registered its offices as law clinics with the provincial law societies. The definition of "law clinic" must be amended to include them.	The Department supports the principle. The SAHRC undertook to revert with specific proposals on all its suggestions.
1	C Erasmus	The definition of "legal practitioner" should be changed to "lawyer" and the definition must include judges, prosecutors, advocates, attorneys, corporate lawyers and legal researchers.	The Department does not support the proposal as the purpose of the Bill is to regulate matters pertaining to advocates and attorneys. The term "legal practitioner" is used in the Bill where a provision pertains to both advocates and attorneys.
1	General Council of the Bar	The definition of "legal practitioner" should be: "means the attorneys profession and the advocates profession.".	The Department does not agree with the proposal, as the meaning would not change. The definition, as it is, is clear and simple.
1	Legal Aid South Africa	"Legal practitioner" should be defined as "an advocate or attorney registered as such in terms of section 30 and includes a candidate legal practitioner, partnership, legal practice, commercial juristic entity, notary or conveyancer.". This creates greater certainty. Clause 2 says that the Act is applicable to all legal practitioners. It is clear that this does not include candidate legal practitioners for instance. In the cases of the other categories certainty is important.	The Department does not agree with this proposal. The proposed definition is too wide. The context in which the term is used in the Bill does not include the proposed categories.
1	Legal Aid South	The words "acting within the powers conferred	Agreed.

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	Africa	upon him or her by law" should be deleted in the definition of "Master". If a Master is not so acting, the acts are in any event invalid.	
1	N Gumbi	Commentator is a non-practising legal practitioner and fears that she will not be able to practise if the Bill is enacted.	Clause 113 provides for this aspect.
1	Competition Commission	<p>The Commission recommends that the following should be defined in the Bill:</p> <p>a) entry requirements <i>(such as examination and/or vocational training. In anticipation of meaningful competition but it is important that these entry barriers are not too high so as to prevent entry by non-legal professions);</i></p> <p>b) accountability and registration, including appropriate insurance;</p> <p>c) consumer protection measures.</p>	<p>*The Department does not agree with this proposal.</p> <p>*The meaning of 'entry requirements' is clear from the provisions of the Bill. A definition is unnecessary and would be too detailed.</p> <p>*It is not in the public interest to set too low entry requirements, thereby exposing members of the public to low standards.</p>
1	Legal Resources Centre	<p>The following must be defined:</p> <ul style="list-style-type: none"> <li>*juristic entities</li> <li>*non-profit juristic entities</li> <li>*public interest legal entities</li> <li>*community-based organizations</li> <li>*non-governmental organizations</li> <li>*practices.</li> </ul>	The Department does not agree with the proposals. These terms have meanings that are clear.

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3(a)	General Council of the Bar	<p>*Insert at the end the words "and ensures that the rule of law is upheld.", in accordance with preamble.</p> <p>*Insert a subclause "protect and promote the independence of the legal profession".</p>	<p>*The Department is not opposed to this proposal.</p> <p>* There is already a provision in clause 3 dealing with the independence of the legal profession. See clause 3(c).</p>
3(b)(i)	General Council of the Bar	It is objectionable to require that fees must always be affordable and within reach of citizenry. The final determination is the prerogative of the courts. In accordance with clause 5(b) this clause must read: "structures to determine reasonable fees chargeable by legal practitioners for legal services rendered and the provision of <i>pro bono</i> work."	It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.
3(b)(ii)	General Council of the Bar	It is unrealistic and not in the public interest that candidate legal practitioners render community service. They lack competence.	The Council can limit the matters candidate attorneys deal with in the rules in terms of clause 95(1)(p). This aspect is left to the discretion of the profession.
3(b)	Legalwise	*Wording should be "broaden access to affordable legal services by putting in place the following ....(insert a list) ".	* It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>*It is suggested that a clause be inserted:  <i>“A system in terms of which a legal practitioner is obliged to enter into a written costs agreement with a client, disclosing the proposed hourly rates for actual time spent, an estimate of the total number of hours to be spent and all other contractual terms to govern the relationship, prior to providing services. If a fixed fee is prescribed in terms of this Act or any other Act, the costs agreement must reflect that.”</i></p>	<p>fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.</p> <p>*A system as suggested might be go some way in assisting. The absence of clear written agreements on costs is the very reason that disputes arise. The suggestion might help in this regard.</p> <p>*Matters relating to fees will be addressed in terms of clause 35.</p>
3(c)	General Council of the Bar	The word "unified" must be deleted.	The Department does not agree with the proposal. The Council is intended to promote a unified, not fused, legal profession.
3(d)	UNISA	"Public interest" has developed a specialised and specific meaning in international law. There should be a reference to the public interest as in the South African Constitution. There are also theoretical philosophical problems with the "public interest" concept.	The clause deals with the general purpose of the Bill and the phrase is relevant in that context.
3	Webber Wentzel	Commentator is generally supportive of a regime to ensure that legal fees are affordable.	Noted.
3	NADEL	The fee structure will fall foul of the Competition Act. Lawyers' capacity to earn must not be limited by making access to justice the sole reason for setting fee structures.	A balance must be maintained between affordability (access to justice) and the right to earn a living.
3	Legal Aid South Africa	Add two more purposes: -(h) preserve and uphold the independence of the legal profession ; and -(i) uphold and advance the rule of law, the	There is already a provision in clause 3 dealing with the independence of the legal profession. See clause 3(c).

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		administration of justice and the Constitution of the Republic".	The principle of including the rule of law is supported.
New clause after clause 3	Legal Aid South Africa	It is proposed that the following clause be inserted: <i>"Independence of legal practitioners. In order to promote and advance the rule of law and an independent judiciary legal practitioners are independent and subject only to such controls as are provided for in this Act."</i>	The Department does not agree that this is necessary. It is too philosophical and independence is an inherent characteristic of lawyers.
4	C Erasmus	The Council must be named "Legal Professions Council".	The Department does not agree. It implies that there is more than one legal profession.
4	NADEL	The Bill does not provide for the Transitional Council and Council to have a corporate structure with perpetual succession.	Both Councils are body corporate. We are not aware of similar provisions in the case of other statutory councils.
4	I J Smuts	There is no reason for one body regulating both attorneys and advocates.	The Department does not agree. The Bill is premised on the concept of a single Council representing both advocates and attorneys.
5	Competition Commission	*The objectives of the Council cannot be inclusive of a function by the Council to develop or recommending a fee structure taking into consideration the composition of the Council.  *The Council would have, in the majority, attorneys and advocates. From a competition law perspective, it is prohibited to have competitors - in this case attorneys and advocates - setting fees for other competitors.  *The Commission recommends that the Bill provide explicitly who within the Council has the responsibility to set a fee structure.	It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.

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		<p>*The Commission recommends that the number of attorneys and advocates in the Council be diluted.</p> <p>*The Commission recommends that it be made clear in the Bill that the Minister is not obliged to follow a recommendation made by the Council or the Transitional Council on a fee structure.</p>	
5	Law Society of South Africa	The Council should also promote the interests of the legal profession, subject always to the overriding interests of the public.	Clause 5 implies this goal. However, a provision of this nature could be inserted.
5(a)	General Council of the Bar	The word "unified" must be deleted. Unity will be achieved by the creation of the Council but the two professions will exist.	"Unified" does not necessarily mean fused. The Bill is premised on the concept of a single Council representing both advocates and attorneys.
5(b)	UNISA	It is not wise to fix fees. That such price fixing only applies to registered attorneys and advocates seems discriminatory.	It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.
5(b)	Cape Bar	<p>*Accredited regional bodies responsible for advocates should be empowered to resolve fee disputes.</p> <p>*Practitioners must be required to perform a specified quota <i>pro bono</i> work.</p>	It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High

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		<p>*Incentivize practitioners who work at capped rates.</p> <p>*Place a responsibility on Regional Councils to assist persons with affordable legal services.</p>	<p>Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well. The details referred to by the Cape Bar Council will be dealt with by regulation or rules.</p>
5(g)	General Council of the Bar	Replace "determine" with "monitor".	The Department does not agree with the proposal. The commentator does not propose who instead must determine these matters.
5(h) and 6	Webber Wentzel	<p>*Commentator supports the requirement of compulsory post-qualification professional development.</p> <p>*The Bill is not clear on what this will entail, to whom it will apply.</p> <p>*Commentator requests that LSSA's proposal be used.</p> <p>*Clarity is requested on whether law firms with internal training programmes may be accredited as training providers. They support this approach.</p>	Compulsory post-qualification professional development will be dealt with by the Minister in terms of the regulations in consultation with the Council. (See clause 97(1)(c)).
5(k)	General Council of the Bar	Insert "the interest and independence of the legal professions".	The concept of independence is captured in clause 5(a). The interests of the legal profession could, however, be included.

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6(1)(d)	UNISA	The wording is too restrictive. Negotiable instruments and the electronic transfer of funds are by no means the only, or even the two most	The Department proposes that the clause be amended to generically provide that the Council may conduct its financial affairs.

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		important examples of methods or instruments of payment. The wording of s 6(1)(d) should be couched in such a way that it encompasses all forms of money, and not only two examples of money or payment.	
6(1)(k)	General Council of the Bar	Replace "develop" with "monitor the development of".	The Department does not agree with the proposal. The question then arises who must develop norms and standards. The profession (the Council) must develop norms and standards.
6(1)(m)	Constitutional Literacy and Service Initiative	The Council must be invested with the authority to allocate additional resources to those law faculties which expand their clinical opportunities for students interested in conducting their community service, and for candidate attorneys who also choose to perform their community service for remuneration at a clinic.	This aspect must be dealt with by the Council. The provision in question is broad enough to cater for what is being suggested. See also clause 6(1)(n).
6(1)(n)	SA Human Rights Commission	The subclause must be amended to provide that the SA Human Rights Commission may also be a beneficiary.	The Human Rights Commission is State funded. The Council must deal with the detail of this aspect. The proposal could, however, be considered.
6(1)(p)	Attorneys Fidelity Fund	This function should remain with the Fund, as it already has an established structure.	The Department agrees with the proposal that the Fund should continue to have this power, as it currently has in terms of section 46 of the Attorneys Act, 1979. The Department proposes that a clause similar to section 46 of the Attorneys Act be inserted into the Bill, possibly as clause 58(p).
6(1)(s)	Law Society of South Africa	The clause should provide also for the payment of honoraria, as is currently the position – see clause 6(2)(e).	Clause 6(2)(e) empowers the Council to do this. It is unnecessary to duplicate the power.
6(1)(t)	General Council of the Bar	Insert after "Charter" : "insofar as the provisions thereof are consistent with the provisions of the	The Department has no objection.

Clause	Name	Submission / Recommendation	DOJCD Response
		Act."	
6(2)(f)	Attorneys Fidelity Fund	These functions fall under the Fund in terms of clause 77(3) and should be deleted here.	Agreed. The Fund currently performs this function in terms of section 40A of the Attorneys Act.
6(4)	General Council of the Bar	The Council must only raise funds for the fulfilments of its functions. The two chambers and Regional Councils must be funded by its members.	This suggestion presupposes that there will be two chambers. The Council will determine these details which should not be specified in the Bill.
6(4)(b)	Attorneys Fidelity Fund	This should be done in consultation with the Fund.	Agreed, this impacts directly on the Fund's administration.
6(4)(c)	UNISA	It is not clear if non-practising lawyers should also pay an annual fee.	The clause specifies that it is for practising practitioners.
6(4)(f)	R Naidoo	This provision is too vague and might impose a financial burden.	It is necessary to provide for this. Consideration could be given to adding the words "as is consistent with this Act".
6(5)(a)	Constitutional Literacy and Service Initiative	The Council must be required to conduct visits, and play a pivotal role in a minimum core curriculum.	The Council's involvement in the education aspects is empowered by the Bill, but the Council and its members should only determine the extent thereof.
6(5)(a)	Law Society of South Africa	The purpose of the visits is not stated. It is recommended that the clause be amended to provide that the Council may conduct visits to evaluate the training or the curriculum offered by the institution concerned.	The Department is hesitant to be too prescriptive and limiting the possibilities. This aspect can be decided on by the role-players.
6(5)(a)	General Council of the Bar	The term "conduct visits" must be clarified and should only be to local educational institutions.	The Department agrees that the word "South African" be inserted although the legislation will obviously not apply extra-territorially.
6(5)(d)	General Council of the Bar	The paragraph must be deleted.	This power should vest in the Council, which can then be delegated.
6(5)(e)	General Council of the Bar	Replace "determine" with "monitor".	The Department does not agree with the proposal. The question then arises who must determine norms and standards. The profession (the Council) should determine these issues.

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6(5)(e) and (f)	Eskom	It is unclear whether this training will be applicable to non-practising legal practitioners.	The wording could be clarified. The Council's role is focused on practising legal practitioners.
6(5)(f)	South African Institute of Race Relations	The Council has influence over the content of training for lawyers, and hence also for judges. Such training is also to be given a 'transformational' slant of a kind likely to suit the ruling party. This reflects the executive's attempt to influence the way in which judges decide cases, and thus to temper the power of judicial review. It infringes the separation of powers.	The Department does not agree with this interpretation of the clause.
6(5)(f)(i)	Cape Bar	Transformation extends beyond legal education and training. They must be tailored to specific conditions.	The Department agrees with this comment. The detail must be determined by the Council.
6(5)(f)	Constitutional Literacy and Service Initiative	Comprehensive proposals are made regarding university <i>curricula</i> .	The Bill cannot be prescriptive in this respect.
6(5)	Black Lawyers Association	*Conveyancing and notary must be included in the <i>curriculum</i> .  *The profession should contribute in the formulation of the <i>curriculum</i> .	* The Bill cannot be prescriptive in this respect.  *The Bill provides for this.
6(5)(h)	Law Society of South Africa	Not all law graduates are registered with the Council: it is only those law graduates who are registered as candidate attorneys or pupils who are required to register. The Council is able to comply with this requirement only in respect of those law graduates who enter the profession.	Noted.
6(5)(i)	Law Society of South Africa	Any decisions by the Minister with regard to multi-disciplinary practices should be taken in consultation with the Council.	Noted. The clause already provides that the Council must advise the Minister. The issue of in or after consultation with the Minister in respect of this clause and other provisions of this nature in the Bill is dealt with below.
6(5)(h)(iii)	NADEL	A single practitioner must not be burdened by	Noted. The detail must be determined by

<b>Clause</b>	<b>Name</b>	<b>Submission / Recommendation</b>	<b>DOJCD Response</b>
		remuneration requirements.	the Council.
6(5)(i)	Webber Wentzel	<p>*The clause's wording is too speculative.</p> <p>*A time period should be set for this issue to be considered.</p> <p>*They request a relaxation of restrictions in this regard.</p>	Noted. This matter must be dealt with by the Council.
6(5)(i)	Competition Commission	The Commission recommends that section 6(5)(i) of the Bill that provides that the Council must advise the Minister on multi-disciplinary legal practices with the view to promoting legislative and other interventions on multi-disciplinary legal practices should be expanded to expressly provide for limited forms of ownership with the majority ownership by legal practitioners so to safeguard the public from fraudulent conduct by non-legal professionals.	Noted. The detail should be determined by the Council and not be prescribed by the Bill. The SALRC is currently investigating the issue of multi-disciplinary practices. As far as we can recall the legal profession itself was of the view that multi-disciplinary practices should be dealt with after the Law Reform Commission has finalized its investigation. The issue of MDP's is complex.
6	Cape Bar	The norms and standards approved by the Council must differentiate between the roles and functions of advocates and attorneys, as well as the vocational training requirements.	Noted, but this aspect will be dealt with by the Council and is not prescribed by the Bill. The proposed differentiation is inevitable and the Bill does not preclude it.
<b>Clause</b>	<b>Name</b>	<b>Submission / Recommendation</b>	<b>DOJCD Response</b>
7	J Lourens  I J Smuts	The Council will be state controlled. This will weaken the independence of the profession. This will be unconstitutional.	<p>Only three of the 21 members will be appointed by the Minister.</p> <p>Government has a duty to promote the public interest in certain respects. A built in safety mechanism is in clause 12, that provides that the Council can remove a member from the Council if the Council is of the opinion that a member is undermining the integrity of the Council. It should be borne in mind that part of the mandate of the Council is to preserve and</p>

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			uphold the independence of the legal profession and to enhance and maintain the integrity and status of the legal profession (clause 5(e) and (f)). Consideration could also be given to including provisions similar to section 6 of the ICASA Act, 2000, in respect of “Ministerial appointees”, for instance that they may not be public servants or the holders of any other remunerated position under the State, that they may not be members of Parliament, any provincial legislature or any municipal council, that they may not be office-bearers or employees of any party, movement or organisation of a party political nature and that they may not be persons who have, at any time, been removed from an office of trust on account of misconduct.
7	Legalwise	Two persons, appointed by the legal expenses insurance sector, must be Council members.	The Council should not be too large. Committees, as contemplated in clause 18(1)(a)(ii), can assist the Council in specialised matters such as insurance.
7	Legal Resources Centre	Law Clinics should have a representative on the Council.	Clinics are manned by practitioners who are represented.

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7	NADEL	They have no objection to Ministerial representation.	Noted.
7	NADEL	Continued accreditation to the Council must be afforded to BLA, NADEL and AFT for five years as the transformative objectives of the Bill will not be achieved in the timeframe of the Transitional Council.	The Council must work together as a unit, not as different interest groups.
7	UNISA	Competent persons should be appointed to the Legal Practice Council and not political figures with the right connections.	Government has a duty to promote the public interest in certain respects. A built in safety mechanism is in clause 12, that provides that the Council can remove a member from the Council if the Council is of the opinion that a member is undermining the integrity of the Council. It should be borne in mind that part of the mandate of the Council is to preserve and uphold the independence of the legal profession and to enhance and maintain the integrity and status of the legal profession (clause 5(e) and (f)). Consideration could also be given to including provisions similar to section 6 of the ICASA Act, 2000, in respect of “Ministerial appointees”, for instance that they may not be public servants or the holders of any other remunerated position under the State, that they may not be members of Parliament, any provincial legislature or any municipal council, that they may not be office-bearers or

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			employees of any party, movement or organisation of a party political nature and that they may not be persons who have, at any time, been removed from an office of trust on account of misconduct.
7	Competition Commission	The Commission recommends that specific mention of representation of those with competition law or policy be provided for in the Bill.	The Council should not be too large. Committees, as contemplated in clause 18(1)(a)(ii), can assist the Council in specialised matters.
7(1)	Law Society of South Africa	<p>*The majority of the statutory members of the law societies believe there should be no members of the Council appointed by the Minister.</p> <p>*The Black Lawyers Association and the National Association of Democratic Lawyers consider that the Minister should be entitled to appoint three Council members.</p>	Government has a duty to promote the public interest in certain respects. A built in safety mechanism is in clause 12, that provides that the Council can remove a member from the Council if the Council is of the opinion that a member is undermining the integrity of the Council. It should be borne in mind that part of the mandate of the Council is to preserve and uphold the independence of the legal profession and to enhance and maintain the integrity and status of the legal profession (clause 5(e) and (f)). Consideration could also be given to including provisions similar to section 6 of the ICASA Act, 2000, in respect of "Ministerial appointees", for instance that they may not be public servants or the holders of any other remunerated position under the State, that they may not be members of Parliament, any provincial legislature or any municipal council, that they may not be office-bearers or

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			employees of any party, movement or organisation of a party political nature and that they may not be persons who have, at any time, been removed from an office of trust on account of misconduct.
7(1)(a)	Independent Association of Advocates of South Africa	The legal practitioners on the Council must be an equal number of advocates and attorneys, namely 8 of each.	There are more attorneys than advocates in the country.
7(1)(a)	General Council of the Bar	It should be 20 legal practitioners, and equal numbers attorneys and advocates (10 each).	There are more attorneys than advocates in the country.
7(1)(b)	Constitutional Literacy and Service Initiative	One clinician nominated by and a member of the Association of University Legal Aid Institutions (AULAI), must also be a member of the Council..	The Council should not be too large. Committees can assist the Council in specialised matters.
7(1)(b)	Law Society of South Africa	There is no clarity as to who may nominate the individual. It is suggested that the section refer to "one teacher of law or legal academic designated by teachers of law at South African universities". This is accordance with section 178(1)(g) of the Constitution.	The Department has no objection.
7	Eskom	The profession's independence must be protected, but this is impossible if the Minister appoints members to Council.	Government has a duty to promote the public interest in certain respects. A built in safety mechanism is in clause 12, that provides that the Council can remove a member from the Council if the Council is

Clause	Name	Submission / Recommendation	DOJCD Response
			of the opinion that a member is undermining the integrity of the Council. It should be borne in mind that part of the mandate of the Council is to preserve and uphold the independence of the legal profession and to enhance and maintain the integrity and status of the legal profession (clause 5(e) and (f)). Consideration could also be given to including provisions similar to section 6 of the ICASA Act, 2000, in respect of "Ministerial appointees", for instance that they may not be public servants or the holders of any other remunerated position under the State, that they may not be members of Parliament, any provincial legislature or any municipal council, that they may not be office-bearers or employees of any party, movement or organisation of a party political nature and that they may not be persons who have, at any time, been removed from an office of trust on account of misconduct.
7	Eskom	At least one non-practising member of the profession must have representation on the Council.	The Council should not be too large. The focus of the Bill is on practicing legal practitioners.
7	Eskom	Members representing legal practitioners on the Council must have at least five years' post-articles experience.	Not all members will have undergone articles as it is not a requirement for membership of the Council.
7(1)(b)	UNISA	More than one teacher of law must be represented on the Council.	The Council should not be too large.
7(1)(c), 8(1)(b), 24(2)(c), 48(2)	UNISA	An explanation of what is considered being a "fit and proper" person is necessary.	The Constitution does not define what a fit and proper person is. Neither do sections 3 and 15 of the Admission of Advocates Act, 1964 and Attorneys Act, 1979,

Clause	Name	Submission / Recommendation	DOJCD Response
			respectively. It is, in our opinion, not necessary to define. That will be an individual question in every instance.
7(1)(c)	General Council of the Bar	<p>*One view is that the Ministerial appointee is not objectionable, but that it should be only one person. There are public interest matters in which Government has a legitimate province. Regulation of certain matters is Government business.</p> <p>*Another view is that Ministerial appointees are objectionable. It is agreed that there are public interest matters which concern Government. But the Ombud and Chapter 5 of the Bill suffice.</p>	Noted. Government has a duty to promote the public interest in certain respects. A built in safety mechanism is in clause 12, that provides that the Council can remove a member from the Council if the Council is of the opinion that a member is undermining the integrity of the Council. It should be borne in mind that part of the mandate of the Council is to preserve and uphold the independence of the legal profession and to enhance and maintain the integrity and status of the legal profession (clause 5(e) and (f)). Consideration could also be given to including provisions similar to section 6 of the ICASA Act, 2000, in respect of "Ministerial appointees", for instance that they may not be public servants or the holders of any other remunerated position under the State, that they may not be members of Parliament, any provincial legislature or any municipal council, that they may not be office-bearers or employees of any party, movement or organisation of a party political nature and that they may not be persons who have, at any time, been removed from an office of trust on account of misconduct.
7(1)(c) and 96(1)(c)	Black Lawyers Association	The Ministerial appointments are supported.	Noted.
7(1)(b), (c) and (d)	General Council of the Bar	These paragraphs must be deleted as they infringe on the independence of the profession.	Government has a duty to promote the public interest in certain respects. A built in

Clause	Name	Submission / Recommendation	DOJCD Response
			<p>safety mechanism is in clause 12, that provides that the Council can remove a member from the Council if the Council is of the opinion that a member is undermining the integrity of the Council. It should be borne in mind that part of the mandate of the Council is to preserve and uphold the independence of the legal profession and to enhance and maintain the integrity and status of the legal profession (clause 5(e) and (f)). Consideration could also be given to including provisions similar to section 6 of the ICASA Act, 2000, in respect of “Ministerial appointees”, for instance that they may not be public servants or the holders of any other remunerated position under the State, that they may not be members of Parliament, any provincial legislature or any municipal council, that they may not be office-bearers or employees of any party, movement or organisation of a party political nature and that they may not be persons who have, at any time, been removed from an office of trust on account of misconduct.</p>
7	C Erasmus	The National Director of Public Prosecutions must be a member of the Council.	The Department does not agree with this proposal. The National Prosecuting Authority Act, 1998, regulates lawyers who appear in criminal matters on behalf of the State.
7(2)(b)	Black Lawyers Association	Age must be inserted as requirement.	Race, gender and disability are target groups in terms of the PEPUDA.
8(1)	NADEL	In this clause and in the whole Bill permanent residents must have the same rights and roles as	The Bill creates a “South African” Legal Practice Council.

Clause	Name	Submission / Recommendation	DOJCD Response
		citizens.	
10	UNISA	The term of office of Council members must be five years.	Noted. Parliamentary deliberations will guide this aspect.
10	Law Society of South Africa	<p>*The clause should refer to re-election as well as re-appointment, since some of the members of the Council are elected.</p> <p>*The majority of the statutory members of the councils of the constituent law societies are of the opinion that it is too prescriptive to permit a member of the Council to serve only two terms, since persons who have a right to elect members of the Council may wish members to serve for longer periods. On the other hand, the BLA and Nadel consider that service on the Council should be limited to two terms.</p>	<p>*Agreed.</p> <p>Parliamentary deliberations will guide this aspect.</p>
11	C Erasmus	When a Council member is appointed as a judicial officer, his or her membership should terminate.	Agreed.
12	UNISA	When a Council member referred to in clause 7(1)(a) is no longer a legal practitioner, he/she should vacate the seat on the Council.	Agreed.
14(6)	UNISA	This creates the potential for a relatively small number of members to "highjack" the Council and pass undemocratic resolutions.	The reality of statutory bodies becoming dysfunctional cannot simply be ignored. Some form of provision to address this reality is required, as experience has shown. Checks and balances are required to ensure that the Council is not dissolved arbitrarily. The Ombud could possibly, in terms of clause 47, play a role, should the Council be in distress.
14	Black Lawyers Association	<p>*The clause is supported.</p> <p>*Guidelines must be defined in the Bill or Rules.</p>	The reality of statutory bodies becoming dysfunctional cannot simply be ignored. Some form of provision to address this reality is required, as experience has

Clause	Name	Submission / Recommendation	DOJCD Response
		*The period should be 14 days.	shown. Checks and balances are required to ensure that the Council is not dissolved arbitrarily. The Ombud could possibly, in terms of clause 47, play a role, should the Council be in distress.
14	R Naidoo	Parliament, and no the Minister, must be mandated to dissolve the Council.	The reality of statutory bodies becoming dysfunctional cannot simply be ignored. Some form of provision to address this reality is required, as experience has shown. Checks and balances are required to ensure that the Council is not dissolved arbitrarily. The Ombud could possibly, in terms of clause 47, play a role, should the Council be in distress.
14	South African Institute of Race Relations	There are not enough safeguards to protect the Council against abuse of power by the Minister.	The reality of statutory bodies becoming dysfunctional cannot simply be ignored. Some form of provision to address this reality is required, as experience has shown. Checks and balances are required to ensure that the Council is not dissolved arbitrarily. The Ombud could possibly, in terms of clause 47, play a role, should the Council be in distress.
14	General Council of the Bar	The clause must be deleted as it infringes on the independence of the profession. If the Minister has an unresolved problem he must approach the Ombud.	The reality of statutory bodies becoming dysfunctional cannot simply be ignored. Some form of provision to address this reality is required, as experience has shown. Checks and balances are required to ensure that the Council is not dissolved arbitrarily. The Ombud could possibly, in terms of clause 47, play a role, should the Council be in distress.
14	Law Society of South Africa	*There are differing views within the profession on the issue of the dissolution of the Council, insofar as it may reflect on the independence of the	The reality of statutory bodies becoming dysfunctional cannot simply be ignored. Some form of provision to address this

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>profession and be at odds with the implied provision that the Council has perpetual succession.</p> <p>*One view holds that the Minister may, on proper grounds and in accordance with a prescribed process, dissolve the Council (any such action, being administration action, being subject to challenge and review). In addition, any interested party may on proper grounds apply to the Court for the Council to be dissolved.</p> <p>*Another view holds that any interested party, including the Minister, may apply to the Court, for the Council to be dissolved.</p> <p>*If the Council is dissolved the Bill should provide that the provisions of section 7, dealing with the composition of the Council, should apply in relation to the reconstituted Council.</p>	<p>reality is required, as experience has shown. Checks and balances are required to ensure that the Council is not dissolved arbitrarily. The Ombud could possibly, in terms of clause 47, play a role, should the Council be in distress.</p> <p>*Subclause (4)(a) already provides for this.</p>
14	NADEL	They object to the whole clause.	The reality of statutory bodies becoming dysfunctional cannot simply be ignored. Some form of provision to address this reality is required, as experience has shown. Checks and balances are required to ensure that the Council is not dissolved arbitrarily. The Ombud could possibly, in terms of clause 47, play a role, should the Council be in distress.
15 to 23	Legal Resources Centre	The clauses should be in regulations .	Due to the importance of the matters contained in these clauses, they should be dealt with in primary legislation and therefore should remain in the Bill.
17	General Council of	Advocates should have a veto right in respect of	The procedure is to be determined by the

Clause	Name	Submission / Recommendation	DOJCD Response
	the Bar	matters peculiar to advocates.	Council, which can make such a provision in terms of clause 16.
18(1)(a)(ii)	Law Society of South Africa	The word "other" should be deleted, as it suggests that a committee may consist only of members, or only of non-members. In reality committees are likely to consist of both members and non-members.	Agreed.
19	Employees of Law Society of South Africa	The clause should expressly provide for the employees of the Law Society of South Africa too.	The Law Society of South Africa is a voluntary association. The Bill cannot make provision for the personnel of voluntary associations beyond the Labour Relations Act, 1995.
20(2)	Law Society of South Africa	The Council should have the authority to determine the size and composition of the executive committee.	The Department has no objection.
20(7)	Law Society of South Africa	The chairperson of the Council should be chairperson of the executive committee.	The Department has no objection.
21	Law Society of South Africa	*The clause should provide specifically that the Council may permit a person or committee to whom or to which a power has been delegated to sub-delegate that power in appropriate circumstances.  *The Council must be empowered to delegate appropriate powers to the executive officer or employees of the Council.	The Department has no objection.
23	UNISA	It must be stated whether Regional Councils will be based on provinces or where there are High Courts.	The Minister must prescribe the areas of jurisdiction (subclause (2)). The Bill should not be prescriptive in this regard. Circumstances should dictate these aspects and they should therefore allow for flexibility.
23	General Council of the Bar	*Regional Councils for attorneys must be created in accordance with the needs of the attorneys'	The model proposed by the GCB constitutes the Regional Councils being

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>profession. They must be funded by the attorneys therein.</p> <p>*Regional Councils for advocates must be created in each area of the jurisdiction of a High Court. Existing regional Bar Councils will become statutory Regional Councils.</p>	<p>subdivided into two separate chambers, each doing what they currently do. This model, in reality, boils down to the retention of the current arrangements. The Department is of the view that this will perpetuate the issues that the Bill seeks to transform. Clause 23(3) currently allows Regional Councils to carry out their powers and functions as may be determined by the Council. It is accepted that the Council, when so determining, will have to accommodate the differences between attorneys and advocates.</p>
23	Law Society of South Africa	<p>Every regional council should comprise separate chambers for attorneys and advocates, each operating under delegated powers, and each chamber having the power to sub-delegate its powers to committees established in centres where there is a concentration of legal practitioners.</p>	<p>The model proposed by the LSSA also constitutes the Regional Councils being subdivided into two separate chambers, each doing what they currently do. This model, in reality, boils down to the retention of the current arrangements. The Department is of the view that this will perpetuate the issues that the Bill seeks to transform. Clause 23(3) currently allows Regional Councils to carry out their powers and functions as may be determined by the Council. It is accepted that the Council, when so determining, will have to accommodate the differences between attorneys and advocates.</p>
23	Cape Bar	<p>Bars must be accredited and exercise the powers and functions of the Council or Regional Councils.</p>	<p>This proposal boils down to the model proposed in the so-called "Budlender Bill", which was rejected by the attorneys' profession.</p>
23	Black Lawyers Association	<p>*Regional Councils must be instituted in each of the current provinces.</p>	<p>The Council must decide on this and advise the Minister. The Minister must prescribe the areas of jurisdiction</p>

<b>Clause</b>	<b>Name</b>	<b>Submission / Recommendation</b>	<b>DOJCD Response</b>
			(subclause (2)). The Bill should not be prescriptive in this regard. Circumstances should dictate these aspects and they should therefore allow for flexibility.
23(2)	Law Society of South Africa	The areas must be prescribed in consultation with the Council.	Consideration could be given to the Minister making any subordinate legislation envisaged in the Bill “in consultation with the Council” rather than “after consultation” in order to address the concerns/criticism that the current wording impacts negatively on the independence of the legal profession. However, there must be some form of deadlock-breaking mechanism in the event of no consensus being reached on these crucial aspects of the legislation. A precedent for this is to be found in sections 12 and 13 of the Judicial Service Commission Act, 1994, which deal with the code of judicial conduct and regulations relating to the disclosure of registrable interests of judges. Where necessary, the requirement of “after consultation” could be retained. The aspects which require “in” and those which require “after” need to be considered.
23(4)	Law Society of South Africa	The principle of representivity should be applied in the composition of the Regional Councils.	The Council can provide for this in the rules although the Department has no objection in this regard.
24(2)(d)	General Council of the Bar	The service of documents must be at the Regional Councils.	The function could be delegated by the Council in terms of clause 23(1).
<b>Clause</b>	<b>Name</b>	<b>Submission / Recommendation</b>	<b>DOJCD Response</b>
24(3)	D Sukdeo S B Dlamini	Cross border practice should be allowed. South Africans who practise outside the country	This matter will be considered when the regulations are made. (Clause 24(3)).

Clause	Name	Submission / Recommendation	DOJCD Response
		must be allowed to practise in the RSA without having to do articles.	
24(3)(a) and (b)	Law Society of South Africa	<p>*Provision should be made for a panel of experts to determine, in conjunction with the Council, the quality of foreign qualifications, training and experience.</p> <p>*Any action taken by the Minister in terms of section 24(3) should, in the public interest, be taken only in consultation with the Council.</p>	<p>The Council could establish an expert committee for this purpose.</p> <p>Consideration could be given to the Minister making any subordinate legislation envisaged in the Bill “in consultation with the Council” rather than “after consultation” in order to address the concerns/criticism that the current wording impacts negatively on the independence of the legal profession. However, there must be some form of deadlock-breaking mechanism in the event of no consensus being reached on these crucial aspects of the legislation. A precedent for this is to be found in sections 12 and 13 of the Judicial Service Commission Act, 1994, which deal with the code of judicial conduct and regulations relating to the disclosure of registrable interests of judges. Where necessary, the requirement of “after consultation” could be retained. The aspects which require “in” and those which require “after” need to be considered.</p>
24(3)(a) and (b)	NADEL	The Minister's role is objectionable. The Department of Trade and Industry's has an interest.	See comments above in respect of this subclause. Moreover, if the Department of Trade and Industry is a stakeholder the Minister will consult with it out of necessity.
24(3)(c)	Law Society of South Africa	This subclause is not supported. It may open the way for persons to gain rights of practice without	The Minister will only make regulations in this regard in consultation with the Council.

Clause	Name	Submission / Recommendation	DOJCD Response
	NADEL	having to comply with normal admission criteria and procedures. This is not in the public interest and the section should be deleted.	Parliamentary deliberations will guide this aspect.
24(3)(c)	Legalwise	Corporate lawyers must be allowed to appear in court.	The Bill focuses on practising attorneys and advocates. If a corporate lawyer does not comply with the provisions of the Bill he or she should not have the right to appear in court, unless it is in terms of regulations under clause 24(3).
24	UNISA	It appears as though admission as a South African citizen (via court) is a more onerous and expensive process than for foreign legal practitioners.	Foreigners will ultimately also have to be admitted by the High Court. If the wording is not clear in this regard, the provision should be clarified.
24	NADEL	The university curricula and education system must be monitored.	It is a function of the Council in terms of clause 6(5).
25	Eskom	A non-practising attorney who is a full-time legal advisor must have the right of appearance on behalf of the employer. Conditions could be set.	This could be considered for the regulations in terms of clause 24(3).
25	J M Maseko	<p>*Attorneys enjoy the right to appear in the superior courts, while advocates are not allowed to take briefs directly from the public in all areas. This is unfair and marginalises the advocate band of practitioners.</p> <p>*Advocates must be able to take direct briefs from the public in specialist areas like consumer courts and tribunals, labour courts (even trade unions are allowed to represent their members here), and conveyance work. This will save costs.</p> <p>* Advocates do not have the fidelity insurance policies to safeguard the members of the public, it can be corrected by simply including them in such or instituting an equivalent safeguard for them.</p>	<p>For the protection of the public only practitioners with fidelity fund certificates (attorneys) should receive money directly.</p> <p>*The Department does not support the proposal that a Fidelity Fund for advocates be instituted. The Bill does not have as its objective the <i>de facto</i> fusion of the two professions. The Bill, in clause 34(2), does, however, create the possibility for regulations to be made by the Minister in consultation with the Council, in terms of which advocates may take briefs directly from the public.</p>
25	Legal Resources	Candidate attorneys must be allowed to appear in	Clause 94(1)(h) provides that the Minister

Clause	Name	Submission / Recommendation	DOJCD Response
	Centre	district courts.	may make regulations in this respect.
26	UNISA	The four year LLB is a major concern. Few students achieve success within four years but apart from obtaining the degree they are not ready for practice.	The curricula of universities cannot be prescribed by the Bill. See however clause 6(5).
26	Cape Bar	*The Bill lacks detail.  *A national body should determine criteria regarding advocates.  *Accredited regional bodies must determine numbers etc.	These aspects will be addressed in regulations. One of the reasons for the lack of detail is because these are issues which still require much more debate. The Bill does not prevent the Council from establishing an expert committee on these issues.
26(1)(a)	Legal Aid South Africa	Insert the degree of <i>bacccalareus procurationis</i> as an acceptable degree.	This degree is recognised in the transitional provisions (clause 111(2)), as the degree is not offered by universities any more.
26(1)(a)	D Grootboom	Commentator has a B.luris degree and LLM degree from Southampton. He argues that it is unfair that he cannot practise in terms of the Bill.	The qualification requirements cannot be so wide as to accommodate every individual. Clause 26(1)(a)(ii) caters for foreign qualifications.
26(1)(a)	Law Society of South Africa	*Provision should be made for the Council to play a role in the quality assurance of law faculties at universities.  *Any decision concerning minimum legal qualifications should be made in consultation with the attorney and advocate members of the Council.  *The foreign law degree must be certified by a South African university in the manner provided for in the current Attorneys Act in consultation with the South African Qualifications Authority.	*Clause 6(5) opens a line of communication in this respect.  *Foreigners will be dealt with in terms of clause 24(3).
26(1)(a)	Law Society of South Africa	*The training requirements should be as determined by the rules.	*Due to the importance of this issue it should be regulated by a legislative

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>*There should be uniform standards with regard to legal qualifications and training for all legal practitioners, which will be determined and provided at the national level.</p>	<p>instrument, in this case by regulations made by the Minister in consultation with the Council.</p> <p>Unless we are misconstruing the comment, the Bill does regulate these issues at the national level.</p>
26(1)(b)	D Sukdeo	<p>*Pupillage and articleship must be abolished.</p> <p>*The Council must provide free training.</p> <p>*A stipend must be paid to trainees.</p> <p>*Law graduates must spend 2 years and 6 months in practical training.</p>	<p>* Vocational training is essential to maintain high standards and it is in the public interest, one of the important objectives of the Bill.</p> <p>*These matters will be considered when the regulations are made.</p>
26(1)(b)	Eskom Legal Aid South Africa	The regulations on vocational training should be made by the Minister, but in consultation with the Council.	Consideration could be given to the Minister making any subordinate legislation envisaged in the Bill “in consultation with the Council” rather than “after consultation” in order to address the concerns/criticism that the current wording impacts negatively on the independence of the legal profession. However, there must be some form of deadlock-breaking mechanism in the event of no consensus being reached on these crucial aspects of the legislation. A precedent for this is to be found in sections 12 and 13 of the Judicial Service Commission Act, 1994, which deal with the code of judicial conduct and regulations relating to the disclosure of registrable interests of judges. Where necessary, the requirement of “after consultation” could be

Clause	Name	Submission / Recommendation	DOJCD Response
			retained. The aspects which require “in” and those which require “after” need to be considered.
26(1)(b)	General Council of the Bar	This function should be left to the professions.	Due to the importance of this issue it should be regulated by a legislative instrument, in this case by regulations made by the Minister in consultation with the Council. The profession is consequently involved.
26	C Erasmus	<p>*An LLB degree should allow entry to the attorney's profession.</p> <p>*A two year LLM degree should provide entrance to the advocate's profession. This will create a genuine distinction between advocates and attorneys, i. e. the one being a specialist and the other a general practitioner.</p> <p>*The commentator refers to the expiry of a transitional period; where after only advocates with more than 7 years' experience may practise as advocates. Thereafter advocates with less than 7 years' experience and without a LLM degree must become attorneys. Attorneys with more than 7 years' experience and a LLM degree can become advocates.</p> <p>*The new proposed six year qualification will obviate the need for the continuation of individual egotistical vocational courses.</p>	The Department does not support these recommendations. The higher qualification requirements will constitute an extra barrier for entry into the profession.
26	Legal Aid South Africa	<p>*It is proposed that candidate legal practitioners may be engaged also by Legal Aid SA.</p> <p>*It is proposed that the engagement as well as the vocational training of candidate legal practitioners</p>	Legal Aid South Africa currently engages candidate attorneys and should continue to engage candidate legal practitioners. Clause 94(1)(b) allows for regulations regarding the practical vocational training

Clause	Name	Submission / Recommendation	DOJCD Response
		be provided for in the rules of the Legal Practice Council and Transitional Legal Practice Council.	requirements, clause 94(1)(h) allows for regulations regarding the right of appearance of candidate legal practitioners in courts and clause 95(1)(j), (k) and (l) and allows the Council to make certain rules pertaining to candidate legal practitioners. The Bill seems to be silent on the engagement of candidate legal practitioners and who may engage them. The Attorneys Act currently regulates this. It might therefore be appropriate to regulate this aspect in the Bill, probably in the regulations (by way of a legislative instrument because it has a bearing on entry into the profession).
27	UNISA	Pupilage must be compulsory.	The Bill envisages that pupilage will be compulsory.
28	UNISA	There appears to be no differentiation between the assessment of advocates and attorneys – just legal practitioners generally.	This matter will be dealt with in the rules. It is foreseen that there will be different assessments.
29(1)(b)	Eskom	The rendering of community service should only be applicable to candidate attorneys.	The detail will be prescribed by regulation. Compulsory community service of practising legal practitioners is seen as an important way to increase access, which is one of the purposes of the Bill.
29	Constitutional Literacy and Service Initiative	<p>*Change “such requirements <i>may</i> include” to “<i>shall</i> include”.</p> <p>*Change the “or” linking subclauses (a) and (b) to “and” in order to ensure that community service is a requirement for both entry to the legal profession and for continued registration as a legal practitioner.</p> <p>*Change the term “candidate legal practitioners”</p>	<p>*It is envisaged that the details regarding community service will be dealt with in the regulations to be made by the Minister in consultation with the Council. The Department is of the view that the Bill should allow for flexibility and not be prescriptive as suggested.</p> <p>*Nothing prohibits a university from</p>

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>to “aspirant legal practitioners” to make room for the possibility of community service being performed as part of the LLB curriculum. Changing the term “candidate legal practitioners” to “aspirant legal practitioners” throughout the Bill would provide for the possibility that community service as a requirement for entry to the profession may take place during the LLB, after graduation, or possibly, as a combination of both. Such a change would necessitate a clear definition of the term “aspirant legal practitioner”.</p> <p>*Section 29 should specify that candidate legal practitioners are remunerated for community service.</p> <p>*A working group must established under the auspices of the Council that would be dedicated to community service.</p> <p>*Aspirant legal practitioners who engage in community service programmes during the course of their legal studies would not need to be compensated, although they would receive academic credit.</p>	<p>including some form of community service in its <i>curriculum</i>. The Bill focuses on legal practitioners and candidate legal practitioners, not law students.</p> <p>*This is a matter to be dealt with at a later stage when the regulations are discussed and prepared.</p> <p>*The Council can establish a committee for this purpose.</p>
29	South African Institute of Race Relations	The power to prescribe community service will strengthen state control over the legal profession.	The Department does not agree. See comments above. The regulations will be made by the Minister in consultation with the Council. The Council will have a statutory duty to protect the independence of the legal profession.
29	Legal Resources Centre	Community service should be defined.	As indicated above, the provision is flexible. Clause 29(2) uses the word “includes”.
29	SA Human Rights	*It is unclear whether the Human Rights	The Department has no objection. The

Clause	Name	Submission / Recommendation	DOJCD Response
	Commission	<p>Commission will be considered as part of the State for purposes of this provision. It would welcome being included as an institution at which community service can be rendered.</p> <p>*To maintain its independence the clause must be amended to provide that the Minister does not approve service to the Human Rights Commission.</p>	SAHRC undertook to revert with specific proposals on all its suggestions.
29	General Council of the Bar	The clause is vague, contradictory and impractical to implement. The particulars should be determined by the Council.	As Government is involved the matter cannot be left to the Council alone, but the Minister will make regulations in consultation with the Council. The Council will indeed be involved in the details.
29(1)(a) and (b)	Law Society of South Africa	<p>*The provisions are unclear, in that it is uncertain whether the emphasis is on vocational training, or the provision of services to parastatals or government institutions, or to promote access to justice.</p> <p>*None of the relevant provisions appears to relate to pro bono services, which are provided on a compulsory basis by attorneys</p>	<p>*The details will be prescribed in regulations after proper consultation with stakeholders.</p> <p>Consideration could be given to tightening up on the wording where necessary and the role of pro bono services.</p> <p>*The Law Societies require their members to do pro bono work. It is not compulsory in term of the Attorneys Act, 1979.</p>
29(1)(a)	Law Society of South Africa	<p>*Will community service be during, or after, or part of, articles or pupillage?</p> <p>* What will the period of community service be?</p> <p>*Will candidate legal practitioners be remunerated? If so, by whom?</p>	<p>*It is envisaged that community service will be part of articles or pupillage (a "component of practical vocational training").</p> <p>*These details will be dealt with in regulations after proper consultation with stakeholders. The regulations will be made in consultation with the Council.</p>

Clause	Name	Submission / Recommendation	DOJCD Response
		*To whom will candidate legal practitioners be responsible while undergoing practical vocational training?	
29(1)(b)	Law Society of South Africa	<p>*What will the period be? Will it refer to a number of hours, or be for a specific period?</p> <p>*Will the requirement for community service recur annually?</p> <p>*Who will monitor these services, since it forms part of the requirements for continued registration?</p>	These details will be dealt with in regulations after proper consultation with stakeholders. The regulations will be made in consultation with the Council.
29(2)(a)	Law Society of South Africa	<p>*Is it intended that there will be an accreditation process for those organisations before community service can be rendered there?</p> <p>*It is proposed that community service be distinguished from <i>pro bono</i> work, and that the obligation to provide <i>pro bono</i> services should be restricted to legal practitioners.</p> <p>*Community service should be provided by candidate legal practitioners.</p> <p>* There should be a specific requirement in the Act for <i>pro bono</i> work.</p>	<p>*These details will be dealt with in regulations after proper consultation with stakeholders. The regulations will be made in consultation with the Council. It might, however, be appropriate to deal with accreditation in the Bill.</p> <p>*This might be appropriate.</p> <p>*It might be appropriate to restrict community service to candidate legal practitioners.</p> <p>*This might be appropriate.</p>
29(2)	Wits Law Clinic	*Service at university law clinics should be included.	*Clause 29(2) is open ended. It uses the word "includes".

Clause	Name	Submission / Recommendation	DOJCD Response
		*Practitioners must be remunerated by the State for this service.	* These details will be dealt with in regulations after proper consultation with stakeholders.
29(2)(a)	Legal Aid South Africa	<p>Insert Legal Aid South Africa. This will enable <i>pro bono</i> services rendered to Legal Aid SA or its clients to be recognised as community services.</p> <p>Currently Legal Aid SA has <i>pro bono</i> agreements with some law firms as well as the Law Society of the Northern Provinces and Free State Law Society. However, if this clause were to be amended in the way suggested, many more such agreements will be possible.</p>	Legal Aid South Africa is part of the State. (See clause 29(2)(d)) There is no objection, however, to include Legal Aid South Africa specifically.
29(2)(f)	Legal Aid South Africa  General Council of the Bar	If this paragraph refers to non-legal services it is untenable and should be deleted.	*It might be appropriate to specifically restrict community service to legal services although that is the intention.
29	Black Lawyers Association	<p>*The guidelines should be in the Act.</p> <p>*Community service should not have to recur and be a condition for continued registration.</p>	<p>*The Department does not agree with this proposal. Community service will increase access.</p> <p>*It might be appropriate to distinguish between community service and pro bono service.</p>
29(2)(g)	Law Society of South Africa	The words "after consultation with the Council" should be inserted after "Minister".	As indicated previously, consideration could be given to replacing the "after consultation" requirement with an "in consultation" requirement, coupled to a deadlock-breaking mechanism.
31(2)	Law Society of South Africa	Before the court has granted an order for suspension or striking off, a process will have been followed during the course of which the legal practitioner will have been given notice of the	*Subclause (2) might still be required for purposes of clause 31(1)(b) where a legal practitioner was registered erroneously or was registered on the basis of false

Clause	Name	Submission / Recommendation	DOJCD Response
		application. There is no reason why the Council must again notify the legal practitioner and give him an opportunity to be heard before it implements the order of the court. Clause 31(2) is unnecessary.	information.
Clause	Name	Submission / Recommendation	DOJCD Response
33	R Naidoo	The provision is too restrictive.	The public must be protected from persons who are not qualified to provide legal services. The Bill is also very much about the protection of the public interest.
33	C Erasmus	Advocates must also be allowed to be conveyancers and notaries public.	Then they must have trust accounts and Fidelity Fund certificates.
33	Competition Commission	<p>*The Commission recommends that the legal profession be opened by <i>inter alia</i> allowing other professionals to provide specified legal services and to recognise the synergies between the legal and other professions (for instance estate agents).</p> <p>*The Commission recommends the inclusion in the Bill of provisions providing for the functions that can be performed by legal practitioners and those that can be offered by other professionals.</p> <p>*The Commission recommends that the Bill make express provision for the regulation of paralegals and in-house lawyers and possibly estate agents who perform conveyancing work.</p> <p>*The Bill would be purposeful in defining what legal services are in relation to work that can be performed by admitted legal practitioners and non-legal practitioners</p>	<p>*This aspect has, in the past, been the subject of considerable heated debate. As it currently reads, it seems to have reasonable support from the profession. It should be borne in mind that the Bill is also about the protection of the public interest.</p> <p>*Earlier versions of the Bill contained a definition of "legal services", but this was deleted with the concurrence of the profession, as it could be interpreted to include services that could be rendered by non-practitioners. The Bill regulates legal practitioners, and not their services.</p> <p>*Earlier versions of the Bill contained provisions/a Chapter dealing with paralegals. It was felt that it would be more appropriate to first settle the regulation of legal practitioners and once that has been achieved, to address the regulation of paralegals.</p>
33(3)	Law Society of South	The reference to a fee, commission, gain or	There is no objection.

Clause	Name	Submission / Recommendation	DOJCD Response
	Africa	reward should be followed by the words "direct or indirect".	
33(4)(b)	Attorneys Fidelity Fund	*The subclause should be deleted.  *If it remains clear obligations must be imposed on the partners of the firm, as well as regular reporting to the Council.	Noted. This clause is similar to the current section 83(5) of the Attorneys Act, 1979.
Clause	Name	Submission / Recommendation	DOJCD Response
34(2)(b)	N Smythe	*Commends clause as it will reduce costs.  *The regulations must provide that these advocates may not receive trust money.  *Advocates' training must cover matters such as service of summons.  *Only advocates who have done pupillage must be allowed to receive instructions directly from the public.	These aspects will be addressed by regulations.  To exclude advocates who have not done pupillage could lead to the exclusion of experienced practitioners, and that is not the intention of the clause.
34(2)	Law Society of South Africa	Advocates should not take instructions from the public, save with the approval of the Council. Such approval should be given only in appropriate cases where it is in the interests of the public.	The Bill provides for a referral system but does envisage advocates taking briefs directly from the public on the basis of regulations to be made by the Minister in consultation with the Council.
34(2)(b)	R Naidoo  Eskom	The clause is vague.	The details will be dealt with in the regulations and rules to be made by the Council.
34(2)	Legal Aid South Africa	A further provision should be inserted: "provided further that Legal Aid South Africa shall be exempt from the provisions of this clause in criminal cases" .  It is submitted that Legal Aid SA should be excluded from this in respect of criminal cases whether same be allocated to an internal or	This seems to be appropriate but it may require rules or regulations.

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>external practitioner.</p> <p>It is submitted that at the end of the clause a further proviso be inserted:  "provided that advocates who perform work for Legal Aid South Africa in a criminal case will not be required to receive a brief from an attorney."  This reflects current practice.</p>	
34(2)(b)	Independent Association of Advocates of South Africa	<p>*Commentator welcomes the provision. They make a full representation on what should be in the regulations in this respect.</p> <p>*For purposes of the protection of the public where advocates are briefed directly, it is proposed that advocates must have compulsory indemnity insurance. This must be administered by the Council or the Minister. Advocates must also use "Payment Distribution Agents".</p>	*These proposals can be considered when the regulations are being prepared.
34(2)(b)	General Council of the Bar	<p>*Exceptions should be determined by the proposed Chamber of Advocates.</p> <p>*The paragraph should be deleted.</p> <p>*It should read: "<i>in consultation</i>".</p>	Noted. As indicated above, consideration could be given to amending the "after consultation" requirement.
34(3)	General Council of the Bar	The words "and directly by members of the public" should be inserted.	Clause 34(3) relates to rules to be made by the Council. Clause 34(2)(b) envisages regulations being made where briefs can be taken directly from the public. It may, however, be necessary that rules must also be made in this regard.
34(3)	Legal Aid South Africa	The subclause must be deleted as rules in this regard are already well determined and observed by most advocates and attorneys.	The Department does not agree with the proposal. The rules are necessary for legal certainty.
34(4)	Wits Law Clinic	The clause should be amended to provide for an attorney in the employ of a university law clinic.	The Department is of the view that a university law clinic falls in the ambit of

Clause	Name	Submission / Recommendation	DOJCD Response
			clause 34(7).
34(5)	R Naidoo C Erasmus	Advocates must also be allowed to form partnerships.	Advocates should be able to accept any brief, and cannot be subject to any conflict of interest with a partner's client.
34(6)	Legal Aid South Africa	It should be made clear that this applies to attorneys only.	Subclause (6)(a) states that it may only comprise attorneys.
34(6)	Competition Commission	The Commission recommends that the provisions of sections 34(6) be revised to take into consideration multi-disciplinary practices and other legal practitioners who are not attorneys or advocates that desire to establish a commercial entity with attorneys or advocates.	In terms of clause 6(5)(i) the Council must advise the Minister on this matter. The detail should be determined by the Council and not be prescribed by the Bill. The SALRC is currently investigating the issue of multi-disciplinary practices. As far as we can recall the legal profession itself was of the view that multi-disciplinary practices should be dealt with after the Law Reform Commission has finalized its investigation. The issue of MDP's is complex.
34(6)	Legalwise	Multi- disciplinary practices must be allowed.	In terms of clause 6(5)(i) the Council must advise the Minister on this matter. See above comments.
34(7)	Law Society of South Africa	*The charging of fees should not be permitted.  * There is no provision for accreditation of non-profit juristic entities. This should be provided for.	*Noted.  *Members of such an entity must be legal practitioners who must comply with the Bill. The question is raised why these entities should then be accredited.
34(7) and (8)	Legal Resources Centre	These two categories will create confusion. A simpler category is proposed: "A law clinic which – (a) Is governed by Legal Aid South Africa; (b) is constituted primarily to serve the public interest and enable poor people to obtain legal services free of charge; (c) where attorneys and advocates practise full	The Department does not agree. The Bill provides for legal practitioners and not for the services provided.

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>time or part-time; (d) which is registered by the Council and subject to regulations issued by the Council."</p> <p>*The Council will be best positioned to determine what work the law clinics should do.</p> <p>*Many of the provisions in the Bill are provided for in the Nonprofit Organisations Act, 1997 (71 of 1997). It is suggested that the Bill refer to that Act and define "law clinics" as such.</p> <p>*It is not necessary that the non-profit based clinics are governed by legal practitioners only. Other disciplines add value.</p> <p>*The clause must simply provide that practitioners can practise as a law clinic.</p>	<p>*The Bill regulates legal practitioners, and to a very minor extent law clinics. It is not advisable to incorporate another Act, which is administered by the Minister responsible for Welfare. It will lead to uncertainty.</p> <p>*Persons from other disciplines can be employed.</p>
34(7)	UNISA	<p>*Will the Bill still regulate persons who are not in private legal practice? What would be the incentive for non-practitioners to comply?</p> <p>*Section 34(7) prohibits any part of a non profit juristic entity's fees being distributed – but can they charge fees for legal work?</p>	<p>The Bill focuses on practising advocates and attorneys.</p> <p>*It is not clear what the commentator means.</p>
34(8)	Law Society of South Africa	No provision is made for accreditation of law clinics, as is currently required. This should be a requirement, since law clinics are entitled to employ candidate attorneys.	This seems to be appropriate.
34(8)(e)	Wits Law School	The exclusions of work that may not be done by university law clinics must be scrapped. The poor can access these services at law clinics.	The Department disagrees. All of these functions require bank accounts and the handling of financial aspects that would require trust accounts.
34(9)	Webber Wentzel	*The clause's wording is too speculative.	This matter must be dealt with by the Council.

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		<p>*A time period should be set for this issue to be considered.</p> <p>*Commentator requests that limited liability practices be allowed, as it will benefit the public.</p>	
New clause after clause 34	Legal Aid South Africa	<p>A clause should be inserted as follows:  <i>" One or more attorneys may practise together as either:-</i>  <i>(a) a sole proprietorship</i>  <i>(b) a partnership</i>  <i>( c) a firm</i>  <i>(d) a commercial juristic entity</i>  <i>(e) an office of Legal Aid South Africa</i>  <i>( f ) a law clinic.</i>  This establishes the important principle that a justice centre can practise as an entity.</p>	This seems to be a duplication of clause 34(4), with partnership and law clinics added. Partnerships are already mentioned in clause 34(4)(b) and law clinics fall under clause 34(7).
35	J Lourens	<p>The Minister's claim that the Bill will result in the lowering of fees and increase in access to justice is a populist view aimed at drumming up support. There are already fee structures in place. Some of these were ruled as uncompetitive in terms of the Competition Act. The proposed capping of fees will suffer the same fate.</p>	<p>It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.</p> <p>The Bill does not provide for the capping of fees. These issues can be dealt with by the envisaged fee structure.</p>
35	Legalwise	<p>A cost agreement must be entered by lawyer and client.</p>	<p>It is proposed that the Bill makes provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister</p>

Clause	Name	Submission / Recommendation	DOJCD Response
			on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.
35	Law Society of South Africa	Legal Aid South Africa should be entitled to charge for its disbursements only, and not charge fees.	If a cost order is granted by a court in its favour it can charge fees.
35	Eskom	If this Bill is indeed applicable to non-practitioners and the salaries earned by such persons are higher or lower than prescribed, would that need to be adjusted up or down?	The commentator misinterpreted this clause. It relates to fees of practitioners.
35	Independent Association of Advocates of South Africa	<p>*It is submitted that the reference to Legal Aid South Africa be removed from this section, as the aforementioned does not charge fees.</p> <p>* IAASA does not support the general capping of fees of legal practitioners more especially that of advocates, as it is tantamount to a restrictive practice and has been ruled as such by the Competition Commission. South Africa is a free market economy wherein members of the profession are striving for excellence and by regulating the fees of advocates; such practice thwarts healthy competition and detracts from the uniqueness and independence of the profession.</p> <p>*The capping of legal fees should apply in instances where practitioners are briefed to render services to the State.</p>	<p>*Cost orders can be obtained by Legal Aid South Africa and then the fees and costs are calculated.</p> <p>* See response above. The Bill does not provide for the capping of fees. These issues can be dealt with by the fee structure.</p> <p>*Noted.</p>
35	Webber Wentzel	*The following aspects should be included: Experience, location and overheads of lawyer.	It is proposed that the Bill makes provision for the establishment of a permanent

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>*Parties, particularly sophisticated users of legal services must be allowed to contract out of the fee structure.</p> <p>*Commentator believes that if fees are regulated most lawyers will charge the maximum capped rate, thus distorting competition. Regulating fees will not achieve the desired purpose. The market should have the freedom to determine and regulate rates.</p> <p>*The Bill gives the legislator too much power and control.</p>	<p>structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.</p> <p>The Bill does not provide for the capping of fees. These issues can be dealt with by the envisaged fee structure.</p>
35	Legal Aid South Africa	<p>*It is suggested that a (iv) is added: " the customary charges by legal practitioners of comparable standing for similar services."</p> <p>*It is suggested that (b) be deleted as it is superfluous. In those rare cases in which it applies the law is there.</p> <p>*This proposal is based on Rule 7.1.1 of the GCB Uniform Rules of Ethics which reads: <i>"7.1.1 Counsel is entitled to a reasonable fee for all services. In fixing fees, counsel should avoid charges which over-estimate the value of their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his lack of means may require a lower charge or even none at all. In determining the amount of the fee, it is proper to consider: (a) the time and labour required, the novelty and difficulty of the questions involved and the skill</i></p>	<p>*This could be vague and could differ from area to area.</p> <p>*Paragraph (b) refers to the tariffs set by the Rules Board.</p>

Clause	Name	Submission / Recommendation	DOJCD Response
		<p><i>requisite properly to conduct the cause;</i>  <i>(b) the customary charges by counsel of comparable standing for similar services; and</i>  <i>(c) the amount involved in the controversy and its importance to the client.</i></p> <p><i>No one of the above considerations in itself is controlling. They are mere guides in ascertaining the real value of the service. In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.</i></p>	
35	UNISA	Seniority and experience of the legal practitioner should also be one of the criteria.	<p>It is proposed that the Bill makes provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.</p> <p>This issue can be considered by the envisaged fee structure.</p>
35	Black Lawyers Association	BLA does not support the capping of fees. Market forces should dictate.	<p>It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure</p>

Clause	Name	Submission / Recommendation	DOJCD Response
			<p>for the determination of fees in the case of non-litigious matters as well.</p> <p>The Bill does not provide for the capping of fees. These issues can be dealt with by the envisaged fee structure.</p>
35	<p>South African Institute of Race Relations</p> <p>General Council of the Bar</p>	The power to set fees will strengthen state control over the legal profession.	Government has a constitutional duty to enhance access to justice / legal services.
35, 94(1)(i) and 97(1)(a)(vi)	Law Society of South Africa	The LSSA seeks clarity on what is intended by the reference to "fee structures".	The proposal that consideration be given to the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees, is intended to clarify this uncertainty.
35	Law Society of South Africa	<p>*Litigation matters fees are prescribed in terms of the magistrate's court rules and the High Court rules. A dissatisfied client is entitled to have these fees taxed by the taxing master of the court.</p> <p>*In respect of non-litigious matters the existing councils have the power to assess fees in terms of the rules of the law societies, and that power should be carried forward into the rules of the Council. A client who is dissatisfied with the decision of an assessment committee will have recourse to the Ombud.</p> <p>*Any regulations regarding fees should be made by the Council, approved by the Chief Justice and published in the <i>Government Gazette</i>. The Minister should not be involved in the process,</p>	<p>It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.</p> <p>The Bill does not provide for the capping of fees. These issues can be dealt with by the envisaged fee structure.</p>

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>which is an unwarranted interference in the fee-setting procedure and is calculated to undermine the independence of the profession.</p> <p>*Every legal practitioner has the constitutional right of freedom of economic activity.</p>	<p>*This is recognised.</p>
35	Competition Commission	<p>*Competitors should not be allowed to set fees.</p> <p>*A provision should be included that makes it clear that legal practitioners are permitted to charge fees for services rendered below the recommended minimum tariff (fee structure). In this manner, price competition is permitted even where there is a fee structure in place.</p> <p>*The Commission recommends that any circulars on recommended fees for the legal profession must be clear that the legal profession is permitted to offer discounts or charge for services rendered below the set minimum tariff. It is the Commission's view that if the overriding concern in setting a fees guideline is to prevent overcharging or over-reaching, this can be achieved by setting price caps or maximum prices. Price caps or maximum prices are permitted in competition law as they provide affordable products to consumers.</p> <p>*The Commission recommends that a provision be included dealing with the fate of contingency fees.</p>	<p>It is proposed that consideration be given to making provision for the establishment of a permanent structure (committee), consisting mostly of non-lawyers, which will advise the Minister on fees. Alternatively, because the Rules Board, which is chaired by a judge of the High Court, already prescribes certain fees/tariffs, the question is raised whether it could not constitute the envisaged structure for the determination of fees in the case of non-litigious matters as well.</p> <p>The Bill does not provide for the capping of fees. These issues can be dealt with by the envisaged fee structure.</p> <p>*This does require attention and it is perhaps an issue which should be included in the Bill.</p>
36	Competition Commission	<p>*The Bill is silent on whether the charging of fees will be included in the code of conduct of legal practitioners.</p>	<p>These details will be dealt with when the fee committee is set up and when the code of conduct is prepared. It might, however, be appropriate to state that failure to comply</p>

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>*The Commission recommends that the Bill contain a provision to the effect that legal practitioners are permitted to charge below the minimum fee tariff.</p> <p>*The Commission recommends that the practice of charging below the minimum fee tariff be excluded from practices that fall underneath misconduct by legal practitioners.</p>	with the eventual fees which are put in place constitutes misconduct.
36	UNISA	A single code of conduct for lawyers will not suffice, there should be separate ones for attorneys and advocates as their respective roles differ.	The Council will deal with this but it is envisaged that the differences between the two categories of lawyers will have to be accommodated in the code. It is inevitable.
36(1)	Legalwise	The Council members must unanimously assent to the code of conduct.	This requirement could frustrate the development of a code.
36	Eskom	It is possible that a code of conduct may conflict with the code of conduct to which the non-practising legal practitioner is subject. Which code will prevail?	Every situation will have to be assessed on its own merits. The Bill focuses on practicing lawyers.
36	South African Institute of Race Relations	If a practitioner breaches the code of conduct he will be disciplined. The disciplinary powers envisaged for a Council which reports to the Minister are too broad.	A code for conduct is generic and does not empower the Minister to influence disciplinary processes.
36	General Council of the Bar	The code must be developed by the Council, and by the two Chambers.	The two chamber model boils down to the retention of the current arrangements. The Department is of the view that this will perpetuate the issues that the Bill seeks to transform. It is accepted that the Council, when developing a code, will have to accommodate the differences between attorneys and advocates.

Clause	Name	Submission / Recommendation	DOJCD Response
37 to 40	Law Society of South Africa	It is recommended that the provisions of the Bill relating to the disciplinary process be removed from the Bill and be incorporated in the rules. If the process outlined in these sections is to be applied the resources of the Council and of the regional councils will need to be bolstered, and the disciplinary process will take significantly more time and involve considerably more expense.	Noted. If the detail is to be removed from the Bill, the details should be dealt with in regulations. It is important to have these crucial issues dealt with by way of a legislative instrument, either in the Bill itself or in regulations made by the Minister (in consultation with the Council). If this approach is adopted, criteria should be spelt out in the Bill with which the regulations must comply, for instance accountability and representivity, among others.
37 to 42	General Council of the Bar	The proceedings are cumbersome and do not take into account the number of disciplinary matters. The proposed two Chambers should deal with discipline internally.	The two chamber model will be guided by the parliamentary deliberations.
37, 38, 40	UNISA	Legal Aid clinics are not included.	Practitioners are disciplined as individuals.
37	Competition Commission	The Commission recommends an inclusion of a provision dealing with the establishment of investigating committees and disciplinary bodies, for clear guidance on the powers of such committees as far the subject matter of the investigations and disciplinary procedure is concerned.	These features are already in the Bill.
37	Cape Bar	The process will be too cumbersome. A process for advocates is suggested.	The two chamber model will be guided by the parliamentary deliberations.
37 (1) and (2)	Law Society of South Africa	It is recommended that the Council be entitled to delegate the power to investigate minor complaints to designated legal officials.	This could be considered. What constitutes minor complaints? This will have to be defined clearly.
37(1), (2) and (3)	Legal Resources Centre	Law clinics must be inserted.	The clinics are manned by individual practitioners who are subject to the Bill. It will not be the clinic that commits an impropriety, but the practitioners.
37(4)(c)	Law Society of	It will be difficult to comply with this section.	Noted. There is a need to balance the

Clause	Name	Submission / Recommendation	DOJCD Response
	South Africa	Disciplinary committees and investigating committees generally consist of only two or three persons, and the desired representivity will be impossible to achieve.	public interest, transparency and cost implications as against the provisions in the Bill which call for public participation in the committees.
37(5), 42	Law Society of South Africa	These clauses should be made subject to clause 44 dealing with urgent matters. A practitioner who is aggrieved by the outcome of a disciplinary hearing where serious misconduct is involved should not be entitled to frustrate the process by making use of the appeal procedure.	The principle is supported.
37 (1), 38(1)	Law Society of South Africa  Cape Bar	Only complaints where there is prima facie evidence of misconduct should go through the disciplinary process.	While there may be a need to limit complaints that go through the disciplinary processes, the Bill envisages investigating committees which are required to see if there is merit in a complaint. The issue of accountability is important. The profession has been criticised regularly regarding this.
39	NADEL	All internal processes must be exhausted.	It is not certain what is meant.
39 (3)(b)(i)	Law Society of South Africa	The signing and issuing of subpoenas should be an administrative function with employees of the Council having delegated authority to deal with those issues.	It seems appropriate for a member of a disciplinary committee to fulfil this function and not an employee.
39 (6)(a)(ii)	Law Society of South Africa	Substitute "another person" for "legal practitioner".	The Department has no objection.
40(3)(a)(i)	Law Society of South Africa	Disciplinary committees should not have the power to order the legal practitioner to pay compensation to a complainant. It is a matter for decision by the courts.	The Department has no objection.
40(3)(a)(iii)	Law Society of South Africa	The disciplinary committee should not have the right to suspend a legal practitioner from practice. That right should be reserved to the Council or Regional Council.	The Department has no objection.
40(3)(a)(vi)	Law Society of South Africa	The disciplinary committee should not have the right to require that a fidelity fund certificate be withdrawn. That right should reside with the	The Department has no objection.

Clause	Name	Submission / Recommendation	DOJCD Response
		Council or with the Regional Council.	
40(3)(c)(i)	Law Society of South Africa	The power to cancel or suspend the practical vocational training of a candidate legal practitioner should vest in the Council or the Regional Council.	The Department has no objection.
40(3)	General Council of the Bar	It is unacceptable that the disciplinary body can make a compensation order without the intervention of the court.	The Department has no objection.
40(8)	Law Society of South Africa	The requirement that every finding of misconduct must be published in the <i>Government Gazette</i> is unnecessary. It is recommended that the requirement of publication be left to the discretion of the disciplinary committee,	The issue of accountability and the public interest/protection should be paramount. What requires further discussion is what constitutes "minor" offences which are possibly exempt from publication.
41	General Council of the Bar	Delete the clause. No appeal lies against a decision of the Ombud.	The point is taken. The Department would like to reconsider this aspect.
42	General Council of the Bar	The clause must provide for an appeal by a complainant, similar to the right of appeal by the practitioner.	See above remarks.

Clause	Name	Submission / Recommendation	DOJCD Response
44	R Naidoo	Magistrates' courts and community courts must not be excluded.	Only the High Court can admit a practitioner to practise and strike him or her from the roll. The lower courts do not and should not have jurisdiction in this regard.
45	R Naidoo	Magistrates' courts and community courts must not be excluded	Only the High Court can admit a practitioner to practise and strike him or her from the roll. The lower courts do not and should not have jurisdiction in this regard.
45(2)	Law Society of South Africa	The clause should provide that an application to court under this section can be made only after the disciplinary processes of the Council have been exhausted. The Council as regulator has	Access to the courts should not be curbed.

Clause	Name	Submission / Recommendation	DOJCD Response
		the right and duty to make such an application and it is only if the Council fails to do so that a complainant should be entitled to make an application.	
46	R Naidoo	The Ombud is unnecessary and too costly.	The Department disagrees. It will promote accountability, among others.
46	Cape Bar	The Ombud's functions should be to investigate and report on maladministration, rather than second-guess the decisions of governance structures.	It is not certain what the Cape Bar means.
46	I J Smuts	The Ombud will not be independent.	The Department disagrees with the proposal. Consultation will take place with the Council before an appointment is made. The model in section 5 of the ICASA Act could possibly be explored in terms of which the National Assembly plays a role.
46	Eskom	There should be branch offices for the Ombudsman to enable the public to have convenient access.	This would be ideal but the cost implications would have to be borne in mind.
48(1)	General Council of the Bar	The Ombud must be appointed on the recommendation of the Council to preserve the independence of the profession.	The Ombud must not be seen as an instrument of the profession or the Council, but rather as an independent office.
48(1)	Law Society of South Africa	The LSSA recommends that the Ombud be appointed by the Chief Justice.	The Department disagrees with the proposal. The Chief Justice does not make appointments. Consultation will in any event take place with the Council before an appointment is made. The model in section 5 of the ICASA Act could possibly be explored in terms of which the National Assembly plays a role.
49(1)	UNISA	It is not clear whether the reports will be made public and made available to the complainants.	Agreed.
49	General Council of the Bar	The powers are too wide, unchecked and unclear.	It is unclear what gives rise to this statement. The GCB refers to the JHB Bar

Clause	Name	Submission / Recommendation	DOJCD Response
			comments. (Unfortunately we discussed at a late stage that we do not have these comments).
49	NADEL	The Ombud's and Council's functions should not overlap, for instance in respect of disciplinary matters.	We do not agree. The Council's role is to investigate and adjudicate. The Ombud's role is to review. The Ombud can, however, investigate failure by the Council to deal promptly with complaints.
49(1)(f)	Law Society of South Africa	<p>*The Ombud should not have the right to review a decision of the board of control of the Fund if the board of control rejects a claim. In such an event the courts have jurisdiction to deal with the matter.</p> <p>*What is intended to be encompassed by the Ombud's right to "review" a decision of the board of control - is it a review in the strict legal sense, or is it intended to be some sort of appeal process? This requires clarification.</p>	Review relates to process and procedure to come to a conclusion. Surely the Ombud should be able to consider this.
50(4)	Law Society of South Africa	The term of office of the Ombud be set at five years, with the right to have the appointment extended for a further period of up to five years.	The Department has no specific objection in this regard.
51	Law Society of South Africa	The removal of the Ombud and the filling of a vacancy should be left in the hands of the Chief Justice.	As indicated above, the involvement of the National Assembly could be considered.
51(2)	Eskom	The period for the replacement of the Ombud should be stipulated. Commentator recommends the appointment of another Ombud should be filled within two months of vacation of office.	This could be considered, but such a provision might cause practical problems.
54	C Erasmus	The Fund must be named "Lawyers Fidelity Fund".	The Department does not support this proposal as the Fund is only applicable in respect of attorneys.
54	NADEL	An inspectorate with sufficient and effective	Clause 87(2) provides that the Council or

Clause	Name	Submission / Recommendation	DOJCD Response
		powers must act on behalf of the Fund.	the Board of the Fund may, itself or through its nominee, inspect the accounting records of any trust account practice.
56	UNISA	It is not clear whether the provision is applicable to non-profit juristic entities and legal aid clinics.	Attorneys obtain fidelity fund certificates in their individual capacity.
56	Attorneys Fidelity Fund	A cap of R5million per claim should be introduced. The Minister should be empowered to adjust the cap from time to time.	The Department has no objection to this proposal. The capping and any adjustment should be published in the Gazette. It is understood that a single claim in New Zealand virtually "wiped out" a similar fund there.
New provision	Attorneys Fidelity Fund	The Bill must provide for the disclosure to the Council and the Fund of both professional indemnity and fidelity cover that will protect the public and Fund against the power of fallen currency against local currency.	
57(1)(a)	A Landman  Attorneys Fidelity Fund	Define "family member".	The Department has no objection to this for the sake of certainty.  Consideration could be given to the following definition : <i>'family member' in relation to any person, means his or her parent, sibling, child, including an adopted child or a step-child, or spouse (whether by statutory, customary or religious law), and including a life partner who is a person living with that person as if they were married to each other.'</i>
57(1)(a)	Attorneys Fidelity Fund	The requirement that the family member must have been found guilty of theft should be deleted. In many instances an attorney is not prosecuted, or dies. The family members should not be able to benefit.	The Department agrees, although the clause does not state it must have been by a court. It proposes that the words "found guilty of the theft" be replaced by "who stole the money".
57(1)(a)	Law Society of South	*Define "family member" and "members of the	*Agreed. (See above).

Clause	Name	Submission / Recommendation	DOJCD Response
	Africa	household".  *The reference to the attorney having to have been found guilty of theft if the Fund is to avoid liability should be deleted. If trust funds have been stolen the family member should not be entitled to claim against the Fund, whether or not the attorney concerned has been found guilty of theft by a court.	*The Department agrees, although the clause does not state it must have been by a court. It proposes that the words "found guilty of the theft" be replaced by "who stole the money".
57(1)(e)	A Landman  Attorneys Fidelity Fund	Delete "contemplated in paragraph (d)", as The corresponding provision in the Attorneys Act is never used in practice.	The provision should be retained, even if it is seldom used. Rather err on the side of caution.
57(1)(e)	Law Society of South Africa  Attorneys Fidelity Fund	*The exclusion of liability in clause 57(1)(e) should not be restricted in the manner set out in the clause, but that the Fund should not be liable for the theft of any money placed with an attorney purely for investment purposes.  *The provisions of section 47(1)(g) of the Attorneys Act, should accordingly be reinstated in the Bill.	*Agreed.  *Section 47(1)(g) of the Attorneys Act provides: <i>"by any person as a result of theft of money which a practitioner has been instructed to invest on behalf of such person after the date of commencement of this paragraph."</i>
58(i) and (j)	Attorneys Fidelity Fund	The clause must be qualified to ensure that the Fund has first preference in respect of available resources.	The Fund will make a determination each year what it can and cannot pay, depending on available resources. This is actuarially determined. Once this is done the Fund must pay. The provision must approach the matter in a manner that doesn't lead to the Council being held ransom each year which could affect its operations.
58(l)	Attorneys Fidelity	This must be limited to clauses 86(2) and (3)	The Department has no objection.

Clause	Name	Submission / Recommendation	DOJCD Response
	Fund	accounts only, as the Fund does not receive the interest generated by clause 86(4) accounts.	
58(o)	Attorneys Fidelity Fund	The extent of the costs should be defined and limited to the audit and inspections costs on the practice.	The Department has no objection.
63	South African Institute of Race Relations	The Minister should not be allowed to appoint persons on the Board.	It will be 2 persons out of 9. Communication between the Board and Minister is paramount for the protection of the public.
63(1)	Attorneys Fidelity Fund	<p>*The Council must nominate persons in a transparent process.</p> <p>*Some of the current Board members are of the opinion that the non-attorney component should be nominated via public participation.</p>	<p>*The Department has no objection. Provisions could be made for wording similar to that used in clause 7(1)(a): "in accordance with the procedure determined by the Council in consultation with the Board".</p> <p>*The Department has no objection.</p>
64(1)(e)	Attorneys Fidelity Fund	The Fund must be involved in the drafting of the rules relating to accounting or have an avenue of appeal on what would be appropriate accounting rules that adequately address its risk.	Agreed. Clause 95(zE) could be amended to provide "in consultation with the Board".
64(1)(e), 87(2)(a)	Law Society of South Africa	<p>*The power of inspection should lie with the Council, but the Council should be authorised to delegate the inspection function to the board of control for specific inspections.</p> <p>*If the function is delegated to the board of control, the board of control can conduct the inspection but if it does so it would be under the authority of the Council.</p>	The Department does not agree with the proposal – the Fund carries the risk and must be able to act proactively. The outcome of the inspections must still be dealt with by the Council and the court.
69 (1)(d)	Attorneys Fidelity Fund	The removal must be done by the Chief Justice on recommendation by the Board, bearing in	The commentator does not give reasons why the Chief Justice should become

Clause	Name	Submission / Recommendation	DOJCD Response
		mind the performance of that member .	involved in a body of attorneys.
74(1)(a) and (5)	Eskom	The subclauses are contradictions as (1)(a) provides for payment to the Fund and (5) to the Council. Commentator suggests that payment should be to Fund.	The process is that it is paid to the Council, which pays it over to the Fund. This provision is the same as section 43(7) of the Attorneys Act, 1979.
74(1)	C Erasmus	All lawyers, including non-governmental corporate lawyers must be subject to the Fund. Prosecutors, state attorneys, government lawyers and advocates must be excluded. However, the commentator, later on contradicts himself by stating that it would be advantageous if advocates are also held accountable to the Fund.	The Department does not support this proposal. It would serve no purpose for these persons to be included, due to the nature of their work.
75(3)	Attorneys Fidelity Fund	<p>*The clause suggests control of the Board by the Council. It undermines the independence of the Fund.</p> <p>*The clause must be amended to limit the report to operational reports.</p> <p>*The Minister should be in the oversight position.</p>	<p>*The Department does not agree that this undermines the independence of the Fund. It merely requires the report to be submitted to both the Council and the Minister. Both have an interest in the report. The question is raised whether the report of the Council should not also be submitted to the Fund.</p> <p>*It is not clear what is meant by "operational".</p>
84(1)	Eskom	The carve out is not clear and the word "and" should be deleted and replaced with "a".	It is not clear what the commentator means.
84	UNISA	It seems as if state attorneys and advocates can and must do everything that private legal practitioners can.	The provision must be read in context. Some of the provisions do pertain to state lawyers.
84(1)	Law Society of South Africa	The Bill introduces uncertainty into the requirement for holding fidelity fund certificates, and will lead to the mingling of business funds	Agreed.

Clause	Name	Submission / Recommendation	DOJCD Response
		and trust funds. It is recommended that every attorney who practises for his or her own account, or in partnership, or as a member of a juristic entity, be required to hold a fidelity fund certificate, whether or not he or she holds trust money or trust property at any particular time.	
84(6)	Law Society of South Africa	Employed attorneys (professional assistants and associates) do not have trust accounts. The requirements should apply only to the attorneys referred to in clause 84(1).	Agreed.
84(8)	WITS Law Clinic	Attorneys employed at university law clinics should have fidelity fund certificates. They often receive money on behalf of clients in civil claims.	Wits Law Clinic and Legal Resources Centre contradict each other.
84(8)	Legal Resources Centre	An attorney who practises at a law clinic should also be exempt.	Wits Law Clinic and Legal Resources Centre contradict each other.
84(8)	Legal Aid South Africa	Insert "permanent". This means that those appointed on a fixed term contract and who were practising as attorneys on their own account prior thereto will still be obliged to have fidelity fund certificates.	Agreed.
84(10)	SA Human Rights Commission	The clause must be amended to provide that the Human Rights Commission is bound.	Agreed.
85	Law Society of South Africa	A similar provision to section 13B of the Attorneys Act should be incorporated.	The Department has no objection. This matter could perhaps be addressed by regulations in terms of clause 94(1).
85	UNISA	Where an attorney has been the cause of prior claims against the Fund, such attorney's contribution should be "loaded".	This proposal should be considered. The Fund's comment could be obtained.
85	Eskom	A requirement that the Fidelity Fund Certificate should be clearly displayed at the offices of the attorneys could be included.	This proposal should be considered or it could be prescribed by the Code of Conduct.
86(4)	Attorneys Fidelity Fund	The Fund must receive part of the interest generated by clause 86(4) accounts as it carries	The LSSA support this (see comment below). The Department has no objection.

Clause	Name	Submission / Recommendation	DOJCD Response
		the risk.	
86(5)(b) and 64(1)(g)(i)	Law Society of South Africa	<p>*This clause contradicts clause 64(1)(g)(i).</p> <p>*The effect of these two clauses, read together, is that the Fund may claim part of the interest on money invested on behalf of a client on a temporary basis and as part of a transaction. This is contrary to the current position and amounts to the expropriation of part of the interest belonging to the client.</p> <p>*Clause 64(1)(g)(i) should be amended to make it clear that the interest under clause 86(5)(b) accrues to the client</p> <p>*The LSSA would support a proposal that part of the interest accruing on the invested funds were to be paid over to the Fund, provided the portion paid over is limited to 5% of the interest .</p>	Noted. The contradiction will be addressed.
86(5)	Attorneys Fidelity Fund	Specific provision must be made that the interest vests in the Fund.	The Department agrees and proposes that the following words be inserted after "to the Fund": <i>"and vests in the Fund"</i> .
87(2)(a), 87(5)	Law Society of South Africa	There is a conflict of powers between the powers of the Council and those of the board of control.	Section 78(5) of the Attorneys Act, 1979, provides that the society has the power. The Fund requests to have this power as it carries the risk and the societies sometimes do not act quickly.
87(4)(a)	Attorneys Fidelity Fund	A subclause should be added to provide that unclaimed moneys must after a year be paid to the Fund. Moneys lying in suspense accounts pose a risk.	Agreed. The Department proposes that the following words be inserted after "unknown": <i>"or which is unclaimed"</i> .
87(5)	Law Society of South Africa	The clause is not sufficiently wide to enable the Council to inspect a practice for another reason	It is not clear what improper conduct the Fund could have an interest in. It might

Clause	Name	Submission / Recommendation	DOJCD Response
		than accounting matters - for example, to investigate allegations of improper conduct. It is recommended that a section be introduced into the Bill giving the Council the power to inspect the affairs of any firm for purposes of an investigation into allegations of improper conduct.	rather be something to provide for under the discipline clauses.
89	Law Society of South Africa	<p>*The power to apply to court should be that of the Council (or a regional council where that power is delegated to it) and to no one else.</p> <p>*The reference to a trust account practice is incorrect and should be a reference to an attorney.</p>	<p>*The Board alleges that the Law Societies do not take timeous steps and that increases the Fund's risk.</p> <p>*Agreed</p>
90	Law Society of South Africa	<p>*There should be a provision similar to section 81(1)(e) in the Bill.</p> <p>*The experience of the law societies is that the Master refuses to make appointments under section 78(9), on the grounds that the regulations referred to in section 81(1)(e) have never been promulgated. LSSA suggests that the clause be amended to incorporate the procedure which is currently adopted by the law societies, namely, that the rights and duties of the curator be incorporated in a court order, with the Master's office not being involved. This means that the Council retains control over the appointment of a curator and the manner in which the curatorship is exercised. This will also avoid delays which occur in the appointment of a curator and enables the accounting records of attorneys to be taken over without delay by the curator.</p>	The Department has no objection.

Clause	Name	Submission / Recommendation	DOJCD Response
90(3)	Law Society of South Africa	This clause refers to judicial management, which no longer exists.	Agreed that the word should be deleted.
91	UNISA	<p>* Section 91(1)(a) provides that a bank will not be deemed to have knowledge (by reason only of the name or style of the account) that the account holder (ie, the legal practice) of a trust account is not entitled to all the money deposited in the account. It is not clear why banks are afforded this special protection. If a bank knows that money is held in a trust account (the name of the account will in all cases be self-explanatory) it is fair to accept that the bank will know that (not all) the money in the trust account "belongs" to the account holder. As it is presently worded s 91(1)(a) creates the impression that it deals with a bank's right to set-off. If so, why not mention it specifically? If not, with what does it deal then?</p> <p>*It would seem that clause 91(1)(a) attempts to require something more before a bank will be deemed to have knowledge about the nature, rights and duties of the parties involved in a bank/trust account holder relationship. However, it does not specify what this additional requirement is.</p> <p>*Clause 91(1)(b), in turn, provides that the provisions contained in s 91(1)(a) do not relieve the bank from any liability or obligation "which legally exists". What type of liability or obligation does s 91(1)(b) refer to?</p> <p>*On the face of it, clauses 91(1)(a) and (b) are</p>	This clause is similar to section 78(10) – (13) of the Attorneys Act, 1979.

Clause	Name	Submission / Recommendation	DOJCD Response
		<p>in conflict with each other.</p> <p>*Further, the provisions contained in clause 91(2) seem to contradict those in clause 91(1)(a).</p> <p>*Clause 91(3), in turn, seems to contradict the provisions contained in s 91(2).</p> <p>*In terms of the common law a bank has the right of set-off or combination of accounts. Does clause 91 aim to alter the common law? And if so, to what extent? If not, why has clause 91 been included in the Bill?</p> <p>*The common-law right of set-off of a bank came under scrutiny in three recent decisions. The common-law position regarding the bank's right to set-off is clear. If a bank had <i>prior knowledge</i> of the source and purpose of the funds in an account, and more specifically, if it had knowledge that a third party (and not the account holder) has a personal claim against it (the bank) for a similar amount to be paid on demand it will not be entitled to apply set-off. Real and not imputed knowledge is required.</p> <p>*From the wording of clause 91 it is not clear whether or not this common-law principle is entrenched by the provisions contained in clause 91. If it is the legislature's intention to alter the common-law position, it must do so in clear and unambiguous terms.</p>	

Clause	Name	Submission / Recommendation	DOJCD Response
92	General Council of the Bar	<p>*The word "attorney" must be replaced by "legal practitioner" to provide for an advocate too.</p> <p>*The word "instructing" must be inserted before "attorney" in the last line.</p>	Agreed.
92(1)	Wits Law Clinic	The words "to that attorney or practice" should be extended to attorneys practising at a university law clinic.	Agreed.
92	Legal Resources Centre	Law clinic must be inserted.	Agreed. The current section 79A of the Attorneys Act provides for a law clinic.
93	UNISA	This makes it almost impossible for an ex legal practitioner to earn any kind of living, which seems unconstitutional.	This provision is similar to section 83(5) of the Attorneys Act, 1979. The public must be protected.
94	Law Society of South Africa	Wherever the Minister is given the power to make regulations it should be done in consultation with the Council. The LSSA recommends that there be a blanket provision to this effect, with an exception being made in those circumstances where it is appropriate for the Minister to act after consultation with the Council.	*Consideration could be given to the Minister making any subordinate legislation envisaged in the Bill "in consultation with the Council" rather than "after consultation" in order to address the concerns/criticism that the current wording impacts negatively on the independence of the legal profession. However, there must be some form of deadlock-breaking mechanism in the event of no consensus being reached on these crucial aspects of the legislation. A precedent for this is to be found in sections 12 and 13 of the Judicial Service Commission Act, 1994, which deal with the code of judicial conduct and regulations relating to the disclosure of registrable interests of judges. Where necessary, the requirement of "after consultation" could be retained. The aspects which require "in" and those which require "after" need to be considered.

Clause	Name	Submission / Recommendation	DOJCD Response
94(1)	General Council of the Bar	It should be "in consultation".	See above remarks.
94(1)(b), (c), (i), (n) and (p).	General Council of the Bar Cape Bar	These clauses must be deleted as it infringes on the independence of the profession. The Council can make rules more swiftly and efficiently than the Minister.	These are crucial aspects in respect of which Government has a legitimate interest. They therefore should be regulated by means of a legislative instrument, in this case regulations.
94(1)(d)	UNISA	"Limited liability legal practices" must be defined.	It has a general meaning.
94(1)(f)	Attorneys Fidelity Fund	These regulations should be made by the Minister, after consultation with the Board, and not the Council.	Agreed.
95(1)(e) and (f)	Attorneys Fidelity Fund	These regulations should be made by the Minister, after consultation with the Board and the Chief Justice. The Council must not be involved.	Agreed.
94(1)(g)	General Council of the Bar Law Society of South Africa	The meaning of "transformational legal education and training" is vague.	The Department will revert on revised wording.
94(1)(h)	Wits Law School	Students must be allowed to appear in certain cases.	The Department does not support this recommendation. It will not be in the public interest.
94	Independent Association of Advocates of South Africa	**"Transformational legal education training" should be defined.  *Pupils must receive some form of remuneration.	*Agreed.  *This important aspect will be dealt with in the regulations.
94	I J Smuts	Wide regulatory powers are a threat to independence.	*Consideration could be given to the Minister making any subordinate legislation envisaged in the Bill "in consultation with the Council" rather than "after consultation" in

Clause	Name	Submission / Recommendation	DOJCD Response
			order to address the concerns/criticism that the current wording impacts negatively on the independence of the legal profession. However, there must be some form of deadlock-breaking mechanism in the event of no consensus being reached on these crucial aspects of the legislation. A precedent for this is to be found in sections 12 and 13 of the Judicial Service Commission Act, 1994, which deal with the code of judicial conduct and regulations relating to the disclosure of registrable interests of judges. Where necessary, the requirement of "after consultation" could be retained. The aspects which require "in" and those which require "after" need to be considered.
95(1)(j), (k), (l), (m), (o), (q), (r) and (s)	General Council of the Bar	These paragraphs must be revised in accordance with the proposed Chambers structure.	This presupposes adoption of the two chamber model. Parliamentary deliberations will guide this aspect.
95(1)(m)	Law Society of South Africa	The expression "level of competence" needs to be clarified.	It will be clarified in the rules to be made by the Council.
95(1)(q)	Law Society of South Africa	It is not clear why there is a need to be rules regarding the instruction of attorneys and instruction of advocates by attorneys. These remain matters covered by the law of contract or the common law.	The Council <i>may</i> make rules. It is not imperative.
95(1)(t), (u), (v) and (zE)	Attorneys Fidelity Fund	These rules must be made in consultation with the Fund, to avoid possible conflicting rules.	Agreed.
95(2)	Law Society of South Africa	Any amendments to the rules should also be published for comment.	Agreed.//
96	South African Institute	The Transitional Council's composition gives the	The Minister will nominate two out of 21

Clause	Name	Submission / Recommendation	DOJCD Response
	of Race Relations	Minister too much influence.	members.
96	Independent Association of Advocates of South Africa	<p>*The inclusion of IAASA is welcomed. The incorrect citation of IAASA in clause 96(1)(a)(iii) must be amended to read as follows: "one advocate nominated by the <i>Independent Association of Advocates of South Africa</i>".</p> <p>* Clause 96(1)(a)(i), (ii), (iii) and (iv) in its current form unfair and creates an undue power imbalance. It is proposed that two advocates nominated by each of the following: General Council of the Bar of South Africa; Independent Advocates Association of South Africa; the National Forum of Advocates; and Advocates for Transformation represent the advocates.</p>	<p>*Noted and agreed.</p> <p>* The proposal can be considered if membership numbers can be provided.</p>
96	Competition Commission	<p>*The Transitional Council would make rules and develop codes of conduct to guide practitioners on what prices to charge. The Commission is concerned that the structure and role of the Transitional Council will have legal practitioners, being parties in a horizontal relationship, determine standards and recommending fees.</p> <p>*The Commission is concerned by the fact that the Bill does not make it clear what the content of the rules that the Transitional Council would make would be.</p> <p>* The Commission recommends:  <i>a) lower the representation of legal practitioners from the Transitional Council so that it can be deemed to be independent of the legal profession, by increasing the number of non-practicing legal professionals on the Council</i></p>	<p>*The Transitional Council will be paramount in the transformation process form existing structures to those of the Bill. It will be counterproductive to import non practitioners as they will not be able to contribute.</p> <p>*Clause 108 lists the matters on which rules must be made.</p> <p>*The content cannot yet be determined, and it should not be prescribed in the Bill.</p>

Clause	Name	Submission / Recommendation	DOJCD Response
		<p><i>itself; or</i>  <i>b) the Transitional Council could recommend a fee structure and leave it open to each practicing attorney or advocate to translate into actual charges for services rendered; or</i>  <i>c) the Transitional Council could recommend fees or a fee structure to the Minister or a panel selected by the Minister to take a final decision; or</i>  <i>d) the Transitional Council could form a fees sub-committee dominated by members appointed by the Minister in which the legal fraternity will also have representation. The decision of the sub-committee should then be final; or</i>  <i>e) the Transitional Council could set price caps and allow the market to compete below the cap.</i></p> <p>*The Commission recommends that the Bill be specific on the content of the rules to be made by the Transitional Council and also specify what is likely to be in the new code of conduct.</p>	
96	General Council of the Bar	If the General Council of the Bar's proposed model of two chambers is accepted there will be no need for a Transitional Council.	
96(1)(a)	General Council of the Bar	<p>*There must be equal representation of attorneys and advocates.</p> <p>*Advocates for Transformation are represented on the General Council of the Bar and should not have individual representation on the Transitional Council.</p> <p>*Advocates should have a veto right in respect</p>	There

Clause	Name	Submission / Recommendation	DOJCD Response
		of issues peculiar to advocates.	
96	Law Society of South Africa	The comment concerning the appointment of members of the Council by the Minister in respect of clause 7 applies in the case of the composition of the Transitional Council.	
96(1)(a)	NADEL	*AFT represents 50% of the GCB and should not have separate representation.  *BLA and NADEL have members who are not attorneys.  This ought to be taken into account with the composition.	
96(1)(b)	Constitutional Literacy and Service Initiative	One clinician nominated by and a member of AULAI, the Association of University Legal Aid Institutions, must also be a member of the Transitional Council.	The Department does not agree. The Transitional Council should not be too big an will not deal with education matters.
96(1)(c)	General Council of the Bar	The Minister should not have representation or should have only one representative.	
96(1)	Legalwise	Two persons, appointed by the legal expenses insurance sector, must be Transitional Council members.	The Department does not agree. The Transitional Council should not be too big.
97	UNISA	*The provision postpones the problems and disputes that could not be resolved thus far,  *To provide that parties must reach an agreement seems <i>contra bonos mores</i> and unenforceable.  *Taking over the assets of private institutions, where all the members have a shared interest in the assets, seems to indicate a deprivation or expropriation, with all the Constitutional implications of that.	

Clause	Name	Submission / Recommendation	DOJCD Response
97	South African Institute of Race Relations	<p>*The Transitional Council could recommend that representation from organisations aligned to the ruling party should be increased. This could be negative for the independence of the profession.</p> <p>*It is unclear whether the current professional organisations will be able to retain their assets, or if they will be confined to arguing over the amount of compensation they are entitled to receive.</p> <p>*The Bill makes it clear that control of the legal profession is to pass from independent professional bodies to an entity under significant executive control.</p>	The Department does not agree.
97	Law Society of South Africa	<p>*Questions relating to Regional Councils must be dealt with by the Minister in consultation with the Council.</p> <p>*The term 'fee structure' is unclear.</p>	The Council will not exist then. The Transitional Council must make recommendations to the Minister.
97(2)	Law Society of South Africa	<p>*It should be defined clearly what is meant by "the attorneys' and advocates' professions".</p> <p>*The assets of the existing law societies should accrue to the regional councils to be established within the areas of jurisdiction of the law societies, to be allocated to the regional councils in such proportions as the relevant Council may determine.</p>	*The Transitional Council can recommend as such to the Minister.
97(2)	I J Smuts	The clause will obliterate voluntary associations.	The Constitutional right to associate remains.
97(2)	Employees of Law Society of South	The clause should expressly provide for the employees of the Law Society of South Africa	The Law Society of South Africa is a voluntary association. The Bill cannot make

Clause	Name	Submission / Recommendation	DOJCD Response
	Africa	too.	provision for all voluntary association's personnel beyond the Labour Relations Act, 1995.
97(2) and 116	General Council of the Bar  Cape Bar	<p>*The effect is that the General Council of the Bar and other voluntary associations will cease to exist.</p> <p>*The provisions are unconstitutional.</p> <p>*The provisions did not take into account the way in which the Law Societies and the General Council of the Bar function from day to day. The Council will not be able to fulfil these functions. Members serve fulltime to manage the two very different professions.</p> <p>*The Bars do <i>pro bono</i> work, and provide education to its members.</p> <p>*The funding of the Council and Regional Councils will be a financial burden to members.</p> <p>*Arbitration in terms of the Arbitration Act, 1965, is inappropriate as status cannot be determined and the Arbitration Act cannot be a vehicle for compulsory arbitration.</p>	
97(2) and 116	General Council of the Bar	<p>*Replace these two clauses with a new proposed structure.</p> <p>*Create two structures (chambers) in the Council, one for attorneys and one for advocates.</p> <p>*The Law Societies will become the chamber for</p>	

Clause	Name	Submission / Recommendation	DOJCD Response
		attorneys and the General Council of the Bar the chamber for advocates.	
98(2)(b)	Law Society of South Africa	The resources of the law societies are severely stretched and the LSSA proposes that whatever additional staff are required are employed at the cost of the Department in terms of section 107(2)(a).	
98(2)(b)	Employees of Law Society of South Africa	The clause should expressly provide for the employees of the Law Society of South Africa too.	The Law Society of South Africa is a voluntary association. The Bill cannot make provision for all voluntary association's personnel beyond the Labour Relations Act, 1995.
100(1)	Independent Association of Advocates of South Africa	The Minister must not be consulted as it detracts from the independence of the profession.	
102	General Council of the Bar	The removal of a member should not be left to the opinion of the Transitional Council.	Chapter 10 of the Bill contains guidelines in this respect.
108(1)(b)	South African Institute of Race Relations	It is unacceptable that the Minister should have so much influence that he might decide alone on the election procedure.	It will only happen be if the Transitional Council does not make recommendations. A deadlock breaking mechanism is necessary.
108(1)(b)	General Council of the Bar	The Minister should not have this power. If this provision is retained, it should be exercised in consultation with the Transitional Council.	It will only happen be if the Transitional Council does not make recommendations. A deadlock breaking mechanism is necessary.
111(1)(a)	Independent Association of Advocates of South Africa	The section only refers to training by the LSSA, and must be amended to also include any other training course approved by any existing Association or Bar Council. It is submitted that the amendment would then include IAASA. The aforementioned Associations or Bar Councils have duly approved their training	The training referred to, as offered by the LSSA is recognized as part of the candidate attorney's vocational training. It must be researched whether the training by the advocates' associations will form part of pupillage.

Clause	Name	Submission / Recommendation	DOJCD Response
		programs and as such, these training programs should be recognised.	
111(1)(a)(i)	Law Society of South Africa	<p>*The words "for purposes of the Attorneys Act, 1979" should be added to this subclause.</p> <p>*All courses presented at the Practical Legal Training School (and not only 'the training course") should be provided for.</p>	Agreed.
111(2)	Law Society of South Africa	<p>*The date 1 January 1999 should be changed to 31 December 2004.</p> <p>*The words "and if all other requirements are met in terms of the Attorneys Act, 1979" should be added at the end of the clause.</p>	<p>*It is not clear why they recommend this date.</p> <p>*Agreed.</p>
113	UNISA	This is pointless. The Law Societies already have these lists and in any event that would not be comprehensive since legal advisers are not required to be admitted by Court.	The provisions do not pertain to legal advisers, but to practitioners.
113	General Council of the Bar	<p>*The Bill should provide the proposed Chamber of Advocates with the power to determine a mechanism to ensure that advocates who practice when the Act commences and who have not passed the General Council of the Bar's pupillage examinations and membership requirements comply with the standards, by example through legal education.</p> <p>*Each practicing advocate who, when the Act commences, is not a member of a constituent Bar, must be compelled to keep chambers approved by a regional council of advocates.</p>	
113(1)	General Council of	Several admitted advocates' names do not	

<b>Clause</b>	<b>Name</b>	<b>Submission / Recommendation</b>	<b>DOJCD Response</b>
	the Bar	appear on the roll. The requirement should be that the person must be admitted.	
114	General Council of the Bar	The clause must be amended in accordance with the comment on clause 113.	
115	Independent Association of Advocates of South Africa	Reference must also be made to IAASA and The National Forum of Advocates.	Agreed.
116	Independent Association of Advocates of South Africa	Reference must also be made to IAASA and The National Forum of Advocates.	Agreed.
116	Law Society of South Africa	There should be a general provision that, subject to the provisions of the Bill, on and after the commencement date of the Bill anything which was done under a provision of a law repealed by the Bill and which could be done under a corresponding provision of the Bill is deemed to have been done under that corresponding provision.	Agreed.
117	Independent Association of Advocates of South Africa	Reference must also be made to IAASA and The National Forum of Advocates.	Agreed.
117	Law Society of South Africa	There should be a general provision that, subject to the provisions of the Bill, on and after the commencement date of the Bill anything which was done under a provision of a law repealed by the Bill and which could be done under a corresponding provision of the Bill is deemed to have been done under that	Agreed

Clause	Name	Submission / Recommendation	DOJCD Response
		corresponding provision.	
119	C Erasmus	The interchangeable use of 'legal practice' and 'legal practitioner' leads to confusion. The Bill should be named "Legal Profession Act".	The commentator does not clarify the reasons for his view.
Schedule	Legal Aid South Africa  Law Society of South Africa	Add the Venda Attorneys Act, 1987(Act No. 42 of 1987)	This Act is referred to in clause 110(c).

**TABLE 2**  
**General recommendations**

<b>Name</b>	<b>Submission / Recommendations</b>	<b>Response</b>
Ebi Achigbe Okeng Ebi  R Naidoo  D Sukdeo  Independent Association of Advocates of South Africa  NADEL	The professions of attorney and advocate should fuse.	Initially the mandate was to merge/fuse the two professions. Due to fierce opposition from all branches in the legal profession, Government made a concession.
R Naidoo	Bill must provide that that 30% briefs from private attorneys and 50% briefs from state attorneys should go to female advocates listed on a public database and website held by the Council or the DoJCD, and that advocates who are not members of any of the Society of Advocates or any other organization should not be discriminated against. This clause should be implemented for a restricted period of five years and be subject to annual review by Parliament.	The Department does not agree with this proposal. It is too prescriptive.
R Naidoo	Advocates must be allowed to advertise through electronic devices.	The matter will be addressed by the Council.
R Naidoo	Advocates' traditional garb should be dispensed with.	The Department does not agree with this proposal. The commentator can address it to the Council.

Name	Submission / Recommendations	Response
R Naidoo	Fundamental rights such as freedom of association are not taken into account.	This Constitutional right is not affected by the Bill.
R Naidoo	Term "lawyers" should be used instead of "legal practitioner".	The Department does not agree with this proposal.
D Sukdeo	<p>*Government work must be distributed equally to all legal practitioners, not to a specific law firm.</p> <p>*Subsidies must be provided to up-coming law firms.</p>	
E K Tsatsi	Advocates who don't practice or who don't belong to any professional body should not be allowed to use the title of advocate, as they are not subject to rules and cannot be monitored..	The Bill brings all advocates under the auspices of the Council.
A Jensen	The Bill should make the legal profession accountable to clients and preclude them from charging for time negligently wasted.	The Ombud will have an important role in the public's complaints against practitioners.
J Marks	The Bar Councils do not act against members. Advocates' fees is out of control and sometimes fraudulent.	It is envisaged that this legislation will address matters related to fees, as <i>per</i> clause 35.
Eskom	An independent body must be created to regulate the affairs of non-practising members of the profession, eg legal advisers.	The Council must keep a Roll of practising and non-practising legal practitioners. This brings non-practising members under the auspices of the Bill.
E du Preez	<p>*Commentator requests that persons who have experience, but have not or could not afford to follow the current requirement for admission, imposed by a system that emanates from the previous century be accommodated. Allow them to work freely and the market forces will soon make legal assistance affordable to all.</p> <p>*The argument that without formal, after University training, a person is not competent to do legal work does not hold water, all industries have in house training, why not legal practitioners?</p>	There is a higher demand for vocational training than there are opportunities. The Bill seeks to address this by, inter alia, the proposed system of community service.

Name	Submission / Recommendations	Response
C Erasmus	All references to "Minister" must be replaced by Judicial Service Commission. It is important, from a separation of powers perspective, that the Act demonstrates that the Executive and Legislative arms of Government merely facilitated in the necessary transformation process of the Judiciary as an arm of Government.	The attorney's and advocate's professions are not members of the judiciary.
C Erasmus	A person who partially completed the LLB degree must be allowed to practise as legal advisor. Separate legislation must provide for this. Community based organizations and NGO's will receive a boost.	The Bill does not provide for paralegals.
South African Institute of Race Relations	<p>*The State has too much control over the legal profession.</p> <p>*The ruling party remains intent on transforming the 'collective mindset' of the Judiciary, as President Thabo Mbeki described it in 2005. However, such a goal is contrary to the separation of powers and threatens the system of judicial review lying at the heart of South Africa's constitutional democracy.</p> <p>*Once all legal practitioners are regulated by a council answerable to the justice minister, it is likely to become much harder to find lawyers willing to take up contentious cases against the State.</p>	The Department does not agree with this proposal.
Competition Commission  Legal Aid South Africa  UNISA	Paralegals and other legal practitioners who are not attorneys or advocates must be included in the Bill.	Provision will be made for paralegals in the proposed Lower Courts Bill.

Name	Submission / Recommendations	Response
<p>Constitutional Literacy and Service Initiative</p> <p>National Alliance for the Development of Community Advice Offices</p> <p>Association of Paralegals Practitioners – Randburg.</p> <p>J Mandlazi</p> <p>Legal Resources Centre</p>		
<p>Legal Aid South Africa</p> <p>General Council of the Bar</p>	<p>No provision is made for the future conferral of senior status. This omission from the previous draft has taken place without any consultation with the profession and without any prior indication that this omission was intended.</p>	<p>The Bill does not provide for the conferring of the status of senior legal practitioner as was provided for previous drafts. This deletion is, inter alia, because of to the recent North Gauteng High Court decision in the application of Adv Mansingh that the President of South Africa does not have the power in terms of the Constitution to confer the status of senior counsel on practising advocates.</p> <p>The Department is not supporting the perpetuation of the system of senior council.</p>

Name	Submission / Recommendations	Response
Competition Commission	<p>*The Commission recommends that express provision be made in the Bill for the allowance of advertising and marketing where a complete ban on advertising and marketing would be prohibited.</p> <p>*The Commission recommends that the general advertising standards alluding to truthfulness of the content and not mislead the public be prescribed for the legal profession.</p> <p>* The Commission recommends that the Bill in the event that it makes express provision for marketing and advertising, it should also make provision for definitions of such.</p> <p>*The Commission recommends that express provision in the Bill on touting be made. In that, what amounts to touting must be clearly defined given the current various interpretations of what is touting and which are a source of much confusion for the Commission and the legal fraternity.</p>	
National Alliance for the Development of Community Advice Offices (NADCAO)	The organisation's name must be corrected in Paragraph 4 of the Memorandum On The Objects Of The Legal Practice Bill	Agreed.
UNISA Legal Resources Centre	The Bill does not contain any provisions that may strengthen the independence of the legal profession. On the contrary, the over regulation seems to have the opposite effect.	The Department does not agree with this comment.

Name	Submission / Recommendations	Response
General Council of the Bar	The status of the General Council of the Bar and the constituent Bar should neither be ignored, nor terminated.	They can exist as voluntary associations, which is what they already are.
General Council of the Bar	The transformation of the legal profession is envisaged but no substance is given to this goal in the Bill.	<p>The transformative nature of the Bill will manifest itself in its application. Several provisions intend to promote and facilitate transformation and accountability:</p> <ul style="list-style-type: none"> <li>• One umbrella body will regulate both the advocates' and attorneys' professions.</li> <li>• Clause 6 requires the Council to report annually to the Minister on its activities, with the view to making recommendations to the Minister regarding legislative and other interventions to improve access to the profession and access to justice broadly.</li> <li>• Clause 29 envisages the obligatory rendering of community service by candidate legal practitioners as well as by practising lawyers, advocates and attorneys, which will contribute enormously to access to justice.</li> <li>• Clause 32 allows a legal practitioner to apply to the Council to convert his or her registration as an attorney to that of an advocate and <i>vice versa</i>, facilitating mobility between these two categories of lawyers.</li> <li>• Clause 35 provides for the establishment of a fee structure which is to determine affordable legal fees.</li> <li>• The establishment of an Office of Legal Services Ombud, which is intended to protect and promote the interests of consumers of legal services.</li> <li>• The emphasis on the creation of mechanisms to provide proper, appropriate and transformational legal education.</li> <li>• The move away from the current system of independent statutory law societies which is not in the interests of a unified legal profession, required to promote uniform minimum norms and standards.</li> <li>• It eliminates artificial and outdated discrepancies or distinctions between advocates and attorneys, for</li> </ul>

Name	Submission / Recommendations	Response
		instance it gives attorneys the right of appearance in all courts, as is the case with advocates, and it give attorneys the right to practise throughout the Republic, as is the case with advocates.
Law Society of South Africa	The Bill rightly places emphasis on improving access to justice. This is an ideal to which the attorneys' profession strives. The attorneys have several processes in place to improve access.	Noted.
Black Lawyers Association	The Legal Services Charter should dictate the application of BBBEE.	

**LEGAL PRACTICE BILL, 2012****LIST OF COMMENTATORS**

1. Competition Commission
2. Independent Association of Advocates
3. Legal Resources Centre
4. Black Lawyers Association
5. Law Society of South Africa
6. A R Sukdeo
7. NADEL
8. Employees of the LSSA
9. Adv I J Smuts
10. Legalwise
11. Wits Law Clinic
12. Human Rights Commission
13. General Council of the Bar
14. Cape Bar
15. Association of University Legal Aid Institutions
16. Legal Aid South Africa
17. D Grootboom
18. UNISA

19. Constitutional Literacy and Service Initiative
20. South African Institute of Race Relations
21. Adv C Erasmus
22. Prof J Maseko
23. Adv E du Preez
24. Webber Wentzel
25. Eskom
26. Adv J Lourens
27. A Landman
28. SB Dlamini
29. June Marks Attorneys
30. A Jensen
31. Adv EK Tsatsi
32. Dr R Naidoo
33. N Smythe
34. Ebi Achitbe Okeng Ebi
35. Association of Paralegal Practitioners, Randburg
36. National Alliance for the Development of Community Advice Offices
37. J Mandlazi
38. Aleagis Consulting
40. Miss N Gumbi

41. Attorneys Fidelity Fund

